



DIVISION OF
CORPORATION FINANCE

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

March 14, 2024

Elizabeth McCright
Kohl's Corporation

Re: Kohl's Corporation (the "Company")
Incoming letter dated December 21, 2023

Dear Elizabeth McCright:

This letter is in response to your correspondence concerning the shareholder proposal (the "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.

The Proposal requests that the board of directors create a board committee on corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability and that the Company issue a public report on the committee's findings.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We do not believe that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal does not address ordinary business matters.

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: Scott Shepard
National Center for Public Policy Research



December 21, 2023

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

Re: Kohl's Corporation – Exclusion of Shareholder Proposal Submitted by the National Center for Public Policy Research

To the addressee set forth above:

Kohl's Corporation (the "Company" or "Kohl's") respectfully submits this letter pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude from the Company's proxy materials for its 2024 annual meeting of shareholders (the "2024 Proxy Materials") a shareholder proposal submitted to the Company by the National Center for Public Policy Research (the "Proponent") in a letter dated November 20, 2023 and received by the Company on November 21, 2023 (the "Shareholder Proposal").

The Company requests confirmation that the staff of the Division of Corporation Finance (the "Staff") will not recommend to the Commission that enforcement action be taken against the Company if the Company excludes the Shareholder Proposal from its 2024 Proxy Materials pursuant to:

- Rule 14a-8(i)(3), on the basis that the Shareholder Proposal is inherently vague and indefinite and subject to multiple interpretations, such that the Company and its shareholders voting on the Shareholder Proposal would not know with any reasonable certainty exactly what actions or measures the Shareholder Proposal requires; and
- Rule 14a-8(i)(7), on the basis that the Shareholder Proposal relates to the Company's ordinary business operations.

Pursuant to Rule 14a-8(j) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), the Company is submitting this letter and the exhibits attached hereto to the Staff and is concurrently sending a copy of this correspondence to the Proponent, no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission.

Rule 14a-8(k) and 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 Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Shareholder 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 Shareholder Proposal

On November 21, 2023, the Company received the following Shareholder Proposal from the Proponent for inclusion in the 2024 Proxy Materials:

Corporate Financial Sustainability Report

Whereas: The Company’s policy positions, advocacy, partnerships and charitable giving on significant social policy and political matters should not alienate consumers, decrease sales, or diminish shareholder value.

The Company takes public and politically divisive positions over issues of significant social policy concern, including generating a backlash for “funding an organization that promotes child mutilation”¹ and “indoctrinate[ing] babies into LGBTQ culture with ‘Happy Pride’ onesies.”²

According to 1792 Exchange, which has given Kohl’s a “high risk” rating for taking controversial positions on ideological issues, the Company does not protect employees based on viewpoint and even “fired an employee after they opposed a ‘racial equity’ clothing line (Kohl’s apparently settled the subsequent lawsuit in 2021).”³

The Company also has a 100 percent rating on the Human Rights Campaign’s (HRC) “Corporate Equality Index.”⁴ Earning that score arguably requires spending shareholder assets to embrace highly partisan positions on hot-button issues, such as supporting legislation that eliminates religious liberties and discriminates against girls and women while opposing legislation to protect children from adult materials. In his 2021 book *The Dictatorship of Woke Capital*, Stephen Soukup describes HRC as “influencing businesses by employing a ‘soothsayer’s trick’” that boils down to increasing the radicalization of businesses by way of a strategy to “simply keep moving the goalposts.”⁵

According to the Claremont Institute’s BLM (Black Lives Matter) Funding Database, Kohl’s has contributed \$1,000,000 to the BLM movement and related causes since 2020.⁶ These causes have been accused of squandering assets⁷ and supporting racism and antisemitism and highly divisive and dangerous programs such as police-defunding and “anti-racist” racial discrimination.⁸

¹ <https://washingtonstand.com/news/target-and-kohls-face-greater-backlash-for-funding-an-organization-that-promotes-child-mutilation>

² <https://www.dailysignal.com/2023/05/30/kohls-indoctrinates-babies-into-lgbtq-culture-with-happy-pride-onesies/>

³ <https://news.bloomberglaw.com/litigation/kohls-settles-job-bias-suit-over-racial-equity-goods-display>

⁴ <https://1792exchange.com/company/kohls/>

⁵ <https://corporate.kohls.com/news/archive-/2022/january/kohl-s-earns-top-score-in-human-rights-campaign-foundation-s-202>

⁶ Id.

⁷ <https://dc.claremont.org/blm-funding-database/>

⁸ <https://www.cnn.com/2022/09/04/us/black-lives-matter-executive-lawsuit/index.html>

⁹ <https://www.wsj.com/articles/black-lives-matter-and-the-worlds-oldest-hatred-anti-semitism-0e0c324e>

The Company has also donated \$100,000 to the Trevor Project,¹⁰ an organization that supports “gender affirming care”¹¹ that critics have argued translates into advocating for dangerous puberty blockers and genital mutilation for children.¹² Trevor Project has also been accused of facilitating the hiding of gender confusion problems from parents.¹³

Supporting Statement: Recent events have made clear that company bottom-lines, and therefore value to shareholders, drop when companies take overtly political and divisive positions that alienate consumers. Following Bud Light’s embrace of partisanship and disparagement of its customer base, its revenue fell roughly 10 percent.¹⁴ Target Corporation’s market cap fell over \$15 billion amid backlash for similar actions.¹⁵ And Disney stock fell 44 percent in 2022 amid its decision to put extreme partisan agendas ahead of parents’ rights.¹⁶

Resolved: Shareholders request that the Board of Directors create a board committee on corporate financial sustainability to oversee and review the impact of the Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company’s financial sustainability. The Company should issue a public report on the committee’s findings by the end of 2024.

A copy of the Shareholder Proposal, as well as related correspondence with the Proponent, is attached hereto as Exhibit A.

Basis for Exclusion

We respectfully request that the Staff concur in our view that the Shareholder Proposal may be excluded from the 2024 Proxy Materials pursuant to (i) Rule 14a-8(i)(3), on the basis that the Shareholder Proposal is inherently vague and indefinite and subject to multiple interpretations, such that the Company and its shareholders voting on the Shareholder Proposal would not know with any reasonable certainty exactly what actions or measures the Shareholder Proposal requires, and (ii) Rule 14a-8(i)(7), on the basis that the Shareholder Proposal relates to the Company’s ordinary business operations.

¹⁰ <https://corporate.kohls.com/news/archive/2023/may/kohl-s-celebrates-pride-month>

¹¹ <https://www.thetrevorproject.org/research-briefs/gender-affirming-care-for-youth/>

¹² <https://aflegal.org/america-first-legal-demands-records-from-five-gender-clinics-in-georgia-iowa-ohio-utah-and-virginia-regarding-chemical-castration-and-genital-mutilation-known-as-gender-affirming-care/>

¹³ <https://www.nationalreview.com/news/lgbtq-org-that-hosts-sexually-explicit-chatroom-racks-up-major-corporate-partnerships-millions-in-donations/>

¹⁴ <https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch>

¹⁵ <https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash>; <https://nypost.com/2023/05/23/target-to-remove-some-lgbtq-merchandise-after-facing-customer-backlash>

¹⁶ <https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began>; <https://www.hollywoodreporter.com/business/business-news/disney-stock-2022-1235289239/>; <https://markets.businessinsider.com/news/stocks/disney-stock-price-decline-bob-iger-pandemic-inflation-recession-streaming-2022-12>; <https://www.foxnews.com/media/disneys-decline-shows-woke-focus-alienating-fans-wsj-column>

Analysis

I. The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(3) Because the Shareholder Proposal is so Impermissibly Vague, Indefinite and Susceptible to Various Interpretations so as to Be Inherently Misleading in Violation of the Proxy Rules.

A. Background of Rule 14a-8(i)(3)

Pursuant to Rule 14a-8(i)(3), the Company may exclude a shareholder proposal from its proxy materials “if the proposal or supporting statement is contrary to any of the Commission’s proxy rules [...] which prohibits materially false or misleading statements in proxy soliciting materials.” The Staff has interpreted Rule 14a-8(i)(3) to include shareholder proposals that are vague and indefinite, and the Staff has consistently concurred with exclusion of shareholder proposals on the basis that “neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004). In addition, the Staff has noted that a proposal may be excludable when the “meaning and application of terms and conditions...in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations” such that “any action ultimately taken by the company upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal.” See *Fuqua Industries, Inc.* (avail. Mar. 12, 1991).

Under this standard, the Staff has routinely allowed proposals to be excluded pursuant to Rule 14a-8(i)(3) if a proposal fails to define key terms of, or otherwise fails to provide guidance on the implementation of the proposal. See, e.g., *Apple Inc.* (avail. Dec. 6, 2019) (permitting exclusion of a proposal seeking to “improve guiding principles of executive compensation” because it “lacks sufficient description about the changes, actions or ideas for the [c]ompany and its shareholders to consider”); *eBay Inc.* (avail. Apr. 10, 2019) (permitting exclusion of a proposal requesting that the company “reform the company’s executive compensation committee” because “neither shareholders nor the company would be able to determine with any reasonable certainty the nature of the ‘reform’ the [p]roposal is requesting,” and that, therefore, “the [p]roposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading”); *Cisco Systems, Inc.* (avail. Oct. 7, 2016) (permitting exclusion of a proposal as vague and indefinite, that requested the board of directors not take any action whose primary purpose was to prevent the effectiveness of a shareholder vote without a compelling justification); *AT&T Inc.* (avail. Feb. 21, 2014) (permitting exclusion of a proposal requesting a review of policies and procedures related to the “directors’ moral, ethical and legal fiduciary duties and opportunities,” where such phrase was undefined); *International Paper Co.* (avail. Feb. 3, 2011) (permitting exclusion of a proposal requesting the adoption of a particular executive stock ownership policy because it did not sufficiently define “executive pay rights”); *General Electric Co.* (avail. Jan. 21, 2011) (permitting exclusion of a proposal requesting changes to senior executive compensation to promote a longer-term perspective because it was impermissibly vague in explaining how the program would work in practice, including the types of awards that should be revised, and failed to define key terms, such as “short-term incentive awards” and “Financial Metric(s)”; and *Verizon Communications Inc.* (avail. Feb. 21, 2008) (permitting exclusion of a proposal where the proposal failed to define certain critical terms, such as “Industry Peer Group” and “relevant period of time”).

B. The Shareholder Proposal is Inherently Vague, Indefinite and Susceptible to Various Interpretations so as to be Inherently Misleading in Violation of the Proxy Rules.

The Shareholder Proposal requests the Company “create a board committee on corporate financial sustainability to oversee and review the impact of the Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company’s financial sustainability.” The Shareholder Proposal is inherently vague and misleading as it fails to define several key terms, rendering it impossible for shareholders and the Company to reach a consensus as to what the Shareholder Proposal seeks to accomplish.

As an initial matter, the Shareholder Proposal seeks to establish a board committee “on corporate financial sustainability” that would be responsible for overseeing and reviewing, among other things, the impact of certain actions on the Company’s “financial sustainability.” The terms “corporate financial sustainability” and “financial sustainability” are inherently vague and could be interpreted by the Company and shareholders in a myriad of ways. For example, the Company and shareholders would not know whether the Shareholder Proposal is seeking an analysis of the impact on the Company’s (i) going concern, (ii) supply chain operations, (iii) stock price performance, (iv) revenues, (v) profitability, (vi) access to capital, (vii) ability to access certain financing streams or any number of other possibilities.

The vagueness of the Shareholder Proposal is further exacerbated by the fact that the Shareholder Proposal provides no clear guidance on what topics and/or operations are meant to be addressed by the board committee and included in the requested report. Even if it were clear what “financial sustainability” refers to, the request that the committee assess the impact on the Company’s financial sustainability of all “policy positions,” “advocacy,” “partnerships” and “charitable giving on social and political matters” is extremely broad, vague and confusing and could encompass a broad range of distinct and unrelated matters subject to interpretation. For example, the term “partnerships” could encompass merchandise and/or non-merchandise suppliers; shipping and delivery vendors; third-party business consultants; intellectual property licensors; the Company’s credit card issuers; technology vendors; third-party brand advocates that market or endorse the Company’s brand or products; non-profit organizations that the Company supports; and/or industry groups the Company joins, among any number of other Company relationships. In addition, depending on the context, “policy positions, advocacy, partnerships and charitable giving on social and political matters” could arguably encompass nearly all of the Company’s operations, including its merchandising, supply chain, marketing and branding decisions, and all of the Company’s charitable giving and environmental, social and governance-related initiatives. The supporting statement accompanying the Shareholder Proposal adds further confusion when it criticizes the Company for having earned a 100 percent rating on the Human Rights Campaign’s (HRC) ‘Corporate Equality Index’ because “[e]arning that score arguably requires spending shareholder assets to embrace highly partisan positions on hot-button issues...” This statement merely adds to the variety of ways shareholders and the Company could reasonably interpret the Shareholder Proposal.

Accordingly, we ask that the Staff concur that the Company may exclude the Shareholder Proposal from its 2024 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Shareholder Proposal is inherently vague and indefinite, in violation of Rule 14a-9.

II. The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because the Shareholder Proposal Relates to, and Does Not Transcend, the Company’s Ordinary Business Operations.

A. Background of Rule 14a-8(i)(7)

Pursuant to Rule 14a-8(i)(7), a company may exclude a shareholder proposal from its proxy materials “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” The Commission has stated that the “general underlying policy of this exclusion is consistent with the policy

of most state corporate laws: 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.” Exchange Act Release No. 34-40018 (May 21, 1998) (“1998 Release”). As explained by the Commission, the term “ordinary business” in this context refers to “matters that are not necessarily ‘ordinary’ in the common meaning of the word and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Id.

The Commission stated in the 1998 Release that the policy underlying the ordinary business exclusion is based on two considerations:

- first, whether a proposal relates to tasks that 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;” and
- second, whether a “proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”

Importantly, a proposal’s request for a review of certain risks does not preclude exclusion pursuant to Rule 14a-8(i)(7) if the underlying subject matter of the proposal is ordinary business. The Staff indicated in Staff Legal Bulletin No. 14E (Oct. 27, 2009) (“SLB 14E”) that when evaluating shareholder proposals that request a risk assessment:

rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk similar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document – where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business – we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

Consistent with its position in SLB 14E, the Staff has repeatedly concurred in the exclusion under Rule 14a-8(i)(7) of shareholder proposals seeking risk assessments when the subject matter concerns ordinary business operations. See, e.g., *The TJX Companies, Inc.* (avail. Mar. 29, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and provide a report to shareholders on the assessment); *Amazon.com, Inc.* (avail. Mar. 21, 2011) (same); *Wal-Mart Stores, Inc.* (avail. Mar. 21, 2011) (same).

The Commission has also distinguished between proposals involving “business matters that are mundane in nature,” which are properly excluded under Rule 14a-8(i)(7), and those which have “significant policy, economic or other implications inherent in them,” which are beyond the scope of the exclusion. Exchange Act Release No. 34-12999 (Nov. 22, 1976). When determining such “significant social policy issues,” the Staff reiterated in Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”) that the Commission will look for “social policy significance” and “whether the proposal raises issues with a broad societal impact”.

As further explained below, the Shareholder Proposal concerns ordinary business matters because the Shareholder Proposal relates to management resource allocation, financial review, and profitability analysis decisions that are “fundamental to management’s ability to run the Company on a day-to-day basis,” and would permit shareholders to micromanage the Company’s ordinary business operations through the limitation of management’s discretion regarding day-to-day business operations and business decisions. Although the Shareholder Proposal may briefly touch upon “significant social policy issues,” its focus is on matters relating to the Company’s underlying business. Accordingly, the Shareholder Proposal relates to, and does not transcend, the Company’s ordinary business operations and therefore may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7).

B. The Subject Matter of the Shareholder Proposal Relates to the Company’s Ordinary Business Operations.

The Shareholder Proposal relates to resource allocation, financial review, and profitability analysis decisions by management that are fundamental to management’s ability to run the Company on a day-to-day basis, such that they could not, as a practical matter, be subject to direct shareholder oversight.

The Staff has routinely concurred that shareholder proposals which seek to manage a company’s ability to manage and make core business decisions, including communications or governance, may be excluded under Rule 14a-8(i)(7). For example, in *HCA Healthcare, Inc.* (avail. Mar. 6, 2023), the Staff permitted exclusion of a proposal requiring the company’s hospitals to provide plant-based food options to patients at every meal because the proposal directed the company to provide particular products in its business and did not “transcend ordinary business matters”. See also, e.g., *JP Morgan Chase & Co.* (avail. Mar. 21, 2023) (permitting exclusion of proposal requiring a report on risks created by business practices that prioritize non-pecuniary factors related to establishing, rejecting, or failing to continue client relationships because the proposal sought to control “the handling of customer accounts, which are ordinary business matters”); and *Netflix, Inc.* (avail. Mar. 14, 2016) (permitting exclusion of a proposal requesting a report on how management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, noting that the proposal related to the core business of “nature, presentation and content of programming and film production”).

Kohl’s is a national omnichannel retailer with stores across the U.S. and operations in 49 states. The Shareholder Proposal seeks to manage the Company’s ability to make key business decisions required in its day-to-day operations, and also requests a financial risk assessment on matters that concern the Company’s ordinary business operations. The report requested by the Shareholder Proposal relates to the Company’s core retail business and the ordinary business matters of resource allocation, financial review, and profitability analysis related to the retail business, including the products and services the Company offers to customers, the Company’s supply chains and its business relationships. In particular, the Shareholder Proposal relates to the Company’s ability to review and conduct its own financial and other analyses and determine how to allocate resources for its ordinary business operations, including determinations regarding the best course of action for any “policy positions, advocacy, partnerships and charitable giving.” Like other retail businesses, the day-to-day management of the Company involves making many different decisions, including choosing merchandise and/or non-merchandise suppliers, shipping and delivery vendors, third-party business consultants, intellectual property licensors, credit card issuers, technology vendors, third-party brand advocates that market or endorse the Company’s brand or products, non-profit organizations that the Company supports, and/or industry groups that the Company joins, often after a detailed review based on financial and other analyses and information that shareholders do not have. Thus, as a practical matter, these ordinary business decisions should not be subject to direct shareholder oversight. Additionally, the Shareholder Proposal asks the Company to create a committee to review for “financial sustainability,” which is in essence a request for a financial risk assessment over all

“social and political matters” relevant to the Company which, as discussed above, are a part of the Company’s ordinary business operations.

The Shareholder Proposal itself also highlights the fact that its subject matter involves ordinary, core business operations related to the retail industry. For example, in the first paragraph of the Shareholder Proposal, the Shareholder Proposal criticizes the Company’s decision to produce and sell “Happy Pride” onesies” for babies, a decision that clearly relates to the Company’s core retail business. Similarly, the Shareholder Proposal discusses marketing and product decisions made by Anheuser-Busch Companies and Target Corporation to customers in their ordinary course of business.

Allowing shareholders to dictate a “financial sustainability review” for many of the Company’s day-to-day decisions would inappropriately delegate management functions and decisions to shareholders. The Company operates 1,170 retail stores across the United States, operating in every U.S. state except for Hawaii, and its operations and decision-making inherently involve complex operational and retail business issues requiring, for example, knowledge of customer preferences, supplier constraints and distribution channels at local, state and country-wide levels. Some decisions are made at a local store or regional level, such as differences in merchandise assortment and store layout attributable to local preferences and store size. Designating a board level committee to review such decisions from a “financial sustainability” perspective as the Shareholder Proposal requests would inappropriately mandate a one-size-fits-all approach to decisions that should be made on a local store or regional level.

Additionally, the Company must adhere to its internal processes and procedures when evaluating the specific projects, product lines, or relationships and partnerships that warrant detailed analysis, such as those involving resource allocation decisions. Assessing these and the many other factors that influence financial review and profitability analysis at the Company’s retail stores requires the real-time judgment and analysis of management and employees. Shareholders would not have the necessary knowledge, information or resources to make informed decisions on such business and operational matters. As a result, such matters could not, as a practical matter, be subject to direct shareholder oversight.

C. The Shareholder Proposal Would Permit Shareholders to Micromanage the Company’s Ordinary Business Operations by Probing Too Deeply into Complex Matters and Aspects of the Company’s Business and Operations.

The Staff has consistently permitted the exclusion of shareholder proposals under Rule 14a-8(i)(7) that would permit shareholders to micromanage a company’s ordinary business when the proposal attempts to probe too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment. See e.g., *Tesla, Inc.* (avail. May 6, 2022) (permitting exclusion of a proposal that micromanaged the financial and investment decisions of management because the proposal would require the company to immediately liquidate all cryptocurrency assets); *Walgreens Boots Alliance, Inc.* (avail. Nov. 20, 2018) (permitting exclusion of proposal requesting that stock buybacks adopted by the board not become effective until approved by shareholders because the proposal was micromanaging the company by substituting shareholder approval for board decision-making); and *Chubb Ltd.* (avail. Mar. 27, 2023) (permitting exclusion of a proposal requesting that the company adopt and disclose a policy for the timebound phase out of the company’s underwriting risks associated with new fossil fuel exploration and development projects, aligned with the Intergovernmental Panel on Climate Change’s recommendation to limit global temperature rise to 1.5 degrees Celsius, because the proposal would allow shareholders to micromanage the company). As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” See the 1998 Release.

The Shareholder Proposal seeks to probe too deeply into matters of a complex nature that are not appropriate for shareholder determination. In this case, the Shareholder Proposal seeks to micromanage the Company by inappropriately limiting the discretion of management by requesting that the Company form a committee to review the risks and impact on “financial sustainability” of the Company’s “policy positions, advocacy, partnerships and charitable giving on social and political matters” and provide a report of its findings. As noted previously, this broad mandate could impact nearly every business decision of management. When making these decisions, management must often analyze constantly changing information that is unavailable to Company shareholders and must act quickly, which is not feasible for shareholders. Factors management may need to consider include the geographic customer base, macroeconomic factors, market trends, cost, demand, employee considerations, legal and environmental factors, and seasonality, among others.

Instead of “providing high-level direction on large strategic corporate matters,” the Shareholder Proposal would “inappropriately limit discretion of the board or management” by usurping the day-to-day decision-making process involved in a wide range of business decisions. See SLB 14L. The way the Company chooses to review its financial and statistical information to make business decisions is fundamental to the Company’s business operations and cannot properly be submitted to shareholders to micromanage.

D. The Shareholder Proposal May Be Excluded Because It Relates to the Company’s Strategic Decisions and Business Practices.

The Shareholder Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the Company’s ordinary business operations regarding strategic decisions and business practices. The Company’s process of evaluating its own “financial sustainability” and making decisions regarding the process and focus of business operations based on such evaluation are all part of the Company’s overall business plan and strategic decision making.

The Staff has consistently concurred that proposals addressing a company’s general business strategies, operations, and business practices may be excluded under Rule 14a-8(i)(7). Furthermore, the Staff has also noted that proposals directed towards a company’s business strategies, policies, and programs may be properly excluded under Rule 14a-8(i)(7). In *Mobil Corp.* (avail. Feb. 13, 1989), the Staff concurred that a proposal relating to the formation of a shareholder committee to review objectives and their implementation may be omitted “since it appears to deal with a matter relating to the ordinary business operations of the [c]ompany (i.e., questions of corporate objectives and goals)” See also, e.g., *CVS Corp.* (avail. Feb. 1, 2000) (permitting exclusion of a shareholder proposal requesting the preparation of an annual strategic plan report describing the company’s goals, strategies, policies, and programs because the proposal related “to its ordinary business operations” (i.e., business practices and policies)). Similarly, here, the review of the Company’s “financial sustainability” and results of such review (which the Shareholder Proposal requests be disclosed in a report), including how “financial sustainability” is defined, the review process, allocation of personnel, and disclosure of the results of such analysis, are directly related to the Company’s strategic decisions, operations and business practices. The Company has processes and business practices in place for making decisions that involve the general business strategies and operations of the Company’s retail business.

E. The Shareholder Proposal Does Not Involve a Sufficiently Significant Social Policy Issue that Transcends the Company’s Ordinary Business Operations.

The Commission noted in the 1998 Release that shareholder proposals relating to ordinary business operations but “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.” In determining whether an issue should be deemed a significant policy issue, the Commission considers whether the issue has been “a consistent topic of widespread public debate.” See the 1998 Release.

However, prior Staff letters have clearly indicated that merely mentioning an issue with a broad societal impact cannot transform a proposal that is otherwise related to a company’s underlying business. In addition, the fact that a proposal may touch upon a policy issue does not preclude the proposal’s exclusion under Rule 14a-8(i)(7). For example, in *CVS Health Corp.* (avail. Feb. 27, 2015), the Staff allowed the exclusion of a proposal requiring “CVS Health amend its equal employment opportunity policy...to explicitly prohibit discrimination based on political ideology, affiliation or activity....” CVS argued that “a proposal seeking to protect against discrimination based on political participation affects a company’s management of business operations by involving the relationship of employees and management.” The Staff concurred, noting that “the proposal relates to CVS Health’s policies concerning its employees.” See also, *Papa John’s International, Inc.* (avail. Feb. 13, 2015), (concurring with the exclusion of a proposal asking the company to include vegan options on its menu since the proposal was actually focused on “the products offered for sale by the company and does not focus on a significant policy issue.”); *CIGNA Corp.* (avail. Feb. 23, 2011) (permitting exclusion of a proposal that addressed the potential significant policy issue of access to affordable health care when the proposal also asked CIGNA to report on expense management, an ordinary business matter); *PetSmart, Inc.* (avail. Mar. 24, 2011) (permitting exclusion of a proposal requiring suppliers to provide certain certifications which related to the company’s ordinary business matters, even though the proposal also addressed the humane treatment of animals); and *Capital One Financial Corp.* (avail. Feb. 3, 2005) (permitting exclusion of a proposal asking the company to disclose information about how it manages its workforce, an ordinary business matter, while also addressing a significant policy issue on outsourcing).

In this instance, the Shareholder Proposal does not focus on any significant social policy issue and does not meet the standard of sufficiently significant social policy issues that “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” While the Shareholder Proposal does mention policy issues, such as charitable giving, sustainability, advocacy, social and political matters, the Shareholder Proposal is asking for a review of how these items impact the Company’s “financial sustainability,” which relates to the specific financial condition of the Company, an ordinary business issue. The Company already makes significant disclosures regarding the Company’s social policies. For example, information on the Company’s political activity policy is available on the Company’s investor relations website, and the Company’s environmental, social and corporate governance (“ESG”) initiatives are already publicly available through free online databases, public filings with the Commission, and the Company’s website and annual ESG report, and the Shareholder Proposal itself cites much of this public information in the proposal.

For the above reasons, the Shareholder Proposal relates to, and does not transcend, the Company’s ordinary business operations and may be excluded from the 2024 Proxy Materials in reliance on Rule 14a-8(i)(7).

Conclusion

For the foregoing reasons, we respectfully request that the Staff not recommend any enforcement action from the Commission if the Company excludes the Shareholder Proposal from its 2024 Proxy Materials. Should you have any questions, or if the Staff is unable to concur in our view without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff

U.S. Securities and Exchange Commission

December 21, 2023

Page 11

prior to the issuance of any written response to this letter. If the Staff has any questions regarding this request or requires additional information, please contact the undersigned by phone at (262) 703-1534 or by email at lizzy.mccright@kohls.com.

Sincerely,



Elizabeth McCright

SVP, Deputy General Counsel

cc: National Center for Public Policy Research

Exhibit A

Shareholder Proposal from National Center for Public Policy Research



November 20, 2023

Via FedEx to

Corporate Secretary
Attention: Legal
Kohl's Corporation
N56 W17000 Ridgewood Drive
Menomonee Falls, Wisconsin 53051

Dear Corporate Secretary,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Kohl's Corporation (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 an Associate 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 December 15, 2023 or December 18, 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 spadfield@nationalcenter.org 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 spadfield@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to be 'SPADFIELD', with a long horizontal line extending to the right.

Stefan Padfield

cc: Scott Shepard, FEP Director
Enclosures: Shareholder Proposal

Corporate Financial Sustainability Report

Whereas: The Company's policy positions, advocacy, partnerships and charitable giving on significant social policy and political matters should not alienate consumers, decrease sales, or diminish shareholder value.

The Company takes public and politically divisive positions over issues of significant social policy concern, including generating a backlash for "funding an organization that promotes child mutilation"¹ and "indoctrinate[ing] babies into LGBTQ culture with 'Happy Pride' onesies."²

According to 1792 Exchange, which has given Kohl's a "high risk" rating for taking controversial positions on ideological issues, the Company does not protect employees based on viewpoint and even "fired an employee after they opposed a 'racial equity' clothing line (Kohl's apparently settled the subsequent lawsuit in 2021³)."⁴

The Company also has a 100 percent rating on the Human Rights Campaign's (HRC) "Corporate Equality Index."⁵ Earning that score arguably requires spending shareholder assets to embrace highly partisan positions on hot-button issues, such as supporting legislation that eliminates religious liberties and discriminates against girls and women while opposing legislation to protect children from adult materials. In his 2021 book *The Dictatorship of Woke Capital*, Stephen Soukup describes HRC as "influencing businesses by employing a 'soothsayer's trick'" that boils down to increasing the radicalization of businesses by way of a strategy to "simply keep moving the goalposts."⁶

According to the Claremont Institute's BLM (Black Lives Matter) Funding Database, Kohl's has contributed \$1,000,000 to the BLM movement and related causes since 2020.⁷ These causes have been accused of squandering assets⁸ and supporting racism and antisemitism and highly divisive and dangerous programs such as police-defunding and "anti-racist" racial discrimination.⁹

The Company has also donated \$100,000 to the Trevor Project,¹⁰ an organization that supports "gender affirming care"¹¹ that critics have argued translates into advocating for dangerous

¹ <https://washingtonstand.com/news/target-and-kohls-face-greater-backlash-for-funding-an-organization-that-promotes-child-mutilation>

² <https://www.dailysignal.com/2023/05/30/kohls-indoctrinates-babies-into-lgbtq-culture-with-happy-pride-onesies/>

³ <https://news.bloomberglaw.com/litigation/kohls-settles-job-bias-suit-over-racial-equity-goods-display>

⁴ <https://1792exchange.com/company/kohls/>

⁵ <https://corporate.kohls.com/news/archive-/2022/january/kohl-s-earns-top-score-in-human-rights-campaign-foundation-s-202>

⁶ *Id.*

⁷ <https://dc.claremont.org/blm-funding-database/>

⁸ <https://www.cnn.com/2022/09/04/us/black-lives-matter-executive-lawsuit/index.html>

⁹ <https://www.wsi.com/articles/black-lives-matter-and-the-worlds-oldest-hatred-anti-semitism-0e0c324e>

¹⁰ <https://corporate.kohls.com/news/archive-/2023/may/kohl-s-celebrates-pride-month>

¹¹ <https://www.thetrevorproject.org/research-briefs/gender-affirming-care-for-youth/>

puberty blockers and genital mutilation for children.¹² Trevor Project has also been accused of facilitating the hiding of gender confusion problems from parents.¹³

Supporting Statement: Recent events have made clear that company bottom-lines, and therefore value to shareholders, drop when companies take overtly political and divisive positions that alienate consumers. Following Bud Light's embrace of partisanship and disparagement of its customer base, its revenue fell roughly 10 percent.¹⁴ Target Corporation's market cap fell over \$15 billion amid backlash for similar actions.¹⁵ And Disney stock fell 44 percent in 2022 amid its decision to put extreme partisan agendas ahead of parents' rights.¹⁶

Resolved: Shareholders request that the Board of Directors create a board committee on corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability. The Company should issue a public report on the committee's findings by the end of 2024.

¹² <https://aflegal.org/america-first-legal-demands-records-from-five-gender-clinics-in-georgia-iowa-ohio-utah-and-virginia-regarding-chemical-castration-and-genital-mutilation-known-as-gender-affirming-care/>

¹³ <https://www.nationalreview.com/news/lgbtq-org-that-hosts-sexually-explicit-chatroom-racks-up-major-corporate-partnerships-millions-in-donations/>

¹⁴ <https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch>

¹⁵ <https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash>; <https://nypost.com/2023/05/23/target-to-remove-some-lgbtq-merchandise-after-facing-customer-backlash/>

¹⁶ <https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began>; <https://www.hollywoodreporter.com/business/business-news/disney-stock-2022-1235289239/>; <https://markets.businessinsider.com/news/stocks/disney-stock-price-decline-bob-iger-pandemic-inflation-recession-streaming-2022-12>; <https://www.foxnews.com/media/disneys-decline-shows-woke-focus-alienating-fans-wsj-column>

December 6, 2023

National Center for Public Policy Research Inc
2005 Massachusetts Avenue NW
Washington DC 20036-1030

RE: Verification of Assets for Account Number ending in PII

To Whom It May Concern:

In connection with your recent request regarding the verification of certain information about your investment account relationship with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), we are providing this letter as confirmation that:

(i) You maintain a Brokerage Cash Service account with Wells Fargo Advisors, number ending in PII

(ii) As of December 6, 2023, the National Center for Public Policy Research holds, and has held continuously since November 21, 2020, more than \$2,000 of Kohls Corporation common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred.

This letter is provided for informational purposes and does not represent future Account value, if this said Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within. This report is not the official record of your account. However, it has been prepared to assist you with your investment planning and is for informational purposes only. Your Wells Fargo Advisors Client Statement is the official record of your account. Therefore, if there are any discrepancies between this report and your Client Statement, you should rely on the Client Statement and call your local Sales Location Manager with any questions. Cost data and acquisition dates provided by you are not verified by Wells Fargo Advisors. Transactions requiring tax consideration should be reviewed carefully with your accountant or tax advisor. Unless otherwise indicated, market prices/values are the most recent closing prices available at the time of this report and are subject to change. Prices may not reflect the value at which securities could be sold. Past performance does not guarantee future results.

Sincerely,



David A. Bos
Senior Vice President - Investments
Branch Manager – Private Client Group
Wells Fargo Advisors
1650 Tysons Blvd, Suite 500 | McLean, VA 22102
Direct: 571-341-1125 Cell 571-651-1523 | Fax: 703-827-7643
David.bos@wfadvisors.com

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January 19, 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: No-Action Request from Kohl's Regarding Shareholder Proposal by the National Center for Public Policy Research

Ladies and Gentlemen:

This correspondence is in response to the letter of Elizabeth McCright on behalf of Kohl's Corporation (the "Company" or "Kohl's") dated December 21, 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:

create a board committee on corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability.

The Company seeks to exclude this Proposal (1) under Rule 14a-8(i)(3) on the basis of vagueness, and (2) under Rule 14a-8(i)(7) because it relates to 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.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

I. The non-omissibility of our Proposal is established by the Staff's decision in *Alphabet, Inc.* (avail. April 11, 2022).

Our Proposal is substantially indistinguishable, for Staff-review purposes, from the proposal that was found non-omissible in *Alphabet, Inc.* (avail. April 11, 2022). The resolution of our Proposal is based on and is conceptually indistinguishable from the Alphabet proposal. As we have noted, the resolution of our Proposal asks the Company's Board of Directors to:

create a board committee on corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability.

The proposal in Alphabet asked the Alphabet Board of Directors to:

create a board committee on environmental sustainability to oversee and review policies and provide guidance on matters relating to environmental sustainability.

These proposals are effectively identical in nature. Each call on the respective boards to examine how the policies and actions of each company impact key sustainability issues. Our Proposal seeks a review of its public policy positions and actions on the Company's financial sustainability, whereas the proposal in Alphabet seeks a review of such policies and actions on that company's environmental sustainability. Financial sustainability more completely implicates substantial issues of particular importance to shareholders because while environmental sustainability is at best a tertiary fiduciary concern of interest to only a portion of shareholders, financial sustainability is the central fiduciary concern imputed by law and common sense to all shareholders.

In *Alphabet, Inc.* (avail. April 11, 2022), the Staff concluded that the proposal "transcends ordinary business matters and does not seek to micromanage the Company," and that "the Company has not substantially implemented the Proposal." While the Staff did not address arguments arising under Rule 14a-8(i)(3), the Alphabet proposal having been found non-omissible goes a long way to concluding our Proposal must be included as well. Were the Staff to determine otherwise, it would thereby provide grounds upon which companies might in the future exclude all inquiries into the intersections of its policy positions on issues of significant social policy concern (in direct contravention of SLB 14L) and the company's continuing sustainability.

II. The Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading.

A. Rule 14a-8(i)(3).

Under Rule 14a-8(i)(3), a company may exclude a shareholder proposal in its entirety "if the language of the proposal or the supporting statement render the proposal so vague and indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires."¹

Importantly, Staff Legal Bulletin No. 14B ("SLB 14B") provides in relevant part:

¹ See Staff Legal Bulletin No. 14B (September 15, 2004) ("SLB 14B") (emphasis added).

[B]ecause the shareholder proponent, and not the company, is responsible for the content of a proposal and its supporting statement, we do not believe that exclusion or modification under rule 14a-8(i)(3) is appropriate for much of the language in supporting statements to which companies have objected. Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.²

B. The plain language of the Proposal is unambiguous.

In terms of vagueness, the Company first argues that the “terms ‘corporate financial sustainability’ and ‘financial sustainability’ are inherently vague and could be interpreted by the Company and shareholders in a myriad of ways.”³ To begin with, there can be no serious claim that the words “corporate” and “financial” are impermissibly vague. Furthermore, for the Company to claim “sustainability” is impermissibly vague is particularly odd given that according to a recent document search the Company used the word “sustainability” 47 times in its 2022 ESG report.⁴ Were that word impermissibly vague, one would have expected the Company to define it the first time it was used in that report, but CEO Kingsbury’s “Dear Stakeholder” letter, which opens the report, includes an entire section devoted to “sustainability” without defining the word. The foregoing leaves the specious argument that impermissible vagueness is somehow introduced by combining these three words. However, this argument is belied by the fact that a Google search for “corporate financial stability” returned about 38,300 results in 0.30 seconds.⁵

² <https://www.sec.gov/corpfin/staff-legal-bulletin-14b-shareholder-proposals>

³ Kohl's No-Action Request Letter (Dec. 21, 2023).

⁴ <https://corporate.kohls.com/content/dam/kohlscorp/corporate-responsibility/landing-page/2022%20Kohls%20ESG%20Report-FINAL.pdf>

⁵

https://www.google.com/search?q=%22corporate+financial+sustainability%22&sca_esv=d6c34d09e2d0a221&ei=gH2hZb_oJeCKwbkPoMOsoAk&ved=0ahUKewi_ql-qttdAxVgRTABHaAhC5QQ4dUDCBA&uact=5&oq=%22corporate+financial+sustainability%22&gs_lp=Egxnd3Mtd2l

The Company next argues that “the request that the committee assess the impact on the Company's financial sustainability of all ‘policy positions,’ ‘advocacy,’ ‘partnerships’ and ‘charitable giving on social and political matters’ is extremely broad, vague and confusing and could encompass a broad range of distinct and unrelated matters subject to interpretation.”⁶ However, this argument is troubling because either (1) the Company can identify and assess its policy positions, advocacy, partnerships, and charitable giving that implicates social and political matters, or (2) its directors and managers are arguably incapable of properly carrying out their fiduciary duties.

Finally, the Company argues that the supporting statement “adds further confusion when it criticizes the Company for having earned a 100 percent rating on the Human Rights Campaign's (HRC) 'Corporate Equality Index' because ‘[e]arning that score arguably requires spending shareholder assets to embrace highly partisan positions on hot-button issues...’”⁷ The Company asserts that this statement “merely adds to the variety of ways shareholders and the Company could reasonably interpret the Shareholder Proposal.”⁸ But there is nothing confusing about this portion of the supporting statement. Rather, it merely provides an example of how the Company may be undermining its financial sustainability by taking “public and politically divisive positions over issues of significant social policy concern.”⁹

If the Company is truly confused as to what may impact its financial sustainability, then all shareholders should be gravely concerned as to the competence of Company leadership and whether the Company's fiduciary duties to shareholders are being met. To be sure, the Company's number one concern should be its financial sustainability, especially with regard to shareholders. It may also be that the Company is confused as to the use of the term “financial sustainability,” not due to any ambiguity on the part of the Proposal, but due to the Company's own bias that has apparently precluded it from interpreting the word “sustainability” in any way other than in an environmental context. As noted above, the Company has authored a recent ESG report seemingly dedicated to “Sustainability,” which is limited to the notion of sustainability in an environmental context, such as climate change. This only serves to underscore the need for our Proposal, which seeks to review the Company's financial, as opposed to environmental, sustainability.

Although reasonable minds may differ as to the use of equally appropriate terms or phrases when drafting a shareholder proposal, the applicable standard as previously noted is whether the company implementing the proposal “would be able to *determine with any reasonable certainty* exactly what actions or measures the proposal requires.” (emphasis added). Absolute certainty, therefore, is not required. When it comes to the instant Proposal, there is nothing about it that prevents the Company, Board, or shareholders from being able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Feigning confusion as a means to exclusion should not be encouraged. We presume that the Board of Directors are able to understand simple language and basic

[6LXNlcnAiJCjb3Jwb3JhdGUgZmluYW5jaWFsIH1c3RhaW5hYmlsaXR5SjlGEAAyFhgeMgYQABgWGB4yCBAAGBYHhgPMgYQABgWGB4yBhAAGBYHjIGEAAyFhgeMgYQABgWGB4yCxAAGIAEGloFGIYDMgsQABiABBikBRiGAzILEAAyGAQYigUYhgNIwR1QkgZY-w1wAXgAkAEAmAGNAaAB2waqAQMzLjW4AQPIAQD4AQHCAgsQABiABBiiBBiwA8ICCAAGIkFGKIEGLADwgIIECEYoAEYwwTCAgQQABgewgIGEAAyCBgewgIIEAAyCBgeGA_iAwQYASBBiAYBkAYC&sclient=gws-wiz-serp](https://www.ncppr.org/document/6LXNlcnAiJCjb3Jwb3JhdGUgZmluYW5jaWFsIH1c3RhaW5hYmlsaXR5SjlGEAAyFhgeMgYQABgWGB4yCBAAGBYHhgPMgYQABgWGB4yBhAAGBYHjIGEAAyFhgeMgYQABgWGB4yCxAAGIAEGloFGIYDMgsQABiABBikBRiGAzILEAAyGAQYigUYhgNIwR1QkgZY-w1wAXgAkAEAmAGNAaAB2waqAQMzLjW4AQPIAQD4AQHCAgsQABiABBiiBBiwA8ICCAAGIkFGKIEGLADwgIIECEYoAEYwwTCAgQQABgewgIGEAAyCBgewgIIEAAyCBgeGA_iAwQYASBBiAYBkAYC&sclient=gws-wiz-serp)

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Proposal.

propositions. They will understand that should shareholders vote for the Proposal, they will have instructed the Board to create a committee to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability. If the Directors cannot understand this intensely simple proposition, then the Company failed in its duty of care by recommending that they be elected to their positions.

Accordingly, the Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of Rule 14a-8(i)(3).

III. The Proposal does not relate to the Company's ordinary business operations.

The Company argues that the subject matter of the Proposal impermissibly relates to the Company's ordinary business operations because it "relates to resource allocation, financial review, and profitability analysis decisions by management that are fundamental to management's ability to run the Company on a day-to-day basis, such that they could not, as a practical matter, be subject to direct shareholder oversight."¹⁰ However, the Proposal does not relate to how the Company does any of these things. Nor does it subject any of these tasks to direct shareholder oversight. Rather, it merely requests a committee be established to "oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability." If the Company's argument is that management should not be subject to board oversight when it comes to these matters, or that shareholders should be precluded from requesting such oversight via the shareholder proposal process, then it is claiming freedom to turn its back on good corporate governance.

Consider the oddity of the Company's overall position. It claims that our proposal is just too vague to be understood, but that it really seeks to get right into the ordinary, everyday decisions that the Company makes, and must be free to make without shareholder oversight. While in this instance neither of those claims are true, it certainly can't be the case that they both be true, and the Company's attempt to go for either/or illustrates that even the Company recognizes that both claims are empty.

IV. The Proposal Involves a Significant Social Policy Issue that Transcends the Company's Ordinary Business Operations.

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."¹¹

¹⁰ Kohl's No-Action Request Letter (Dec. 21, 2023).

¹¹ Quoting the 1998 Release.

As shown by the following excerpts, the Proposal makes clear the significant social policy issues raised by the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, which quite obviously transcend the Company's ordinary business:

- The Company ... has a 100 percent rating on the Human Rights Campaign's (HRC) "Corporate Equality Index."¹² Earning that score arguably requires spending shareholder assets to embrace highly partisan positions on hot-button issues, such as supporting legislation that eliminates religious liberties and discriminates against girls and women while opposing legislation to protect children from adult materials.
- According to the Claremont Institute's BLM (Black Lives Matter) Funding Database, Kohl's has contributed \$1,000,000 to the BLM movement and related causes since 2020.¹³ These causes have been accused of squandering assets¹⁴ and supporting racism and antisemitism and highly divisive and dangerous programs such as police-defunding and "anti-racist" racial discrimination.¹⁵
- The Company has also donated \$100,000 to the Trevor Project,¹⁶ an organization that supports "gender affirming care"¹⁷ that critics have argued translates into advocating for dangerous puberty blockers and genital mutilation for children.¹⁸ Trevor Project has also been accused of facilitating the hiding of gender confusion problems from parents.¹⁹

Each of the foregoing implicates issues of substantial social policy that transcend ordinary business. When a company wades into substantial social and policy issues, that action is by definition not ordinary business but a significant add-on to those ordinary business activities. When a company takes such extraordinary action, it has necessarily implicated the substantial social issues it has addressed. The Company can't on one hand claim that it must use shareholder assets to stake out controversial positions on these matters or support organizations that have taken such positions, and then on the other hand argue that such stances are simply run-of-the-mill business activities about which shareholders deserve no accounting.

V. Conclusion

Just as a proposal to create a board committee on environmental sustainability was found non-excludable in *Alphabet, Inc.* (avail. April 11, 2022), so too should our Proposal to create a board committee on corporate financial sustainability be non-excludable. The Proposal is not impermissibly

¹² <https://corporate.kohls.com/news/archive-/2022/january/kohl-s-earns-top-score-in-human-rights-campaign-foundation-s-202>

¹³ <https://dc.claremont.org/blm-funding-database/>

¹⁴ <https://www.cnn.com/2022/09/04/us/black-lives-matter-executive-lawsuit/index.html>

¹⁵ <https://www.wsj.com/articles/black-lives-matter-and-the-worlds-oldest-hatred-anti-semitism-0e0c324e>

¹⁶ <https://corporate.kohls.com/news/archive-/2023/may/kohl-s-celebrates-pride-month->

¹⁷ <https://www.thetrevorproject.org/research-briefs/gender-affirming-care-for-youth/>

¹⁸ <https://aflegal.org/america-first-legal-demands-records-from-five-gender-clinics-in-georgia-iowa-ohio-utah-and-virginia-regarding-chemical-castration-and-genital-mutilation-known-as-gender-affirming-care/>

¹⁹ <https://www.nationalreview.com/news/lgbtq-org-that-hosts-sexually-explicit-chatroom-racks-up-major-corporate-partnerships-millions-in-donations/>

vague and does not impermissibly encroach on the Company's ordinary business. Finally, the Proposal implicates significant social policy issues that transcend the Company's ordinary business.

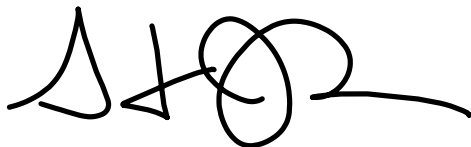
The Company has clearly failed to meet its burden under Rule 14a-8(g) of persuading the Staff that it may omit our Proposal. Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company's request for a no-action letter concerning our Proposal.

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 [REDACTED] and at [REDACTED].

Sincerely,



Scott Shepard
FEP Director
National Center for Public Policy Research



Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Elizabeth McCright ([REDACTED])