



DIVISION OF
CORPORATION FINANCE

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

February 21, 2024

John C. Demers
The Boeing Company

Re: The Boeing Company (the "Company")
Incoming letter dated December 21, 2023

Dear John C. Demers:

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

The Proposal recommends the board of directors relocate the Company's headquarters back to Seattle, Washington.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

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: Clinton A. Krislov
Krislov & Associates, Ltd.



December 21, 2023

VIA ONLINE SHAREHOLDER PROPOSAL PORTAL

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

Re: *The Boeing Company*
Shareholder Proposal to Move Company Headquarters

Ladies and Gentlemen:

The Boeing Company (the “Company” or “we”) received a shareholder proposal (the “Proposal”) from Walter E. Ryan, Jr. (the “Proponent”) for inclusion in the Company’s proxy statement and form of proxy to be distributed to the Company’s shareholders in connection with its 2024 Annual Meeting of Shareholders (the “2024 Proxy Materials”). The Proposal, a copy of which is attached hereto as Exhibit A, requests that the Company move its corporate headquarters from Arlington, Virginia to Seattle, Washington. The Company believes that it may properly omit the Proposal from the 2024 Proxy Materials in reliance on Rule 14a-8(i)(7) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), because the Proposal deals with a matter directly related to the Company’s ordinary business operations. We respectfully request confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend to the U.S. Securities and Exchange Commission (the “Commission”) that enforcement action be taken if the Company omits the Proposal from the 2024 Proxy Materials for the reasons set forth below.

THE PROPOSAL

The Proposal requests that the Company’s shareholders approve the following:

RESOLVED: The shareholders of Boeing, hereby recommend the Board of Directors relocate Boeing’s headquarters back to Seattle, Washington.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) under the Exchange Act because the Proposal deals with a matter—the location of the Company’s headquarters—that falls squarely within the Company’s ordinary business operations.

1. Background on Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, 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." See *Exchange Act Release No. 40018 (May 21, 1998)* (the "1998 Release").

In the 1998 Release, the Commission stated that 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," and identified two central considerations that underlie this policy. The first consideration relates to the subject matter of the proposal, recognizing that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" (except for proposals that "raise policy issues so significant that it would be appropriate for a shareholder vote"). Examples of such "ordinary business" tasks cited by the Commission include "decisions on production quality and quantity, and the retention of suppliers." *1998 Release*. The second consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing *Exchange Act Release No. 12999 (Nov. 22, 1976)*). The 1998 Release further states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."

More recently, in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff realigned its approach for determining whether a proposal relates to "ordinary business" with the standard the Commission reaffirmed in the 1998 Release, emphasizing that in making a determination regarding the social policy significance of the issue that is the subject of the shareholder proposal, the Staff "will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." *SLB 14L (citing the 1998 Release)*. In SLB 14L, the Staff also clarified that not all "proposals seeking detail or seeking to promote timeframes" constitute micromanagement, and that going forward the Staff would "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." To that end, the Staff stated that this "approach is consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters" (emphasis added). *SLB 14L*.

The Proposal implicates both of the considerations in the 1998 Release, as affirmed in SLB 14L, and is precisely the type of proposal that Rule 14a-8(i)(7) was designed to exclude. First, decisions relating to the location of the Company's headquarters are an integral part of

Boeing's ordinary business operations fundamental to management's ability to run the Company, and it would be impractical to subject such decisions to shareholder oversight. Second, the Proposal seeks to micro-manage the Company by asking shareholders to vote on an issue on which they cannot reasonably be expected to make an informed judgment—namely, which factors should be used when making complex decisions about the location of Boeing's headquarters. Finally, the Proposal does not raise issues with broad societal impact such that they transcend the ordinary business of the company and would, therefore, preclude exclusion of the Proposal under Rule 14a-8(i)(7).

2. The Proposal deals with fundamental matters that are not appropriate for shareholder oversight.

The Staff has consistently concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(7) when the proposals relate to the location of company facilities, finding that these decisions implicate a company's ordinary business operations. The Staff's ruling in *Seagate Technology Holdings PLC* (Aug. 2, 2021) is particularly instructive when addressing the location of a company's operations as an ordinary business decision. There, the proponent requested that Seagate terminate its operations in the People's Republic of China and relocate those operations to some other country to protect Seagate's employees and technology. The company argued that the proponent's proposal was properly excludable under Rule 14a-8(i)(7) because the proposal implicated business decisions the company makes regarding whether and where to maintain operations. The Staff permitted Seagate to exclude the proponent's proposal under Rule 14a-8(i)(7) as relating to the company's ordinary business operations. The Proposal similarly seeks to improperly involve shareholders in Boeing's ordinary business operations in relation to the physical location of its headquarters and recommends that Boeing's Board of Directors relocate its headquarters back to Seattle, Washington.

Historically, the Staff has permitted the exclusion of proposals related to requests to move a company's headquarters. *See Tenneco Inc.* (Dec. 28, 1995) (concurring in the exclusion of a proposal requesting a report on the relocation of the company's corporate headquarters) and *Pacific Gas & Electric Co.* (Jan. 3, 1986) (concurring in the exclusion of a proposal requesting a feasibility study to relocate the company's headquarters). The Staff has also continuously permitted the exclusion of proposals that address the location of company operations, making clear that decisions regarding the location of company operations require detailed operational considerations that implicate management's ability to run the company on a day-to-day basis. *See Sempra Energy* (Jan. 12, 2012, recon. denied Jan. 23, 2012) (concurring in the exclusion of a proposal requesting the company's board review and report on the company's management of certain risks posed by company operations in any country that may pose an elevated risk of corrupt practices); *Hershey Co.* (Feb. 2, 2009) (concurring that the proposal could be excluded under Rule 14a-8(i)(7) because it implicated the company's ordinary business decisions by addressing decisions relating to the location of the company's operations); *Tim Horton's Inc.* (Jan. 4, 2008) (concurring in the exclusion of a proposal involving "decisions relating to the location of [Tim Hortons'] restaurants"); *The Allstate Corp.* (Feb. 19, 2002) (concurring in the exclusion of a proposal recommending that the company cease operating in Mississippi); *Minnesota Corn Processors, LLC* (Apr. 3, 2002) (concurring in the exclusion of a proposal involving decisions relating to the location of corn processing plants); and *MCI Worldcom, Inc.*

(Apr. 20, 2000) (concurring in the exclusion of a proposal seeking analysis of future plans to relocate or expand office or operating facilities).

The location of corporate headquarters is integral to management's ability to run the Company in the ordinary course of business. Boeing is the world's largest aerospace company and leading manufacturer of commercial jetliners, defense, space and security systems, and service provider of aftermarket support. As a leading global aerospace company, Boeing develops, manufactures and services commercial airplanes, defense products and space systems for customers in more than 150 countries. Boeing employs approximately 150,000 people across the United States and in more than 65 countries. The process of selecting the site for Boeing's headquarters is complex and depends on numerous factors that must be analyzed and balanced by those with intimate knowledge about Boeing, its global supply chain and customer base—all with a focus on the overall effects such actions will have on the Company's business, customers, suppliers, employees, shareholders, and reputation. The Proposal seeks to dictate the location of Boeing's headquarters based on an unsupported theory that certain manufacturing issues experienced by Boeing would have been avoided simply because the Company's headquarters were located in a particular city, emphasizing, among other things, management's ability to walk the factory floor. This theory completely ignores the rationales for the current work location of various senior executives and the reasoning supporting the move of the Company's headquarters to Virginia. It also ignores the Company's defense business and the fact that, in both businesses, Boeing has multiple manufacturing facilities outside Seattle. What the rationale for the proposal does do is to highlight the complex nature of the judgment of where best to locate the Company's headquarters. The ability to determine the location for Company headquarters is so fundamental to management's ability to run Boeing on a day-to-day basis, it could not, as a practical matter, be subject to direct shareholder oversight.

3. The Proposal seeks to “micro-manage” the Company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

When reviewing a proposal under the ordinary business exception, the Staff will consider “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.’” *SLB 14L*. The Staff focuses on the “level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board.” *Id.* To assess whether a proposal probes a matter “too complex” for shareholders to make an informed judgment, the Staff “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.” *Id.* The ordinary business exception is designed to preserve “management’s discretion on ordinary business matters but not prevent shareholders from providing high-level direction.” *The 1998 Release*.

As referenced above, in *Seagate*, the Staff concurred with the exclusion of a proposal requesting that the Board cease operations in the People’s Republic of China agreeing that “a company’s decisions and actions regarding the location of its operations are a fundamental part of its ordinary business operation.” *See Seagate* (Aug. 2, 2021). *Seagate* referenced that, as a

large global organization, management routinely made decisions of where to operate, and noted that these decisions were integral to management's ability to run the company's business. *Id.* Similarly, as a global aerospace company with operations around the world, Boeing considers a complex multitude of factors when determining the appropriate location of its headquarters, including proximity to key customers or suppliers, location of strategic partners, availability and access to relevant expertise and labor force, legal and regulatory compliance considerations, reputational risks and other financial and nonfinancial considerations. This Proposal seeks to strip the Company of its ability to make a decision that is fundamental to its ordinary business operations and instead seeks to prescribe a single, specific location for Boeing's headquarters. Boeing's decision-making process is complex and relies on the analysis and judgement of many senior leaders and advisors who are well-engrained in the nuances and intricacies of Boeing's business. The Company's Board of Directors properly has discretion to develop a process and to seek data supporting a decision of where to locate the Company's headquarters pursuant to the Delaware General Corporation Law and the Company's governing documents. This Proposal would allow the unsupported theories of shareholders, who do not have access to and have not reviewed the background information prepared by and for the Company, to micromanage the Company's management and Board of Directors who, after analysis and careful consideration, decided to move Boeing's headquarters from Chicago to Arlington.

SLB 14L cites *ConocoPhillips Co.* (Mar. 19, 2021) as an example of the micromanagement standard. In *ConocoPhillips*, the Staff did not concur with the exclusion of a proposal, stating that the proposal did not micromanage the company because, although it requested the company address a particular issue, the proposal "did not *impose a specific method* for doing so." This Proposal is a recommendation that Boeing move its headquarters in order to bring leadership closer to its manufacturing facilities in Seattle as an attempt to address issues specified in the supporting statement. The Proposal imposes one specific method for addressing these issues: move its headquarters to Seattle, Washington. The Proposal does not allow for any discretion as to how to address the concerns set forth in the Proposal's supporting statement. The Proposal instead imposes a specific method for addressing perceived quality problems based on an unsupported theory that moving Boeing's headquarters closer to one of Boeing's multiple manufacturing facilities would improve the Company's credibility. Not only does the Proponent seek to micromanage the Company by directing the relocation of the headquarters, but they also restrict the relocation to only one place: Seattle, Washington.

In several other instances, the Staff concurred that proposals requesting reports or analyses relating to the topic of the location of company operations were excludable on the basis that they implicated ordinary business matters. *See Tenneco Inc.* and *Pacific Gas & Electric Co.* This Proposal goes far beyond requesting reports or analyses, and seeks a specific recommendation from the Company's shareholders to move the Company's headquarters to an identified single location. It is difficult to conceive of a greater intrusion into the ordinary business of the Company than a shareholder proposal that would attempt to micromanage the Company's business by having shareholders second guess management's discretion as to where to locate the Company's headquarters. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(7).

4. The Proposal does not raise a significant policy issue with a broad societal impact such that it transcends the Company's day-to-day ordinary business.

The Commission has concluded that certain proposals focus on significant policy issues with a broad societal impact such that they would transcend the Company's day-to-day ordinary business matters so as to not be excludable under Rule 14a-8(i)(7), even if they do not otherwise relate to the company's ordinary business operations. In SLB 14L, the Staff outlined its present approach to evaluating ordinary business proposals, noting a plan to "realign" with the Commission's standard in the 1998 Release, first articulated in 1976, by focusing on "the social policy significance of the issue that is the subject of the shareholder proposal" rather than "the nexus between a policy issue and the company." The explanation provided in SLB 14L confirms the Staff's intent to preserve the Commission's policy objectives behind the ordinary business exclusion, namely, as noted above, "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." *1998 Release*.

Following SLB 14L's publication, the Staff has illustrated the application of these principles to distinguish between proposals that transcend ordinary business matters and those that are excludable under Rule 14a-8(i)(7). *See Kroger* (Apr. 25, 2023) (concurring in the exclusion of a proposal requesting the board to participate in the Fair Food Program for the company's tomato purchases in the Southeast to mitigate risks of human rights violations in the produce supply chain); *Valero Energy Corp.* (March 20, 2022) (concurring with the exclusion of a proposal because although the supporting statement connected the proposed accounting report to the topic of transitioning to clean energy, the core of the proposal dealt with matters that concerned day-to-day familiarity with Valero's business and did not transcend Valero's ordinary business); *Dollar Tree, Inc.* (May 2, 2022) (concurring in the exclusion of a proposal requesting that the company's board of directors report to shareholders on risks to its business strategy in the face of increasing labor market pressure because the passing references in the proposal to safety, workforce-participation, and pandemic-related concerns that might raise a significant social policy issue did not transform the otherwise ordinary business proposal into one that transcends ordinary business); and *Amazon.com, Inc.* (Apr. 7, 2022) (concurring with the position that citing potential social policy implications in a proposal does not qualify as "focusing" on such issues, even if the social policies happen to be the subject of substantial public focus (such as diversity, equity and inclusion considerations)).

SLB 14L makes clear that a proposal can overcome the ordinary business exclusion only if the proposal "focuses on a significant social policy issue." Similar to the above precedent, the Proposal fails to focus on any significant social policy issue that transcends the ordinary business of the Company. The safety aspect of the Proposal is clearly secondary to the central objective of relocating the Company's headquarters, which, as mentioned above, is an inherently ordinary business decision.

Additionally, in *Amazon.com, Inc.* referenced above, the Staff concurred with Amazon in excluding a shareholder proposal that cited social policy implications, reasoning that mere references to significant social policies are insufficient. In order to properly transcend ordinary business, a proposal must focus on a significant social policy. Here, the Proposal only

tangentially mentions safety as a potential policy issue. Mere theories of safety implications do not transform the Proposal into one that transcends ordinary business. Therefore, the Proposal fails to focus on any significant social policy issue that transcends the ordinary business of the Company.

Furthermore, safety is not a significant social policy issue that transcends Boeing's ordinary business, safety *is* the ordinary business of Boeing. Safety is, and always will be, a foundational value of the Boeing business. Today, we are more committed than ever to strengthening our culture of safety through continuous improvement, learning, and innovation. Boeing has implemented and continues to implement meaningful steps to strengthen its safety practices and culture. Boeing maintains websites devoted to informing customers and travelers about the structures and improvements in place to consistently monitor for and eliminate any safety concerns. *See www.boeing.com/principles/safety.page.*

For the above reasons, this Proposal does not raise a significant policy issue with a broad societal impact such that it transcends the Company's day-to-day ordinary business.

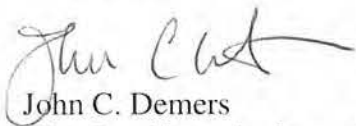
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Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials.

We are submitting this letter to the Staff through the SEC's website in accordance with the Staff's instructions published in November 2023. We are simultaneously sending a copy of this letter to the Proponent as notice of the Company's intent to omit the Proposal from the 2024 Proxy Materials in accordance with Exchange Act Rule 14a-8(j). We take this opportunity to inform the Proponent that a copy of any correspondence it submits to the Commission or the Staff with respect to the Proposal should be provided concurrently to the Company pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008).

We would be happy to provide any additional information and answer any questions that the Staff may have regarding this submission. Correspondence regarding this letter should be sent to CSO@boeing.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (703) 465-3131.

Sincerely,



John C. Demers
Vice President, Assistant General Counsel
and Corporate Secretary

Attachments

cc: Walter E. Ryan, Jr., c/o Clinton A. Krislov (clint@krislovlaw.com)

EXHIBIT A

KRISLOV & ASSOCIATES, LTD.

Attorneys at Law

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SUITE 1006
20 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606

FAX (312) 739-1098
TELEPHONE (312) 606-0500

October 30, 2023

**To: Office of the Corporate Secretary
The Boeing Corporation
929 Long Bridge Drive
MC 7949-5929
Arlington, Virginia 22202-4208**

**Shareholder Proposal
for inclusion in the annual meeting proxy statement
and as a proposed shareholder resolution for the 2024 Annual Meeting:**

Walter E. Ryan, Jr., of Las Vegas, Nevada, representing 10,000 shares in the Boeing Corporation, submits the following proposal:

RESOLVED: The shareholders of Boeing, hereby
recommend the Board of Directors relocate Boeing's
headquarters back to Seattle, Washington.

Supporting Statement:

I believe the most significant factor in Boeing's recent issues was relocating Boeing's headquarters from Seattle and separating executives from Boeing's core commercial manufacturing business. Since the departure of Boeing's executive from Seattle and separation from the core manufacturing business, engineering and quality problems, and Boeing's historic credibility, in the minds of both travelers and shareholders have become major issues for Boeing. The deadly 737 Max jet crashes, followed by management's initially defensive and erroneous

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Attorneys at Law

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statements, the 20-month grounding of the plane,¹ and a litany of quality issues that have affected both the 737 MAX and 787 programs,² and the view that Boeing, once considered the most reliable producer of the safest and most desirable airplane products, has refocused from its core mission.

Boeing became an industry leader in commercial aviation because of the close working relationship between manufacturing, engineering, and management. Boeing executives deeply engaged themselves in the design and production of its planes, rightfully positioning Boeing as the model for innovation, safety *and* profit.³ However, following the merger with McDonnell Douglas, Boeing's new executives, schooled under the "Jack Welch" style of conglomerate management, chose to move the global headquarters to Chicago, separating headquarters from the Company's actual design and manufacturing operations.⁴ Rather than restore Boeing's cohesive core operations, the Board recently, and without explanation, moved its headquarters to Virginia, perhaps closer to federal regulators but even more distant from when headquarters looked directly onto a field for test flights⁵ and C-Suite management walked among production lines and engineers.

While other companies may do better under a removed management structure, it has proven disastrous for Boeing. The 737 jet crashes along with the additional costs from necessary

¹ <https://www.cnn.com/2022/05/09/business/boeing-headquarters-move/index.html>

² <https://www.seattletimes.com/business/boeing-aerospace/boeing-won-big-on-september-jet-orders-but-737-max-snap-cut-deliveries/>

³ <https://www.seattletimes.com/pacific-nw-magazine/a-behind-the-scenes-look-at-boeings-shifting-leadership-landscape-and-its-profound-effects/>

⁴ *Id.*

⁵ *Id.*

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Merrysat Law

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development and regulatory efforts have cost Boeing well beyond \$20 billion in real dollars and value,⁶ and eroded Boeing's reputation as the single most trusted name in commercial aviation,⁷ deteriorating customers' and travelers' trust in Boeing and demand for its products.⁸

Industry experts also questioned Boeing's decision to relocate to Virginia. While one major customer expressed his feeling that "Boeing has lost its way", another noted: Boeing's "problem isn't a lack of access to government."⁹ Further, Boeing continues to suffer significant losses and revise down the projected number of 737 Max deliveries due to production delays.¹⁰

In short, returning Boeing's headquarters to its Seattle base for commercial airplane operations will send a meaningful signal Boeing credibly intends to resume its position at the top of the commercial airplane business, restore its reputation for safety and excellence, and is committed to fixing its problems with commercial airplanes, Boeing's most important line of business.¹¹

Respectfully submitted for Mr. Ryan,

Clinton A. Krislov, Attorney

Email: [REDACTED]

Mobile phone: [REDACTED]

⁶ See *supra* note 1.

⁷ <https://www.seattletimes.com/business/boeing-aerospace/in-the-other-washington-boeings-future-is-far-from-clear/>

⁸ See *supra* note 1.

⁹ *Id.*

¹⁰ <https://finance.yahoo.com/news/boeing-earnings-aerospace-giant-trims-737-max-forecast-due-to-production-issue-maintains-cash-flow-guidance-122638161.html>

¹¹ See *supra* note 3.

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Attorneys at Law

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Certifications Pursuant to SEC Rule 14a-8:

Walter E. Ryan Jr ,certifies that:

1. I (for my revocable trust, family investment company, and as custodian, broker statement attached) own or represent 10,000 Boeing shares, owned continuously from December 23, 2019, and intend to continue to hold these securities through the date of the 2024 shareholders meeting and beyond;
2. My attorney, Clinton A. Krislov, has my authority to present this proposal to the Company's 2024 meeting, and to otherwise act on my behalf with respect to this proposal;
3. Per the Rule, Mr. Krislov and I are available to meet with the company by teleconference on most business days during the next ten to thirty days between the hours of 9 a.m. and 5:30 p.m. central time.

Dated: 10/31/23, 2023



Walter E. Ryan, Jr.

KRISLOV & ASSOCIATES, LTD.

Attorneys at Law

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January 11, 2024

VIA ONLINE SHAREHOLDER PROPOSAL PORTAL

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

Re: *The Boeing Company Shareholder Proposal Recommending the Relocation of Boeing's Headquarters to Seattle, Washington.*

Dear Sir or Madam,

This letter is in response to the no-action request of John C. Demers on behalf of The Boeing Company ("Boeing") dated December 21, 2023, requesting that your office (the "Commission") take no action if Boeing omits our Shareholder Proposal (the "Proposal") from its 2024 Proxy Materials for its 2024 Annual Shareholder meeting.

RESPONSE TO BOEING'S CLAIMS

The Proposal recommends that the Board of Directors relocate Boeing's headquarters back to its original location: Seattle, Washington. The Proposal does not direct Boeing to conduct or not to conduct company operations in any specific region and the Proposal does not direct Boeing to make any strategic decisions or investments regarding its operations.

Boeing's reputation for producing safe and reliable airplanes suffered after Boeing relocated its corporate headquarters from Seattle, Washington. The Proposal seeks to restore traveler, airline, and shareholder confidence in Boeing airplanes following the rash of production and mechanical failures that impacted Boeing after Boeing shifted to a removed management structure. Boeing's continued failure to resolve its safety issues shows that management must be in a position to proactively resolve production issues rather than reacting to incidents as they occur.

The Proposal focuses on a significant policy issue of airplane safety. The Proposal is consistent with the Commission's view that the ordinary business exclusion "not prevent shareholders from providing high-level direction on large strategic corporate matters." Staff Legal Bulletin No. 14L (Nov. 3, 2021).

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Boeing did not meet its burden to exclude the Proposal. Boeing has the burden of persuading the Commission that it may exclude the Proposal from its 2024 Proxy Materials. Staff Legal Bulletin No. 14 (CF)(July 13, 2001). For the following reasons, Boeing failed to meet its burden, therefore, Boeing is not eligible for no action relief under 14a-8(i)(7).

I. The Proposal May Not be Excluded Under Rule 14a-8(i)(7) as Interfering With Ordinary Business Operations.

Shareholder proposals that affect a company's day-to-day operations or "micro-manage" a company can be excluded. Following the 1998 Amendments to Rule 14a-8, the Commission's response identified two central considerations that underlie the ordinary business exclusion, neither of which bar inclusion of the Proposal in Boeing's 2024 Proxy Materials:

- i. Certain tasks, such as hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers, are so fundamental to management's ability to run a company on a day-to-day basis that they could not be subject to shareholder oversight; and
- ii. The degree to which the proposal seeks to "micro-manage" the company by probing too deeply into complex matters that shareholders would not be in a position to make an informed judgment such as implementing complex policies, imposing specific time-frames, or involving intricate detail. Release No. 34-40018 (May 21, 1998).

Proposals that focus on significant social policy issues cannot be excluded. Proposals that focus on significant social policy issues are not excludable under Rule 14a-8(i)(7) because the proposal transcends the day-to-day business matters and raises policy issues so significant that a shareholder vote is appropriate. Release No. 34-40018 (May 21, 1998).

A. The Proposal Must be Included in the 2024 Proxy Materials Because It Implicates Boeing's Core Principal of Safety and Reliability and Not Boeing's Ordinary Business Operations.

The Proposal does not implicate Boeing's day-to-day operations. Boeing's statements about its commitment to safety and reliability ring more and more hollow because seemingly weekly, a new safety issue appears. The Proposal recommends Boeing relocate its headquarters to Seattle, and permits shareholders to provide direction to management regarding its ability to oversee the production of safe and reliable airplanes. The Proposal implicates Boeing's core mission, and not "the ability to run Boeing on a day-to-day basis." Boeing No-Action Request at 4.

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Attorneys at Law

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The Proposal does not affect company operations. The decisions that Boeing cites in support of excluding the Proposal under 14a-8(i)(7) are distinguishable because those proposals addressed the location of those companies' operations and not their headquarters. *See Seagate Technology Holdings PLC* (Aug. 2, 2021)(excluding a request to terminate operations in the People's Republic of China); *Sempra Energy* (Jan 12, 2012, recon. Denied Jan. 23, 2012)(excluding request for a report on risks posed by company operations in any country with high risk of corrupt practices); *Hershey Co.* (Feb. 2, 2009)(excluding proposal that implicated the location of the company's operations); *Tim Horton's Inc.* (Jan. 4, 2008)(excluding proposal related to location of restaurants); *The Allstate Corp.* (Feb. 19, 2002)(excluding proposal recommending operations cease in Mississippi); *Minnesota Corn Processors, LLC* (Apr. 3, 2002)(excluding proposal related to location of processing plants); *MCI Worldcom, Inc.* (Apr. 20, 2000)(excluding proposal requesting analysis of plans to expand operating facilities.)

The Commission has reversed its position on the excludability of proposals. The Commission issued its decisions in *Tenneco Inc.* (Dec. 28, 1995)(excluding a request for a report on the relocation of the company's corporate headquarters) and *Pacific Gas & Electric Co.* (Jan 3, 1986), cited by Boeing, before the 1998 Amendments to Rule 14a-8 and the Commission's updated its interpretation of the ordinary business exclusion. Further, the Commission has periodically reviewed and adjusted its position on the excludability of a number of types of proposals, including plant closings, the manufacture of tobacco products, executive compensation, golden parachutes, and employment-related proposals. Release No. 34-40018 (May 21, 1998).

The Proposal affects Boeing's core safety principle. *Here*, the Proposal does not dictate the location of the company's operations, but merely recommends Boeing relocate corporate headquarters. Relocating the corporate headquarters to Seattle affects Boeing's core mission because it will (i) improve the Board of Directors' ability to oversee the production of reliable airplanes; and (ii) restore investor, airline and customer confidence in the safety of Boeing airplanes.

B. The Proposal Must be Included in the 2024 Proxy Materials Because It Does Not Seek to "Micro-manage" Boeing.

The Proposal does not micro-manage Boeing. Shareholders are entitled to provide high-level direction to ensure that Boeing's management are in the best position to oversee the production of safe airplanes. Boeing's argument that the Proposal seeks to micro-manage The Boeing Company by directing and restricting the relocation of Boeing's headquarters to Seattle, Washington, Boeing No-Action Request at 5, is unpersuasive.

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The Proposal does not affect Boeing's operations. Boeing's citation to *Seagate Technology Holdings PLC* (Aug. 2, 2021) (excluding a request to terminate operations in the People's Republic of China) is distinguishable again because, *here*, the Proposal is limited to the location of Boeing's headquarters and is silent about the company's operations.

The Proposal provides high-level direction to Boeing management. Shareholders can make an informed decision on the Proposal because management's utter failure to provide adequate oversight over Boeing's production since the separation of its headquarters from its Seattle facilities is well-documented. The location of a company's headquarters is fundamental to management's ability to oversee the production of safe airplanes. It is essential for management to be in a position to proactively respond to issues during production, instead of its current cycle of issuing reactive statements after every major incident.

C. The Proposal Must be Included in the 2024 Proxy Materials Because it Focuses on Safety Such that it Transcends Boeing's Day-to-Day Business.

The Proposal focuses on the significant social policy of airplane safety. Boeing's arguments that the Proposal does not fit within the significant social policy exception because (i) the policy issue of safety is secondary to the central objective of relocating Boeing's headquarters; and (ii) safety as a policy issue does not transcend Boeing's ordinary business, which is safety, Boeing No-Action Request at 7, are misguided and too restrictive.

The Proposal makes more than a passing reference to safety. The Proposal is focused on safety, not like the proposals Boeing cites that only made passing references to social policies. *See Kroger* (Apr. 25, 2023)(excluding proposal that touched upon human rights but focused on decisions regarding its supply chain); *Valero Energy Corp.* (March 20, 2022)(excluding proposal that connected report to clean energy but focused on company's accounting for Asset Retirement Obligations); *Dollar Tree, Inc.* (May 2, 2022)(excluding proposal that referenced workplace safety and minimum wage but focused on workforce management); *Amazon.com Inc.* (Apr. 7, 2022)(excluding proposal that cites potential social policy implications but does not focus on the issues).

The Proposal focuses on airplane safety. *Here*, the Proposal focuses on safety by recommending that Boeing relocate its headquarters in order to resolve the well-documented issues Boeing has faced since the departure of its executives from Seattle. The Proposal cites to engineering and quality problems that have become major issues for both travelers, airlines and shareholders including multiple fatal crashes, a 20-month grounding issued by the FAA, and significant manufacturing issues.

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Airplane safety transcends Boeing's day-to-day operations. Boeing's glib statement that the Proposal can be excluded because safety does not transcend its day-to-day operations is erroneous because shareholders are entitled to provide direction to the company on social policy issues even if the company states that it is committed to that issue.

Boeing's safety and reliability problems continue to mount. While Boeing routinely professes its commitment to safety, in the short period of time after Mr. Ryan submitted the Proposal, Boeing's removed management structure's inability to provide adequate oversight has become more evident following (i) the near fatal disaster suffered by Alaska Airlines flight 1282; (ii) similar issues found in additional Alaska Airline and United Airlines Boeing MAX 9 jets following FAA ordered inspections; and (iii) the inspection of all 737 MAX jets due to missing bolts in the rudder control system in December 2023.

II. Conclusion

Based upon the foregoing reasons, we respectfully request that the Commission find that Boeing must include the Proposal in its 2024 Proxy Materials for its 2024 Annual Shareholder meeting because Boeing failed to meet its burden that it may exclude the Proposal under Rule 14a-8(i)(7).

A copy of this letter was timely provided to Boeing. We can provide additional materials to address any questions the Commission may have with respect to this letter, please contact me at 312-606-0500 or email me at clint@krislovlaw.com.

Sincerely,

/s/ Clinton A. Krislov

Clinton A. Krislov
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