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

DIVISION OF
CORPORATION FINANCE

February 9, 2024

Lillian Brown
Wilmer Cutler Pickering Hale and Dorr LLP

Re: The Walt Disney Company (the "Company")
Incoming letter dated February 8, 2024

Dear Lillian Brown:

This letter is in regard to your correspondence concerning the shareholder proposal submitted to the Company by the National Center for Public Policy Research for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Company withdraws its November 22, 2023 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

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

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

WILMERHALE

November 22, 2023

Lillian Brown

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

Via Online Shareholder Proposal Form

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

Re: The Walt Disney Company
Exclusion of Shareholder Proposal by the National Center for Public Policy Research

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the "Company"), to inform you of the Company's intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2024 annual meeting of shareholders (the "Proxy Materials"), the enclosed shareholder proposal and supporting statement (collectively, the "Proposal") submitted by the National Center for Public Policy Research (the "Proponent").

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

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

Background

On July 26, 2023, the Company received the Proposal from the Proponent. The Proposal states in relevant part as follows:

> **Resolved:** Shareholders request the Company list the recipients of corporate charitable contributions of $5,000 or more on the Company's website, along with the amount contributed and any material limitations or monitoring of the contributions.

Basis for Exclusion

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it seeks to micromanage the Company.

Rule 14a-8(i)(7) permits the omission of a shareholder proposal dealing with matters relating to a company's "ordinary business operations." The underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *See Amendments to Rules on Shareholder Proposals*, Release No. 34-40018 (May 21, 1998) (the "1998 Release").

As set out in the 1998 Release, there are two "central considerations" underlying the ordinary business exclusion. One consideration is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The other consideration is that a proposal should not "seek[] to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." We believe the Proposal implicates the second of these considerations because it seeks to micromanage the Company.

More specifically, the Proposal may be excluded in reliance on Rule 14a-8(i)(7) on the basis that it seeks to micromanage the Company with regard to the reporting of its charitable contributions. In Staff Legal Bulletin No. 14L (November 3, 2021) ("SLB 14L"), the Staff clarified that in evaluating companies' micromanagement arguments, it will "focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management." The Staff further noted that this approach is "consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing *high-level direction on large strategic corporate matters*" (emphasis added).

Here, the Proposal requests detailed disclosure regarding the Company's charitable giving, which would include the Company's matching gifts program.[1] The Company's matching gifts program is a broad-based employee benefit in which thousands of the Company's employees participate each year. Requiring the Company to list the specific recipients who received $5,000 or more in donations pursuant to the Company's matching gifts program would be burdensome and impractical, as over 20,300 charitable organizations benefited from, and over 8,600 employees participated in, the Company's matching gifts program during the period from 2017 to 2022. Any effort by the Company to prepare such disclosure regarding employee matching contributions would require a substantial investment of time and resources and would serve as a significant distraction to the Company's management and employees.

The Staff has previously concurred in the exclusion of proposals requesting disclosure of charitable contributions on the grounds that they seek to micromanage a company's management. In *Merck & Co., Inc.* (March 29, 2023), the Staff concurred in exclusion under Rule 14a-8(i)(7) of a proposal nearly identical to this Proposal, which requested that the company "list the recipients of corporate charitable contributions of $5,000 or more on its website, along with any material limitations, if any, and/or the monitoring of the contributions and its uses, if any, that the [c]ompany undertakes." Like the Proposal, the proposal submitted to Merck would have required the company to provide detailed disclosure of thousands of employee matching contributions. In concurring in exclusion of the Merck proposal, the Staff noted the "the [p]roposal seeks to micromanage the [c]ompany." *See also Verizon Communications Inc.* (March 17, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish annually the written and oral content of diversity, inclusion, equity or related employee-training materials offered to the company's employees on the basis that the proposal "micromanages the [c]ompany by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany's employment and training practices"); *American Express Company* (March 11, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish annually the written and oral content of employee-training materials offered to the company's employees on the basis that the proposal "micromanages the [c]ompany by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany's employment and training practices"); and *Deere & Co.* (January 3, 2022) (same).

In addition, while the Company has controls in place to ensure that matching gifts are going to legitimate charities, it has not historically required its employees to provide the purpose of their donations or monitor the use of the donations, both of which would seem to be required by the Proposal. The Company is concerned that gathering such additional information from employees participating in the matching gifts program will be administratively infeasible, will have a

[1] The Company's employee matching gifts program matches eligible employees' financial donations to charitable organizations around the world. *See* https://impact.disney.com/charitable-giving/.

chilling effect on the willingness of employees to participate in the matching gifts program, and will negatively impact employee morale. Accordingly, the disclosure requested by this Proposal is fundamentally granular in nature and would require disclosure of intricate detail. It is not the type of "large strategic corporate matter[]" the Staff has stated shareholders should be able to provide "high-level direction on"[2]; rather, it is an attempt to micromanage how the Company discloses its charitable contributions.

Therefore, for the reasons set forth above, and in accordance with the above-cited no-action letters, the Proposal may be excluded in reliance on Rule 14-8(i)(7) because the Proposal seeks to micromanage the Company with regard to its charitable giving and disclosures of the same.

Conclusion

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

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

Best regards,

Lillian Brown

Enclosures

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

Sarah Rehberg, Deputy Director, Free Enterprise Project
National Center for Public Policy Research

---

[2] *See* SLB 14L.

EXHIBIT A

July 25, 2023

Via FedEx to

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

Dear Sir/Madam,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Walt Disney Company (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Deputy Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding $2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2024 annual meeting of shareholders. A proof of ownership letter is forthcoming.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal August 10, 2023 or August 11, 2023 from 1-4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [redacted] so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to [redacted]

Sincerely,

Sarah Rehberg

cc: Scott Shepard, FEP Director
Enclosures: Shareholder Proposal

Charitable Giving Reporting

Whereas: Charitable contributions should enhance the image of our Company in the eyes of the public. Increased disclosure of these contributions would serve to create greater goodwill for our Company. It would also allow the public to better voice its opinions on our corporate giving strategy. Inevitably, some organizations might be viewed more favorably than others. This could be useful in guiding our Company's philanthropic decision making in the future. Corporate giving should ultimately enhance shareholder value in line with the Company's fiduciary duty.

Resolved: Shareholders request the Company list the recipients of corporate charitable contributions of $5,000 or more on the Company's website, along with the amount contributed and any material limitations or monitoring of the contributions.

Supporting Statement: Current disclosure is insufficient to allow shareholders to evaluate the proper use of corporate assets by outside organizations and how those assets should be used, especially for controversial issues.

According to Disney's "Global Charitable Giving Guidelines," Disney "May Not Support…Organizations that are actively engaged in highly controversial issues…."[1] The Guidelines state that, "A controversial issue is a serious matter for which different segments of the community have strong opposing positions."[2]

Nonetheless, Disney insists on contributing to controversial organizations. Disney's 2022 Corporate Social Responsibility Report reveals it pledged $5 million to organizations serving the LGBTQIA+ community, noting it donated all June 2022 profits from its "Pride" collection "to organizations…that support LGBTQIA+ communities."[3] These organizations include groups such as The Trevor Project and GLSEN.[4]

These issues and organizations are not without controversy, and therefore contributing to them is antithetical to Disney's own guidelines. A review of the Trevor Project's website reveals that to support its suicide prevention and mental health services is to support "gender affirming care."[5] This is because it views "gender affirming care" as a key method of suicide prevention for gender dysphoria among youth. But what gender affirming care for youth really means is dangerous puberty blockers and genital mutilation.

A review of GLSEN's website reveals similarly controversial views. It advocates for concealing a student's preferred gender identity from parents and integrating gender ideology at all levels of curriculum in public schools.[6] Nonetheless, Disney is prominently listed as a "Senior Corporate Partner" on GLSEN's website.[7]

---

[1] https://impact.disney.com/app/uploads/Current/Global-Charitable-Giving-Guidelines.pdf
[2] https://impact.disney.com/app/uploads/Current/Global-Charitable-Giving-Guidelines.pdf
[3] https://impact.disney.com/app/uploads/2023/06/2022-CSR-Report.pdf
[4] https://disneyconnect.com/dpep/twdc-pride-collection/
[5] https://www.thetrevorproject.org/research-briefs/gender-affirming-care-for-youth/
[6] https://www.foxnews.com/media/target-partners-org-pushing-kids-genders-secretly-changed-schools-without-parental-consent
[7] https://www.glsen.org/take-action/corporate-partners

curriculum in public schools.[6] Nonetheless, Disney is prominently listed as a "Senior Corporate Partner" on GLSEN's website.[7]

It's time Disney stop injecting itself into controversial and significant social policy issues. Parents, consumers, and shareholders are tired of its extreme pursuits that ignore the beliefs of a majority of Americans. A majority of Americans oppose access to puberty blockers and hormone treatments for children and teenagers.[8] A majority of Americans believe whether someone is a man or a woman is determined by the sex they were assigned at birth.[9]

It's one thing to ensure a welcoming environment for all employees by respecting LGBTQ+ rights in the workplace that adhere to anti-discrimination laws. It's another to spend Company time, resources, and philanthropic dollars on a radical agenda that alienates your customer base and undermines your fiduciary duty to shareholders.

---

[6] https://www.foxnews.com/media/target-partners-org-pushing-kids-genders-secretly-changed-schools-without-parental-consent

[7] https://www.glsen.org/take-action/corporate-partners

[8] https://archive.is/xFIP9#selection-607.1-611.81

[9] https://archive.is/xFIP9#selection-607.1-611.81

UBS Financial Services Inc.
1000 Harbor Blvd
3rd Floor
Weehawken, NJ 07086

ubs.com/fs

Confirmation

Office of the Secretary
Walt Disney Company

7/28/2023

Confirmation: Information regarding the account of The National Center for Public Policy Research

Dear Sir or Madam,

The following client has requested that UBS Financial Services Inc provide you with a letter of reference to confirm it's banking relationship with our firm.

As of 7/28/2023, The National Center for Public Policy Research holds, and has held continuously since July 25th, 2020 more than $2000 of Walt Disney Company common stock.

Disclosure
Please be aware this account is a securities account, not a "bank" account. Securities, mutual funds and other non-deposit investment products are not FDIC-insured or bank guaranteed and are subject to market fluctuation. The assets in the account, including cash balances, may also be subject to the risk of withdrawal and transfer.

Questions
If you have any questions about this information, please contact the UBS Wealth Advice Center at 877-827-7870.

UBS Financial Services is a member firm of the Securities Investor Protection Corporation (SIPC).

Sincerely,

Evan Yeaw
Head Wealth Advice Center Operations
UBS Financial Services

December 21, 2023

Via Online Shareholder Proposal Form

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

Re: The Walt Disney Company No-Action Request for Shareholder Proposal by the National Center for Public Policy Research

Ladies and Gentlemen:

This correspondence is in response to the letter of Lillian Brown on behalf of The Walt Disney Company (the "Company") dated November 22, 2023, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our shareholder proposal (the "Proposal") from its 2024 proxy materials for its 2024 annual shareholder meeting.

RESPONSE TO THE COMPANY'S CLAIMS

Our Proposal asks the Company to:

> list the recipients of corporate charitable contributions of $5,000 or more on the Company's website, along with the amount contributed and any material limitations or monitoring of the contributions.

The Company seeks to exclude the Proposal from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(7) because it claims the subject matter of the Proposal directly concerns the Company's ordinary business operations.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

Analysis

Part I. Rule 14a-8(i)(7).

In Staff Legal Bulletin No. 14L (November 3, 2021) ("SLB 14L"), the Staff noted that "Rule 14a-8(i)(7), the ordinary business exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8."[1] Specifically, it "permits a company to exclude a proposal that 'deals with a matter relating to the company's ordinary business operations.'"

[1] All quotations in this section are from SLB 14L unless otherwise indicated.

The Staff provides guiding principles in SLB 14L relevant to the applicability of the ordinary business exclusion to our Proposal. Generally, "the policy underlying the ordinary business exception rests on two central considerations." The first "relates to the proposal's subject matter; the second relates to the degree to which the proposal 'micromanages' the company."

Micromanagement, the Staff noted, occurs when shareholders probe "too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."[2] Whether "a proposal probes matters 'too complex' for shareholders, as a group, to make an informed judgment" may turn on "the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." Focusing on these issues preserves "management's discretion on ordinary business matters" but does not "prevent shareholders from providing high-level direction on large strategic corporate matters."

Notably, "specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability." Put another way, "proposals seeking detail … do not per se constitute micromanagement." Rather, the focus is "on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."[3] To that end, proposals seeking details do not constitute micromanagement when the level of detail sought is "consistent with that needed to enable investors to assess an issuer's impacts .., risks or other strategic matters appropriate for shareholder input."

As to subject matter, SLB 14L makes clear that a corporation may not rely on the ordinary business exclusion when a proposal raises "significant social policy issues." This significant social policy exception "is essential for preserving shareholders' right to bring important issues before other shareholders by means of the company's proxy statement." In determining the social policy significance "of the issue that is the subject of the shareholder proposal…. the Staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." Put another way, proposals "focusing on sufficiently significant social policy issues. . .generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote."[4]

Part II. Our proposal is not excludable under Rule 14a-8(i)(7) for micromanagement

First, Disney argues that our proposal is excludable because it "seeks to micromanage the Company with regard to the reporting of its charitable contributions" because "[r]equiring the Company to list the specific recipients who received $5,000 or more in donations pursuant to the Company's matching gifts program would be burdensome and impractical." In support of this argument, Disney submits that:

> the Company… has not historically required its employees to provide the purpose of their donations or monitor the use of the donations, both of which would seem to be required by the Proposal. The Company is concerned that gathering such additional information from employees participating in the matching gifts program will be administratively infeasible, will have a chilling effect on the willingness of employees to participate in the matching gifts program, and will negatively impact employee morale. Accordingly, the disclosure requested by this Proposal is fundamentally granular in nature and would require disclosure of intricate detail. It is not the type of "large strategic corporate matter[]" the Staff has stated shareholders should be able to provide "high-level direction on"; rather, it is an attempt to micromanage how the Company discloses its charitable contributions.

---

[2] Quoting Release No. 34-40018 (May 21, 1998) (the "1998 Release").
[3] Emphasis added.
[4] Quoting the 1998 Release.

Disney's concerns about its matching gift program are misplaced. First, nowhere in our resolution are matching gifts mentioned and the text of our resolution does not require inclusion of matching gifts. Accordingly, the resolution should be read as limited to charitable contributions made by Disney on its own initiative as opposed to donations made pursuant to its matching gifts program. Thus understood, all of Disney's concerns about disclosing its matching gift donations are irrelevant. Alternatively, even if one reads our proposal as covering matching gifts, nothing in the proposal requires employees to "provide the purpose of their donations or monitor the use of the donations." Rather, to the extent matching gifts are deemed covered, the resolution would only require disclosure of "material limitations or monitoring" imposed or conducted *by the Disney corporation itself*. Beyond that, a list of amounts and recipients is not unduly burdensome given that Disney should already be tracking this information. After all, it pays out those contributions, not the employees.

Disney goes on to argue that the excludability of our proposal has already been definitively decided in *Merck & Co., Inc.* (March 29, 2023). However, Disney's argument that *Merck* definitively allows it to exclude our proposal has a number of problems.

First, Disney argues that "the proposal submitted to Merck would have required the company to provide detailed disclosure of thousands of employee matching contributions." However, the issue of matching contributions was only raised by the proponent in a letter responding to Merck's contention that it was already in substantial compliance with the proposal. Merck's claim of substantial compliance showed that Merck's original and natural reading of the resolution was that it did not reach matching gifts. We concur with Merck in this.

Second, to the extent *Merck* stands for the proposition that all resolutions seeking corporate disclosure of "the recipients of corporate charitable contributions of $5,000 or more on its website, along with the material limitations, if any, and/or the monitoring of the contributions and its uses, if any, that the Company undertakes" is excludable because it improperly seeks to micromanage the corporation, we believe that the Staff erred in that conclusion and should here revisit it. To begin with, the SEC's own extensive disclosure regime rests heavily on the distinction between disclosure requirements and other types of interventions that reach the internal affairs of the corporation for which the SEC lacks authority.[5] In doing so it bases its own regulatory regime on the premise that disclosure is not micromanagement of a company, and is instead properly linked to making markets more accessible and regular for shareholders. In fact, it has made this argument explicitly in its defense of its approval of the NASDAQ rule requiring company disclosure of private information about the surface characteristics of its board members.[6] Those arguments apply exactly to our Proposal, which merely seeks disclosure as an efficient, inexpensive and non-burdensome way for the Company to provide shareholders information that will allow them to quickly determine whether the Company is acting prudently or dangerously with regard to its giving out of those shareholders' assets – without in any conceivable way micromanaging anything. If the Staff here again asserts that merely publishing already compiled information constitutes micromanagement of the Company, then it has contravened the SEC's own argument in *AFBR v. SEC*.

Furthermore, the Staff's failure to indicate what specific provision of the *Merck* proposal triggered its micromanagement conclusion (as with many other similarly opaque Staff determinations) provides insufficient guidance to proponents to allow them to proceed in an orderly and efficient fashion and

---

[5] Cf. James J. Park, *Reassessing the Distinction Between Corporate and Securities Law*, 64 UCLA L. REV. 116, 128 (2017) ("According to the [U.S. Supreme] Court, securities law is based on a 'philosophy of full disclosure,' while corporate law is about the 'internal affairs of the corporation.'") (quoting *Green*, 430 U.S. at 470); Bus. Roundtable v. SEC, 905 F.2d 406, 411-12 (D.C. Cir. 1990).

[6] Cf. All. for Fair Bd. Recruitment v. Sec. & Exch. Comm'n, 85 F.4th 226, 255 (5th Cir. 2023) ("Nasdaq's disclosure-based framework does not alter the state-federal balance. It is well-established that disclosure rules do not interfere with the role of 'state corporate law' in 'regulat[ing] the distribution of powers among the various players in the process of corporate governance.'") (quoting Bus. Roundtable, 905 F.2d at 411-12.

creates impermissible opportunities for the Staff to make arbitrary and/or biased decisions based on the identity of the proponents themselves or the concerns that animate particular submissions rather than the substance of the proposals themselves. For example, it is impossible for a proponent to know why the SEC concluded that the charitable contribution disclosures in *The Walt Disney Co.* (Jan. 12, 2023) and *The Kroger Co*. (Apr. 25, 2023) did not sufficiently relate to ordinary business or micromanage the corporation to warrant exclusion, while the charitable contribution disclosure proposal in *Merck* was excludable.

To wit: three potential grounds for distinguishing the proposed resolutions are (1) the threshold dollar amount, (2) the precatory nature of the resolution, and (3) the inclusion of matching gifts. As to the threshold dollar amounts, while it is true that the two proposals the SEC deemed non-excludable set the threshold at $10,000 while the proposal that was deemed excludable set the amount at $5,000 (as is the case in our proposal) – there is no indication in the *Merck* letter that the distinguishing factor when compared to the preceding *Disney* letter was the lower threshold. Nor would it be reasonable to conclude that the $5,000 spread makes a material difference when Disney and Merck are corporations with market capitalizations over $100 billion. Rather, the materiality of the donations is a function of their reputational risk, which is the same whether the donation is $5,000 or $10,000. Moving on to the fact that the two proposals deemed non-excludable requested the corporation to "consider" listing the donations while the proposal deemed excludable merely requested the listing (like ours), we are again confronted by the fact that this distinction was not raised in any of the Staff decision letters. Furthermore, the precatory nature of a proposal is relevant to the issue of lawfulness under state law as per Rule 14a-8(i)(1), and that ground for exclusion is not at issue here. Specifically, the note to Rule 14a-8(i)(1) states in relevant part that "some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law."

Finally, the two proposals deemed non-excludable by the SEC both expressly excluded matching gifts under the terms of the resolution, while the proposal deemed excludable did not mention matching gifts (as is also the case with our proposal). Both the issue of (1) whether matching gifts should be read into a resolution that makes no mention of them, and (2) whether disclosure of matching gifts, if covered, is unduly burdensome, have been discussed above. Perhaps most importantly, the facts in *Merck*, with the proponent seeking to extend its resolution to cover matching gifts in a post-submission letter as a way to avoid exclusion on the basis of substantial implementation, are simply too *sui generis* to provide generally applicable guidance vis-à-vis charitable donation resolutions making no mention of matching gifts.

Though none of these grounds, for the reasons we have articulated in this letter, justify the Staff's erroneous decision in *Merck*, it would have been easy for the SEC to expressly identify the specific ground on which it based its decision in each of the three relevant letters. The fact that it chose not to imposes unreasonable costs on proponents attempting to follow Staff guidance, while allowing for arbitrary and biased Staff decision-making that further undermines the legitimacy of the no-action-letter process. In fact, the SEC's failure to disclose the specific grounds for its decisions in these letters, and the concomitant lack of transparency this creates (which is troubling for an agency that so frequently touts disclosure and transparency), imposes costs not only on proposal proponents but on all companies involved in the no-action-letter process. All of this makes the *Merck* decision unsound, and therefore Disney's reliance on it unjustified.

Finally, Disney cites three additional no-action letters as further supporting its request for a no-action letter here: *Verizon Communications Inc.* (March 17, 2022), *American Express Company* (March 11, 2022), and *Deere & Co.* (January 3, 2022). However, these letters are simply irrelevant. They request in one case disclosure of "the written and oral content of diversity, inclusion, equity or related employee-training materials offered to the company's employees" and in the other two cases requesting the disclosure of "the written and oral content of employee-training materials offered to the company's employees." As the companies in those cases argued, there are lots of training materials spread throughout the company dealing with all sorts of issues irrelevant to the purpose of, in particular, the latter of these proposals, and,

they claimed, it would have taken a heavy lift to collect and publish all of them, redacting to avoid disclosure of proprietary information and such. That is simply not the case here. Disney has – it must have, if only in its tax records – a list of its annual donations each year. Our Proposal would have the Company find that list, sort for "above or below $5,000," and stick it up on its website. There is no other burden at all. In fact, our Proposal is much less burdensome and costly than the proposals that the Staff blessed as non-omissible in *Walt Disney Co.* (Jan. 12, 2023) and *Kroger Co*. (Apr. 25, 2023). So even if "micromanage" is taken, with terminological inexactitude of a sort that redundantly undermines the legitimacy of the Staff's whole review process, to mean "would take a while to do," our Proposal does manifestly far less micromanaging than *Walt Disney Co.* (Jan. 12, 2023) and *Kroger Co*. (Apr. 25, 2023).

Having reviewed Disney's arguments, we now proceed to note that even if the SEC decides our proposal otherwise constitutes excludable micromanaging, the issue of corporate charitable giving of the sort that Disney has undertaken sufficiently "raises issues with a broad societal impact, such that they transcend the ordinary business of the company."[7] For example, and as we note in our proposal, Disney's contributions to the Trevor Project implicate children's health via the use of dangerous puberty blockers and genital mutilation. Meanwhile, Disney's support of GLSEN implicates concealing a student's preferred gender identity from parents and integrating gender ideology at all levels of curriculum in public schools. More broadly, corporate charitable giving could fund antisemitism by way of donations to organizations like the Council on American-Islamic Relations (CAIR).[8]

The SEC has also routinely denied no-action relief for proposals seeking disclosure of political contributions, which address the same or similar issues as the charitable contributions that our proposal focuses on. For example, in one recent proposal the proponent noted the "shared objectives that political contributions and charitable giving often have - influence over public policy and stakeholders."[9] In light of this, granting the Company's no-action request here would raise a specter of bias, as discussed below in Part III.A.

In addition to the foregoing, we further submit that even if our proposal would constitute micromanaging in a broader context, it should not be deemed micromanaging in the case of Disney because Disney has set itself apart when it comes to politicized decision-making, making it particularly important for shareholders to be able to monitor the reputational risk Disney incurs via its charitable contributions. While we recognize that the Staff has stated it "will no longer focus on determining the nexus between a policy issue and the company,"[10] we nonetheless raise the following issues because they support inclusion as opposed to exclusion of our Proposal.[11] In addition, the items raised below are relevant to the issue of whether our Proposal "probes matters 'too complex' for shareholders, as a group, to make an informed judgment."[12] As should be obvious from even a cursory review, these are "topics that shareholders are well-equipped to evaluate."[13]

---

[7] SLB 14L (2021).
[8] Cf. Gabby Deutch, *White House distances itself from CAIR, condemns director's 'antisemitic statements*,' JEWISH INSIDER (Dec. 7, 2023), available at https://jewishinsider.com/2023/12/white-house-distances-itself-from-cair-condemns-directors-antisemitic-statements/ .
[9] PepsiCo, Inc., 2022 WL 192904, at *16 (S.E.C. No - Action Letter Mar. 12, 2022). Cf. Michael Megaris, *The SEC and Mandatory Disclosure of Corporate Spending by Publicly Traded Companies*, KAN. J.L. & PUB. POL'Y, Summer 2013, at 432, 441 ("Proposals concerning corporate political spending are typically considered to be related to a company's social policy.").
[10] SLB 14L (2021).
[11] Cf. id. ("proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company") (emphasis added).
[12] Id.
[13] Id.

Examples of Disney's hyper-politicization include becoming overtly embroiled in politics twice in 2016 (threatening to boycott Georgia over a religious liberty bill and North Carolina over a bathroom bill) as well as 2019 (threatening to boycott Georgia over fetal heartbeat bill) and 2022 (publicly denouncing Florida's Parental Rights in Education bill).[14] Meanwhile, as reported August 28, 2023, Disney's "woke" agenda has alienated movie-goers and streaming-service subscribers to the tune of a loss of "nearly $900 million on its past eight studio releases" and a loss of 4 million Disney+ and Hulu subscribers.[15] All of this led Barron's to report in September of 2023 that Disney's stock price had fallen to a 10-year low.[16] In fact, these problems have become so severe that South Carolina's treasurer recently removed Disney from the state's portfolio because "Disney has abandoned its fiduciary responsibilities to its investors and customers by joining far-left activist[s]."[17] And Disney has had to acknowledge these problems itself in a recent SEC filing, stating that "consumers' perceptions of our position on matters of public interest … present risks to our reputation and brands."[18] Disney CEO Bob Iger similarly appeared to personally acknowledge these self-inflicted wounds when he reportedly told Disney investors that culture war battles are bad for business and vowed to "quiet the noise" in those culture wars.[19] In light of all this, the SEC would be undermining its mission to "protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation"[20] by granting Disney a no-action letter here in light of the materiality and ready availability of the information requested.

Part III. Issuing relief to the Company would raise serious constitutional and administrative law concerns.

For the reasons discussed above, our proposal's merits under Commission and Staff rules, interpretations, guidance, and precedent require that Staff deny the Company's request for relief. If the Staff elects to issue relief to the Company despite its clear merits, the Staff's decision would raise a host of constitutional and administrative law issues.

A. Disney is asking the Staff to discriminate on the basis of viewpoint in violation of the First Amendment.

Our proposal relates to the socially significant issue of the company's charitable and politically motivated spending, which the Staff have previously recognized is not excludable under Rule 14a-8(i)(7). By urging the Staff to issue relief for the Proposal regardless, the Company invites the Staff to itself discriminate based on viewpoint.

It is well-established that the government cannot engage in viewpoint discrimination.[21] This principle prevents governments from regulating speech "because of the speaker's specific motivating ideology, opinion, or perspective."[22] And the Supreme Court defines "the term 'viewpoint' discrimination in a broad sense."[23] This is because "[v]iewpoint discrimination is a poison to a free society."[24]

---

[14] https://wokecapital.org/disneys-dark-days/
[15] https://www.newsmax.com/newsfront/walt-disney-company-woke-stock-price/2023/08/28/id/1132366/
[16] https://www.barrons.com/articles/disney-stock-price-buy-charter-dispute-d0d23938
[17] https://treasurer.sc.gov/about-us/newsroom/treasurer-loftis-removes-disney-from-state-portfolios/
[18] https://thehill.com/opinion/finance/4326247-happy-birthday-adam-smith-the-invisible-hand-just-slapped-disney/
[19] https://www.foxbusiness.com/markets/disney-ceo-bob-iger-vows-quiet-noise-culture-wars
[20] https://www.sec.gov/about
[21] Matal v. Tam, 137 S. Ct. 1744 (2017); Iancu v. Brunetti, 139 S. Ct. 2294 (2019).
[22] Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 820 (1995).
[23] Matal, 137 S. Ct. at 1763.
[24] Iancu, 139 S. Ct. at 2302 (Alito, J., concurring).

The rule against viewpoint discrimination prevents allowing speech based on one "political, economic, or social viewpoint" while disallowing other views on those same topics.[25] It also prohibits excluding views that the government deems "unpopular"[26] or because of a perceived hostile reaction to the views expressed.[27]

Here, the Company invites the Staff to engage in viewpoint discrimination by issuing relief on our proposal.

Just last year, in *The Walt Disney Co.* (Jan. 12, 2023) and *The Kroger Co*. (Apr. 25, 2023) the Staff denied companies no-action relief for proposals seeking the disclosure of charitable contributions where the proponents praised corporate "support of Planned Parenthood" and the "Southern Poverty Law Center . . . since they included several conservative Christian organizations in their list of hate groups." These proposals clearly espoused the viewpoint that corporate charitable contributions to groups associated with the political left were praiseworthy and grounded their advocacy for the proposal on that basis. Similarly, the Staff has denied relief to companies seeking to disclose political expenditures aligned with the political like "problematic company sponsored advocacy efforts" to "undercut public health policies."[28]

Our proposal addresses the same issue of corporate contributions—but from a different viewpoint. Where the Staff blessed proposals last year that praised contributions to left-aligned groups like Planned Parenthood and the Southern Poverty Law Center, our proposal notes the controversy surrounding contributions to left-aligned groups like The Trevor Project and GLSEN. So if the Staff opts to issue relief to exclude our Proposal, one might reasonably conclude that it could only do so because of its opinion of the distinctive political *views* our Proposal expresses.

The Staff—and the Commission—needs a principled basis for such a distinction. The Company proposes none. As the Supreme Court has explained, to avoid viewpoint discrimination the government must have "narrow, objective, and definite" standards to prevent officials from covertly discriminating based on viewpoint through subjective and unclear terms.[29] And here, the Staff has complete discretion to determine what "issues" are significant and do not "micromanage" the company and even to censor on the same issue when they are presented by speakers with different political views. The Staff should choose not exercise this discretion here by denying Disney's request for no-action relief.

B. The Company is asking the Staff to take arbitrary and capricious action under the Administrative Procedure Act.

If the Staff grants no-action relief to Disney for our proposal, it must explain how our proposal is distinct from prior charitable contribution and political expenditure disclosure proposals that it has blessed.

Under the Administrative Procedure Act (APA), agency action that is "arbitrary and capricious" may be set aside.[30] The Supreme Court has succinctly explained that "[t]he APA's arbitrary and capricious standard requires that agency action be reasonable and reasonably explained."[31] Under this precedent, in order for action to be reasonable and reasonably explained, the agency must at least consider the record

---

[25] Rosenberger, 515 U.S. at 831.
[26] McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 357 (1995).
[27] Forsyth Cnty., Ga. v. Nationalist Movement, 505 U.S. 123, 134 (1992).
[28] *PepsiCo, Inc., supra*.
[29] Forsyth Cnty., Ga., 505 U.S. at 131.
[30] 5 U.S.C. § 706(2)(A).
[31] FCC v. Prometheus Radio Project, 141 S. Ct. 1150, 1158 (2021); see also Motor Vehicle Mfs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 50 (1983).

before it and rationally explain its decision.[32]

Additionally, where an agency seeks to change its position from a prior regime, it must "display awareness that it is changing position," "show that there are good reasons for the new policy" and provide an even "more detailed justification" when the "new policy rests upon factual findings that contradict those which underlay its prior policy," and "take[] into account" "reliance interests" on the prior policy.[33]

Given the Staff's prior precedent on charitable contributions and political expenditures, issuing relief to Disney would undoubtedly be a change in its position. At a bare minimum, the Staff—or the Commission—would have to explain its reasoning for the reversal in position to comply with the APA.

C. The Company is requesting relief the Staff lacks statutory authority to issue.

Regardless, the Staff lack statutory authority to grant Disney no-action relief. Disney has notice that we intend to submit our proposal, which is valid under state law, for consideration at the annual meeting. The Staff may not give the company its blessing to exclude an otherwise valid proposal from its proxy statement.

Section 14(a) of the Exchange Act prohibits anyone from "solicit[ing] any proxy" "in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."[34] While this authority might be read "broadly," "it is not seriously disputed that Congress's central concern [in enacting § 14(a)] was with disclosure."[35] The purpose of Section 14(a) was to ensure that investors had "adequate knowledge" about the "financial condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders' meetings."[36]

While Section 14(a) gave the Commission authority to compel investor-useful disclosures, the substantive regulation of stockholder meetings was left to the "firmly established" state-law jurisdiction over corporate governance.[37] Recognizing that state law provides the "confining principle" to Section 14(a)'s otherwise "vague 'public interest' standard," the D.C. Circuit has held that "the Exchange Act cannot be understood to include regulation of" "the substantive allocation" of corporate governance that is "traditionally left to the states."[38] Under Section 14(a), then, the SEC may compel the disclosure in a company's proxy materials of items that will be before shareholders at the annual meeting.

Under state law, a shareholder proposal may be presented for consideration at the corporation's annual meeting if the proposal is a proper subject for action by the corporation's stockholders.[39] A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders' power to adopt.[40]

Our proposal is valid under state law. Under Section 14(a), the SEC only has power to compel that Disney disclose our proposal in its proxy materials. The Staff therefore may not then give Disney no-action relief to exclude it.

---

[32] See FCC, 141 S. Ct. at 1160.
[33] FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).
[34] 15 U.S.C. § 78n(a)(1).
[35] Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).
[36] S. Rep. No. 792 at 12 (1934).
[37] Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).
[38] Id.
[39] See CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227 (Del. 2008).
[40] Id. at 232.

Conclusion

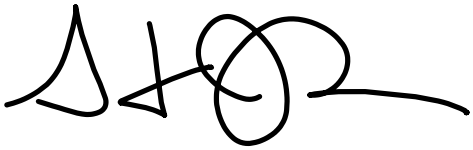
Our Proposal seeks only a disclosure of readily available charitable contributions, not in any way the micromanagement of the Company, and it does so about issues of significant social policy interest. In addition, issuing relief to the Company would raise serious constitutional and administrative law concerns, including concerns related to improper viewpoint discrimination, arbitrary and capricious action, and exceeding statutory authority.

The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company's request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at sshepard@nationalcenter.org and at spadfield@nationalcenter.org.

Sincerely,

Scott Shepard
FEP Director
National Center for Public Policy Research



Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Lillian Brown (Lillian.Brown@wilmerhale.com)

WILMERHALE

Lillian Brown

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

February 8, 2024

Via Online Shareholder Proposal Form

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

Re: The Walt Disney Company
Withdrawal of No-Action Request Dated November 22, 2023, Relating to Shareholder Proposal Submitted by the National Center for Public Policy Research

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the "Company"), with regard to our letter dated November 22, 2023 (the "No-Action Request") concerning the shareholder proposal and supporting statement (collectively, the "Proposal") submitted by the National Center for Public Policy Research. In the No-Action Request, the Company sought concurrence from the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") that the Company may exclude the Proposal from its proxy statement and proxy in connection with the Company's 2024 annual meeting of shareholders pursuant to Rule 14a-8(i)(7) of the Securities Exchange Act of 1934, as amended.

On February 1, 2024, the Company filed its definitive proxy statement with the Commission. The Company therefore withdraws the No-Action Request.

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

Best regards,

Lillian Brown

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

Scott Shepard, Director, Free Enterprise Project
National Center for Public Policy Research

Stefan Padfield, Deputy Director, Free Enterprise Project
National Center for Public Policy Research