

December 29, 2023

VIA ELECTRONIC SUBMISSION

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

*Re: The Kraft Heinz Company
Stockholder Proposal of Kenneth Steiner
Exchange Act of 1934—Rule 14a-8*

Dear Ladies and Gentlemen:

This letter is to inform you that our client, The Kraft Heinz Company (the “Company”), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Stockholders (collectively, the “2024 Proxy Materials”) a stockholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) submitted by John Chevedden on behalf of Kenneth Steiner (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that, if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

Office of Chief Counsel
Division of Corporation Finance
December 29, 2023
Page 2

THE PROPOSAL

The Proposal states:

Shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Supporting Statement states:

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board on an expedited basis.

It is best practice to adopt this proposal soon. However, this policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

This proposal topic won 52% support at Boeing and 54% support at Baxter International in 2020. Boeing then adopted this proposal topic in 2020.

This proposal is important to Kraft Heinz because the current Kraft Heinz lead director, John Pope, does not seem to have enough stature to be lead director and seems lucky to have such a title. If a person has an exalted titled compared to his qualifications that person is likely to be happy to just go along for the ride.

Mr. Pope's Career Highlight for the last 30-years is a position with a firm that has less than \$5 million in annual revenue according to at least one source. Kraft Heinz has annual revenue of \$26 billion.

Copies of the Proposal, the Supporting Statement, and correspondence with the Proponent directly relevant to this no-action request are attached to this letter as Exhibit A.

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)(8)(iii) because the

Office of Chief Counsel
Division of Corporation Finance
December 29, 2023
Page 3

Proposal questions the competence, business judgment, or character of a director who is expected to be a nominee for re-election at the 2024 Annual Meeting of Stockholders (the “2024 Annual Meeting”).

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(8)(iii) Because The Proposal Questions The Competence, Business Judgment, Or Character Of One Director Who Is Expected To Be A Nominee For Reelection At The 2024 Annual Meeting.

A. Background – Rule 14a-8(i)(8) And The Company’s Board of Directors.

The Proposal is excludable pursuant to Rule 14a-8(i)(8), which permits the exclusion of stockholder proposals that “(i) [w]ould disqualify a nominee who is standing for election; (ii) [w]ould remove a director from office before his or her term expired; (iii) [q]uestions the competence, business judgment, or character of one or more nominees or directors; (iv) [s]eeks to include a specific individual in the company’s proxy materials for election to the board of directors; or (v) [o]therwise could affect the outcome of the upcoming election of directors.” The purpose of the exclusion is to ensure that the stockholder proposal process is not used to circumvent more elaborate rules governing election contests. As the Commission has stated, “the principal purpose of this grounds for exclusion is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting elections or effecting reforms in elections of that nature, since other proxy rules . . . are applicable thereto.” Exchange Act Release No. 12598 (July 7, 1976).

In Exchange Act Release No. 56914, at n.56 (Dec. 6, 2007), the Commission acknowledged the Staff’s position that “a proposal relates to ‘an election for membership on the company’s board of directors or analogous governing body’ and, as such, is subject to exclusion under Rule 14a-8(i)(8) if it could have the effect of . . . questioning the competence or business judgment of one or more directors.” The Commission codified this interpretation in 2010 by adopting amendments to Rule 14a-8(i)(8) to expressly allow for the exclusion of a proposal that “[q]uestions the competence, business judgment, or character of one or more nominees or directors.” Exchange Act Release No. 62764 (Aug. 25, 2010).

The operation of the Proposal and the language of the Supporting Statement demonstrate that the Proposal specifically targets a member of the Company’s Board of Directors (the “Board”), whom the Company currently expects the Board to nominate for reelection at the 2024 Annual Meeting.

As set forth below, the Staff has consistently concurred with the exclusion of stockholder proposals that are intended to or operate to question the competence and

Office of Chief Counsel
Division of Corporation Finance
December 29, 2023
Page 4

business judgment of particular directors nominated for reelection at the annual meeting. Thus, we believe that the Proposal is excludable from the 2024 Proxy Materials in reliance on Rule 14a-8(i)(8) as relating to the election of a director to the Board.

B. The Proposal And The Supporting Statement Relate To The Election Of A Specific Director.

While the Proposal is phrased in general terms, the Supporting Statement leaves no doubt that the Proponent intends for the Proposal to serve as a referendum on the Board's current Lead Director, John Pope, whom the Company expects to stand for reelection at the 2024 Annual Meeting. The Supporting Statement explicitly names John Pope, identifies him as the Company's current Lead Director, and questions his competence, business judgement, and character as the Company's Lead Director in order to justify the Proposal's request to create an Independent Chairman of the Board.

While the Proposal, on its face, appears only to seek adoption of a policy requiring the Chairman of the Board to be an independent director, taken as a whole, the Proposal and Supporting Statement is properly excludable under Rule 14a-8(i)(8). The Supporting Statement justifies the need for the Proposal by criticizing the Lead Director's competence and business judgment. It reads: "[t]his proposal is important to [the Company] because the current [Company] lead director, John Pope, does not seem to have enough stature to be lead director." This assertion is an open criticism of a director that the Company intends to nominate for reelection by calling into question the director's qualifications as lacking "stature" and thereby his ability to competently serve as Lead Director. This criticism is furthered by the Supporting Statement's suggestion that John Pope did not earn his position on the Board but rather "seems lucky to have such a title." Furthermore, the Supporting Statement insinuates that John Pope "has an exalted title compared to his qualifications," and questions his character by suggesting that he is "likely to be happy to just go along for the ride." Finally, the Supporting Statement suggests that John Pope is unqualified for his position as his "Career Highlight for the last 30-years is a position with a firm that has less than \$5 million in annual revenue." These statements illustrate the true intent of the Proposal, which uses the pretense of adopting a policy requiring an Independent Chairman in order to question the competence and business judgement of a director the Company expects to stand for reelection at the 2024 Annual Meeting.

The Staff has consistently permitted the exclusion of stockholder proposals that have the effect of questioning the suitability of a specific individual to serve on the Board. The Staff views the proposal and the supporting statement together in making this determination. *See Brocade Communication Systems, Inc.* (avail. Jan. 31, 2007); *Exxon-Mobil Corp.* (avail. Mar. 20, 2002); *AT&T Corp. (Communication Workers of America Pension Fund)* (avail.

Office of Chief Counsel
Division of Corporation Finance
December 29, 2023
Page 5

Feb. 13, 2001); *Honeywell International Inc. (John Gilbert)* (avail. Mar. 2, 2000) (in each case, the Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(8), noting that “the proposal, together with the supporting statement” appeared to “question the business judgment” of a board member or members).

The Staff has consistently permitted companies to exclude stockholder proposals that request changes to board policies when the proposal personally targets directors who are standing for election at the same meeting at which the proposal will be considered. For example, in *Rite Aid Corp.* (avail. Apr. 1, 2011), the Staff concurred with the exclusion of a stockholder proposal seeking to prohibit nomination of any non-executive board member “who has had any financial or business dealings . . . with any member of senior management or the [c]ompany” where the supporting statement criticized individual directors and questioned their suitability to serve on the board by describing the terms of relationships between them and management to suggest that the relationships created conflicts of interest. Further, in *Marriott International, Inc.* (avail. Mar. 12, 2010), the Staff concurred with the exclusion of a proposal requesting a reduction in the size of the board where the proposal criticized the business judgment of members of the board of directors who the company expected to nominate for reelection. Similarly, in *General Electric Co.* (avail. Jan. 29, 2009), the Staff concurred with the exclusion of a stockholder proposal that sought to influence the interpretation of its governance principles where the supporting statement identified one of the directors as the “antithesis of good governance,” and stated that the director should have resigned and that the director’s continued presence “besmirched” the company. The Staff, in concurring with exclusion under Rule 14a-8(i)(8), specifically noted that “the proposal, together with the supporting statement, appears to question the business judgment of a board member whom [the company] expects to nominate for reelection at the upcoming annual meeting of shareholders.”

In addition, the Staff has consistently allowed exclusion of proposals that question the personal suitability of a specific individual to serve on the board, including instances where only the supporting statement contained the director-specific information. *See Brocade Communication Systems, Inc.* (avail. Jan. 31, 2007) (stockholder proposal criticizing directors who ignore certain stockholder votes was excludable); *Exxon Mobil Corp.* (avail. Mar. 20, 2002) (stockholder proposal condemning the chief executive officer for causing “reputational harm” to the company and for “destroying shareholder value” was excludable); *AT&T Corp.* (avail. Feb. 13, 2001) (stockholder proposal criticizing the board chairman, who was the chief executive officer, for company performance was excludable); *Honeywell International Inc.* (avail. Mar. 2, 2000) (stockholder proposal making directors who fail to enact resolutions adopted by stockholders ineligible for election was excludable). *See also Black & Decker Corp.* (avail. Jan. 21, 1997) (concurring with the exclusion of a proposal under the predecessor to Rule 14a-8(i)(8) that questioned the independence of board

Office of Chief Counsel
Division of Corporation Finance
December 29, 2023
Page 6

members where contentions in the supporting statement questioned the business judgment, competence and service of a chief executive officer standing for reelection to the board); *Delta Air Lines, Inc.* (avail. July 21, 1992) (concurring with the exclusion of a proposal that “calls into question the qualifications of at least one director for reelection and thus the proposal may be deemed an effort to oppose the management’s solicitation on behalf of the reelection of this person” in reliance on the predecessor to Rule 14a-8(i)(8)).

Consistent with *Rite Aid Corp.*, *Marriott International, Inc.*, *General Electric Co.* and the other precedent described above, the Proposal may be properly excluded pursuant to Rule 14a-8(i)(8). Here, the Proposal requests a change to the leadership structure of the Board, and when read together with the Supporting Statement, makes clear that the Proposal is intended to target the current Lead Director by questioning his competence, business judgment, and character. First, the Supporting Statement claims that “[t]his proposal is important to [the Company] because the current [Company] lead director, John Pope, does not seem to have enough stature to be lead director.” Second, immediately following that claim, the Supporting Statement suggests that John Pope did not earn his position on the Board but rather “seems lucky to have such a title.” Third, the Supporting Statement insinuates that John Pope “has an exalted title compared to his qualifications,” and questions his character by suggesting that he is “likely to be happy to just go along for the ride.” Finally, the Supporting Statement suggests that John Pope is unqualified for his position as his “Career Highlight for the last 30-years is a position with a firm that has less than \$5 million in annual revenue.”

We are aware of the Staff’s response in *General Motors Co.* (avail. Mar. 19, 2013), where the Staff was unable to concur with the exclusion of a proposal that sought adoption of a policy requiring the chairman of the board to be an independent director. There, the supporting statement focused its criticism of certain directors in the context of “overall corporate governance” concerns, including the size of the board, prior board service at other companies, involvement in company bankruptcies, board tenure, and past voting results. Importantly, the Proposal and Supporting Statement are distinguishable because they do not base their criticism on objective measures such as tenure, board size, and past voting results but rather criticize the Lead Director based on personal characteristics, questioning his competence and qualifications to serve in his current role. Similarly, in *Xcel Energy Inc.* (avail. Mar. 12, 2007), the Staff was unable to concur with the exclusion of a proposal that sought adoption of a policy separating the roles of chairman of the board and chief executive officer where the supporting statement expressed the proponent’s disagreement with the chairman’s decision to appoint certain officers and emphasized the need for independent oversight of management. Unlike in *General Motors Co.* where the supporting statement focused on general corporate governance practices and *Xcel Energy Inc.* where the supporting statement focused on board oversight, the Supporting Statement’s attacks on the

Office of Chief Counsel
Division of Corporation Finance
December 29, 2023
Page 7

Lead Director's qualifications go to the heart of his competence, business judgment, and character.

The Proposal can also be distinguished from other no-action requests where the Staff declined to find that proposals related to board composition or director requirements questioned the competence or business judgment of directors. For example, in *Exxon Mobil Corp.* (avail. Mar. 14, 2013), a shareholder proposal requested that the board adopt a bylaw limiting the company's directors to a maximum of three board memberships in companies with sales in excess of \$500 million annually, and in *The Allstate Corp.* (avail. Feb. 1, 2017), and *Textron Inc.* (avail. Feb 7, 2018), the proposals sought term limits on service as director. See also *Johnson & Johnson* (avail. Jan. 29, 2015) (proposal seeking limits on public board memberships); *Duke Energy Corp.* (avail. Feb. 24, 2000) (same). While the Staff did not agree that the proposals could be excluded under Rule 14a-8(i)(8)(iii) in those cases, each of these proposals is clearly distinguishable from the Proposal. In *Exxon Mobil* and the other cited precedent, the proposals merely imposed a qualification requirement that had to be met for a director to serve on the board, and the supporting statements disclosed the number of boards on which certain directors served and/or the length of time they had served on the board, whereas the Proposal, when read together with the Supporting Statement, is an *ad hominem* attack that clearly intends to question the competence, business judgment and character of an individual director who is currently expected to be nominated for reelection at the 2024 Annual Meeting of Stockholders.

Based on the well-established precedent set forth above, the Staff views the proposal and supporting statement together when evaluating the excludability of proposals under Rule 14a-8(i)(8). As such, we believe that the Proposal and Supporting Statement, together, “[q]uestion[] the competence, business judgment, or character of one or more . . . directors,” who currently serves on the Board and is currently expected to be nominated for reelection at the 2024 Annual Meeting of Stockholders. For these reasons, the Company believes that the Proposal and Supporting Statement may be properly excluded from its 2024 Proxy Materials under Rule 14a-8(i)(8).

CONCLUSION

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

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 351-2309 or Heidi Miller,

Office of Chief Counsel
Division of Corporation Finance
December 29, 2023
Page 8

the Company's Corporate Secretary and Deputy General Counsel, Corporate Governance and Securities, at (847) 646-6016.

Sincerely,

A handwritten signature in cursive script that reads "Lori Zyskowski".

Lori Zyskowski

Enclosures

cc: Heidi Miller, The Kraft Heinz Company
John Chevedden
Kenneth Steiner

EXHIBIT A

Kenneth Steiner

Ms. Nicole Fritz
The Kraft Heinz Company (KHC)
One PPG Place
Pittsburgh, Pennsylvania 15222

Dear Ms. Fritz,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

The attached rule 14a-8 proposal is for the next annual shareholder meeting. I intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

to facilitate prompt and verifiable communications.
Please identify this proposal as my proposal exclusively.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Please confirm that this proposal was sent to the correct email address for rule 14a-8 proposals. Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

Sincerely,


Kenneth Steiner

10/12/23
Date

cc: "Miller, Heidi"
Michael Mullen

[KHC – Rule 14a-8 Proposal, October 22, 2023]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Independent Board Chairman

Shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board on an expedited basis.

It is best practice to adopt this proposal soon. However this policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

This proposal topic won 52% support at Boeing and 54% support at Baxter International in 2020. Boeing then adopted this proposal topic in 2020.

This proposal is important to Kraft Heinz because the current Kraft Heinz lead director, John Pope, does not seem to have enough stature to be lead director and seems lucky to have such a title. If a person has an exalted title compared to his qualifications that person is likely to be happy to just go along for the ride.

Mr. Pope's Career Highlight for the last 30-years is a position with a firm that has less than \$5 million in annual revenue according to at least one source. Kraft Heinz has annual revenue of \$26 billion.

Please vote yes:

Independent Board Chairman – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

“Proposal 4” stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

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

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

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. **I intend to continue holding the same required amount of Company shares through the date of the Company’s next Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [REDACTED]

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).
Please alert the proxy editor.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.

If there is objection to the title please negotiate or seek no action relief as a last resort.
Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.



FOR

*Shareholder
Rights*