



DIVISION OF  
CORPORATION FINANCE

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

April 19, 2024

Amy C. Seidel  
Faegre Drinker Biddle & Reath LLP

Re: Target Corporation (the "Company")  
Incoming letter dated February 9, 2024

Dear Amy C. Seidel:

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 conduct an evaluation and issue a report examining the risks to the financial sustainability and reputation of the Company arising from its partnerships with, charitable contributions to, and other support for divisive social and political organizations and causes.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(b)(1)(i) and Rule 14a-8(f). In our view, the Proponent has supplied clear documentary support evidencing the Proponent's eligibility to submit the Proposal. The requirements the Company argues must be imposed on the Proponent are not supported by a plain reading of Rule 14a-8(b)(2)(ii).

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the Proposal is materially false or misleading and 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



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February 9, 2024

**VIA STAFF ONLINE FORM**

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

**Re: Target Corporation – Notice of Intent to Exclude from 2024 Proxy Materials  
Shareholder Proposal of National Center for Public Policy Research**

Ladies and Gentlemen:

This letter is submitted on behalf of Target Corporation, a Minnesota corporation (“Target” or the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from its proxy materials for its 2024 Annual Meeting of Shareholders (the “2024 Proxy Materials”) a shareholder proposal and statements in support thereof (the “Proposal”) from the National Center for Public Policy Research (the “Proponent”). The Company requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend an enforcement action to the Commission if the Company excludes the Proposal from its 2024 Proxy Materials in reliance on Rule 14a-8.

Pursuant to Rule 14a-8(j) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we have (i) submitted this letter and its exhibit to the Commission via the online Shareholder Proposal Form located on the Commission’s website within the time period required under Rule 14a-8(i) and (ii) concurrently sent copies of this correspondence to the Proponent as notification of the Company’s intention to exclude the Proposal from its 2024 Proxy Materials.

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 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 Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

### **The Proposal**

A full copy of the Proposal, including the accompanying supporting statement (the “Supporting Statement”), is attached hereto as Exhibit A. The resolution of the Proposal reads as follows:

Shareholders request that the Board conduct an evaluation and issue a report examining the risks to the financial sustainability and reputation of the Company arising from its partnerships with, charitable contributions to, and other support for divisive social and political organizations and causes – as illustrated particularly by its continued participation in and striving for high scores on the Human Rights Campaign’s Corporate Equality Index. The report, prepared at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, should be publicly disclosed on the Company’s website by the end of 2024.

### **Bases for Exclusion**

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the Company’s 2024 Proxy Materials pursuant to:

- Rule 14a-8(b)(1) and Rule 14a-8(f)(1) because the Proponent failed to provide the Company with the requisite proof of continuous stock ownership after receiving notice of such deficiency;
- Rule 14a-8(i)(7) because the Proposal relates to the Company’s ordinary business; and
- Rule 14a-8(i)(3) because the Proposal makes materially false or misleading statements and is impermissibly vague, indefinite and subject to multiple interpretations, such that it violates the proxy rules.

### **Procedural Background**

On December 26, 2024, the Company received the Proposal, via FedEx, which was submitted by the Proponent and postmarked on December 22, 2023 (the “Submission Date”). *See Exhibit A*. The submission did not include any information or documentary evidence regarding the Proponent’s ownership of Company shares. The Company reviewed its stock records, which did not reflect that the Proponent was a record owner of Company shares. Accordingly, the Company sent the Proponent a letter, dated January 8, 2024, notifying the Proponent of the requirements of Rule 14a-8, identifying the procedural deficiencies associated with the Proponent’s submission and explaining how the Proponent could cure these procedural deficiencies (the “First Deficiency Notice”).

The First Deficiency Notice, attached hereto as Exhibit B, was sent to the Proponent on January 8, 2024 via email and FedEx, which was within 14 calendar days of the Company’s receipt of the Proposal in accordance with Rule 14a-8(f)(1).

On January 9, 2024, the Company received an email from Stephen Padfield, on behalf of the Proponent, in response to the First Deficiency Notice. Mr. Padfield’s email included a letter

from Wells Fargo Advisors, dated January 9, 2024 (the “Wells Fargo Letter”). See Exhibit C. The Wells Fargo Letter stated that “[a]s of January 9, 2024, [NCPPR] holds, and has held continuously since December 21, 2020, more than \$2,000 of Target Corp 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. Wells Fargo N.A. is record owner of these shares.” The Wells Fargo Letter did not attach any documentation from UBS, or otherwise indicate that Wells Fargo was affiliated with UBS.

Accordingly, on January 15, 2024, the Company sent a second deficiency notice (the “Second Deficiency Notice”) to the Proponent via email and FedEx. The Second Deficiency Notice, attached hereto as Exhibit D, explained that the Wells Fargo Letter did not provide adequate proof that the Proponent satisfied the ownership requirements under Rule 14a-8(b)(1), reiterated the requirements of Rule 14a-8(b) and explained how the Proponent could cure the continuing procedural deficiency.

On January 15, 2024, the Company received an email from Mr. Padfield stating, in part, “[i]f you can provide a regulation that states we must provide documentation from every former record holder as described above, then we will pursue providing that additional documentation. If you cannot do that, then your claim that we “must” provide such documentation is false, and we will rely on the documents we have already sent you as fully satisfying our relevant proof-of-ownership obligations.” See Exhibit E. Shortly thereafter, the Company received an additional email from Mr. Padfield stating, “[f]ollowing up on the below, I am attached [sic] a relevant letter from UBS as a courtesy.” This second email included a letter from UBS Financial Services Inc. dated December 4, 2023 (the “UBS Letter”). See Exhibit E. The UBS Letter stated:

Please accept this letter as a confirmation of the following facts:

- During the month of October 2023, the National Center for Public Policy Research transferred assets, including 95 individual equity positions, from UBS Financial Services account [REDACTED] PII to Wells Fargo account [REDACTED] PII.
- As part of this transfer UBS Financial Services transmitted cost basis data, including purchase date and purchase price, for each of these 95 equity positions transferred to Wells Fargo.
- UBS has reviewed a copy of the October 2023 Wells Fargo statement for account [REDACTED] PII and has confirmed the original purchase dates and purchase prices which were transmitted by UBS Financial Services to Wells Fargo are being accurately and correctly reported on this statement.

Aside from the Wells Fargo Letter and the UBS Letter (collectively, the “Stock Ownership Letters”), the Company has not received any additional evidence demonstrating the Proponent’s continuous ownership of the Company’s shares for the requisite time period.

## Analysis

### **I. The Proposal May Be Excluded Under Rule 14a-8(b)(1) And Rule 14a-8(f)(1) Because The Proponent Failed to Establish Eligibility To Submit The Proposal Despite Proper Notice.**

#### *A. Background Of Rule 14a-8(b)(1) And Rule 14a-8(f)(1).*

Rule 14a-8(b)(1) provides that, to be eligible to submit a shareholder proposal, a shareholder proponent must have continuously held: (i) at least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; (ii) at least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or (iii) at least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year.

Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the requisite ownership requirements under Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within 14 days from the date the proponent received such notice. If a proponent is not a registered shareholder of a company and has not made a filing with the Commission detailing his or her ownership of the company's shares, Rule 14a-8(b)(2) provides that the proponent must prove his or her eligibility to submit a proposal by providing the company with a written statement from the "record" holder of the proponent's securities.

Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") specifies that "[t]he shareholder will need to obtain proof of ownership from the DTC participant through which [his or her] securities are held." SLB 14F further explains that proof of ownership letters fail to satisfy the ownership requirement under Rule 14a-8(b)(1) if "they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted." A letter fails to verify the requisite ownership if it "speaks as of a date *before* the date the proposal is submitted...[or] speaks as of a date *after* the date the proposal was submitted but covers a period of only one year...." See SLB 14F, Section C.

#### *B. The Stock Ownership Letters Submitted By The Proponent To The Company Fail To Demonstrate The Proponent's Continuous Ownership Of The Company Shares For The Requisite Time Period.*

As required by Rule 14a-8(b) and as specified by the Staff in SLB 14F, a proponent must demonstrate continuous ownership of the requisite amount of company shares for the requisite time period, preceding and including the submission date of the proposal. Here, the Proposal may be excluded because the Stock Ownership Letters received by the Company are insufficient to satisfy the ownership requirements of Rule 14a-8(b). Specifically, the Stock Ownership Letters, taken together or separately, do not amount to a written statement from the "record" holder of the Proponent's securities demonstrating that the Proponent, as of the Submission Date, has continuously held the requisite amount of Company shares for the requisite time period. While the

Wells Fargo Letter confirms that Wells Fargo Advisors is the “record” holder of the Proponent’s Company shares, it does not confirm that Wells Fargo Advisors has been the “record” holder of the Proponent’s Company shares during the three years preceding and including the Submission Date. In fact, by seeking to rely on “cost-basis data” provided by UBS, the Wells Fargo Letter indicates that UBS was the “record” holder for some unspecified portion of the three-year period preceding and including the Submission Date. Since the Wells Fargo Letter states that the Proponent’s ownership of the Company shares during the period covered by the letter (December 21, 2020 to January 9, 2024) is based on information from UBS, Wells Fargo Advisors is unable to independently provide adequate documentary evidence confirming the Proponent’s continuous ownership of Company shares for the period during which Wells Fargo Advisors was not the “record” holder of the Proponent’s securities. The UBS Letter does not cure this procedural deficiency because it fails to provide necessary information regarding the 95 individual equity positions transferred to Wells Fargo Advisors, including the issuers of the shares, the number of Company shares held by the Proponent, or the duration of the Proponent’s purported holdings of such Company shares.

When a proponent’s shares of a company are transferred between “record” holders during the applicable holding period, like in the Proponent’s case here, the proponent can satisfy the continuous ownership requirement under Rule 14a-8(b) by submitting separate letters from each “record” holder demonstrating there was no interruption in the chain of ownership. For example, in *Bank of America Corp.* (Feb. 29, 2012), the proponent submitted two such letters to prove continuous ownership of the company shares. The first letter, from TD Ameritrade, Inc., confirmed the proponent’s ownership of the company shares “from December 03, 2009 to April 21, 2011,” and the second letter, from Charles Schwab & Co., confirmed that the proponent’s company shares “have been held in this account continuously since April 21, 2011.”

In accordance with the foregoing precedent, the Proponent was required to provide documentary evidence from each “record” holder of the Proponent’s Company shares during the applicable holding period (i.e., UBS and Wells Fargo Advisors) that the last date of the earlier “record” holder’s holding period correlated with the first date of the new “record” holder’s holding period. Such documentary evidence is necessary to establish that the Proponent continuously held the Company shares throughout the applicable three-year holding period despite the change in “record” holders.

Accordingly, because the Proponent has failed to establish eligibility to submit the Proposal under Rule 14a-8 due to the failure to submit documentary evidence of continuous ownership of the Company shares for the requisite time period, we respectfully ask that the Staff concur in the view that the Company may exclude the Proposal under Rule 14a-8(b)(1) and Rule 14a-8(f)(1).

## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company’s Ordinary Business.**

### *A. Background Of Rule 14a-8(i)(7).*

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if it “deals with a matter relating to the company’s ordinary business operations.” According to the Commission, the



term “ordinary business” refers to matters that are not necessarily “ordinary” in the common meaning of the word, but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”). 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* 1998 Release. In the 1998 Release, the Commission stated that there are two central considerations for determining whether the ordinary business exclusion applies. The first consideration, related to the subject matter of the proposal, recognizes that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration “relates to the degree to which the proposal seeks to ‘micromanage’ 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.” 1998 Release.

Framing a shareholder proposal in the form of a request for a report, including requesting a report about certain risks, does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). Similarly, a proposal’s request for a review of certain risks is also subject to exclusion if the underlying subject matter of the proposal to which the risk pertains or that gives rise to the risk is ordinary business. *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009) (“SLB 14E”). In accordance with its position in SLB 14E, the Staff has permitted the exclusion under Rule 14a-8(i)(7) of shareholder proposals that request a risk assessment related to ordinary business operations.

*B. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Relates To The Company’s Partnerships With, Charitable Contributions To, And Support For Specific Types of Organizations.*

The Staff has consistently permitted the exclusion of shareholder proposals under Rule 14a-8(i)(7) when the proposals focus on a company’s relationships with or contributions to specific types of organizations. *See, e.g., PG&E Corp.* (Feb. 4, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal calling for the company to “form a committee to solicit feedback on the effect of anti-traditional family political and charitable contributions” as relating to the ordinary business matter of “contributions to specific types of organizations”); *The Walt Disney Co.* (Nov. 20, 2014) (permitting exclusion of a proposal requesting that the company “preserve the policy of acknowledging the Boy Scouts of America as a charitable organization to receive matching contributions” as relating to the ordinary business matter of “charitable contributions to a specific organization”); *Target Corporation* (Mar. 31, 2010) (permitting exclusion of a proposal requesting a report on charitable contributions and the “feasibility of...policy changes, including minimizing donations to charities that fund animal experiments[.]” noting that proposals “concern[ing] charitable contributions directed to specific types of organizations are generally excludable under [R]ule 14a-8(i)(7); and *PepsiCo., Inc.* (Feb. 24, 2010) (permitting exclusion of a proposal to

prohibit support of organizations that “either reject or support homosexuality,” noting that the proposal related to “charitable contributions directed to specific types of organizations”).

The Staff has further permitted exclusion of shareholder proposals as relating to ordinary business under Rule 14a-8(i)(7) when the proposal, even if facially neutral, appears directed at a particular organization or type of organization when read together with the supporting statement. For example, in *Pfizer Inc.* (Feb. 12, 2018), the Staff permitted the exclusion of a proposal requesting that the company “review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies and to report its findings.” The company noted that the proposal, “viewed in its entirety with the preamble and the supporting statement, focuses primarily on Pfizer’s relationships with specific organizations, namely Pfizer’s relationships with the Human Rights Campaign and the Southern Poverty Law Center.”

Moreover, the Staff recently permitted exclusion under Rule 14a-8(i)(7) of multiple proposals submitted by the Proponent in which the underlying focus of such proposals were similar in nature and subject matter to the instant Proposal. For example, in *Netflix, Inc.* (Apr. 9, 2021), *Facebook, Inc.* (Mar. 26, 2021), *McDonald’s Corporation* (Mar. 26, 2021), *AT&T Inc.* (Jan. 15, 2021) and *Starbucks Corp.* (Dec. 23, 2020), the same Proponent submitted similar proposals with a “Resolved” clause in each that requested a detailed but facially neutral report regarding those companies’ general charitable giving activities. However, the supporting statements in the proposals included references, including through online articles in footnotes, to each company’s support for or contributions to organizations supportive of the Black Lives Matter movement.

Here, neither the resolved clause nor the Supporting Statement of the Proposal is facially neutral. The Proposal patently focuses on contributions to specific types of organizations, as demonstrated by the language in the resolved clause that specifically refers to charitable contributions the Proponent contends the Company makes to “divisive social and political organizations” and goes even further to expressly request that the proposed evaluation and report examine the risks arising from the Company’s relationship with the Human Rights Campaign (the “HRC”)—the same organization targeted by the proposal that the Staff deemed excludable in *Pfizer Inc.* The Proposal focuses on the Company’s charitable contributions to, and/or partnership with, specific, named organizations (i.e., HRC, GLSEN and Out&Equal) and specific types of organizations. The text of the Proposal further enumerates specific charitable contributions on which it is focused, namely, those that support: “the sort of LGBTQ activism that is demanded by companies of the [HRC]’s Corporate Equality Index” “contentious activism,” “divisive social and political organizations,” “extreme partisan agendas,” and “overtly partisan and divisive activism.” These descriptors coupled with the references to particular organizations make clear that the Proposal is not addressed generally to the Company’s policies toward charitable giving. Instead, it is intended to serve as a shareholder referendum on Company contributions to, support for, and partnerships with organizations that the Proponent perceives to be supportive of a specific social and political movement—social justice organizations and in particular, organizations the Proponent disapproves of based on their associations with the LGBTQ+ community.

The Proponent’s public statements on these topics about the Company similarly confirm its preoccupation with the Company’s contributions to particular organizations: the Proponent has publicly voiced its objection to the Company’s support of social justice organizations. An article

on the Proponent’s website titled “Target Targeted By Shareholder Activists Over Radical LGBT Agenda” labels the Company’s support of social justice organizations as a “radical LGBT political agenda” and “pet political positions.”<sup>1</sup> The article further asserts that the Company’s management “ha[s] bowed to woke leftists by recklessly embracing the radical agenda of the LGBT movement.” Another article on the Proponent’s website titled “Scott Shepard: As Target Plays Politics, Its Shareholders Take Aim” asserts that the Company has “left-wing policy positions” and describes the Company’s management as thinking within a “woke echo chamber.”<sup>2</sup>

Based on the foregoing, the Proposal demonstrates an intention to further the Proponent’s agenda of condemning corporate support for the LGBTQ+ community and to limit the Company’s charitable contributions to, and support of, specific types of organizations, including HRC, GLSEN and Out&Equal. Thus, consistent with the precedents cited above, by targeting specific Company charitable contributions, the Proposal’s request that the Company issue a report concerning the “risk to the...Company arising from its partnerships with, charitable contributions to, and other support of divisive social and political organizations and causes” relates directly to the well-recognized ordinary business matter of deciding which charitable organizations to support and, therefore, may be excluded pursuant to Rule 14a-8(i)(7). Accordingly, we respectfully ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(i)(7).

*C. The Proposal Is Excludable Because It Relates To The Company’s Litigation Strategy And The Conduct Of Ongoing Litigation To Which The Company Is A Party.*

As described below, the Company is presently involved in litigation seeking to hold the Company liable for its alleged failure to adequately oversee and disclose the risks of its ESG and DEI policies, and specifically its annual practice of selling LGBTQ+ Pride-themed merchandise during and shortly before the month of June. The report and analysis requested by the Proposal relate to the very same subject matter: whether the Company’s alleged “support for divisive social and political organizations and causes” creates “risks to the financial sustainability and reputation of the Company.” Additionally, the Supporting Statement specifically references what the Proponent calls “LGBTQ activism,” which it ties to the “backlash” to the Company’s 2023 Pride Collection, the very subject of the pending litigation against the Company. As a result, requiring the creation and disclosure of the report requested by the Proposal would adversely affect the litigation strategy of the Company in pending litigation. In this regard, implementing the Proposal could be construed as an implied admission by the Company that there are risks associated with the Company’s ESG and DEI initiatives that are different from or greater than those the Company has historically disclosed, or otherwise used as evidence against the Company in the pending litigation. Thus, the Proposal would require the Company to take action (in the form of public disclosures) that would harm its legal defense in pending litigation by potentially contradicting its position in such litigation regarding the adequacy of its past oversight and disclosure of the risks related to its ESG and DEI initiatives.

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<sup>1</sup> The article is available at <https://nationalcenter.org/ncppr/2023/06/06/target-targeted-by-shareholder-activists-over-radical-lgbt-agenda/>.

<sup>2</sup> The article is available at <https://nationalcenter.org/ncppr/2023/06/09/scott-shepard-as-target-plays-politics-its-shareholders-take-aim/>.



The Staff has consistently permitted the exclusion of shareholder proposals under Rule 14a-8(i)(7) when the proposal implicates the subject matter related to pending litigation faced by the company. A company's management has a responsibility to protect the interests of the company against litigation, and a shareholder proposal that hinders this obligation is inappropriate and excludable. For example, in *Walmart Stores, Inc.* (Apr. 13, 2018), the Staff permitted the exclusion of a proposal requesting a report on risks faced by the company regarding emerging public policies on the gender pay gap while the company was involved in numerous lawsuits regarding gender-based pay discrimination. In reaching its decision, the Staff noted that "the proposal would affect the conduct of ongoing litigation relating to the subject matter of the proposal to which the Company is a party." See also *Amazon.com, Inc.* (Apr. 7, 2021) (permitting exclusion of a proposal requesting a report on the adequacy of the company's efforts to mitigate COVID-19-related health and safety risks while the company was involved in lawsuits alleging the Company adopted inadequate health and safety measures in response to the COVID-19 pandemic); *Chevron Corp.* (Mar. 19, 2013) (permitting exclusion of a proposal requesting that the company review its "legal initiatives against investors" because "[p]roposals that would affect the conduct of ongoing litigation to which the company is a party are generally excludable"); *AT&T Inc.* (Feb. 9, 2007) (permitting exclusion of proposal requesting that the company issue a report containing specified information regarding the alleged disclosure of customer records to governmental agencies, while the company was defending multiple pending lawsuits alleging unlawful acts related to such disclosures); *Exxon Mobil Corp.* (Mar. 21, 2000) (permitting exclusion of proposal requesting immediate payment of settlements associated with the Exxon Valdez oil spill as relating to litigation strategy); and *Philip Morris Companies Inc.* (Feb. 4, 1997) (permitting exclusion of proposal where the Staff noted that although it "has taken the position that proposals directed at the manufacture and distribution of tobacco-related products by companies involved in making such products raise issues of significance that do not constitute matters of ordinary business," the proposal "primarily addresses the litigation strategy of the [c]ompany, which is viewed as inherently the ordinary business of management to direct").

Similarly, the Staff has also permitted the exclusion of shareholder proposals under Rule 14a-8(i)(7) when the subject matter at the heart of the proposal relates to pending litigation in which the company is involved and the implementation of the proposal would be in conflict with the company's ongoing defense of itself in pending litigation. See, e.g., *Chevron Corp.* (Mar. 30, 2021) (permitting exclusion of a proposal requesting a report analyzing how the company's policies and practices perpetuate racial injustice and inflict harm on communities of color while the company was involved in litigation seeking to hold the company liable for its alleged role in climate change and alleged resulting injuries, including the alleged harmful impacts of climate change on communities of color); *General Electric Co.* (Feb. 3, 2016) (permitting exclusion of a proposal requesting a report assessing all potential sources of liability related to PCB discharges in the Hudson River while the company was defending multiple pending lawsuits related to its alleged past release of chemicals into the Hudson River); *Johnson & Johnson* (Feb. 14, 2012) (permitting exclusion of proposal where implementation would have required the company to report on any new initiatives instituted by management to address the health and social welfare concerns of people harmed by LEVAQUIN®, thereby taking a position contrary to the company's litigation strategy); *Reynolds American Inc.* (Mar. 7, 2007) (permitting exclusion of proposal requesting that the company provide information on the health hazards of secondhand smoke, including legal options available to minors to ensure their environments are smoke free, while the

company was defending several cases alleging injury as a result of exposure to secondhand smoke and a principal issue concerned the health hazards of secondhand smoke); and *Reynolds American Inc.* (Feb. 10, 2006) (permitting exclusion of proposal requesting that the company notify African-Americans of the unique health hazards to them associated with smoking menthol cigarettes, which would be inconsistent with the company’s pending litigation position of denying such health hazards).

In accordance with the foregoing precedent, the Proposal should be excluded pursuant to Rule 14a-8(i)(7) because it will affect the conduct of ongoing litigation, specifically a shareholder lawsuit against the Company and its Board, captioned *Craig v. Target Corporation*, No. 2:23-cv-00599, (M.D. Fla.) (the “Lawsuit”). In fact, the Proposal specifically references the Lawsuit, which it falsely describes as a “\$12 billion lawsuit against the Company” (see Section III.B. below for an explanation of why that is false) with a footnote citation to a hyperlinked webpage which summarizes the Lawsuit. The Lawsuit alleges that “Target’s Board and management for years spent Target’s valuable financial and reputational capital on the pursuit of ESG/DEI initiatives” while “falsely and misleadingly portraying the risks of this strategy to Target’s shareholders.” (See *Lawsuit*, Dkt. 52, ¶ 5 (the “Am. Compl.”).<sup>3</sup> The Lawsuit further alleges that the consumer “backlash” to Target’s 2023 Pride Collection revealed the true risks of Target’s business strategies related to ESG and DEI initiatives and caused the Company’s stock price to drop. (See *Am. Compl.* ¶ 431). The Proposal self-evidently addresses the same subject matter. As described above, the Proposal seeks an evaluation and report of the alleged risks and impacts to the Company’s finances and reputation resulting from the Company’s alleged “support for divisive social and political organizations and causes.” And the Proposal is clearly targeted at the same alleged “backlash” that forms the basis of the Amended Complaint. See Proposal (claiming Target’s stock price fell “amid backlash” to the 2023 Pride collection); see generally *Am. Compl.* (referring to “backlash” 130 times).

It is no surprise that the Proposal addresses the same subject-matter as the Lawsuit, because the Proponent, through its legal representative America First Legal (which is counsel to the plaintiffs in the Lawsuit), previously submitted a demand to the Company seeking to inspect the Company’s books and records related to what the Proponent described as the Company’s “LGBT-Themed Marketing Strategy” and its impact on “Target’s risk and financial performance.” That books and records demand was made via a letter dated June 6, 2023, to which the Company responded, through counsel, on June 22, 2024. The Demand Letter is attached hereto as Exhibit F. The Demand Letter shows that the Proponent has historically pursued the same information pertaining to the same subject matter through the same counsel in the Lawsuit, America First Legal.<sup>4</sup> This suggests that the Proponent is not merely seeking a report that could have a prejudicial impact on the Company’s defense of itself in the Lawsuit as a matter of happenstance or coincidence. Instead, the Demand Letter shows that counsel for the plaintiffs in the Lawsuit may be using another client of theirs, the Proponent, to pursue the Proposal specifically *because of* its potential impact on the Lawsuit. Exclusion of the Proposal is specifically appropriate because, as

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<sup>3</sup> Plaintiffs’ amended complaint in the lawsuit is available at <https://media.aflegal.org/wp-content/uploads/2023/11/29204258/ECF-052-First-Amended-Complaint.pdf>.

<sup>4</sup> Unlike the Demand Letter, the Proposal does not indicate whether counsel was involved in its preparation or the identity of that counsel. The Proposal, however, does cite to America First Legal’s website and expressly references America First Legal’s Lawsuit. See Proposal, n.12.

the Demand Letter shows, the Proposal is part of a concerted litigation strategy against the Company.

With regard to the Lawsuit itself, the defendants in the Lawsuit, including the Company, have filed a motion to dismiss the Amended Complaint, which motion is pending. There has been no adverse judgment against the Company in the Lawsuit. The Company's management has a responsibility to defend the Company's interests against unwarranted litigation, which it is committed to doing with respect to the Lawsuit. A shareholder proposal that interferes with this obligation is inappropriate, particularly when the company is involved in pending litigation on the very issues that form the basis for the Proposal. Moreover, the Proposal would obligate the Company to take a public position—outside the context of pending litigation and the discovery process, which is currently stayed pursuant to the Private Securities Litigation Reform Act of 1995—with respect to the alleged risks associated with its existing policies, practices, and operations regarding its engagement with the LGBTQ+ community and its strategy of including, within its array of merchandise, collections that celebrate a variety of seasonal events (including the Superbowl, Valentine's Day, Pride Month, the 4th of July, Back to School/ Back to College, Halloween, Thanksgiving, and Christmas among others). Adopting the Proposal could also potentially require the Company to disclose assessments regarding the existence and nature of those alleged risks, which may prematurely disclose the Company's litigation strategy to the parties opposing it in the Lawsuit and prejudice the Company's position and ability to defend itself.

The Proposal also seeks reporting that would directly interfere with the Company's position in the Lawsuit. The Proposal seeks a report that would address whether “damage to shareholder value” was a “direct result” of the Company's partnerships with or support for certain LGBTQ+ initiatives. Plaintiffs in the Lawsuit could argue that the mere conduct of an investigation into that issue is an implied admission that would prejudice the Company in defending itself in litigation where the question of the alleged impact of the backlash on the Company's stock price is itself at issue.

Similarly, if a report were prepared, plaintiffs in the Lawsuit could attempt to use it to prove one or more elements of their case, no matter what the investigation confirmed and the report might say. For example, plaintiffs in the Lawsuit would surely attempt to use any report to argue that stockholders were harmed as a result of the “backlash” to the 2023 Pride Collection. The plaintiffs in the Lawsuit could also attempt to use any report prepared in response to the Proposal to argue that the Company knew or should have known about any risks identified in the report. That could prejudice the Company's defense since the focus of the claims in the Lawsuit are the adequacy of the Company's disclosure of those very same risks. No matter what the report might say, the plaintiffs in the Lawsuit would likely attempt to use the additional detail that might be disclosed in such a report as an admission of information that plaintiffs may argue should have previously been disclosed, or as evidence of the Company's purported prior knowledge of those risks. The inevitability of any such attempted use would prejudice the Company's defense of itself in the Lawsuit.

Nor does the Proposal's claimed exclusion of “anything that would constitute an admission of pending litigation” alter this fact. As explained above, the plaintiffs in the Lawsuit could argue that the very existence of the report sought by the Proposal is an implied admission. Nor is a

limitation on “admissions” sufficient to protect the Company against potential prejudice to its ability to defend itself against the Lawsuit, as it does not prevent the harms described above related to the potential premature disclosure of the Company’s litigation strategy, the likelihood that the report itself would be used as evidence against the Company (irrespective of what it ultimately said), or the other forms of prejudice described above. Instead, the proposed carve-out for “anything that would constitute an admission of pending litigation” serves as a tacit acknowledgement that the Proposal is excludable because it is inextricably linked to the subject matter of the Lawsuit.

Relatedly, the Proposal would affect the Company’s defense of the Lawsuit by potentially impacting a remedy plaintiffs are seeking. The plaintiffs’ Am. Compl. requests, in part, that the Company “fully disclos[e] their plans and purposes concerning their monitoring of ESG/DEI backlash risk in the upcoming 2024 annual proxy statement.” This remedy is closely analogous to the report requested in the Proposal, which asks the Company to “issue a report examining the risks to the financial sustainability and reputation of the Company arising from its partnerships with, charitable contributions to, and other support for divisive social and political organizations and causes.” Normally in litigation, a plaintiff seeking this type of relief would need to meet a demanding standard, which they should not be permitted to avoid by having another client of their litigation counsel submit the Proposal.

Finally, we note that a proposal relating to ordinary business matters such as ongoing litigation is excludable under Rule 14a-8(i)(7) regardless of whether or not it touches upon a significant policy issue. Although the Commission has stated that “proposals relating to such [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable,” the Staff has expressed the view that proposals relating to both ordinary business matters and significant social policy issues may be excluded in their entirety in reliance on Rule 14a-8(i)(7). As an example, although racial justice is often considered a significant policy issue, the Staff has concurred with the exclusion of proposals that touched upon this issue where the subject matter of the proposal (e.g., whether certain business practices perpetuate racial injustice) was the same as or similar to that which was at the heart of litigation in which the company was then involved. *See, e.g., Chevron Corp.* (Mar. 30, 2021) (permitting exclusion of a proposal requesting a report analyzing how the company's policies and practices perpetuate racial injustice and inflict harm on communities of color while the company was involved in litigation seeking to hold the company liable for its alleged role in climate change and alleged resulting injuries, including the alleged harmful impacts of climate change on communities of color). Similarly, the subject matter of the Proposal (e.g., whether the Company’s alleged “support for divisive social and political organizations and causes” creates “risks to the financial sustainability and reputation of the Company”) encompasses the subject matter of litigation in which the Company is currently involved. Thus, because the Proposal implicates the Company’s litigation strategy, which is an ordinary business matter, the Proposal is excludable under Rule 14a-8(i)(7).

*D. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because The Subject Matter Relates To The Company’s Ordinary Business Operations.*

The Proposal requests an evaluation of, and report “examining the risk to the financial sustainability and reputation of the Company arising from its partnerships with, charitable contributions to, and other support for divisive social and political organizations and causes – as illustrated particularly by its continued participation in and striving for high scores on the Human Rights Campaign’s Corporate Equality Index.” The Proposal concerns ordinary business matters of the Company because it relates to the Company’s own profitability and reputational analysis decisions which are “fundamental to management’s ability to run a company on a day-to-day basis.”

In addition, the requested report 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 its customers, which the Company refers to as “guests.” The Supporting Statement of the Proposal criticizes the Company’s decision to sell certain items as part of the Company’s celebration of Pride Month during and around the month of June (the “Pride Collection”); but a decision by a retailer about which products to offer to consumers and when and how to market them is one that clearly relates to the Company ordinary business operations. The Staff has routinely permitted exclusion of shareholder proposals which concern the sale, or offering, of particular products by a company. For example, in *Wal-Mart Stores, Inc.* (Mar. 20, 2014), the Staff concurred in the exclusion of a proposal requesting the company amend its board committee charter to require board oversight of whether selling certain items that endanger public safety and well-being would harm the reputation of the company and/or be offensive to family and community standards. In reaching its decision, the Staff noted that “the proposal relates to the products and services offered for sale by the company.” Moreover, the Staff reiterated that “[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7).” See also *HCA Healthcare, Inc.* (Mar. 6, 2023) (permitting exclusion of a proposal requesting that the “[c]ompany’s hospitals provide plant-based food options to patients at every meal,” noting that “the [p]roposal relates to, and does not transcend, ordinary business matters”); and *The TJX Companies, Inc.* (April 16, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board develop an animal welfare policy applying to all of the company’s “stores, merchandise and suppliers[,]” noting that “the [p]roposal relates to the products and services offered for sale by the [c]ompany”).

Permitting shareholders to dictate the examination of the “financial sustainability and reputation of the Company” based on its ordinary business decisions, including retail decisions, inappropriately delegates management functions and decisions to shareholders. The Proposal seeks oversight over decisions that are “fundamental to management’s ability to run a company on a day-to-day basis” and “seeks to ‘micromanage’ 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.” 1998 Release.

*E. The Proposal Does Not Raise A Significant Social Policy Issue For Purposes Of Rule 14a-8(i)(7) That Transcends The Company’s Ordinary Business Operations.*

In the 1998 Release, the Commission noted that shareholder proposals concerning 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.” However, in Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), the Staff provided guidance on its process for evaluating proposals that raise significant social policy issues. Whereas previously it would focus on the determination of a “nexus between a policy issue and the company,” the Staff stated that, going forward, it will consider whether the policy issues raised in a proposal have “a broad societal impact, such that they transcend the ordinary business of the company.” SLB 14L.

The Staff has consistently indicated that the mere mention of an issue with a broad societal impact cannot transform a proposal that is otherwise excludable as relating to ordinary business. For example, in *McDonald’s Corporation* (Apr. 3, 2023), the Staff permitted exclusion under Rule 14a-8(i)(7) of a shareholder proposal asking the company to prepare a report “listing and analyzing policy endorsements made in recent years.” The proposal requested that the report include “public endorsements, including press statements...and signing of public statements associated with activist groups and statements of threat or warning against particular statements in response to policy proposals [,]” an analysis of whether the policies advocated are of pecuniary benefit to the company and a description of possible risks to the company arising from such statements, endorsements or warnings. In reaching its decision, the Staff noted that the proposal “relates to, and does not transcend, ordinary business matters.” *See also Johnson & Johnson* (March 2, 2023) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report explaining the business rationale for the company’s participation in corporate and executive membership organizations and how such involvement by the Company and its corporate leaders fulfills its fiduciary duty to shareholders as relating to, but not transcending, ordinary business matters).

In this instance, even if the Proposal is interpreted to touch on a significant policy issue, it is asking for a review of how certain actions and decisions impact the Company’s “financial sustainability” and “reputation,” which are issues relating to the financial condition of the Company – a quintessential ordinary business matter. Accordingly, because the Proposal relates to the ordinary business matters of the Company, seeks to limit the Company’s charitable contributions to specific organizations and specific types of organizations and does not raise a significant policy issue that transcends the Company’s ordinary business operations, we respectfully ask that the Staff concur in our view that the Company may exclude the Proposal pursuant to Rule 14a-8(i)(7).

### **III. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Makes Materially False Or Misleading Statements And Is Impermissibly Vague, Indefinite And Subject To Multiple Interpretations, Such That It Violates The Proxy Rules.**

#### *A. Background Of Rule 14a-8(i)(3).*

Rule 14a-8(i)(3) provides that a shareholder proposal may be omitted from a proxy statement “if the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits false or misleading statements in proxy soliciting materials.” The Staff has further determined that shareholder proposals may be excluded pursuant to Rule 14a-8(i)(3) where “the resolution contained in the proposal is so inherently vague or

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.” See Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“SLB 14B”). 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 could be significantly different from the actions envisioned by the shareholders voting on the proposal.” See *Fuqua Industries, Inc.* (Mar. 12, 1991).

*B. The Proposal Is Excludable Under Rule 14a-8(i)(3) Because It Makes Materially False or Misleading Statements.*

In SLB 14B, the Staff articulated that “reliance on rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where...the company demonstrates objectively that a factual statement is *materially* false or misleading.” Moreover, Staff precedent indicates that, when the premise of a proposal is based on an objectively false or materially misleading statement, total exclusion of the proposal is warranted.

Among the materially false and misleading statements in the Proposal, the Supporting Statement references a “\$12 billion lawsuit against the Company” resulting from “backlash.” The Proponent appears to be referring to a lawsuit filed by five individuals who allege they hold no more than 5,000 shares of Company stock and whose alleged damages is, at the most, a few hundred thousand dollars. Such an assertion would materially mislead shareholders being asked to vote on the Proposal because it suggests that the Company faces a multi-billion-dollar lawsuit related to the subject matter of the Proposal when, in fact, it does not. The Supporting Statement makes another misleading statement by making the claim that the Company earning a 100 percent rating on the Corporate Equality Index (“CEI”) “can only mean that [the Company] is spending shareholder assets to espouse and fund such divisive partisanship.” The Proposal does not provide any support for this conclusion. The lack of any information or support for such a statement would materially mislead shareholders because it provides no benchmark of any kind for shareholders or other stakeholders to assess the extent to which the Company “spend[s] shareholder assets” or how such spending correlates with its CEI rating.

More generally, the Proposal is materially misleading in its foundational premise that the Company makes decisions and enacts certain policies for the “fulfillment of CEI criteria.” Both the Proposal and the Supporting Statement focus on the Company’s relationship to the CEI published by the HRC. Specifically, the Proposal states that that the Company “striv[es] for high scores on the HRC’s Corporate Equality Index.” This statement is materially false. The Company makes decisions about how to operate its business, including its engagement with local, regional, and national LGBTQIA+ organizations aligned with its strategy and objectives. The Company responds to HRC’s survey. The HRC then provides the Company a CEI rating. The Company’s rating is the result of HRC’s assessment of the Company’s policies and practices; however, the Company does not “strive” to obtain a certain rating. The Company does not make decisions about human rights policies and practices for the purpose of obtaining a certain CEI rating or increasing

the rating. The Proposal's unfounded assertion that the Company is "striving for high scores" is simply not true.

Furthermore, the Supporting Statement states that the CEI demands certain actions from rated companies, and that the Company may be required to do certain things to fulfill the CEI criteria. For example, the Supporting Statement wrongly claims that the CEI "requires companies to market to the LGBTQ community in diverse ways," and references "the sort of LGBTQ activism that is demanded by companies of the [HRC]'s Corporate Equality Index" (emphasis added). The CEI is merely a rating system – it does not require or demand rated companies to do or not do anything – but rather merely rates what companies, in fact, do with respect to certain policies and practices.

In totality, these statements about the Company's relationship to the CEI materially mislead shareholders by suggesting the Company makes decisions for reasons other than the long-term interests of the Company and its stakeholders, including its shareholders. Accordingly, the Proposal makes materially false and misleading statements and may be excluded under Rule 14-8(i)(3).

*C. The Proposal Is Excludable Under Rule 14a-8(i)(3) Because It Fails To Provide Sufficient Clarity Or Guidance Such That Shareholders And The Company Would Reach Different Conclusions Regarding The Implementation Thereof.*

The Staff has routinely permitted exclusion of proposals that failed to define key terms used in the proposal or otherwise failed to provide sufficient clarity or guidance such that shareholders and the company would be uncertain about the core purpose of the proposal or reach different conclusions regarding the implementation thereof. *See, e.g., The Boeing Company* (Feb. 23, 2021) (permitting exclusion of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined); *Apple Inc.* (Dec. 6, 2019) (permitting exclusion of a proposal seeking to "improve guiding principles of executive compensation" that did not provide an explanation or definition of the key term "executive compensation"); *AT&T Inc.* (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.* (Feb. 3, 2011) (permitting exclusion of a proposal under Rule 14a-8(i)(3) that requested the adoption of a particular executive stock ownership policy because it did not sufficiently define "executive pay rights"); *Verizon Communications Inc.* (Feb. 21, 2008) (permitting exclusion of a proposal under Rule 14a-8(i)(3) because it failed to define certain critical terms, such as "Industry Peer Group" and "relevant time period"); and *General Electric Company* (Jan. 21, 2011) (permitting exclusion of a proposal under Rule 14a-8(i)(3) that requested implementation of more long-term incentives because it was impermissibly vague in explaining how the program would work in practice, including the financial metrics that would be used in implementing the proposal).

The scope of the requested report in the Proposal that the Company's shareholders are being asked to consider is unclear. The Proposal requests the Company "conduct an evaluation and issue a report examining the risks to the financial sustainability and reputation of the Company arising from its partnerships with, charitable contributions to, and other support for divisive social



and political organizations and causes....” The terms “financial sustainability” and “reputation” are inherently vague and shareholders reading these words will not be able to identify the scope of the report for which they are voting. Similarly, if shareholders vote in favor of the Proposal, the Company will be unable to ascertain the scope of the report that shareholders requested. For example, the term “financial sustainability” could be interpreted to mean the Company’s financial outlook and strategy over the near- or long-term. Moreover, neither the shareholders nor the Company would know whether the Proposal is seeking an evaluation of the risks on the Company’s supply chain operations, stock price performance, revenues, profitability, ability to access certain financing streams or any other number of other financial concerns that may arise in the process of managing a multi-national retailer with over 1,900 stores.

Even if the Company, or its shareholders, could discern what “financial sustainability” and “reputation” refer to, the Proposal remains too vague and indefinite. The terms “partnerships,” “charitable contributions” and “other support” are extremely broad and vague. For example, the term “partnerships” could encompass the Company’s suppliers, shipping and delivery vendors, business consultants, licensors, credit card issuers, technology vendors, third-party brand advocates, non-profit organizations that the Company supports, or any other party with which the Company interacts or does business.

The Proposal adds an additional layer of ambiguity by asking the Company to focus on “divisive social and political organizations and causes.” The term “divisive” itself is an inherently subjective, vague, and indefinite term. The Company’s shareholders and management are made up of diverse individuals with varying backgrounds, opinions, and ideologies, each of whom may have a different opinion as to whether an organization or cause is considered “divisive.” As such, the Proposal is open to various interpretations, making it impermissibly vague and indefinite.

The Supporting Statement provides little clarity as to what Company practices are within the scope of the Proposal. The Supporting Statement references certain “partisan and divisive activism,” “the sort of LGBTQ activism that is demanded by companies of the Human Rights Campaign’s Corporate Equality Index,” “extreme partisan agendas” and “contentious activism” supported by the Company and other corporations, including Disney and Bud Light. However, the Supporting Statement does not specify what specific Company actions are the subject of such critique. In fact, the Supporting Statement accuses the Company of “aggressively tout[ing] radical gender theory in its stores,” but fails to provide additional context or explanation for this term aside from one article in the accompanying footnote that makes no mention of “radical gender theory.”

In *Fuqua Industries, Inc.* (Mar. 12, 1991), the Staff permitted exclusion of a proposal under Rule 14a-8(i)(3) that sought to prohibit “any major shareholder...which currently owns 25% of the Company and has three board seats from compromising the ownership of the other stockholders,” where the meaning and application of such terms as “any major shareholder,” “assets/interest” and “obtaining control” would be subject to differing interpretations. In *Fuqua*, the company argued that the ambiguities in the proposal would render the proposal materially misleading since “any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal.” Here, like in *Fuqua*, the ambiguous scope of the report could lead to materially different interpretations of the Proposal. Shareholders will have no ability to make a reasonable

assessment of the Proposal and the Company would not be able to reasonably determine how to implement the preparation of the report if shareholders approve the Proposal.

Without any specificity as to what the Proposal is asking the shareholders to vote on, shareholders will have difficulty determining whether to vote “for” or “against” the Proposal, and neither the shareholders nor the Company will be able to determine with reasonable certainty what further actions or measures should be taken with regard to this Proposal were it to be approved by shareholders. If shareholders approved the Proposal pursuant to their individual interpretations, the Company would have no consistent direction or guidelines with respect to how the Proposal should be implemented. The Company’s Board of Directors would then have to choose among multiple options for implementing the Proposal, any one of which could look very different from what the shareholders approving the Proposal envisioned. Accordingly, the Proposal is inherently vague and indefinite and may be excluded under Rule 14-8(i)(3).

Accordingly, we respectfully ask that the Staff concur that the Company may exclude the Proposal from its 2024 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Proposal makes materially false and misleading statements and is inherently vague and indefinite and, thus, violates the proxy rules.

**Conclusion**

Based upon the foregoing analysis, the Company respectfully requests that the Staff confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2024 Proxy Materials pursuant to Rule 14a-8. We would be happy to provide any additional information and answer any questions regarding this matter.

Should you have any questions, please contact me at [Amy.Seidel@FaegreDrinker.com](mailto:Amy.Seidel@FaegreDrinker.com) or (612) 766-7769.

Thank you for your consideration.

Regards,

FAEGRE DRINKER BIDDLE & REATH LLP



Amy C. Seidel  
Partner

cc: Ethan Peck  
National Center for Public Policy Research  
2005 Massachusetts Avenue NW  
Washington, DC 20036  
Email: [REDACTED]

Minette Loula  
Assistant General Counsel  
Target Corporation  
Email: [REDACTED]

**EXHIBIT A**

Proposal  
[See Attached]

ORIGIN ID: BZSA  
ETHAN PECK  
NCPFR  
2005 MASSACHUSETTS AVE NW  
WASHINGTON, DC 20036  
UNITED STATES US

SHIP DATE: 22DEC23  
ACTWGT: 0.15 LB  
CAD: 100230591/INET4535  
BILL SENDER

TO DON H. LIU  
TARGET CORPORATION  
1000 NICOLLET MALL  
MAIL STOP TPS-2670  
ATTN: CORPORATE SECRETARY  
MINNEAPOLIS MN 55403

(612) 304-6073  
INV:  
PO:

REF:

DEPT:



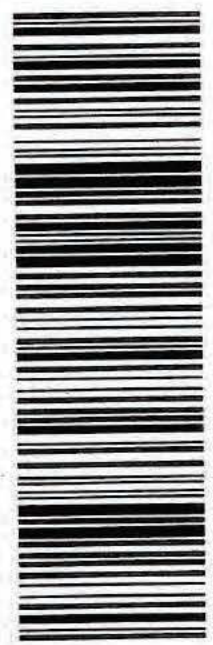
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WED - 27 DEC 5:00P  
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RT 386  
3 17:00  
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WED - 27 DEC AA  
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55403  
MN - US MSR  
156297-435 RPOB EXP 09/24

FedEx  
TRK# 7745 8987 7414  
0201  
SS GPZA



#5739342 12/23 583J4/2BE4/9RE3





December 22, 2023

**Via FedEx and Email to:**

Don H. Liu  
Attn: Corporate Secretary  
Target Corporation  
1000 Nicollet Mall, Mail Stop TPS-2670  
Minneapolis, MN 55403  
[REDACTED]

Dear Mr Liu,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the Target 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. Proof of ownership documents will be 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 January 16 or 17, 2024 from 2-5 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,

A handwritten signature in black ink that reads "Ethan Peck". The signature is written in a cursive style with a long, sweeping underline.

Ethan Peck

cc: Scott Shepard, FEP Director  
Enclosure: Shareholder Proposal

## Financial Sustainability and Risk Report

### Supporting Statement:

Recent events made clear that revenue, and therefore shareholder value, drop when companies engage in overtly partisan and divisive activism – especially the sort of LGBTQ activism that is demanded of companies by the Human Rights Campaign (HRC)'s Corporate Equality Index (CEI)<sup>1</sup>, which seeks to sow gender confusion in children, encourage the permanent genital mutilation of confused teens, effectively eliminate girls' and women's sports and bathrooms, and rollback longstanding religious liberties.

Following Bud Light's embrace of such partisanship, its North American revenue fell \$395 million from the year prior,<sup>2</sup> roughly 10% of its revenue in the months following its leap into contentious activism.<sup>3</sup> Disney stock fell 44% in 2022 – its worst performance in nearly 50 years – amid its decision to put extreme partisan agendas ahead of parental rights.<sup>4</sup> And Target is no exception – its market cap fell over \$15 billion amid backlash for similar actions.<sup>5</sup>

Target – which has paid partnerships with HRC<sup>6</sup> and similar organizations like GLSEN<sup>7</sup> and Out&Equal<sup>8</sup> – disastrously engaged in such activism when it aggressively touted radical gender theory in its stores.<sup>9</sup> The backlash that ensued hurt sales<sup>10</sup> and the stock price<sup>11</sup> significantly,

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<sup>1</sup> <https://www.hrc.org/resources/corporate-equality-index>

<sup>2</sup> <https://www.cnn.com/2023/08/03/business/anheuser-busch-revenue-bud-light-intl-hnk/index.html>;

<sup>3</sup> <https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch>

<sup>4</sup> <https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began>; <https://markets.businessinsider.com/news/stocks/disney-stock-price-decline-bob-iger-pandemic-inflation-recession-streaming-2022-12>

<sup>5</sup> <https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash>

<sup>6</sup> <https://www.hrc.org/about/corporate-partners>

<sup>7</sup> <https://www.glsen.org/take-action/corporate-partners>

<sup>8</sup> <https://outandequal.org/oe-partners/#>

<sup>9</sup> <https://nypost.com/2023/05/19/targets-tuck-friendly-swimwear-for-kids-sparks-controversy/>

<sup>10</sup> <https://www.forbes.com/sites/tylerroush/2023/08/16/target-sales-drop-after-negative-reaction-to-pride-month-collection-but-profit-beats-expectations/?sh=51dd8d196054>

<sup>11</sup> <https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash>



which resulted in a \$12 billion lawsuit against the Company<sup>12</sup> and caused Target to be rated “high risk” on 1792 Exchange’s Corporate Bias Ratings.<sup>13</sup>

Was this damage to shareholder value a direct result of Target’s capitulation to the CEI criteria,<sup>14</sup> which requires companies to market to the LGBTQ community in divisive ways? Does Target’s fulfillment of the CEI criteria requiring it to pay for employees’ gender transition surgeries<sup>15</sup> open the Company up to liability from future detransitioner lawsuits?<sup>16</sup>

Target received a perfect score on the CEI from 2013-2022, which can only mean that it is spending shareholder assets to espouse and fund such divisive partisanship. Yet despite Target engaging in its most extreme activism to date, its CEI score in 2023 dropped for the first time in a decade, proving that no amount of Company-destroying activism will satisfy the insatiable appetite of HRC and its allies.

The risks of participating in the CEI must be evaluated and considered by the Company out of its fiduciary duty to serve the interests of shareholders.

**Resolved:**

Shareholders request that the Board conduct an evaluation and issue a report examining the risks to the financial sustainability and reputation of the Company arising from its partnerships with, charitable contributions to, and other support for divisive social and political organizations and causes – as illustrated particularly by its continued participation in and striving for high scores on the Human Rights Campaign’s Corporate Equality Index. The report, prepared at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, should be publicly disclosed on the Company’s website by the end of 2024.

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<sup>12</sup> <https://aflegal.org/litigation/brian-craig-v-target-corporation-et-al/>

<sup>13</sup> <https://1792exchange.com/company/target/>

<sup>14</sup> <https://reports.hrc.org/corporate-equality-index-2023>

<sup>15</sup> <https://reports.hrc.org/corporate-equality-index-2023#criteria-2-inclusive-benefits>

<sup>16</sup> <https://thehill.com/opinion/4284777-matthews-here-come-the-gender-detransitioner-lawsuits/>

**EXHIBIT B**

First Deficiency Notice  
[See Attached]



Direct: [REDACTED]  
Email: [REDACTED]

January 8, 2024

**Sent Via FedEx and Email**

National Center for Public Policy Research  
Attn: Ethan Peck  
2005 Massachusetts Ave. NW  
Washington, DC 20036  
[REDACTED]

**Re: Procedural Defects in Rule 14a-8 Proposal**

Dear Mr. Peck:

On December 26, 2023 (the "Receipt Date"), we received the proposal submitted by National Center for Public Policy Research ("NCPPr") for inclusion in Target's proxy statement for the 2024 Annual Meeting pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended. The submission from NCPPr was postmarked on December 22, 2023 (the "Submission Date"). We are writing to notify you of a procedural defect in the submission and to provide you with an opportunity to remedy the defect.

**Proof of Ownership**

In order to be eligible to submit a shareholder proposal, Rule 14a-8(b)(1) requires that a proponent must have continuously held at least (i) \$2,000 in market value of Target voting shares for at least three years, (ii) \$15,000 in market value of Target voting shares for at least two years, or (iii) \$25,000 in market value of Target voting shares for at least one year, in each case preceding and including the Submission Date, and continues to hold the required amount through the date of the 2024 Annual Meeting. Upon examination of Target's records, we are unable to verify that any of NCPPr is a "record" holder of sufficient Target voting shares to be eligible to submit a proposal for the 2024 Annual Meeting.

Pursuant to Rule 14a-8(b), since NCPPr is not a "record" holder, you must provide Target with documentation as to NCPPr's ownership of the required amount of Target voting shares. Sufficient proof must be in the form of either:

- a written statement from the "record" holder of NCPPr's voting shares of Target (usually a broker or bank) verifying that, as of the date you submitted the proposal, NCPPr continuously held the required amount of Target voting shares for at least the applicable required eligibility period preceding and including the Submission Date; or
- a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 filed with the Securities and Exchange Commission ("SEC"), or amendments to those documents or updated forms, reflecting NCPPr's ownership of the required amount of Target voting shares as of the date on which the applicable required eligibility period begins, and a

written statement NCPPR continuously held the required amount of Target voting shares for at least the applicable required eligibility period.

If you intend to demonstrate NCPPR's ownership by submitting a written statement from the "record" holder of NCPPR's voting shares of Target, please note that most large U.S. brokers and banks deposit their customers' shares with, and hold those shares through, the Depository Trust Company ("DTC"). Under SEC Staff Legal Bulletins No. 14F ("SLB 14F") and 14G ("SLB 14G"), only DTC participants and their affiliates are viewed as "record" holders of shares that are deposited at DTC. You can confirm whether NCPPR's bank or broker is a DTC participant by asking the broker or bank or by checking the DTC's participant list, which is currently available on the Internet at:

<http://dtcc.com/client-center/dtc-directories.aspx>

In these situations, proof of ownership must be obtained from the DTC participant or affiliate through which NCPPR's voting shares of Target are held, as follows:

- If NCPPR's broker or bank is a DTC participant or affiliate, then NCPPR must submit a written statement from NCPPR's broker or bank verifying that for at least the applicable required eligibility period preceding and including the Submission Date, NCPPR continuously held the required amount of Target voting shares.
- If NCPPR's broker or bank is not a DTC participant or affiliate, then NCPPR must submit proof of ownership from the DTC participant or affiliate through which NCPPR's voting shares of Target are held verifying that for at least the applicable required eligibility period preceding and including the Submission Date, NCPPR continuously held the required amount of Target voting shares. You should be able to find out the identity of the DTC participant by asking NCPPR's broker or bank. If the DTC participant that holds NCPPR's shares is not able to confirm NCPPR's individual holdings but is able to confirm the holdings of NCPPR's broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that for at least the applicable required eligibility period preceding and including the Submission Date, NCPPR continuously held the required amount of Target voting shares: (1) one from NCPPR's broker or bank confirming NCPPR's continuous ownership of Target voting shares, and (2) the other from the DTC participant confirming the continuous ownership of Target voting shares by NCPPR's broker or bank.

Staff Legal Bulletin 14L ("SLB 14L") provides that the following is one example of an acceptable format for a broker or bank to provide the required proof of ownership as of the Submission Date for purposes of Rule 14a-8(b):

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] [two years] [three years], [number of securities] shares of [company name] [class of securities]."

SLB 14G indicates that the date of submission of a proposal is the date that the proposal is postmarked or transmitted electronically. It appears based on the FedEx label that the proposal submitted by NCPPR was postmarked on December 22, 2023, which is why we have identified that date as the Submission Date above.



Please submit proof of ownership for NCPPR that (a) covers the applicable required eligibility period preceding and including the Submission Date, (b) verifies the amount of Target voting shares NCPPR held during that period, and (c) is signed by an authorized representative of the “record” holder of NCPPR’s securities. For your reference, we have included a copy of SEC Rule 14a-8. Website addresses for electronic versions of SLB 14F<sup>1</sup>, SLB 14G<sup>2</sup>, and SLB 14L<sup>3</sup> are provided as footnotes in this letter.

### **Response Required Within 14 Days of Receipt**

You may direct your response to my attention using the contact information in the letterhead. Please ensure your response is postmarked, or transmitted electronically, no later than 14 days from the date that you receive this letter. Failure to remedy the procedural defects discussed in this letter within that time period may entitle Target to exclude the proposal from its 2024 proxy statement. Please note that, even if you remedy the procedural defects, the proposal might raise other issues that form a basis for exclusion from Target’s 2024 proxy statement.

Best Regards,

*Minette M Loula*

Minette Loula  
Assistant General Counsel

cc: Dave Donlin, Jeff Proulx

Enclosures

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<sup>1</sup> An electronic version of SLB 14F is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14f-shareholder-proposals?> and attached as Exhibit B.

<sup>2</sup> An electronic version of SLB 14G is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14g-shareholder-proposals?> and attached as Exhibit B.

<sup>3</sup> An electronic version of SLB 14L is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals?> and attached as Exhibit B.

## §240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.



(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?* (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?* Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8: Must I appear personally at the shareholders' meeting to present the proposal?* (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?* (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, 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. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law*: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules*: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest*: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance*: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority*: If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- (i) Less than 5 percent of the votes cast if previously voted on once;
- (ii) Less than 15 percent of the votes cast if previously voted on twice; or
- (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

- (i) The proposal;
- (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
- (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE: At 85 FR 70294, Nov. 4, 2020, §240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

# Shareholder Proposals: Staff Legal Bulletin No. 14F (CF)

## Division of Corporation Finance Securities and Exchange Commission

**Action:** Publication of CF Staff Legal Bulletin

**Date** October 18, 2011

**Summary:** This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

**Supplementary Information:** The statements in this bulletin represent the views of the Division of Corporation Finance (the “Division”). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the “Commission”). Further, the Commission has neither approved nor disapproved its content.

**Contacts:** For further information, please contact the Division’s Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at [https://www.sec.gov/forms/corp\\_fin\\_interpretive](https://www.sec.gov/forms/corp_fin_interpretive).

### A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division’s new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletin that are available on the Commission’s website: [SLB No. 14](#), [SLB No. 14A](#), [SLB No. 14B](#), [SLB No. 14C](#), [SLB No. 14D](#) and [SLB No. 14E](#).

### B. The types of brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8



To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.<sup>1</sup>

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holder in the U.S.: registered owner and beneficial owner.<sup>2</sup> Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.<sup>3</sup>

## 2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.<sup>4</sup> The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.<sup>5</sup>

## 3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.<sup>6</sup> Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the position against its own or its transfer agent's record or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8<sup>7</sup> and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our view as to what type of broker and bank should be considered "record" holder under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC

participants should be viewed as “record” holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a “record” holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,<sup>8</sup> under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holder for purpose of Section 12(g) and 15(d) of the Exchange Act

Companies have occasionally expressed the view that, because DTC’s nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the “record” holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

#### *How can a shareholder determine whether his or her broker or bank is a DTC participant?*

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC’s participant list, which is currently available on the Internet at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>.

#### *What if a shareholder’s broker or bank is not on DTC’s participant list?*

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder’s broker or bank.<sup>9</sup>

If the DTC participant knows the shareholder’s broker or bank’s holding, but does not know the shareholder’s holding, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder’s broker or bank confirming the shareholder’s ownership, and the other from the DTC participant confirming the broker or bank’s ownership.

#### *How will the staff process no-action requests that argue for exclusion on the basis that the shareholder’s proof of ownership is not from a DTC participant?*

The staff will grant no-action relief to a company on the basis that the shareholder’s proof of ownership is not from a DTC participant only if the company’s notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

## **C. Common errors shareholders can avoid when submitting proof of ownership to companies**

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has “continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal” (emphasis added).<sup>10</sup> We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder’s beneficial ownership

for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that a shareholder can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]"<sup>11</sup>

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

## D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revision to a proposal or supporting statement.

### 1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).<sup>12</sup> If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.<sup>13</sup>

### 2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revision to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revision. However, if the company does not accept the revision, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

### 3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,<sup>14</sup> it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder “fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder]’s proposal from its proxy material for any meeting held in the following two calendar year.” With the exception in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.<sup>15</sup>

## E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company’s no-action request.<sup>16</sup>

## F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission’s website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission’s website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission’s website copies of this correspondence at the same time that we post our staff no-action response.

<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] (“Proxy Mechanics Concept Release”), at Section II.A. The term “beneficial owner” does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to “beneficial owner” and “beneficial ownership” in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owner for purpose of the Exchange Act provision. See Proposed Amendment to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposal by Security Holder, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 (“The term ‘beneficial owner’ when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.”).

<sup>3</sup> If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

<sup>4</sup> DTC holds the deposited securities in “fungible bulk,” meaning that there are no specifically identifiable shares directly owned by the DTC participant. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. See Proxy Mechanics Concept Release, at Section II.B.2.a.

<sup>5</sup> See Exchange Act Rule 17Ad-8

<sup>6</sup> See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] (“Net Capital Rule Release”), at Section II.C.

<sup>7</sup> See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company’s non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> In addition, if the shareholder’s broker is an introducing broker, the shareholder’s account statements should include the clearing broker’s identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

<sup>10</sup> For purpose of Rule 14a-8(b), the submission date of a proposal will generally precede the company’s receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

<sup>11</sup> This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

<sup>12</sup> As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

<sup>13</sup> This position will apply to all proposals submitted after an initial proposal but before the company’s deadline for receiving proposals, regardless of whether they are explicitly labeled as “revisions” to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company’s proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f) (1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company’s deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no action letter in which we took the view that a proposal would violate the Rule 14a-8(c) one proposal limitation if such proposal is submitted to a



company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

<sup>14</sup> See, e.g., Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

<sup>15</sup> Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

<sup>16</sup> Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

*Modified: Oct. 18, 2011*

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# Shareholder Proposals: Staff Legal Bulletin No. 14G (CF)

## Division of Corporation Finance Securities and Exchange Commission

**Action:** Publication of CF Staff Legal Bulletin

**Date** October 16, 2012

**Summary:** This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

**Supplementary Information:** The statements in this bulletin represent the views of the Division of Corporation Finance (the “Division”). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the “Commission”). Further, the Commission has neither approved nor disapproved its content.

**Contacts:** For further information, please contact the Division’s Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at [https://www.sec.gov/forms/corp\\_fin\\_interpretive](https://www.sec.gov/forms/corp_fin_interpretive).

### A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission’s website: [SLB No. 14](#), [SLB No. 14A](#), [SLB No. 14B](#), [SLB No. 14C](#), [SLB No. 14D](#), [SLB No. 14E](#) and [SLB No. 14F](#).

### B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

## 1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank) "

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirement in Rule 14a-8

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.<sup>1</sup> By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customer's ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

## 2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.<sup>2</sup> If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holding of the securities intermediary.

## C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiency that the company has identified. We do not believe that such notice of defect serves the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

## D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposal. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.<sup>3</sup>

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.<sup>4</sup>

### 1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what action or measure the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholder and the company to understand with reasonable certainty exactly what action or measure the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and

indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

## 2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy material. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

## 3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy material, we may concur that the change to the referenced website constitutes "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

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<sup>1</sup> An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

<sup>2</sup> Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

<sup>3</sup> Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

<sup>4</sup> A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.



## Announcement

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# Shareholder Proposals: Staff Legal Bulletin No. 14L (CF)

## Division of Corporation Finance Securities and Exchange Commission

**Action:** Publication of CF Staff Legal Bulletin

**Date** November 3, 2021

**Summary:** This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

**Supplementary Information:** The statements in this bulletin represent the views of the Division of Corporation Finance (the “Division”). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the “Commission”). Further, the Commission has neither approved nor disapproved its content. This bulletin, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligation for any person.

**Contacts:** For further information, please contact the Division’s Office of Chief Counsel by submitting a web-based request form at [https://www.sec.gov/forms/corp\\_fin\\_interpretive](https://www.sec.gov/forms/corp_fin_interpretive).

### A. The Purpose of This Bulletin

The Division is rescinding Staff Legal Bulletin Nos. 14I, 14J and 14K (the “rescinded SLBs”) after a review of staff experience applying the guidance in them. In addition, to the extent the views expressed in any other prior Division staff legal bulletin could be viewed as contrary to those expressed herein, this staff legal bulletin controls.

This bulletin outlines the Division’s views on Rule 14a-8(i)(7), the ordinary business exception, and Rule 14a-8(i)(5), the economic relevance exception. We are also republishing, with primarily technical, conforming changes, the guidance contained in SLB Nos. 14I and 14K relating to the use of graphics and images, and proof of ownership letters. In addition, we are providing new guidance on the use of e-mail for submission of proposals, delivery of notice of defects, and responses to those notices.

In Rule 14a-8, the Commission has provided a means by which shareholders can present proposals for the shareholders’ consideration in the company’s proxy statement. This process has become a cornerstone of shareholder engagement on important matters. Rule 14a-8 sets forth several bases for exclusion of such proposals. Companies often request assurance that the staff will not recommend enforcement action if they omit a proposal based on one of these exclusions (“no-action relief”). The Division is issuing this bulletin to streamline and simplify our process for reviewing no action requests, and to clarify the standard staff will apply when evaluating the request.

## B. Rule 14a-8(i)(7)

### 1. Background

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. It permits a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations.” The purpose of the exception 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.”<sup>[1]</sup>

### 2. Significant Social Policy Exception

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we recognize that an undue emphasis was placed on evaluating the significance of a policy issue to a particular company at the expense of whether the proposal focuses on a significant social policy,<sup>[2]</sup> complicating the application of Commission policy to proposals. In particular, we have found that focusing on the significance of a policy issue to a particular company has drawn the staff into factual considerations that do not advance the policy objectives behind the ordinary business exception. We have also concluded that such analysis did not yield consistent, predictable results.

Going forward, the staff will realign its approach for determining whether a proposal relates to “ordinary business” with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues,<sup>[3]</sup> and which the Commission subsequently reaffirmed in the 1998 Release. This exception is essential for preserving shareholders’ right to bring important issues before other shareholders by means of the company’s proxy statement, while also recognizing the board’s authority over most day-to-day business matters. For these reasons, staff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises an issue with a broad societal impact, such that they transcend the ordinary business of the company.<sup>[4]</sup>

Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7). For example, 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.<sup>[5]</sup>

Because the staff is no longer taking a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7), it will no longer expect a board analysis as described in the rescinded SLB as a part of demonstrating that the proposal is excludable under the ordinary business exclusion. Based on our experience, we believe that board analysis may distract the company and the staff from the proper application of the exclusion. Additionally, the “delta” component of board analysis – demonstrating that the difference between the company’s existing actions addressing the policy issue and the proposal’s request is insignificant – sometimes confounded the application of Rule 14a-8(i)(10)’s substantial implementation standard.

### 3. Micromanagement

Upon further consideration, the staff has determined that its recent application of the micromanagement concept, as outlined in SLB No. 14J and 14K, expanded the concept of micromanagement beyond the Commission’s policy directive. Specifically, we believe that the rescinded guidance may have been taken to mean that any limit on company or board discretion constitutes micromanagement.

The Commission has stated that 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 “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.”<sup>[6]</sup> The Commission clarified in the 1998 Release that specific method, timeline, or detail do not necessarily amount to micromanagement and are not dispositive of excludability.

Consistent with Commission guidance, the staff will take a measured approach to evaluating companies’ micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement. Instead, we 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. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Our recent letter to ConocoPhillips Company<sup>[7]</sup> provides an example of our current approach to micromanagement. In that letter the staff denied no-action relief for a proposal requesting that the company set targets covering the greenhouse gas emissions of the company’s operations and products. The proposal requested that the company set emission reduction targets and it did not impose a specific method for doing so. The staff concluded this proposal did not micromanage to such a degree to justify exclusion under Rule 14a-8(i)(7).

Additionally, in order to assess whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment,<sup>[8]</sup> we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. The staff may also consider references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.

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. As the Commission stated in its 1998 Release:

[In] the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micro-manage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or to impose specific methods for implementing complex policies. Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to ‘ordinary business.’ We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of the consideration

While the analysis in this bulletin may apply to any subject matter, many of the proposals addressed in the rescinded SLBs requested companies adopt timeframes or targets to address climate change that the staff concurred were excludable on micromanagement grounds.<sup>[9]</sup> Going forward we would not concur in the exclusion of similar proposals that suggest target or timeline so long as the proposal affords discretion to management as to how to achieve such goals.<sup>[10]</sup> We believe our current approach to micromanagement will help to avoid the dilemma many proponents faced when seeking to craft proposals with sufficient specificity and direction to avoid being excluded under Rule 14a-8(i)(10), substantial implementation, while being general enough to avoid exclusion for “micromanagement.”<sup>[11]</sup>

### C. Rule 14a-8(i)(5)

Rule 14a-8(i)(5), the “economic relevance” exception, permits a company to exclude a proposal that “relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.”

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we are returning to our longstanding approach, prior to SLB No. 14I, of analyzing Rule 14a-8(i)(5) in a manner we believe is consistent with *Lovenheim v Iroquois Brand, Ltd* [12]. As a result, and consistent with our pre-SLB No. 14I approach and *Lovenheim*, proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5). In light of this approach, the staff will no longer expect a board analysis for its consideration of a no-action request under Rule 14a-8(i)(5).

## D. Rule 14a-8(d)[13]

### 1. Background

Rule 14a-8(d) is one of the procedural bases for exclusion of a shareholder proposal in Rule 14a-8. It provides that a "proposal, including any accompanying supporting statement, may not exceed 500 words."

### 2. The Use of Images in Shareholder Proposals

Questions have arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images. [14] The staff has expressed the view that the use of "500 word" and absence of explicit reference to graphic or image in Rule 14a-8(d) do not prohibit the inclusion of graph and/or image in proposal. [15] Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals. [16]

The Division recognizes the potential for abuse in this area. The Division believes, however, that the potential abuse can be addressed through other provisions of Rule 14a-8. For example, exclusion of graph and/or image would be appropriate under Rule 14a-8(i)(3) where they:

- make the proposal materially false or misleading;
- render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
- directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
- are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote. [17]

Exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphic, exceed 500.

## E. Proof of Ownership Letters[18]

In relevant part, Rule 14a-8(b) provides that a proponent must prove eligibility to submit a proposal by offering proof that it "continuously held" the required amount of securities for the required amount of time. [19]

In Section C of SLB No. 14F, we identified two common errors shareholders make when submitting proof of ownership for purposes of satisfying Rule 14a-8(b)(2). [20] In an effort to reduce such errors, we provided a suggested format for shareholders and their brokers or banks to follow when supplying the required verification of ownership. [21] Below, we have updated the suggested format to reflect recent changes to the ownership threshold due to the Commission's 2020 rulemaking. [22] We note that broker and bank are not required to follow this format.

“As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] [two years] [three years], [number of securities] shares of [company name] [class of security]”

Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive. For example, we did not concur with the excludability of a proposal based on Rule 14a-8(b) where the proof of ownership letter deviated from the format set forth in SLB No. 14F [23]. In the case, we concluded that the proponent nonetheless had supplied documentary support sufficiently evidencing the requisite minimum ownership requirement, as required by Rule 14a-8(b). We took a plain meaning approach to interpreting the text of the proof of ownership letter, and we expect companies to apply a similar approach in their review of such letters.

While we encourage shareholder and their broker or bank to use the ample language provided above to avoid this issue, such formulation is neither mandatory nor the exclusive means of demonstrating the ownership requirements of Rule 14a-8(b). [24] We recognize that the requirements of Rule 14a-8(b) can be quite technical. Accordingly, companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.

We also do not interpret the recent amendments to Rule 14a-8(b) [25] to contemplate a change in how brokers or banks fulfill their role. In our view, they may continue to provide confirmation as to how many shares the proponent held continuously and need not separately calculate the share valuation, which may instead be done by the proponent and presented to the receiving issuer consistent with the Commission's 2020 rulemaking. [26] Finally, we believe that companies should identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect( )

## F. Use of E-mail

Over the past few years, and particularly during the pandemic, both proponents and companies have increasingly relied on the use of emails to submit proposals and make other communications. Some companies and proponents have expressed a preference for emails, particularly in cases where offices are closed. Unlike the use of third party mail delivery that provides the sender with a proof of delivery, parties should keep in mind that methods for the confirmation of email delivery may differ. Email delivery confirmation and company server log may not be sufficient to prove receipt of emails as they only serve to prove that emails were sent. In addition, spam filters or incorrect email addresses can prevent an email from being delivered to the appropriate recipient. The staff therefore suggests that to prove delivery of an email for purposes of Rule 14a-8, the sender should seek a reply email from the recipient in which the recipient acknowledges receipt of the e-mail. The staff also encourages both companies and shareholder proponents to acknowledge receipt of emails when requested. Email read receipts, if received by the sender, may also help to establish that emails were received.

### 1. Submission of Proposals

Rule 14a-8(e)(1) provides that in order to avoid controversy, shareholder should submit their proposal by means, including electronic means, that permit them to prove the date of delivery. Therefore, where a dispute arises regarding a proposal's timely delivery, shareholder proponents risk exclusion of their proposals if they do not receive a confirmation of receipt from the company in order to prove timely delivery with email submissions. Additionally, in those instances where the company does not disclose in its proxy statement an email address for submitting proposals, we encourage shareholder proponents to contact the company to obtain the correct email address for submitting proposals before doing so and we encourage companies to provide such email addresses upon request.



## 2. Delivery of Notices of Defects

Similarly, if companies use email to deliver deficiency notices to proponents, we encourage them to seek a confirmation of receipt from the proponent or the representative in order to prove timely delivery. Rule 14a-8(f)(1) provides that the company must notify the shareholder of any defects within 14 calendar days of receipt of the proposal, and accordingly, the company has the burden to prove timely delivery of the notice.

## 3. Submitting Responses to Notices of Defects

Rule 14a-8(f)(1) also provides that a shareholder's response to a deficiency notice must be postmarked, or transmitted electronically, no later than 14 days from the date of receipt of the company's notification. If a shareholder uses email to respond to a company's deficiency notice, the burden is on the shareholder or representative to use an appropriate email address (e.g., an email address provided by the company, or the email address of the counsel who sent the deficiency notice), and we encourage them to seek confirmation of receipt.

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[1] Release No. 34-40018 (May 21, 1998) (the "1998 Release") Stated a bit differently, the Commission has explained that "[t]he 'ordinary business' exclusion is based in part on state corporate law establishing spheres of authority for the board of directors on one hand, and the company's shareholders on the other." Release No. 34-39093 (Sept. 18, 1997).

[2] For example, SLB No. 14K explained that the staff "take a company-specific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally 'significant.'" Staff Legal Bulletin No. 14K (Oct. 16, 2019).

[3] Release No. 34-12999 (Nov. 22, 1976) (the "1976 Release") (stating, in part, "proposals of that nature [relating to the economic and safety consideration of a nuclear power plant], as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations").

[4] 1998 Release ("[P]roposals . . . focusing on sufficiently significant social policy issues. . . generally would not be considered to be excludable, because the proposal would transcend the day-to-day business matter and raise policy issues so significant that it would be appropriate for a shareholder vote")

[5] See, e.g., *Dollar General Corporation* (Mar. 6, 2020) (granting no-action relief for exclusion of a proposal requesting the board to issue a report on the use of contractual provisions requiring employees to arbitrate employment related claims because the proposal did not focus on specific policy implications of the use of arbitration at the company) We note that in the 1998 Release the Commission stated "[P]roposal relating to [workforce management] but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) 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." Matters related to employment discrimination are but one example of the workforce management proposals that may rise to the level of transcending the company's ordinary business operations.

[6] 1998 Release.

[7] *ConocoPhillips Company* (Mar. 19, 2021)

[8] See 1998 Release and 1976 Release.

[9] See, e.g., *PayPal Holdings, Inc.* (Mar. 6, 2018) (granting no-action relief for exclusion of a proposal asking the company to prepare a report on the feasibility of achieving net-zero emissions by 2030 because the staff concluded it micromanaged the company); *Devon Energy Corporation* (Mar. 4, 2019) (granting no-action relief for exclusion of a proposal requesting that the board in annual reporting include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the Paris Climate Agreement because the staff viewed the proposal as requiring the adoption of time-bound targets).

[10] See *ConocoPhillips Company* (Mar. 19, 2021).

[11] To be more specific, shareholder proponents have expressed concerns that a proposal that was broadly worded might face exclusion under Rule 14a-8(i)(10). Conversely, if a proposal was too specific it risked exclusion under Rule 14a-8(i)(7) for micromanagement.

[12] 618 F. Supp. 554 (D.D.C. 1985).

[13] This section previously appeared in SLB No. 14I (Nov. 1, 2017) and is republished here with only minor, conforming change

[14] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. See 1976 Release.

[15] See *General Electric Co.* (Feb. 3, 2017, Feb. 23, 2017); *General Electric Co.* (Feb. 23, 2016). These decisions were consistent with a longstanding Division position. See *Ferrofluidics Corp.* (Sept. 18, 1992).

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

[17] See *General Electric Co.* (Feb. 23, 2017)

[18] This section previously appeared in SLB No. 14K (Oct. 16, 2019) and is republished here with minor, conforming changes. Additional discussion is provided in the final paragraph.

[19] Rule 14a-8(b) requires proponents to have continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively.

[20] Staff Legal Bulletin No. 14F (Oct. 18, 2011).

[21] The Division suggested the following formulation: "A [name of shareholder] submitted [date the proposal was submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."

[22] Release No. 34-89964 (Sept. 23, 2020) (the "2020 Release").

[23] See *Amazon.com, Inc.* (Apr. 3, 2019); *Gilead Sciences, Inc.* (Mar. 7, 2019).

[24] See Staff Legal Bulletin No. 14F, n. 11

[25] See 2020 Release.

[26] 2020 Release at n.55 ("Due to market fluctuations, the value of a shareholder's investment in a company may vary throughout the applicable holding period before the shareholder submits the proposal. In order to determine whether the shareholder satisfies the relevant ownership threshold, the shareholder should look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at the relevant threshold or greater. For these purposes, companies and shareholders should determine the market value by multiplying the number of securities the shareholder continuously held for the relevant period by the highest selling price during the 60 calendar day before the shareholder submitted the proposal. For purposes of this calculation, it is important to note that a security's highest selling price is not necessarily the same as its highest closing price.") (citations omitted).

**EXHIBIT C**

Wells Fargo Letter  
[See Attached]



Advisors

1650 Tysons Boulevard  
Suite 500  
McLean, Virginia 22102



1/9/2024

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 January 9, 2024, the National Center for Public Policy Research holds, and has held continuously since December 21, 2020, more than \$2,000 of Target Corp common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPFR holdings. This information routinely transfers when assets are transferred. Wells Fargo N.A. is record owner of these shares.

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



**Investment and Insurance Products are:**

- **Not Insured by the FDIC or Any Federal Government Agency**
- **Not a Deposit or Other Obligation of, or guaranteed by, the Bank or Any Bank Affiliate**
- **Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested**

Investment products and services are offered through Wells Fargo Advisors, a trade name used by Wells Fargo Clearing Services, LLC, Member SIPC, a registered broker-dealer and non-bank affiliate of Wells Fargo & Company.



**EXHIBIT D**

Second Deficiency Notice  
[See Attached]





Direct: [REDACTED]  
Email: [REDACTED]

January 15, 2024

**Sent Via Email**

National Center for Public Policy Research  
Attn: Ethan Peck  
2005 Massachusetts Ave. NW  
Washington, DC 20036  
[REDACTED]

**Re: Procedural Defects in Rule 14a-8 Proposal**

Dear Mr. Peck:

I am writing on behalf of Target Corporation related to the shareholder proposal submitted by the National Center for Public Policy Research (“NCPPR”) for inclusion in Target’s proxy statement for the 2024 Annual Meeting pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended. In my letter dated January 8, 2024 (the “Deficiency Notice”), we notified you of the requirements of Rule 14a-8 and how to cure the procedural deficiencies associated with your submission. We received the Verification of Assets for Account Number ending in [REDACTED] PII that you forwarded from Wells Fargo Advisors dated January 9, 2024 (the “Wells Fargo Letter”) in response to the Deficiency Notice. The purpose of this second letter is to notify you of continuing defects regarding NCPPR’s submission.

**Proof of Ownership**

As previously indicated in the Deficiency Notice, in order to be eligible to submit a shareholder proposal, Rule 14a-8(b)(1) requires that a proponent must have continuously held at least (i) \$2,000 in market value of Target voting shares for at least three years, (ii) \$15,000 in market value of Target voting shares for at least two years, or (iii) \$25,000 in market value of Target voting shares for at least one year, in each case preceding and including the Submission Date, and continues to hold the required amount through the date of the 2024 Annual Meeting (the “Ownership Requirements”). Upon examination of Target’s records and the Wells Fargo Letter, we are unable to verify that any of NCPPR is a “record” holder of sufficient Target voting shares to be eligible to submit a proposal for the 2024 Annual Meeting.

Pursuant to Rule 14a-8(b), since NCPPR is not a “record” holder, you must provide Target with documentation as to NCPPR’s ownership of the required amount of Target voting shares. Sufficient proof must be in the form of either:

- a written statement from the “record” holder of NCPPR’s voting shares of Target (usually a broker or bank) verifying that, as of the date you submitted the proposal, NCPPR

continuously held the required amount of Target voting shares for at least the applicable required eligibility period preceding and including the Submission Date; or

- a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 filed with the Securities and Exchange Commission (“SEC”), or amendments to those documents or updated forms, reflecting NCPPR’s ownership of the required amount of Target voting shares as of the date on which the applicable required eligibility period begins, and a written statement NCPPR continuously held the required amount of Target voting shares for at least the applicable required eligibility period.

The Wells Fargo Letter does not provide adequate proof that NCPPR has satisfied any of the Ownership Requirements. In particular, we note that the Wells Fargo Letter states that “[NCP] maintain[s] a Brokerage Cash Service account with Wells Fargo Advisors, number ending in [PII]” and that “[a]s of January 9, 2024, [NCP] holds, and has held continuously since December 21, 2020, more than \$2,000 of Target Corp common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCP holdings. This information routinely transfers when assets are transferred. Wells Fargo N.A. is record owner of these shares.”

While the Wells Fargo Letter indicates that Wells Fargo Advisors is the “record” holder of NCP’s shares as of the date of the Wells Fargo Letter, it does not state that Wells Fargo Advisors has been the “record” holder of NCP’s shares during the three years preceding and including the Submission Date, and, in fact, by seeking to rely on “cost-basis data” provided by UBS, indicates that UBS was the “record” holder for some unspecified portion of the three-year period preceding and including the Submission Date.

To remedy this deficiency, you must obtain new proof of ownership verifying that NCP has satisfied at least one of the Ownership Requirements with a written statement(s) from the “record” holder(s) of NCP’s voting shares of Target. As indicated previously, please note that most large U.S. brokers and banks deposit their customers’ shares with, and hold those shares through, the Depository Trust Company (“DTC”). Under SEC Staff Legal Bulletins No. 14F (“SLB 14F”) and 14G (“SLB 14G”), only DTC participants and their affiliates are viewed as “record” holders of shares that are deposited at DTC. You can confirm whether NCP’s bank(s) or broker(s) is a DTC participant by asking the broker(s) or bank(s) or by checking the DTC’s participant list, which is currently available on the Internet at:

<http://dtcc.com/client-center/dtc-directories.aspx>

In these situations, proof of ownership must be obtained from the DTC participant(s) or affiliate(s) through which NCP’s voting shares of Target are held, as follows:

- If NCP’s broker(s) or bank(s) is a DTC participant or affiliate, then NCP must submit one or more written statements from NCP’s broker(s) or bank(s) verifying that for at least the applicable required eligibility period preceding and including the Submission Date, NCP continuously held the required amount of Target voting shares.
- If NCP’s broker(s) or bank(s) is not a DTC participant or affiliate, then NCP must submit proof of ownership from the DTC participant(s) or affiliate(s) through which NCP’s voting shares of Target are held verifying that for at least the applicable required eligibility period preceding and including the Submission Date, NCP

continuously held the required amount of Target voting shares. You should be able to find out the identity of the DTC participant by asking NCPPR's broker or bank. If the DTC participant that holds NCPPR's shares is not able to confirm NCPPR's individual holdings but is able to confirm the holdings of NCPPR's broker or bank, then you need to satisfy the proof of Ownership Requirements by obtaining and submitting two proof of ownership statements verifying that for at least the applicable required eligibility period preceding and including the Submission Date, NCPPR continuously held the required amount of Target voting shares: (1) one from NCPPR's broker or bank confirming NCPPR's continuous ownership of Target voting shares, and (2) the other from the DTC participant confirming the continuous ownership of Target voting shares by NCPPR's broker or bank.

If NCPPR's shares were held by more than one "record" holder over the course of the applicable ownership period, as appears to be the case here, then confirmation of ownership needs to be obtained from each record holder with respect to the time during which it held the shares on NCPPR's behalf, and those documents must collectively demonstrate NCPPR's continuous ownership of sufficient shares to satisfy at least one of the Ownership Requirements.

Staff Legal Bulletin 14L ("SLB 14L") provides that the following is one example of an acceptable format for a broker or bank to provide the required proof of ownership as of the Submission Date for purposes of Rule 14a-8(b):

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] [two years] [three years], [number of securities] shares of [company name] [class of securities]."

Please submit proof of ownership for NCPPR that (a) covers the applicable required eligibility period preceding and including the Submission Date, (b) verifies the amount of Target voting shares NCPPR held during that period, and (c) is signed by an authorized representative(s) of the "record" holder of NCPPR's securities. For your reference, we have included a copy of SEC Rule 14a-8. Website addresses for electronic versions of SLB 14F<sup>1</sup>, SLB 14G<sup>2</sup>, and SLB 14L<sup>3</sup> are provided as footnotes in this letter.

### **Response Required Within 14 Days of Receipt**

You may direct your response to my attention using the contact information in the letterhead. Please ensure your response is postmarked, or transmitted electronically, no later than 14 days from the date that you receive this letter. Failure to remedy the procedural defects discussed in this letter within that time period may entitle Target to exclude the proposal from its 2024 proxy statement. Please note that, even if you remedy the procedural defects, the proposal might raise other issues that form a basis for exclusion from Target's 2024 proxy statement.

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<sup>1</sup> An electronic version of SLB 14F is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14f-shareholder-proposals?>

<sup>2</sup> An electronic version of SLB 14G is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14g-shareholder-proposals?>

<sup>3</sup> An electronic version of SLB 14L is available at: <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals?>

National Center for Public Policy Research  
January 15, 2024  
Page 4

We appreciate your cooperation in substantiating NCPPR's eligibility to submit a proposal for the 2024 Annual Meeting.

Best Regards,

*Minette M Loula*

Minette Loula  
Assistant General Counsel

cc: Dave Donlin

Enclosures

## §240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:



(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?* (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?* Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8: Must I appear personally at the shareholders' meeting to present the proposal?* (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?* (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, 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. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law*: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules*: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest*: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance*: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority*: If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- (i) Less than 5 percent of the votes cast if previously voted on once;
- (ii) Less than 15 percent of the votes cast if previously voted on twice; or
- (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.



(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE: At 85 FR 70294, Nov. 4, 2020, §240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

**EXHIBIT E**

UBS Letter and Emails Received by the Company on January 15, 2024 From Stephen Padfield  
[See Attached]



UBS Financial Services Inc.  
1000 Harbor Blvd  
3<sup>rd</sup> Floor  
Weehawken, NJ 07086

Confirmation

ubs.com/fs

National Center for Public Policy Research  
2005 Massachusetts Ave NW  
Washington, DC 20036

12/4/2023

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

Dear Sir,

Please accept this letter as a confirmation of the following facts:

- During the month of October 2023, the National Center for Public Policy Research transferred assets, including 95 individual equity positions, from UBS Financial Services account [PII] to Wells Fargo account [PII]
- As part of this transfer UBS Financial Services transmitted cost basis data, including purchase date and purchase price, for each of these 95 equity positions transferred to Wells Fargo.
- UBS has reviewed a copy of the October 2023 Wells Fargo statement for account [PII] and has confirmed the original purchase dates and purchase prices which were transmitted by UBS Financial Services to Wells Fargo are being accurately and correctly reported on this statement.

### Questions

If you have any questions about this information, please contact the UBS Wealth Advice Center at [REDACTED]

Sincerely,

Evan Yeaw  
Head Wealth Advice Center Operations  
UBS Financial Services

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**From:** Stefan Padfield [REDACTED]  
**Sent:** Monday, January 15, 2024 9:43 AM  
**To:** Minette.Loula  
**Cc:** Ethan Peck; Brianna.Murphy; Dave.Donlin  
**Subject:** [EXTERNAL] Re: Shareholder Proposal Defect Notice - NCPPR  
**Attachments:** ACAT Cost Basis Confirmation Letter.pdf

Following up on the below, I am attached a relevant letter from UBS as a courtesy.

Stefan J. Padfield, JD  
Deputy Director  
Free Enterprise Project  
National Center for Public Policy Research  
<https://nationalcenter.org/ncppr/staff/stefan-padfield/>

On Mon, Jan 15, 2024 at 9:40 AM Stefan Padfield [REDACTED] wrote:

*Your letter states: If NCPPR's shares were held by more than one "record" holder over the course of the applicable ownership period, as appears to be the case here, then confirmation of ownership needs to be obtained from each record holder with respect to the time during which it held the shares on NCPPR's behalf, and those documents must collectively demonstrate NCPPR's continuous ownership of sufficient shares to satisfy at least one of the Ownership Requirements.*

If you can provide a regulation that states we must provide documentation from every former record holder as described above, then we will pursue providing that additional documentation. If you cannot do that, then your claim that we "must" provide such documentation is false, and we will rely on the documents we have already sent you as fully satisfying our relevant proof-of-ownership obligations.

Stefan J. Padfield, JD  
Deputy Director  
Free Enterprise Project  
National Center for Public Policy Research  
<https://nationalcenter.org/ncppr/staff/stefan-padfield/>

On Mon, Jan 15, 2024 at 9:25 AM Minette.Loula [REDACTED] wrote:

Dear Mr. Padfield:

Attached to this email, please find a communication regarding your shareholder proposal submitted to Target Corporation.

Please feel free to contact me if you would like to discuss.

Thanks,

Minette

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**From:** Stefan Padfield [REDACTED]  
**Sent:** Tuesday, January 9, 2024 12:50 PM  
**To:** Minette.Loula [REDACTED]  
**Cc:** Ethan Peck [REDACTED]  
**Subject:** [EXTERNAL] Shareholder Proposal - Defect Notice

Please find attached our proof of ownership.

Regards,

Stefan

Stefan J. Padfield, JD

Deputy Director

Free Enterprise Project

National Center for Public Policy Research

<https://nationalcenter.org/ncppr/staff/stefan-padfield/>



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**From:** Stefan Padfield [REDACTED]  
**Sent:** Monday, January 15, 2024 9:40 AM  
**To:** Minette.Loula  
**Cc:** Ethan Peck; Brianna.Murphy; Dave.Donlin  
**Subject:** [EXTERNAL] Re: Shareholder Proposal Defect Notice - NCPPR

Your letter states: *If NCPPR's shares were held by more than one "record" holder over the course of the applicable ownership period, as appears to be the case here, then confirmation of ownership needs to be obtained from each record holder with respect to the time during which it held the shares on NCPPR's behalf, and those documents must collectively demonstrate NCPPR's continuous ownership of sufficient shares to satisfy at least one of the Ownership Requirements.*

If you can provide a regulation that states we must provide documentation from every former record holder as described above, then we will pursue providing that additional documentation. If you cannot do that, then your claim that we "must" provide such documentation is false, and we will rely on the documents we have already sent you as fully satisfying our relevant proof-of-ownership obligations.

Stefan J. Padfield, JD  
Deputy Director  
Free Enterprise Project  
National Center for Public Policy Research  
<https://nationalcenter.org/ncppr/staff/stefan-padfield/>

On Mon, Jan 15, 2024 at 9:25 AM Minette.Loula [REDACTED] wrote:

Dear Mr. Padfield:

Attached to this email, please find a communication regarding your shareholder proposal submitted to Target Corporation.

Please feel free to contact me if you would like to discuss.

Thanks,

Minette

[REDACTED]

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**From:** Stefan Padfield [REDACTED]  
**Sent:** Tuesday, January 9, 2024 12:50 PM  
**To:** Minette.Loula [REDACTED]  
**Cc:** Ethan Peck [REDACTED]  
**Subject:** [EXTERNAL] Shareholder Proposal - Defect Notice

Please find attached our proof of ownership.

Regards,

Stefan

Stefan J. Padfield, JD

Deputy Director

Free Enterprise Project

National Center for Public Policy Research

<https://nationalcenter.org/ncppr/staff/stefan-padfield/>

**EXHIBIT F**

Demand Letter and the Company's Response Letter  
[See Attached]



June 6, 2023

**REPLY REQUESTED BY JUNE 13, 2023**

**VIA CERTIFIED MAIL**

Target Corporation  
c/o CT Corporation System  
1010 Dale St N  
St Paul, MN 55117-5603

**RE: Demand to Inspect Books and Records of Target Corporation Under  
Minnesota Stat. Ann. § 302A.461**

Dear Target Corporation Board of Directors:

America First Legal Foundation is counsel for the National Center for Public Policy Research (“NCPPr”), a record owner of Target Corporation (“Target”) common stock. See Exhibit A. America First Legal Foundation is authorized to act on NCPPr’s behalf in connection with this matter as NCPPr’s “legal representative” pursuant to Minn. Stat. § 302A.461. We hereby demand that Target make available certain books and records specified below for inspection and copying under Minnesota Stat. § 302A.461.

***Target’s Acknowledgment that Its Reputation Among Customers Is Critical to Financial Success***

Target’s 2022 10-K filing with the Securities and Exchange Commission recognizes that the company’s core customer base is “families.”<sup>1</sup> Management recognized in bold letters the serious risk to the company’s financial prospects if that core customer base were to have a negative perception of the corporation: “**Our continued success is dependent on positive perceptions of Target which, if eroded, could adversely affect our business and our relationships with our guests and team members.**”<sup>2</sup>

Management acknowledged: “Negative reputational incidents or negative perceptions of us could adversely affect our business and results of operations, including through lower sales, the termination of business relationships, loss of new

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<sup>1</sup> Target Corporation 2022 10-K at 1 (Jan. 29, 2023), [bit.ly/43pnqmQ](https://bit.ly/43pnqmQ).

<sup>2</sup> *Id.* at 8.

611 Pennsylvania Ave SE #231  
Washington, DC 20003

store and development opportunities, and team member retention and recruiting difficulties.”<sup>3</sup>

Management further acknowledged: “stakeholder expectations regarding environmental, social, and governance matters continue to evolve and are not uniform.”<sup>4</sup> Consequently, “[a]ny failure, or perceived failure, by us to achieve these goals and initiatives or to otherwise meet evolving and varied stakeholder expectations could adversely affect our reputation and result in legal and regulatory proceedings against us. Any of these outcomes could negatively impact our results of operations and financial condition.”<sup>5</sup>

Target’s Board of Directors has also established committees that oversee these risks. The Board’s Governance & Sustainability Committee must “[o]versee ... social and political issues and risks impacting the Corporation.”<sup>6</sup> And the Board’s Audit & Risk Committee is charged to “[o]versee the Corporation’s enterprise risk management program to obtain an understanding of the primary enterprise risks facing the Corporation,” including: “management’s process for identifying and assessing risks” and “employing strategies for risk mitigation.”<sup>7</sup>

### ***Target’s Decision to Prioritize Political Statements Over Its Customers’ Interests***

Despite recognizing the critical importance of not alienating its core customer demographic of parents and families, Management has engaged in a coordinated strategy of aiming and marketing overtly sexualized LGBT-themed products to young children in the hopes of scoring points in the culture wars (the “LGBT-Themed Child Marketing Strategy”), at the expense of Target’s core customer base—and thus at the expense of the company’s financial success. For example:

- Target has donated millions to an organization called “GLSEN,” which “Promotes LGBT Activism in Schools.”<sup>8</sup> Target’s marketing senior executive Carlos Saavedra serves as treasurer at GLSEN.<sup>9</sup> Among other things, GLSEN’s mission includes undermining parents’ federal and state constitutional and statutory rights by directing public schools to withhold “any information that may reveal a student’s gender identity to others, including

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Target, Governance & Sustainability Committee Charter at 3, <https://bit.ly/3MU4lCs>.

<sup>7</sup> Target, Audit & Risk Committee Charter at 5, <bit.ly/3NfbSgg>.

<sup>8</sup> Bill Pan, *Target Donated Millions of Dollars to Group That Promotes LGBT Activism in Schools*, The Epoch Times (Feb. 27, 2023).

<sup>9</sup> Hannah Grossman, *Target Marketing VP Holds Senior Position at Org Pushing Secretive Transgender Policies in K-12 Schools*, Fox News (May 29, 2023), <https://bit.ly/3NbaLhS>.



[to] parents or guardians.”<sup>10</sup> A 2020 GLSEN guide states, “Students may not be ready for their parents or guardians to know about their gender identity or expression, or that they are expressing their affirmed gender at school. Before contacting the parent or guardian of a transgender or nonbinary student, school staff should clarify with the student whether to use their gender affirming name and the pronouns that correspond to their gender identity, or whether to use their legal name when corresponding with a parent/guardian.”<sup>11</sup> Management apparently supports this mission.<sup>12</sup> By funding GLSEN, it is knowingly, or with reckless disregard, subsidizing GLSEN’s policy of promoting “secret gender transitions for kids.”<sup>13</sup> Yet parents and children are critical to the corporation’s customer base.

- Target has repeatedly held Pride as a core belief of the company, issuing a “Pride Manifesto” in 2016,<sup>14</sup> and has unwaveringly asked its employees to espouse this belief. Target’s Chief Diversity & Inclusion Officer and VP of HR, Kiera Fernandez, has stated that even if an employee “do[esn’t] believe in” Target’s DEI initiatives, he or she “still [has] to do it to be part of this company.” “[Each employee] will be responsible for these behaviors, values, and expectations.”<sup>15</sup>
- Target has adopted supplier diversity targets, boasting last year in its “ESG Report” that “59% of our Pride assortment was designed with and by LGBTQIA+ creators and brands” as part of its overall strategy that sources from “suppliers that are at least 51% owned, controlled and operated by women, BIPOC, LGBTQIA+, veterans or people with disabilities.”<sup>16</sup>
- Target’s website lists over 100 products under the category “LGBT Pride: Kids’ Clothing,” which are often modeled by very young children and almost always feature themes designed to attract and interest them, like rainbow Mickey Mouse symbols.<sup>17</sup> The full selection of these child-marketed items (with faces redacted) is attached as Exhibit B.

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<sup>10</sup> Hannah Grossman, *Target Partners with Org Pushing for Kids’ Genders to be Secretly Changed in Schools Without Parental Consent, ‘We ... Continue to Support Their Mission,’ Target Corporation Said About GLSEN*, Fox News (May 26, 2023), <https://bit.ly/3ISxxso>.

<sup>11</sup> *Model Local Education Agency Policy on Transgender and Nonbinary Students*, GLSEN & National Center for Transgender Equality at 5 (Oct. 2020), <https://bit.ly/3MTdfzU>.

<sup>12</sup> *Id.*

<sup>13</sup> Laurel Duggan, *Major Children’s Clothing Retailers Poured Money Into LGBT Group That Promotes Secret Gender Transitions For Children*, Daily Caller (May 30, 2023), <https://bit.ly/3MRmQHx>.

<sup>14</sup> *#TakePride With Target*, Target (June 8, 2015), <https://bit.ly/43ow7Ou>; *Target’s Pride Manifesto video Transcript*, Target (June 8, 2015), <https://bit.ly/43AyMo4>.

<sup>15</sup> Sarah Weaver, *Resurfaced Video Shows Target Diversity Chief Suggesting Employees May ‘Leave’ If They Think Differently*, Daily Caller (May 30, 2023), <https://bit.ly/45PitAE>.

<sup>16</sup> 2022 Target ESG Report at 45, 51 [bit.ly/45PgJvW](https://bit.ly/45PgJvW).

<sup>17</sup> Target, *LGBT Pride: Kids Clothing*, <https://bit.ly/43m6oWT>.

- This campaign extends to brick-and-mortar stores. News reports state that “[t]here was plenty of LGBTQ merch in Target’s children’s section,” including “T-shirts that say ‘Pride Adult Drag Queen ‘Katya,’ ‘Trans people will always exist!’ and ‘Girls Gays Theys.’”<sup>18</sup> No child is too young for Target, which advertises and sells LGBT-themed products like onesies, bibs, and overalls aimed at newborns and toddlers. For example:



♡ 19

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<sup>18</sup> Shannon Thaler, *Target’s Reputation Takes Hit over Children’s LGBTQ Clothing, Survey Shows*, N.Y. Post (May 24, 2023), <https://bit.ly/45OeDwl>.

<sup>19</sup> *Id.*



20



21

Target has also stocked controversial merchandise in this year's pride collection, including "swimsuits with clothing tags that describe the items as having a 'light binding effect' on breasts and 'tuck-friendly construction' for male genitalia" with "extra crotch coverage."<sup>22</sup> See below:

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<sup>20</sup> Ronny Reyes, *Target Loses \$10B in 10 Days as Stocks Fall Following Boycott over LGBTQ-Friendly Kids Clothing*, N.Y. Post (May 28, 2023), <https://bit.ly/45PIPY0>.

<sup>21</sup> Brian Flood, *Target Holds 'Emergency' Meeting over LGBTQ Merchandise in Some Stores to Avoid 'Bud Light Situation'*, Fox News (May 23, 2023), <https://bit.ly/3ORFYN2>.

<sup>22</sup> Abigail Anthony, *Target Reportedly Moving 'Pride' Items to Back of Store to Avoid the Bud Light Treatment*, Nat'l Review (May 23, 2023), <https://bit.ly/43Ko9Pc>.





23

Target also *knowingly* stocked merchandise by “Satanist-Inspired” brand Abprallen for its pride collection, according to its designer Erik Carnell.<sup>24</sup> Abprallen is known for designs that “glorif[y] violence” against so-called transphobes, such as “designs showing the phrases ‘We Bash Back’ with a heart-shaped mace in the trans-flag colors, ‘Transphobe Collector’ with a skull, and ‘Homophobe Headrest’ with skulls beside a pastel guillotine.”<sup>25</sup> See below:

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<sup>23</sup> Will Potter, *Target Takes ‘Emergency’ Action to ‘Avoid a Bud Light Situation’ and Removes ‘Tuck-Friendly’ Women’s Swimwear and LGBTQ Products from Display in Southern Stores - as CEO Defends the Line*, Daily Mail UK (May 23, 2023), <https://bit.ly/3OWgbOV>.

<sup>24</sup> Abigail Anthony, *Target Knew of Satanist-Inspired Merchandise When It Partnered with LGBTQ Brand, Designer Claims*, Nat’l Review (May 24, 2023), <https://bit.ly/3qiYYVC>.

<sup>25</sup> Abigail Anthony, *Target Partners with Satanist Brand to Create Items for ‘PRIDE’ Collection*, Nat’l Review (May 22, 2023), <https://bit.ly/45KWzDr>.



26

Designs also include divisive, anti-Christian imagery, including “pentagrams, horned skulls and other Satanic products”<sup>27</sup> and one design “featuring the slogan ‘Satan Respects Pronouns’ and a horned ram representing Baphomet—a half-human, half-animal deity that is both male and female.”<sup>28</sup> See below:



29

### ***Financial and Reputational Harm***

News reports state that Target lost \$10 billion in market valuation over May 18-28, 2023, due to parents’ backlash over its LGBTQ-themed clothing line for children.<sup>30</sup> The stock value remains depressed. “Target stock is in the midst of its longest losing

<sup>26</sup> Abprallen, <https://bit.ly/43m1VmV>.

<sup>27</sup> Siddharth Cavale, *Target Removing Some LGBTQ Merchandise Following Customer Backlash*, Reuters (May 24, 2023), <https://bit.ly/3CedrF8>.

<sup>28</sup> Helen Reid, *Target Pride Backlash Exposes ‘Rainbow Capitalism’ Problem, Designer Says*, Reuters (May 31, 2023), <https://bit.ly/43Kp6r8>.

<sup>29</sup> Abprallen (@abprallenuk), Instagram (May 29, 2023), <https://bit.ly/3IYPkOm>.

<sup>30</sup> Ronny Reyes, *Target Loses \$10B in 10 Days as Stocks Fall Following Boycott over LGBTQ-Friendly Kids Clothing*, N.Y. Post (May 28, 2023), <https://bit.ly/45PIPY0>.



streak in 23 years.”<sup>31</sup> “Since the backlash, Target’s market value has fallen over \$12 billion to \$61.77 billion as of Tuesday’s closing price. Mid-month the market value was over \$74 billion.”<sup>32</sup> JPMorgan recently downgraded the stock, citing recent “controversies” as part of the explanation.<sup>33</sup>

This dramatic and sudden loss in company market capitalization is a direct and predictable result of management’s calculated decisions to promote sexualized material to children as a means of virtue signaling to culturally extreme “stakeholders,” almost none of whom shop at Target, at the expense of the corporation’s core customer group of families and parents, whose reputational views are paramount, as Target itself has recognized. “We call our customers ‘guests,’ [and] there is outrage on their part,” stated one Target insider who has worked there for nearly two decades.<sup>34</sup>

One entrepreneur said that Target’s drastic loss of market capitalization is “a response to a company that chooses to spit in [customers’] face. I have no doubt that many companies do find wokeness to be a good short-term trick,” but “if a company makes a conscious business decision to alienate a significant portion of its customer base, then it’s totally fair game for its customers to respond accordingly.”<sup>35</sup>

Management’s program to alienate the corporation’s core customer base by promoting sexualized products for young children has caused catastrophic reputational harm. For example:

- A rap song titled “Boycott Target” has reached #1 on iTunes sales in the United States.<sup>36</sup> The song features a rapper showing sexualized merchandise aimed at children in an actual Target store and then encouraging customers not to shop at Target.<sup>37</sup>
- Reports are that “Target’s reputation with US shoppers has taken a steep hit this year as the ‘cheap-chic’ retail chain releases a controversial ‘PRIDE’

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<sup>31</sup> Sabrina Escobar, *Target Isn’t the Only Retailer Facing Anti-Pride Backlash*, Barron’s (June 1, 2023), <https://bit.ly/42oZK0D>.

<sup>32</sup> David Rutz, *Target May Have ‘Lost Control of the Narrative’ As Financial Losses, LGBT Anger Mount: Consumer Researchers*, Fox News (May 31, 2023), <https://bit.ly/45K1ch9>.

<sup>33</sup> Matthew Fox, *JPMorgan Downgrades Target Stock Because of Its High Exposure to Millennials and the Upcoming Resumption of Student Loan Payments*, Business Insider, <https://bit.ly/3OQ5cqm>.

<sup>34</sup> Brian Flood, *Target Holds ‘Emergency’ Meeting over LGBTQ Merchandise in Some Stores to Avoid ‘Bud Light Situation,’* Fox News (May 23, 2023), <https://bit.ly/3ORfYN2>.

<sup>35</sup> Shannon Thaler, *Target ‘Spit in the Face’ of Customers with Trans-Friendly Pride Merch: Vivek Ramaswamy*, N.Y. Post (May 25, 2023), <https://bit.ly/43G52Gf>.

<sup>36</sup> Shannon Thaler, *‘Boycott Target’ Song over Retailer’s LGBTQ ‘Agenda’ Tops iTunes — But Rapper Still Claims He’s ‘Shadow-Banned,’* N.Y. Post (May 30, 2023), <https://bit.ly/45GGTBf>.

<sup>37</sup> See <https://bit.ly/43MI54l>.

apparel collection that includes ‘tuck-friendly’ swimwear and LGBTQ-friendly gear for infants and children, according to a survey.”<sup>38</sup>

- Reports are that Target “took 53rd place on the 2023 Axios Harris Poll 100 corporate reputation rankings released Tuesday — the same day the chain yanked some of its Pride merch off store shelves after the pro-LGBTQ messages caused violent outbursts among customers.”<sup>39</sup> “Target’s 21-spot drop was the third-largest on the list.”<sup>40</sup>

### ***Management’s Response***

Management has justified its strategy of aiming sexualized materials toward young children as part of a coordinated and intentional campaign to curry favor with political and cultural stakeholders rather than focusing on the company’s profitability and maintaining its core customer base. “Target CEO Brian Cornell has dismissed the uproar over the retailer’s new line,” stating that the products are “the right thing for society.”<sup>41</sup> Reports have now surfaced that Target intends to donate the alienating clothing, perhaps to LGBT-allied organizations, raising suspicions that the company had no intention of operating a financially sound marketing campaign but instead hoped to score social-justice points.<sup>42</sup> In short, the directors either deliberately undertook these ill-advised actions or ignored red flags.

\* \* \*

### ***Demand for Inspection***

Section 302A.461 of the Minnesota Code states that the company must provide corporate records upon a showing of a “proper purpose,” and the Minnesota Supreme Court has held that shareholders demonstrate a “proper purpose” where they seek records “to place an accurate value on their shares of stock, and to evaluate the conduct and affairs of the corporation’s officers and majority shareholders so as to determine the effects on the financial condition of [the company].” *Fownes v. Hubbard Broad., Inc.*, 302 Minn. 471, 473, 225 N.W.2d 534, 536 (1975). The Minnesota Court of Appeals has held that a proper purpose includes seeking records “to investigate

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<sup>38</sup> Shannon Thaler, *Target’s Reputation Takes Hit over Children’s LGBTQ Clothing, Survey Shows*, N.Y. Post (May 24, 2023), <https://bit.ly/45OeDwl>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* Notably, “Target also scored poorly in the survey’s reputational quotient, or RQ, metric. *Id.* Out of the nine categories used to determine the overall RQ score, Target did the worst in ‘culture,’ defined as a company that is ‘good to work for,’ placing 65th with a score of 74.” *Id.* “And the retailer’s ‘vision’ score — determined based on the company’s ‘clear vision for the future’ — dropped a drastic 24 places from 2022.” *Id.* “Target also took a hit when it comes to ‘citizenship,’ defined as a company that ‘shares my values’ and ‘supports good causes,’ dropping to 35th place from 19th place last year.” *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Thomas Lee, *Target Just Dumped Its Pride Merchandise – Here’s Where It All May Go*, The Street (May 30, 2023), <https://bit.ly/43ps3xe>.

alleged officer misconduct.” *Bergmann v. Lee Data Corp.*, 467 N.W.2d 636, 640 (Minn. Ct. App. 1991). NCPPR’s purposes are therefore proper under the controlling authorities. Moreover, “the right of inspection cannot be qualified by the necessity for it. Where the right exists, refusal cannot be justified by offering a substitute, or on the ground that the information may be obtained from other sources, or that it is not needed.” *Fownes*, 302 Minn. at 474, 225 N.W.2d at 536–37.

Accordingly, NCPPR demands an inspection of the books and records specified below for the following purposes:

- A. To place an accurate value on NCPPR’s shares of Target’s stock.
- B. To evaluate the conduct and affairs of Target’s officers related to the LGBT-Themed Child Marketing Strategy.
- C. To investigate potential misconduct and/or breaches of fiduciary duties and waste by the Corporation’s directors and officers with respect to the LGBT-Themed Child Marketing Strategy and related matters.

These purposes are reasonably related to NCPPR’s interests as a Target shareholder because they will inform NCPPR as to whether Target’s LGBT-themed child marketing campaign was indeed the result of unlawful misconduct by the Corporation’s officers and directors. It will also reveal to NCPPR whether the sharp drop in Target’s share value is indeed the result of this marketing campaign, as all the public evidence currently indicates.

Accordingly, NCPPR hereby demands that the Corporation make available for inspection and copying the following books and records:

1. All written or electronic documents or other records relating to the information provided to the officers and directors about the LGBT-Themed Child Marketing Strategy, including, without limitation, with respect to the effect that this Strategy would have on Target’s risk and financial performance.
2. All written or electronic documents or other records relating to or evidencing communication between (1) the Corporation and its agents or advisors and (2) outside groups or individuals in connection with the LGBT-Themed Child Marketing Strategy.
3. All written or electronic documents or other records relating to or evidencing communication between (1) the Corporation and its agents or advisors and (2) individual stores, including their employees and agents, in connection with the LGBT-Themed Child Marketing Strategy.
4. All written or electronic documents or other records relating to or evidencing communication about the actual, perceived, or potential backlash to the LGBT-

Themed Child Marketing Strategy and its financial consequences to the Corporation. Communications from the Chief Financial Officer to the Corporation's other officers and its directors are of particular concern and interest.

5. All written or electronic documents or other records of or evidencing communication between the Corporation's officers and directors about Target's design or approval of products for the LGBT-Themed Child Marketing Strategy.
6. All written or electronic documents or other records from or to any professionals who assisted or advised Target in the adoption of the LGBT-Themed Child Marketing Strategy.
7. All written or electronic documents or other records relating to or evidencing communication about the potential financial effects of the LGBT-Themed Child Marketing Strategy.
8. All written or electronic documents or other records relating to or evidencing communication about the cost, volume, write-offs, donation, or pricing of clothing in the LGBT-Themed Child Marketing Strategy.
9. Annual director questionnaires for each director for the years 2020 through 2023.

The above-listed books and records must include all relevant books and records in the Corporation's possession, custody, or control, including books and records which are in the possession, custody, or control of its agents, attorneys, accountants, affiliates, stores, or other agents and advisors. These records will reveal what the officers and directors knew about the LGBT-Themed Child Marketing Strategy, its financial impact on the Corporation and its shareholders, and whether the directors breached fiduciary duties or wasted corporate assets, including corporate reputation and goodwill. This Demand covers the period from June 1, 2022, through the present.

Please make the above-described books and records available at your principal office or another mutually convenient location for the undersigned to inspect, copy, and make extracts at our expense. We request that production occurs at a mutually agreeable date and time but no later than the close of business on June 20, 2023. We further request that you contact us to confirm the inspection date and location on or before June 13, 2023.

Be advised that if you refuse this Demand or if you fail to timely respond, NCPPR reserves its right to file an action compelling compliance and to pursue all of its other legal and equitable remedies.

[Signature Page Follows]

Sincerely yours,

/s/ Gene Hamilton

Gene Hamilton

Vice-President and General Counsel

America First Legal Foundation  
[REDACTED]

I hereby affirm and verify under penalty of perjury that the purposes for the demanded inspection as set forth above constitute a true and accurate statement of the reasons NCPPR seeks to review the demanded books, records, and documents, that such demand is made in good faith, and that such demand is not made for purely personal reasons. The purpose is both proper and reasonably related to NCPPR's interest as a stockholder of Target Corporation.

NATIONAL CENTER FOR PUBLIC POLICY RESEARCH

By: /s/ Scott Shepard

Scott Shepard

Director, Free Enterprise Project

National Center for Public Policy Research  
[REDACTED]



# Ex. A



UBS Financial Services Inc.  
1000 Harbor Blvd  
3<sup>rd</sup> Floor  
Weehawken, NJ 07086

Confirmation

[ubs.com/fs](https://ubs.com/fs)

Office of the Secretary  
Target Corporation

6/5/2023

## 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.

Please accept this letter as confirmation that as of June 5<sup>th</sup>, 2023, The National Center for Public Policy Research holds, and has held continuously, shares of Target Corporation common stock since April 25<sup>th</sup>, 2012.

### 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 [REDACTED]

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

## **Ex. B**



What can we help you find?



# LGBT Pride : Kids' Clothing

[Target](#) / [Clothing, Shoes & Accessories](#) / LGBT Pride : Kids' Clothing (107)

## Hydrate & feel better fast

Stock up on electrolyte drinks from Pedialyte.



sponsored

### How are you shopping today?



Sort  **Featured**

Occasion  **LGBT Pride**

Gender

Size Grouping

Size

Category



107 results



**Kids' Rainbow Tutu Skirt - Striped**



★★★★☆ 66

**\$15.00**

When purchased online

Free shipping\*

\*Exclusions Apply

Add to cart



**Kids' 'Be Kind' Sleeveless Romper - Black**



★★★★☆ 62

**\$16.00**

When purchased online

Free shipping\*

\*Exclusions Apply

Add to cart





### Kids' Short Sleeve Rainbow Checkered A-Line Dress

★★★★☆ 67

\$18.00

When purchased online

Free shipping\*

\*Exclusions Apply



Add to cart



### Kids' 'People' Short Sleeve T-Shirt - Pink

★★★★☆ 282

\$10.00

When purchased online

Only ships with \$35 orders

Free shipping\*

\*Exclusions Apply



Add to cart

### Kids' Straight Biker Shorts - Checkered

★★★★☆ 38

\$10.00

When purchased online

Only ships with \$35 orders

Free shipping\*

\*Exclusions Apply

Add to cart



### Kids' Bien Proud Short Sleeve T-Shirt - Light Mint Green

Jen Zeano Designs

★★★★☆ 338

\$13.00

When purchased online

Add to cart

Power you & your little one can count on  
Browse *Energizer* MAX batteries for baby equipment.



sponsored





**Baby Bien Proud Bodysuit - Light Mint Green**



Jen Zeano Designs

★★★★☆ 709

**\$10.00**

When purchased online

Add to cart



**Kids' Sleeveless A-Line Dress - Pink**



★★★★☆ 58

**\$18.00**

When purchased online

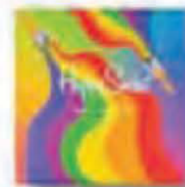
Free shipping\*

\*Exclusions Apply

Add to cart



**Kids' 'It Takes All Kinds' Short Sleeve T Shirt Blue Animal Icon**



★★★★☆ 114

\$10.00

When purchased online

Add to cart



### Kids Rebel Girls Pride Heart Hands T-Shirt

Fifth Sun

★★★★☆ 8



\$16.49 reg \$26.99

Sale

When purchased online

Sold and shipped by Fifth Sun a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart

### Happy Socks Kids 3pk Pride Socks Gift Box

Happy Socks

★★★★☆ 59

Extended sizes offered

\$24.00

When purchased online

Sold and shipped by Happy Socks a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart



### Happy Socks Kids 3pk Pride Socks Gift Box

Happy Socks

★★★★☆ 40

Extended sizes offered

\$24.00

When purchased online

Sold and shipped by Happy Socks a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart



### Kids Star Wars Large Rainbow Pride Stormtrooper T-Shirt



Star Wars

★ ★ ☆ ☆ ☆ 10



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus™ partner

Free shipping\*

\*Exclusions Apply.

Add to cart



### Kids Minecraft Rainbow Logo Pride T-Shirt



Minecraft

★ ☆ ☆ ☆ ☆ 1



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus™ partner

Free shipping\*

\*Exclusions Apply.

Add to cart



### Kids Disney Mickey Mouse Rainbow Outline Pride T-Shirt

Mickey Mouse & Friends

★★★★☆



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun,

a Target Plus<sup>™</sup> partner 

Free shipping\*

\*Exclusions Apply

**Add to cart**

**Power you & your little one can count on**  
Browse *Energizer* MAX batteries for baby equipment.



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### Kids Lilo & Stitch Ohana Rainbow Pride T-Shirt



Lilo & Stitch  
★★★★☆  
■ ▾

**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>®</sup> partner

**Free shipping\***

\*Exclusions Apply.

Add to cart



### Kids Rebel Girls Celebrate Pride T-Shirt



Fifth Sun  
★★★★☆  
■ ▾

**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>®</sup> partner

**Free shipping\***

\*Exclusions Apply.

Add to cart



Stock up on electrolyte drinks from Pedialyte.



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## How are you shopping today?



Sort  **Featured**

Occasion  **LGBT Pride**

Gender

Size Grouping

Size

Category  T

107 results



### Kids Disney Mickey Be True To Yourself Pride T-Shirt



Mickey Mouse & Friends

★★★★☆ 12



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart

### Kids Mickey & Friends Groups All Here Pride T-Shirt



Mickey Mouse & Friends

★★★★☆ 6



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart



### Girl's Design By Humans LGBT Pride Rainbow Flag Music Note...



Design by Humans

★★★★☆ 2

+2 options

**\$17.98 - \$19.98** reg \$27.98

**Sale**

When purchased online

Sold and shipped by Design by Humans  
a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart

### Kids Marvel Rainbow Logo Pride T-Shirt



Marvel

★★★★☆ 1

**\$16.49** reg \$26.98

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart



### Kids Star Wars Pride Rainbow Stripe Classic Logo T-Shirt



Star Wars



\$16.49 reg \$26.99

Sale

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>®</sup> partner

Free shipping\*

\*Exclusions Apply

Add to cart

### Star Wars Pride Rainbow Hope Rebel Alliance T-Shirt



Star Wars New at



\$16.49 reg \$26.99

Sale

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>®</sup> partner

Free shipping\*

\*Exclusions Apply

Add to cart

Power you & your little one can count on. Browse Energizer MAX batteries for baby equipment.



sponsored





### Kids Star Wars Pride Rainbow Crests Logo T-Shirt



Star Wars



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart

### Kids Star Wars Porg Pride Rainbow Logo T-Shirt



Star Wars



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart





### Kids Disney Mickey Mouse Love n Rainbows Pride T-Shirt



Mickey Mouse & Friends



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun a Target Plus™ partner.

Free shipping\*

\*Exclusions Apply.

Add to cart

### Kids Star Wars Pride Rainbow Flag Logo T-Shirt



Star Wars

★★★★★ 2



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun a Target Plus™ partner.

Free shipping\*

\*Exclusions Apply.

Add to cart



### Kids Disney Mickey Pride Love Rainbow T-Shirt



Mickey Mouse & Friends

★☆☆☆☆ 1



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>®</sup> partner

Free shipping\*

\*Exclusions Apply

Add to cart

### Kids Disney Mickey Ears Rainbow Pride T-Shirt



Disney



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>®</sup> partner

Free shipping\*

\*Exclusions Apply

Add to cart



### Kids Lord of the Rings Fellowship of the Ring Pride T-Shirt



The Lord of the Rings

★★★★☆ 16



**\$14.98** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>™</sup> partner

Free shipping\*

\*Exclusions Apply

Add to cart

### Kids Mickey & Friends Fabulous Five Rainbow Pride T-Shirt



Mickey Mouse & Friends

★★★★☆ 3



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>™</sup> partner

Free shipping\*

\*Exclusions Apply

Add to cart





sponsored

## How are you shopping today?

Sort  Occasion   
**Featured** **LGBT Pride** Gender Size Grouping Size Category  T

107 results



### Kids Lilo & Stitch Big Face Rainbow Pride T-Shirt



Lilo & Stitch



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>®</sup> partner

Free shipping\*

\*Exclusions Apply.

Add to cart

### Kids Lilo & Stitch Sitting Cute with Rainbow Pride T-Shirt



Lilo & Stitch



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>®</sup> partner

Free shipping\*

\*Exclusions Apply.

Add to cart





### Kids Precious Moments Love is Love PrideT-Shirt



Precious Moments

★★★★☆ 4



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart

### Kids Precious Moments Love is Love PrideT-Shirt



Precious Moments

★★★★☆ 19



**\$16.49** reg \$26.99

**Sale**

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus™ partner

Free shipping\*

\*Exclusions Apply

Add to cart



### Kids Lilo & Stitch Big Face Rainbow Pride T-Shirt



Lilo & Stitch



\$16.49 reg \$26.99

Sale

When purchased online

Sold and shipped by Fifth Sun  
a Target Plus<sup>®</sup> partner.

Free shipping\*

\*Exclusions Apply.

Add to cart

### Star Wars Pride Rainbow R2-D2 Line Up T-Shirt



Star Wars New at



\$16.49 reg \$26.99

Sale

When purchased online

Sold and shipped by Fifth Sun  
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# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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June 22, 2023

## VIA EMAIL

Gene Hamilton  
Vice-President and General Counsel  
America First Legal Foundation  
[REDACTED]

Re: Target Corporation Inspection Demand

Dear Mr. Hamilton:

I write on behalf of Target Corporation (“Target” or the “Company”) in response to your June 6, 2023 letter (the “June 6 Letter”) on behalf of the National Center for Public Policy Research (“NCPFR”), a purported holder of Target common stock, which we received on June 12. The letter demands to inspect a wide range of documents (the “Demands”) pursuant to Minnesota Statute § 302A.461 (the “Inspection Provision”). The Demands are legally improper under Minnesota law.

### **1. Improper Purpose**

It is well settled under Minnesota law that the Inspection Provision is not an invitation for shareholders to engage in open-ended discovery for improper, personal purposes. A shareholder must have a legally “proper purpose” that is reasonably related to its interest *as a shareholder*. *Bergmann v. Lee Data Corp.*, 467 N.W.2d 636, 639 (Minn. Ct. App. 1991); *accord Warren v. Acova, Inc.*, No. 27-CV-18-3944, 2023 WL 2663230, at \*168 (Minn. Dist. Ct. Mar. 27, 2023) (barring access to corporate records under the Inspection Provision that were “not demanded for a proper purpose,” even if they would be potentially “discoverable in litigation”). Requesting information to further political objectives and goals unrelated to that interest is not a legally proper purpose. *See, e.g., Pillsbury v. Honeywell, Inc.*, 191 N.W.2d 406, 413 (Minn. 1971) (purpose improper where it is “not germane to [shareholder’s] or [company’s] economic interest,” but instead “further[s] [shareholder’s] political and social beliefs.”); *Tatko v. Tatko Bros. Slate Co.*, 569 N.Y.S.2d 783, 784 (App. Div. 1991) (“Improper purposes” include, among other things, “to locate information to pursue one’s own social or political goals.”); *see also Bergmann*, 467 N.W.2d at 640 (“purely personal purpose is improper”).

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Gene Hamilton  
June 22, 2023  
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Here, the objectives of both America First Legal Foundation (“AFL”) and NCPPR are well documented.<sup>1</sup> The Demands appear driven by the same purpose, as AFL has made clear in its public statements.<sup>2</sup> Lawyer-driven purposes do not count as legally proper purposes of shareholders warranting inspection. *See, e.g., Wilkinson v. A Schulman, Inc.*, No. 2017-0138, 2017 WL 5289553, at \*2 (Del. Ch. Nov. 13, 2017) (stockholder lacks a proper purpose where stockholder “lent his name to a lawyer-driven effort by . . . plaintiffs’ counsel”); *Boldt v. St. Cloud Milk Producers’ Ass’n*, 273 N.W. 603, 610 (Minn. 1937) (shareholder “cannot use his rights as a stockholder or member to advance the interests and purposes of others who are not stockholders or members.”).

NCPPR’s purpose is also legally improper. NCPPR describes itself as an “activism group that’s effective in pushing corporate America” to a particular end of the political spectrum.<sup>3</sup> And NCPPR likewise appears to be using the Demands as instruments toward that end.<sup>4</sup> These are personal, political interests that are not legally relevant to shareholder or company interests. *See, e.g., Pillsbury*, 191 N.W.2d at 413 (affirming denial of inspection request “to further [shareholder’s] political and social beliefs.”); *see also Warren*, 2023 WL 2663230, at \*168 (holding that “purely personal purpose” is an “improper” reason to demand records under the statute.”).

NCPPR states in its June 6 letter that it has other purposes—namely to (1) “place an accurate value on NCPPR’s shares of Target stock” and (2) “evaluate” and/or “investigate”

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<sup>1</sup> *See, e.g., Am. First Legal (“AFL”),* <https://aflegal.org/> (last visited June 15, 2023); AFL, Press, <https://aflegal.org/category/press/> (last visited June 15, 2023). Consistent with that agenda, AFL has served cease-and-desist letters on Pizza Hut in relation to a Pride-related book, records requests on gender-affirming clinics across the United States, lawsuits against school districts concerning their treatment of gender non-conforming students, and a misconduct complaint against a member of the Navy for gender non-conforming attire. *See, e.g.,* Ltr. from AFL to Yum! Brands (June 27, 2022), <https://tinyurl.com/46rkfswx> (asserting that “management substantially damaged Pizza Hut’s family and childfriendly brand and reputation by promoting” certain books “as part of ‘Pride Month.’”); AFL Demands Records from Five Gender Clinics in Georgia, Iowa, Ohio, Utah, and Virginia, AFL (June 1, 2023), <https://tinyurl.com/y83e6fmd>; AFL Sues Bethel School Board in Ohio (Nov. 23, 2022), <https://tinyurl.com/3cxmx5bp>; AFL Sues to Stop the Eau Claire Area School District (Sept. 7, 2022), <https://tinyurl.com/2zjsye5b>; AFL Demands An IG Investigation (June 12, 2023), <https://tinyurl.com/3fs43u4s>.

<sup>2</sup> AFL, *Am. First Legal Demands Target Corporation Produce its Books and Records*, AFL (June 6, 2023), <https://tinyurl.com/37h3tx5k>; AFL (@America1stLegal), Twitter (June 6, 2023, 10:10 AM), <https://tinyurl.com/cxnys654>.

<sup>3</sup> National Center for Public Policy Research, *Donate to the National Center*, Nat’l Ctr., <https://tinyurl.com/8twkjp4m> (last visited June 9, 2023).

<sup>4</sup> The Lars Larson Show, *Scott Shepherd Should Target be Held Accountable* (June 8, 2023) (discussing political agenda in opposition to Target and its board, which Mr. Shepherd characterizes in pejorative political terms).

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Gene Hamilton

June 22, 2023

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potential misconduct. June 6 Ltr. at 10. But the Inspection Provision looks behind the mere “incantation of a proper purpose” to whether the shareholder’s “actual purpose” is improper. *Bergmann*, 467 N.W.2d at 640. Where, as here, the evidence demonstrates that the actual purpose is “purely personal,” there is no right to inspection. *See id.* (affirming denial of petition to compel inspection of corporate records where, notwithstanding professed proper purpose, the shareholder’s actual purpose is improper).

### **2. Stated Purposes Are Insufficient**

#### **a. No Need to Value Stock in Publicly Held Corporation**

Even if NCPPR’s stated purposes were its actual purposes, they are legally insufficient. First, the need to “value” stock only exists for closely held corporations for which valuation information is not readily available. *See, e.g., Fownes v. Hubbard Broad, Inc.*, 225 N.W.2d 534, 535 (Minn. 1975) (“[S]tated purposes for wanting to inspect the various books and records is to place an accurate value on their shares of stock” in a “close corporation”) (emphasis added); *Albertson v. Timberjay, Inc.*, No. A17-0293, 2017 WL 3863863, at \*5 (Minn. Ct. App. Sept. 5, 2017) (citing *Fownes* as support for a potential “valuation purpose” for a “corporation that is *not publicly held*”) (emphasis added); *Uldrich v. Datasport, Inc.*, 349 N.W.2d 286, 288 (Minn. Ct. App. 1984) (same for *closely held* corporation with seven stockholders). There is no such need for a publicly held corporation like Target, which makes available extensive financial information to the market, provides periodic financial guidance, and is covered by dozens of financial analysts. *See, e.g., Beatrice Corwin Living Irrevocable Tr. v. Pfizer, Inc.*, 2016 WL 4548101, at \*8 (Del. Ch. Aug. 31, 2016) (denying request for books and records where stockholder had access to public filings and failed to show “that an accurate valuation depend[ed] on inspecting the books and records sought”); *Polygon Glob. Opportunities Master Fund v. W. Corp.*, No. CIV.A. 2313-N, 2006 WL 2947486, at \*4 (Del. Ch. Oct. 12, 2006) (noting the “dichotomy” in inspection cases between (1) “publicly traded companies” for which “public SEC filings typically provide significant amounts of information about a company” and (2) “closely held companies” that “do not have the wealth of information provided in SEC filings”).

#### **b. No Credible Basis for Misconduct Investigation**

Second, the stated evaluation/investigation objective alleges misconduct that is conclusory and fails to identify alleged wrongdoing by any fiduciary. *See, e.g., Seinfeld v. Verizon Commc’ns*, 909 A.2d 117, 123 (Del. 2006) (affirming denial of inspection where there was no “credible basis” for alleged misconduct); *Louisiana Mun. Police Employees’ Ret. Sys. v. Lennar Corp.*, No. CIV.A. 7314-VCG, 2012 WL 4760881, at \*4 (Del. Ch. Oct. 5, 2012) (“negative news articles alone are insufficient bases on which to justify” inspection demand).



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### 3. Failure to Comply with Other Statutory Requirements

Lastly, the Demands fail to comply with other statutory requirements. For instance, they neither describe the documents requested with “reasonable particularity” nor are they “reasonably related to the stated purpose,” as required by subdivision 4(c) of the Inspection Provision. *See, e.g.*, June 6 Ltr. at 10-11 (requesting “all documents” relating to various overbroad categories in the “possession, custody, or control” of Target and its “agents, attorneys, accountants, affiliates, stores, or other agents and advisors,” including documents dating back to 2020). They are not “verified,” as required by subdivision 4(c) of the Inspection Provision. And they fail to provide appropriate proof of NCPDR’s purported beneficial ownership of Target stock.

Accordingly, the Demands do not meet the relevant legal standards.<sup>5</sup>

Sincerely,

  
Sandra C. Goldstein, P.C.

---

<sup>5</sup> *See, e.g., Seinfeld*, 909 A.2d at 123 (Del. 2006) (holding that inspection “to investigate possible wrongdoing where there is no credible basis” is “a license for fishing expeditions” that are “adverse to the interests of the corporation”); *Norfolk Cnty. Ret. Sys. v. Jos. A. Bank Clothiers, Inc.*, No. CIV.A. 3443-VCP, 2009 WL 353746, at \*14 (Del. Ch. Feb. 12, 2009) (courts should reject “wealth reducing” “fishing expeditions” that are “adverse to the interests of the corporation.”), *aff’d*, 977 A.2d 899 (Del. 2009); *Highland Select Equity Fund, L.P. v. Motient Corp.*, 906 A.2d 156, 168 n.53 (Del. Ch. 2006) (inspection demand “is bound by a requirement of good faith and lack of abuse . . . Where those factors are in doubt or missing, the court must use its statutory powers to deny relief.”), *aff’d*, 922 A.2d 415 (Del. 2007).



March 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: No-Action Request from Target Corporation Regarding Shareholder Proposal by the National Center for Public Policy Research**

Ladies and Gentlemen:

This correspondence is in response to the letter of Amy C. Seidel on behalf of Target Corporation (the “Company” or “Target”) dated February 9, 2024, 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:

conduct an evaluation and issue a report examining the risks to the financial sustainability and reputation of the Company arising from its partnerships with, charitable contributions to, and other support for divisive social and political organizations and causes – as illustrated particularly by its continued participation in and striving for high scores on the Human Rights Campaign’s Corporate Equality Index. The report, prepared at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, should be publicly disclosed on the Company’s website by the end of 2024.

The Company seeks to exclude the Proposal from the 2024 Proxy Materials pursuant to:

- Rule 14a-8(b)(1) and Rule 14a-8(f)(I) because the Proponent failed to provide the Company with the requisite proof of continuous stock ownership after receiving notice of such deficiency;



- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business; and
- Rule 14a-8(i)(3) because the Proposal makes materially false or misleading statements and is impermissibly vague, indefinite and subject to multiple interpretations, such that it violates the proxy rules.

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 Proponent Established Eligibility to Submit the Proposal**

The Company claims that "the stock ownership letters submitted by the proponent to the company fail to demonstrate the proponent's continuous ownership of the company shares for the requisite time period" (citing Rule 14a-8(b)(1) and Rule 14a-8(f)(I)). However, this issue has already been resolved in Proponent's favor by the Staff. See, e.g., *Pfizer Inc.* (Feb. 28, 2024).

#### **II. The Proposal Does Not Improperly Relate to The Company's Ordinary Business**

##### **A. The Proposal Does Not Improperly Relate to Specific Types of Organizations**

While we set forth below specific responses to the issue of naming specific organizations, we note that this issue has also been resolved in Proponent's favor by *Pfizer Inc.* (Feb. 28, 2024).

The Company effectively asserts that the Staff has concluded that a proposal that is neutral in application but that explains the concerns that animated the submission by citing specific organizations as examples thereby becomes an intrusion into the ordinary business of the company. But that doesn't make any sense. However, a proposal that seeks company transparency or accountability either improperly implicates the company's ordinary business or it doesn't, whatever the proposal might include by way of explanation for why the proponents were impelled to seek the transparency. If the Staff decisions cited by the Company do stand for the proposition that the Staff has decided that certain modes of explanation-via-example render an otherwise acceptable proposal an invasion of "ordinary business," then it means that the Staff had improperly misapplied the ordinary business ground for exclusion by extending its application in a manner that has nothing to do with the question of ordinary business *vel non*, presumably because it wanted to exclude some proposals but had no proper basis to do so. This, though, would at very least constitute arbitrary and capricious behavior on the part of the Staff – an abuse of its own rules and *ultra vires* decision-making by the Staff. And if, as it seems, the Staff has in practice used this rule to exclude some proposals because relevant staffers don't personally approve of the reasons the proposal was submitted, then there is a very good reason there is no legitimate heading under which to lodge it: because the Staff does not and cannot have the authority to make decisions on that basis.

This concern rises to the level of conclusion when it is considered that the Staff has found no need to omit proposals that have focused on organizations or types of organizations in ways the Staff approves

of. In *McDonald's Corporation* (avail. Feb. 28, 2017), the proposal focused on giving to “health-related organizations, including the American Academy of Pediatrics, the California Dietetic Association, and the Michigan Academy of Nutrition and Dietetics conference, among others” as its reason for opposing McDonald’s giving to schools for class activities that would “expose” children to McDonald’s products. Here is a focus on giving to one type of organization (medical professional organizations) being used to justify objection to giving to another type of organization (elementary schools) as justification for the neutral request for transparency. Likewise, in *Mastercard* (avail. April 25, 2019), the proponent sought the formation of a standing committee on human rights. The supporting statement revealed that the proponent wished the committee to be responsible for cutting off services to a specific type of organization, specifically naming some examples, that expressed opinions with which the proponents disagreed. While it appears in that instance that the organizations specifically mentioned were indeed espousing noxious views, this cannot provide a relevant ground for distinction for the Staff. The Staff may not determine which proposals to omit and which to allow through on the grounds of its personal agreement with the proposals themselves. In that proceeding the Staff decided that the proposal did not constitute excludable ordinary business despite focusing in its supporting statement on a specific type of groups and naming three examples. *Amazon.com, Inc.* (avail. April 3, 2019) and *Alphabet, Inc.* (avail. April 19, 2019) followed the same pattern to the same result – finding that proposals that focused on specific types of organizations in order to explain the purpose of their proposal were not omissible.

Now to be sure, these proposals sought to *try to get the companies to stop selling certain goods or providing services* to the individually named groups and that type of group. This is to say, the purpose of the proposals trenched directly on the ordinary business of the company, buying and selling, rather than on a necessarily peripheral activity – giving away shareholder assets to third parties. At the most fundamental level, the distinction is without a difference: either a focus in supporting statements on specific organizations or types of organizations somehow turns otherwise acceptable proposals into ordinary business, or it does not. But if the distinction is not meaningless, then surely buying and selling are more truly ordinary business activities than donations, so the “ordinary-business-making” effect of mentioning specific organizations or types of organizations should be more powerful in proposals dealing with core business activities.

Then there are the lobbying and trade-association membership proposals. For more than a decade the Staff has declined to omit proposals that sought company transparency in its lobbying and trade-association activities even though those proposals singled out individual organizations, such as the National Association of Manufacturers, the American Petroleum Institute and the American Legislative Exchange Council (ALEC), and that focused on specific types of organizations (*e.g.*, those that opposed shifting away from reliable and affordable energy on politicized timelines). *See, e.g.*, *Devon Energy* (March 31, 2014). The Staff’s refusal to omit proposals that focus on those organizations and that type of organization is so well established that it has been many years since any company has challenged one except when it could append non-ordinary-business grounds as well. *See, e.g.*, *Eli Lilly & Co.* (avail. March 2, 2018) (proposal specifically named the Chamber of Commerce, ALEC and the Pharmaceutical Research and Manufacturers of America, which the proponents opposed because they were the type of organization that fought to maintain free-market pricing of medicines; proposal not omissible). Proponents are so certain that singling out specific organizations and types of organizations is acceptable to the Staff for *some* types of organizations and topics that a massive wave of proposals targeting lobbying groups fighting green extremism have recently descended on companies. And

companies are so certain that the Staff will allow specific identification of and focus on *those* organizations of *that* type that they don't even bother to seek no-action relief.

No principled distinction can be made between (a) using shareholder assets to lobby or to be members of trade organizations and (b) giving shareholder assets to organizations that may then themselves undertake lobbying and public advocacy, and even use some of those assets to pressure corporations themselves to adopt partisan positions and to end support for certain lobbying and trade associations that those organizations oppose. Yet even when the National Center submitted a proposal specifically explaining that an organization that a company was funding was itself funding efforts to end corporate relationships with the lobbying groups mentioned above, and was therefore functionally indistinguishable from those groups, the Staff omitted our proposal because we had mentioned a specific group. See *Johnson & Johnson* (avail. Jan. 1, 2018). This left the Staff having taken the position that it *did not* constitute grounds for omission to focus on the desire to defund a specific type of organizations and even to name individual organizations, while it *did* constitute grounds for omission to focus on the desire to defund a group, and others like it, that were lobbying for the defunding of the groups that it was not grounds for exclusion to focus on.

It is difficult to find any ground other than bias to explain those twin decisions and the divergent results in the others cited above, but even if there were some other explanation, the haphazard application of this rule – combined with the Staff's regular refusal to explain its decisions and the lack of any relationship between ordinary business and a focus on certain groups or types of groups in supporting statements – render its application arbitrary and capricious. The Staff has so many times in so many contexts permitted proposals to avoid omission even though their supporting statements (or even their resolutions) focused on specific organizations or type of organizations that it cannot with fidelity use that as a reason to omit our Proposal here.

**B. The Proposal Does Not Improperly Relate to The Company's Litigation Strategy or The Conduct of Ongoing Litigation to Which the Company Is a Party**

The Company asserts our Proposal should be precluded under 14a-8(i)(7) because it relates to the Company's litigation strategy and the conduct of litigation to which the Company is a party. However, a proposal sharing similar subject matter as pending litigation does not automatically deem it omissible.

For instance, in *Johnson & Johnson* (avail. Mar. 3, 2022), SEC Staff found a proposal concerning talc-based baby powder to be non-ommissible despite its baby powder being the subject of a myriad of lawsuits to which Johnson & Johnson was a party. The proposal in that proceeding recommended the company cease selling its talc-based baby powder "in recognition of the social justice and public health issues" surrounding the product. The proposal in that proceeding even mentioned how the company was "inundated with personal injury lawsuits linking the use of its talc-based Baby Powder to cancer, including thousands filed by women who used the product and later developed ovarian cancer." (emphasis added). Yet, despite the proposal in *Johnson & Johnson* dealing with the exact same subject matter as litigation to which the company was a party (talc-based baby powder) for apparently the exact same reasons for the litigation (public health issues), the proposal was found non-ommissible. According to SEC Staff, the proposal "d[id] not deal with the Company's litigation strategy or the conduct of litigation to which the Company is a party." See also *The Travelers Companies, Inc.* (avail. Mar. 31, 2022) (Staff found the proposal non-ommissible for several reasons, including that it "transcends ordinary

business matters,” despite the company claiming the proposal interfered with its active litigation and regulatory proceedings).

Our Proposal is far less relevant to any litigation than the proposal that was found non-omissible in *Johnson & Johnson*. While we reference litigation against the Company in our Supporting Statement as an example of the types of risks that explain why our Proposal is needed, arguing the merits of that litigation is far from the subject of our Proposal. Our Proposal only seeks a report on the relevant risks and consequences of the covered conduct; the fact that litigation may be one potential consequence of the Company’s covered conduct should not preclude our Proposal.

On the other hand, the proposal in *Johnson & Johnson* couldn’t have been clearer in both its Resolution and Supporting Statement that it sought to have the company in that proceeding cease selling its talc-based baby powder because of the litigation surrounding its purported deleterious health effects. And the company in that proceeding was, at least according to the proponent, entangled in “thousands” of lawsuits surrounding the subject of its proposal. And the inquiry sought by that proposal, and any results likely to flow from that inquiry, were certainly no less likely to have a relationship to the matter of the lawsuits than ours to the suit the Company cites.

Nonetheless, SEC Staff found the proposal in that proceeding to be non-omissible. Because our Proposal is less directly related to only a single lawsuit, while the *Johnson & Johnson* proposal related directly and explicitly to the central question at issue in thousands of lawsuits, the Staff cannot now without bias allow the Company to omit our Proposal.

In addition to the foregoing, the Company’s arguments regarding the Proposal’s potential impact on litigation that the Company is currently engaged in amount to asking the Staff to improperly put its finger on the scale of on-going litigation. The Proposal is only seeking factually accurate information and provides a carveout for “proprietary information and disclosure of anything that would constitute an admission of pending litigation.” If the Proposal is adopted and the Company still believes the disclosures that the Proposal calls for will improperly undermine on-going litigation, then the Company should go to the court before which the case is proceeding and seek a protective order.

**C. The Proposal’s Subject Matter Does Not Improperly Relate to The Company’s Ordinary Business Operations**

Again, in addition to the response set forth below, Proponent believes this issue has been resolved in Proponent’s favor by *Pfizer Inc.* (Feb. 28, 2024).

The Company argues that the Proposal’s subject matter is improper because it “relates to the Company’s own profitability and reputational analysis decisions which are ‘fundamental to management’s ability to run a company on a day-to-day basis.’” However, this confuses the assessment the Proposal seeks with the possibility that the Company may modify its day-to-day business in response to that assessment. The Proposal itself imposes no limits on the day-to-day business of the Company. For the same reason, the Proposal does not “inappropriately delegate[] management functions and decisions to shareholders.”

**D. The Proposal Raises a Significant Social Policy Issue That Transcends the Company’s Ordinary Business Operations**

We note that even if the SEC decides our Proposal otherwise constitutes improper interference with the Company's ordinary business, the issue of the Company's support for divisive organizations and causes sufficiently "raises issues with a broad societal impact, such that they transcend the ordinary business of the company."<sup>1</sup> A review of our supporting statement makes clear the social significance of our Proposal.

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 includes in its scope. 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."<sup>2</sup> In light of this, granting the Company's no-action request here would raise a specter of bias, as discussed below in Part V.A.

#### **E. The Company Improperly Seeks to Exclude the Proposal Based on the Identity of the Proponent**

Few things in the shareholder proposal process scream improper viewpoint discrimination as loudly as arguing that an otherwise proper proposal should be excluded because of the identity of the proponent. And yet, the Company here argues precisely that by pointing to Proponent's prior proposals, public statements, and connection to a law firm currently representing a client suing the Company as somehow providing a basis for excluding the Proposal. But if a review of the four corners of the Proposal find it unproblematic, then the Staff would be improperly discriminating by using Proponent's identity as an independent ground for supporting exclusion.

### **III. The Proposal Does Not Make Materially False or Misleading Statements nor Is it Impermissibly Vague, Indefinite and Subject to Multiple Interpretations**

#### **A. The Proposal Does Not Make Materially False or Misleading Statements**

SLB 14B contemplates exclusion of parts of a proposal.<sup>3</sup> Criticism of that practice in SLB 14 is directed at abuse of the practice by companies, not proponents.<sup>4</sup> In this case, the Company should have alerted Proponent of the problem with the challenged statements/phrases before raising the issue for the first time in its no-action request. Had those discussions not resolved the issue, the Company should have included a request for excluding particular statements in its NAR. Having failed on both counts, the

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<sup>1</sup> SLB 14L (2021).

<sup>2</sup> 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.").

<sup>3</sup> <https://www.sec.gov/corpfin/staff-legal-bulletin-14b-shareholder-proposals> ("There continue to be certain situations where we believe modification or exclusion may be consistent with our intended application of rule 14a-8(i)(3).") (emphasis added).

<sup>4</sup> Id. ("many companies have begun to assert deficiencies in virtually every line of a proposal's supporting statement as a means to justify exclusion of the proposal in its entirety").



Company should now be required to include those statements/phrases in the Proposal and rely on its statement in opposition to point out the problems with the statement.<sup>5</sup>

To the extent the Staff does not rely on the foregoing to resolve this issue, Proponent addresses the specific allegations below. In addition, Proponent believes that some or all of these issues have been resolved in favor of Proponent by *Levi Strauss & Co.* (Mar. 8, 2024).

**1. “\$12 billion lawsuit against the Company” resulting from “backlash.”**

Target is facing a lawsuit as a result of \$12 billion in share value loss.<sup>6</sup> The sources<sup>7</sup> Proponent cited to in the Proposal make that clear. Nowhere did Proponent claim that the specific shareholders who are suing the company suffered \$12 billion in losses themselves. That would be impossible given that all losses by *all* Target shareholders amounted to \$12 billion. It is therefore implicit in our statement, given that not every single Target shareholder sued the Company, that “\$12 billion” refers to the loss in share value to all Target shareholders.

**2. The Company earning a 100 percent rating on the Corporate Equality Index (“CEI”) “can only mean that [the Company] is spending shareholder assets to espouse and fund such divisive partisanship.”**

According to the scoring criteria listed on HRC’s website,<sup>8</sup> all of the CEI’s criteria need to be met in order to receive a perfect score of 100 on the CEI. For example, the HRC website states:

HRC also wanted to continue to recognize and celebrate companies that are earning that top score of 100 on the new, more robust CEI. HRC is proud to recognize the following **545** businesses that met all the criteria to earn a 100 percent rating.<sup>9</sup>

Target’s website also states: “The Human Rights Campaign (HRC) recognizes Target for meeting all the criteria to earn a 100% rating on the Corporate Equality Index.”<sup>10</sup>

Additionally, HRC’s website also lists the amount of points each criteria is worth:

- 5 points for criteria 1

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<sup>5</sup> “We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.” SLB 14B.

<sup>6</sup> <https://www.foxnews.com/media/target-lost-control-narrative-financial-losses-lgbt-anger-mounts-consumer-researchers>

<sup>7</sup> <https://1792exchange.com/company/target/> (“Target is currently facing a shareholder lawsuit for the \$12 billion share value loss that ensued from its transgender advocacy”); <https://aflegal.org/litigation/brian-craig-v-target-corporation-et-al/> (“Target shares have seen more than a \$12 billion collapse in value”).

<sup>8</sup> <https://reports.hrc.org/corporate-equality-index-2023#scoring-criteria>

<sup>9</sup> Id.

<sup>10</sup> <https://corporate.target.com/sustainability-governance/our-team/diversity-equity-inclusion/team-members-guests/lgbtqia>

- 50 points for criteria 2
- 25 points for criteria 3
- 20 points for criteria 4 <sup>11</sup>

Together, those four criteria add up to 100 points, each of which must be met in full to earn a score of 100.

Some of the criteria requirements include:

- "Coverage for reconstructive surgical procedures related to sex reassignment"
- "Trans-inclusive restroom/facilities policy"
- "Gender transition guidelines with supportive restroom, dress code and documentation guidance"
- "Marketing or advertising to LGBTQ+ consumers (e.g.: advertising with LGBTQ+ content, advertising in LGBTQ+ media or sponsoring LGBTQ+ organizations and events)"
- "LGBTQ+ inclusive products and services"<sup>12</sup>

Please note that it was those last two that led Target to be boycotted by its own customers,<sup>13</sup> and that the American people are deeply divided on all of those criteria requirements. Scoring 100 on the CEI means that the Company adhered to those divisive requirements, amongst many more.

**3. Foundational premise that the Company makes decisions and enacts certain policies for the "fulfillment of CEI criteria"; the Company "striv[es] for high scores on the HRC's Corporate Equality Index."**

As already mentioned, the Company must meet all of the many specific requirements necessary to receive a score of 100 on the CEI. And since these criteria change on a year-to-year basis (HRC itself called this year's CEI the "new, more robust CEI"<sup>14</sup>), scoring 100 can only mean that the Company is annually updating and expanding its LGBT policies in precisely the way that the CEI requires. What are the odds of that for a decade straight? There is simply no other way to get a score of 100 year after year for ten years straight without meeting all the new CEI criteria every year. It takes very proactive and very specific actions to meet all of those annually changing criteria.

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<sup>11</sup> <https://reports.hrc.org/corporate-equality-index-2023#scoring-criteria>

<sup>12</sup> Id.

<sup>13</sup> <https://nypost.com/2023/05/19/targets-tuck-friendly-swimwear-for-kids-sparks-controversy/>;  
<https://wlos.com/news/nation-world/targets-pride-line-sells-trans-merch-for-kids-chest-binders-and-packing-underwear>; <https://www.foxnews.com/media/satanist-designer-says-target-set-dangerous-precedent-by-pulling-products>

<sup>14</sup> <https://reports.hrc.org/corporate-equality-index-2023#scoring-criteria>

Additionally, the Company is very proud to tout this score publicly: “The Human Rights Campaign (HRC) recognizes Target for meeting all the criteria to earn a 100% rating on the Corporate Equality Index.”<sup>15</sup>

It is therefore reasonable to conclude – because the Company has taken all of the specific, new actions that the CEI has required every year for the past decade, and because the Company flaunts its CEI scores – that the Company does in fact strives for these scores.

**4. The Supporting Statement wrongly claims that the CEI “requires companies to market to the LGBTQ community in diverse ways,” and references “the sort of LGBTQ activism that is demanded by companies of the [HRC]’s Corporate Equality Index” (emphasis added).**

It is clear from the text of the proposal that when we said “requires” and “demanded,” we meant it in the context of explaining what is needed to receive perfect or high scores on the CEI.

The CEI’s criteria #4 specifically requires Companies to “Market or advertise to LGBTQ+ consumers (e.g.: advertising with LGBTQ+ content, advertising in LGBTQ+ media or sponsoring LGBTQ+ organizations and events)”<sup>16</sup> in order to receive all of the whole 20 points of criteria 4, and therefore a perfect score of 100.

**B. The Proposal Provides Sufficient Clarity and Guidance**

Here, as above, Proponent believes that some or all of these issues have been resolved in favor of Proponent by *Levi Strauss & Co.* (Mar. 8, 2024).

The Company argues the following terms and phrases in the Proposal are so impermissibly vague that “shareholders reading these words will not be able to identify the scope of the report for which they are voting” and “the Company will be unable to ascertain the scope of the report that shareholders requested”:

- “financial sustainability”
- “reputation”
- “partnerships”
- “charitable contributions”
- “other support”
- “divisive social and political organizations and causes”

The claim that these terms and phrases are so vague as to violate the proxy rules is facially absurd. However, if the Staff needs support for this contention, it should consider the following:

- The Company’s own most recent proxy statement contains the following words without defining them:<sup>17</sup> “financial” (100 times); “sustainability” (70 times); “reputation” (18 times).

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<sup>15</sup> <https://corporate.target.com/sustainability-governance/our-team/diversity-equity-inclusion/team-members-guests/lgbtqia>

<sup>16</sup> <https://reports.hrc.org/corporate-equality-index-2023#scoring-criteria>

<sup>17</sup>

<https://app.quotemedia.com/data/downloadFiling?webmasterId=101533&ref=317447720&type=HTML&symbol=>

- A search of the Company’s corporate website for “partnerships” produced 284 results, with the Company again apparently not finding the word so vague as to require providing a definition.
- The Company’s “Grants & Corporate Giving” page uses the phrase “charitable contribution” without defining it.

Furthermore, the notion that “financial” and “sustainability” suddenly become impermissibly vague when paired is undermined by the fact that a Google search for “financial sustainability” returned about 9,560,000 results.<sup>18</sup> Finally, “other support” is perfectly clear in context: Actions that do not involve partnerships or charitable contributions but nonetheless are taken to “promote” a particular cause or organization.<sup>19</sup>

As for the phrase “divisive social and political organizations and causes,” the Staff should consider the implication of concluding that this phrase is too vague for the Company to understand. How can the Company’s directors and executives possibly carry out their fiduciary duties if they can’t grasp the concept of “divisive social and political organizations and causes”? And the suggestion that shareholders are incapable of grasping the meaning of “divisive social and political organizations and causes” in our current political climate beggars belief. To be sure, there will be disagreements about where to precisely draw the relevant lines, but that is a far cry from the requisite lack of “reasonable certainty” regarding “what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“SLB 14B”). The Staff can be sure that had Proponent used narrower terminology the Company would be arguing that the Proposal seeks to micromanage the Company.

#### **IV. 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. The Company 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 “partnerships with, charitable contributions to, and other support for divisive social and political organizations and causes.” The Staff have previously recognized that similar proposals dealing with contributions, donations, and trade association memberships are 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.

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<sup>18</sup>

[https://www.google.com/search?q=%22financial+sustainability%22&og=%22financial+sustainability%22&gs\\_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCTUxMjZqMGoxNagCALACAA&sourceid=chrome&ie=UTF-8#ip=1](https://www.google.com/search?q=%22financial+sustainability%22&og=%22financial+sustainability%22&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCTUxMjZqMGoxNagCALACAA&sourceid=chrome&ie=UTF-8#ip=1)

<sup>19</sup> <https://www.merriam-webster.com/dictionary/support>

It is well-established that the government cannot engage in viewpoint discrimination.<sup>20</sup> This principle prevents governments from regulating speech “because of the speaker’s specific motivating ideology, opinion, or perspective.”<sup>21</sup> And the Supreme Court defines “the term ‘viewpoint’ discrimination in a broad sense.”<sup>22</sup> This is because “[v]iewpoint discrimination is a poison to a free society.”<sup>23</sup>

The rule against viewpoint discrimination prevents allowing speech based on one “political, economic, or social viewpoint” while disallowing other views on those same topics.<sup>24</sup> It also prohibits excluding views that the government deems “unpopular”<sup>25</sup> or because of a perceived hostile reaction to the views expressed.<sup>26</sup>

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

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.<sup>27</sup> 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 the Company’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 the Company for our proposal, it must explain how our proposal is distinct from prior charitable contribution, political expenditure, and trade association disclosure proposals that it has blessed.

Under the Administrative Procedure Act (APA), agency action that is “arbitrary and capricious” may be set aside.<sup>28</sup> The Supreme Court has succinctly explained that “[t]he APA’s arbitrary and capricious standard requires that agency action be reasonable and reasonably explained.”<sup>29</sup> Under this precedent, in order for action to be reasonable and reasonably explained, the agency must at least consider the record before it and rationally explain its decision.<sup>30</sup>

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

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<sup>20</sup> Matal v. Tam, 137 S. Ct. 1744 (2017); Iancu v. Brunetti, 139 S. Ct. 2294 (2019).

<sup>21</sup> Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 820 (1995).

<sup>22</sup> Matal, 137 S. Ct. at 1763.

<sup>23</sup> Iancu, 139 S. Ct. at 2302 (Alito, J., concurring).

<sup>24</sup> Rosenberger, 515 U.S. at 831.

<sup>25</sup> McIntyre v. Ohio Elections Comm’n, 514 U.S. 334, 357 (1995).

<sup>26</sup> Forsyth Cnty., Ga. v. Nationalist Movement, 505 U.S. 123, 134 (1992).

<sup>27</sup> Forsyth Cnty., Ga., 505 U.S. at 131.

<sup>28</sup> 5 U.S.C. § 706(2)(A).

<sup>29</sup> 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).

<sup>30</sup> See FCC, 141 S. Ct. at 1160.



contradict those which underlay its prior policy,” and “take[] into account” “reliance interests” on the prior policy.<sup>31</sup>

Given the Staff’s prior precedent on charitable contributions, political expenditures, and trade association memberships issuing relief to the Company 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 the Company no-action relief. The Company 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.”<sup>32</sup> While this authority might be read “broadly,” “it is not seriously disputed that Congress’s central concern [in enacting § 14(a)] was with disclosure.”<sup>33</sup> 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.”<sup>34</sup>

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.<sup>35</sup> 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.”<sup>36</sup> 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.<sup>37</sup> A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders’ power to adopt.<sup>38</sup>

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

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<sup>31</sup> FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

<sup>32</sup> 15 U.S.C. § 78n(a)(1).

<sup>33</sup> Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).

<sup>34</sup> S. Rep. No. 792 at 12 (1934).

<sup>35</sup> Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).

<sup>36</sup> Id.

<sup>37</sup> See CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227 (Del. 2008).

<sup>38</sup> Id. at 232.

**V. Conclusion**

Our Proposal seeks only “a report examining the risks to the financial sustainability and reputation of the Company arising from its partnerships with, charitable contributions to, and other support for divisive social and political organizations and causes.” This does not in any way improperly implicate the ordinary business of the Company. Nor does the Proposal violate the proxy rules by making materially false or misleading statements, or being impermissibly vague, indefinite, or subject to multiple interpretations. Furthermore, the Proposal implicates issues of significant social policy that transcend the ordinary business of the Company. 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.

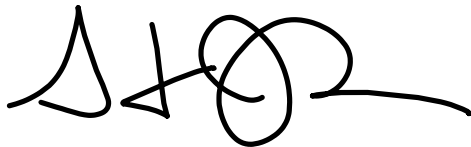
The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company’s request for a no-action letter concerning our Proposal.

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 [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: Amy C. Seidel ([REDACTED])

