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February 2, 2021  
Via electronic mail

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

Re: PepsiCo, Inc.; Shareholder Proposal of The John Bishop Montgomery Trust (John Chevedden) Securities Exchange Act of 1934 (“Exchange Act”)—Rule 14a-8

Ladies and Gentlemen:

The John Bishop Montgomery Trust (the “Proponent”) is beneficial owner of common stock of PepsiCo, Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. I have been asked by the Proponent to respond to the letter dated December 29, 2020 (“Company Letter”) sent to the Securities and Exchange Commission (the “SEC”) by Elizabeth Ising (“Company Counsel”). In that letter, the Company contends that the Proposal may be excluded from the Company’s 2021 proxy statement. A copy of the Proposal is attached to this letter.

Based on Proposal, as well as the letter sent by the Company, we respectfully submit that the Proposal must be included in the Company’s 2021 proxy materials and that it is not excludable under Rule 14a-8. A copy of this letter is being emailed concurrently to Company Counsel.

## SUMMARY

The Proposal requests a study of the external public health costs associated with the Company's food and beverage business, and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns. The Company asserts that the Proposal is excludable either as relating to ordinary business (Rule 14a-8(i)(7)), or that the Proposal is vague and misleading (Rule 14a-8(i)(3)).

The Proposal is not excludable pursuant to Rule 14a-8(i)(7) because it is solely directed to a significant policy issue posed by the Company's ongoing business, namely the question of how a corporation accounts for the costs it imposes on stakeholders when it prioritizes the interests of its shareholders. The Company itself has recognized the importance of the question, recently signing on to the Business Roundtable Statement of the Purpose of a Corporation (the "Statement,") which purports to make significant commitments to shareholders.<sup>1</sup> This issue has been the focus of legislative action, policy debate and the Company's own communications strategy. The Proposal relates solely to this critical policy issue and contains no specifics direction with respect to particular products and services or any other ordinary business of the Company--the scope of the Proposal does not stray into ordinary business matters.

The Company asserts that the Proposal is vague, yet reading the language of the Proposal, neither the Company nor shareholders would have difficulty in ascertaining how to go about implementing the Proposal and therefore, the Proposal is not vague within the meaning of Rule 14a-8(i)(3).

## ANALYSIS

### **1. The Proposal Is Not Excludable Under Rule 14a-8(i)(7)**

The Staff has indicated that a shareholder proposal that might otherwise be excludable as relating to ordinary business under Rule 14a-8(i)(7) may not be excludable if it raises significant social policy issues. Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018, (May 21, 1998). In explaining ordinary business, the Release noted:

*Certain 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. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant*

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<sup>1</sup> <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>.

*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.*

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*The determination as to whether a proposal deals with a matter relating to a company's ordinary business operations is made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.*

Shareholder proposals involve significant social policies if they involve issues that engender widespread debate, media attention and legislative and regulatory initiatives. Staff Legal Bulletin 14E (October 27, 2009) addressed considerations relevant to the present matter as well since the Proposal implicates certain risks to investors. Under the guidance of the bulletin, a proposal that requests analysis of risks to investors does not necessarily render the proposal excludable. Instead, the Staff suggested that a key question is whether the particular risk that is being analyzed involves a significant policy issue:

*On a going-forward basis, rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk. The fact that a proposal would require an evaluation of risk will not be dispositive of whether the proposal may be excluded under Rule 14a-8(i)(7). Instead, similar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document — where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business — we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company. In those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company. Conversely, in those cases in which a proposal's underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7). In determining whether the subject matter raises significant policy issues and has a sufficient*

*nexus to the company, as described above, we will apply the same standards that we apply to other types of proposals under Rule 14a-8(i)(7).*

As we will discuss below, in the present matter, the reporting on risks and costs requested by the Proposal relate to an underlying significant policy issue, the appropriate manner of accounting for the divergent interests of shareholders and stakeholders when profitable activity creates external social costs.

***A. Significant policy issue: externalizing costs to stakeholders***

The Company's argument to exclude the Proposal under Rule 14a-8(i)(7) is based on a misconstruction of the purpose of the Proposal, which is clear on its face: to address the significant policy issue of corporate financial returns to shareholders that cause harm to other stakeholders. The Proposal refers to the Statement, North Carolina law (the Company's domicile) and the shareholder primacy model established in Delaware (which the North Carolina legislature has not rejected). Yet the Company Letter fails to even acknowledge this critical issue that the disclosure described in the Proposal would address. Below, we explain how this issue has become a central feature of the policy debate in the U.S. and beyond.

i. Corporate Law and Shareholder Primacy

The directors of U.S. corporations have long focused their efforts on improving the financial return of their corporation to its shareholders. While there has been a fierce ongoing debate as to whether corporations should in fact be managed for the benefit of only shareholders or for a broader group of stakeholders,<sup>2</sup> the concept of shareholder primacy has dominated corporate law. This doctrine eschews consideration of the external costs of a business unless those costs effect the corporation's own financial return to its shareholders. A series of decisions by the Delaware courts cemented the place of shareholder primacy in the United States.<sup>3</sup>

The most important of these was the famous *Revlon* case decided by the Delaware Supreme Court in 1985.<sup>4</sup> Other Delaware authority has established that corporations exist primarily to generate shareholder value.<sup>5</sup> *eBay Domestic Holdings, Inc. v. Newmark*<sup>6</sup> is a more

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<sup>2</sup> Frederick Alexander, *BENEFIT CORPORATION LAW AND GOVERNANCE: PURSUING PROFIT WITH PURPOSE* (2018) at 21-26.

<sup>3</sup> Joan MacLeod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 *Seattle Univ. L. Rev.* 611, 613 (2017) ("Delaware decisional law is arguably particularly unfriendly to for-profit corporate boards that fail to place shareholder financial wealth maximization first in every decision they make.")

<sup>4</sup> *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) (holding that when a corporation is to be sold in a cash-out merger, the directors' duty is to maximize the cash value to shareholders, regardless of the interests of other constituencies, because there is no long term for the shareholders).

<sup>5</sup> See *Katz v. Oak Indus. Inc.*, 508 A.2d 873, 879 (Del. Ch. 1986) ("It is the obligation of directors to attempt, within the law, to maximize the long-run interests of the corporation's stockholders; that they may sometimes do so 'at the expense' of others [e.g., debtholders] . . . does not . . . constitute a breach of duty."); Leo E. Strine, Jr., *The Social Responsibility of Boards of Directors and Stockholders in Change of Control Transactions: Is There Any "There" There?*, 75 *S. Cal. L. Rev.* 1169, 1170 (2002) ("The predominant academic answer is that corporations exist primarily to generate stockholder wealth, and that the interests of other constituencies are incidental and subordinate to that primary concern.")

<sup>6</sup> 16 A.3d 1 (Del. Ch. 2010).

recent example of the focus on shareholder wealth maximization, even outside the sale context. The court embraced shareholder primacy, finding that it was a violation of the directors' fiduciary duties to make decisions primarily for the benefit of users of the corporation's platform:

*Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders. The "Inc." after the company name has to mean at least that. Thus, I cannot accept as valid . . . a corporate policy that specifically, clearly, and admittedly seeks not to maximize the economic value of a for-profit Delaware corporation for the benefit of its stockholders.<sup>7</sup>*

The former Chief Justice of the Delaware Supreme Court has explained that the law clearly favors shareholders, stating that, "a clear-eyed look at the law of corporations in Delaware reveals that, within the limits of their discretion, directors must make stockholder welfare their sole end, and that other interests may be taken into consideration only as a means of promoting stockholder welfare."<sup>8</sup> Toward the end of the twentieth century, many jurisdictions in the United States adopted "constituency statutes," fully or partially opting out of shareholder primacy.<sup>9</sup> None of those states mandate consideration of stakeholder interests, however.<sup>10</sup> North Carolina has not adopted a constituency statute.

Shareholder primacy has caused great consternation regarding the harm that it poses to stakeholders and the public.<sup>11</sup> In response, the benefit corporation option was created to provide a corporate form where directors could prioritize interests other than shareholders. Beginning in 2010, U.S. jurisdictions began to adopt benefit corporation provisions, which created a corporate form that required directors to consider other stakeholder interests.

As the Chief Justice of the Supreme Court of Delaware has said:

*[T]he benefit corporation movement represents a refreshing and substantial step forward for those who believe that corporations—and all business entities—not only can, but should both do well by their investors, but also their workers and the societies in which they operate.<sup>12</sup>*

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<sup>7</sup> *Id.* at 34-35 (referring to corporate justification for shareholder rights plan meant to forestall a change in control that might threaten platform users' interests).

<sup>8</sup> Leo Strine, *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law* 50 *WAKE FOREST LAW REVIEW* 761 (2015).

<sup>9</sup> Alexander, *supra* n. 3, at 135-148.

<sup>10</sup> *Id.*

<sup>11</sup> See generally, Lynn Stout, *THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS AND THE PUBLIC* (2012).

<sup>12</sup> Leo Strine, *Forward*, in Alexander, *supra*, n. 3

The clearest signal of the significance of the policy issue is legislative action to address the issue around the nation and the world. Legislatures have acted in 39 U.S. jurisdictions, the Canadian province of British Columbia, and the countries of Italy, Colombia, and Ecuador over the last decade to make this new form available. In addition, legislation was introduced in the last U.S. Congress in both houses that would have imposed benefit corporation duties on the directors of all billion dollar companies.<sup>13</sup> The issue even surfaced in the most recent U.S. presidential election, as one candidate decried “the era of shareholder capitalism.”<sup>14</sup> In response, critics argued that favoring shareholders was the best recipe for a successful economy:

*In reality, corporations do enormous social good precisely by seeking to generate returns for shareholders.*<sup>15</sup>

ii. Trust Law

This policy issue has also appeared in recent regulatory and legislative activity relating to trustees for retirement plans and other investment advisors. The Department of Labor recently proposed a Rule that would have made it more difficult for trustees to account for environmental and social costs, but, after receiving public comments, revised the final rule in a manner that gives trustees the ability to address corporate activity that imposes the type of social costs described in the Proposal when the trustees believed that those costs would affect their diversified portfolios—exactly the type costs of that the Proposal seeks a report on:

*In addition, Final Rules should also permit stewardship that discourages portfolio companies from engaging in behaviour that harms society and the environment, and consequently the value of shareholders’ diversified portfolios (For example, plan fiduciaries might vote to encourage all companies to lower their carbon footprint, not because it will necessarily increase return at each and every company, but because it will promote a strong economy and thus increase the return of their diversified portfolio).*<sup>16</sup>

Moreover, in 2020, a bill was introduced in the U.S. House of Representatives that included an express finding that plan fiduciaries should consider the costs that corporations in their portfolios impose on the financial system:

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<sup>13</sup> Copies of the legislation are available here: <https://www.congress.gov/bill/116th-congress/senate-bill/3215?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=1&r=1> (Senate) and here: <https://www.congress.gov/bill/116th-congress/house-bill/6056?q=%7B%22search%22%3A%5B%22accountable+capitalism+act%22%5D%7D&s=2&r=2> (House)

<sup>14</sup> *Biden says investors ‘don’t need me,’ calls for end of ‘era of shareholder capitalism’*, (CNBC) (July 9, 2020), available at <https://www.cnbc.com/2020/07/09/biden-says-investors-dont-need-me-calls-for-end-of-era-of-shareholder-capitalism.html>.

<sup>15</sup> Andy Pudzer, *Biden’s Assault on ‘Shareholder Capitalism’*, (Wall Street Journal) (August 17, 2020), available at <https://www.wsj.com/articles/bidens-assault-on-shareholder-capitalism-11597705153>.

<sup>16</sup> Frederick Alexander, *The Final DOL Rules Confirm That Fiduciary Duty Includes ‘Beta Activism,’* RESPONSIBLE INVESTOR (December 15, 2020) available at <https://www.responsible-investor.com/articles/the-final-dol-rules-confirm-that-fiduciary-duty-includes-beta-activism>.

*The Congress finds the following:*

- (1) *Fiduciaries for retirement plans should*  
...  
(D) *consider the impact of plan investments on the stability and resilience of the financial system; . . .*<sup>17</sup>

While the bill related to costs to the financial system, rather than public health, it was clearly focused on the same policy concern: costs that a company's profit-seeking activities impose on stakeholders.<sup>18</sup>

iii. The Statement

In addition to the activity noted in the prior section regarding political and legislative activity around the issue of external costs to stakeholders, the business community, including the Company itself, have noted the importance of the consideration of stakeholder interests other than shareholders. Here we quote the Statement, as its eloquence is perhaps the best evidence for the critical nature of the policy issue raised by the Proposal:

*Americans deserve an economy that allows each person to succeed through hard work and creativity and to lead a life of meaning and dignity. We believe the free-market system is the best means of generating good jobs, a strong and sustainable economy, innovation, a healthy environment and economic opportunity for all. . . .*

*While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders. We commit to:*

- *Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations. . . .*
- *Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses. . . .*
- *Each of our stakeholders is essential. We commit to deliver*

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<sup>17</sup> H.R. 8959 (116th): Retirees Sustainable Investment Policies Act of 2020

<sup>18</sup> See also Frederick Alexander, Holly Ensign-Barstow, Lenore Palladino, and Andrew Kassoy, *From Shareholder Primacy to Stakeholder Capitalism: A Policy Agenda for Systems Change* (arguing that fiduciary duties of trustees should incorporate external costs of individual companies that harm portfolios).

*value to all of them, for the future success of our companies, our communities and our country.*<sup>19</sup>

Thus, the Statement, *which the Company itself signed onto*, explains exactly why the Proposal is a critical policy question: it asks the Company to report on public health costs of its business, which fall upon “Americans,” “customers,” “people in our community,” and “our country,” the very stakeholders the Company publicly committed to less than two years ago. The Company’s CEO highlighted this commitment to stakeholders with his own post:

*I am proud to join 171 CEOs in signing on to Business Roundtable's new statement on the purpose of a corporation. We are committing to leading our companies for the benefit of all stakeholders—customers, employees, suppliers, communities & shareholders. . . .*

*At PepsiCo, . . . [o]ur ambition is to win sustainably in the marketplace, while doing good for the planet and our communities. Business Roundtable's new statement on the purpose of a corporation aligns directly with this vision.*<sup>20</sup>

More recently, the CEO emphasized the critical role that the Company and other corporations have to play in addressing “systemic problems,” i.e., avoiding adding unnecessary costs (and thus risks) to those systems:

*But we know that systemic problems require systemic solutions, and the pandemic has brought into sharp focus the larger need to address our long-term sustainability challenges. It is clearer than ever that organizations like PepsiCo and our partners need to take bold steps to catalyze positive change and bring about a stronger, more sustainable future for us all.*<sup>21</sup>

The reaction to the Statement’s issuance (as well as the number of companies signing on) in August 2019 demonstrated the policy significance of addressing external costs. One dubious commentator noted that “For many of the BRT signatories, truly internalizing the meaning of their words would require rethinking their whole business.”<sup>22</sup> Others noted the importance of the change, but also that it was meaningless without ending shareholder primacy:

*Ensuring that our capitalist system is designed to create a shared and durable prosperity for all requires this culture shift. But it also*

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<sup>19</sup> *Supra*, n. 1 (emphasis added).

<sup>20</sup> Ramon Laguarta LinkedIn post (emphasis added) available at [https://www.linkedin.com/posts/ramonlaguarta\\_our-commitment-activity-6569181193504387072-ezG/-](https://www.linkedin.com/posts/ramonlaguarta_our-commitment-activity-6569181193504387072-ezG-/).

<sup>21</sup> *Pepsico 2019 Sustainability Report* (emphasis added) available at <https://www.pepsico.com/sustainability/strategy>

<sup>22</sup> Andrew Winston, *Is the Business Roundtable Statement Just Empty Rhetoric?* HARVARD BUSINESS REVIEW (August 30, 2019).



*requires corporations, and the investors who own them, to go beyond words and take action to upend the self-defeating doctrine of shareholder primacy.<sup>23</sup>*

Other commentators were worried not that the Statement did not go far enough, but rather that it went too far:

*Asking corporate managers to focus more on improving society and less on making profits may sound like a good strategy. But it's a blueprint for ineffective and counterproductive public policy on the one hand, and blame-shifting and lack of accountability on the other. This is a truth Milton Friedman recognized nearly five decades ago — and one that all corporate stakeholders ignore today at their peril.<sup>24</sup>*

Another writer agreed, linking the issue to the same essay by Milton Friedman:

*The issue of which constituency – or “stakeholder” – has the highest priority has long been a classic corporate governance conundrum. Still, the prevailing consensus, as espoused by Milton Friedman in his September 13, 1970 New York Times Magazine article, has been corporate executives work for their owners (i.e., shareholders) and have a responsibility to do what those owners desire, which is to make as much money as (legally) possible. That all changed on August 19, 2019.<sup>25</sup>*

While exploring the commitments to corporate social responsibility, the author of the latter two articles each returned to Friedman’s famous article, which stated that:

*[T]he doctrine of ‘social responsibility’ taken seriously would extend the scope of the political mechanism to every human activity. It does not differ in philosophy from the most explicitly collectivist doctrine. It differs only by professing to believe that collectivist ends can be attained without collectivist means. That is why, in my book *Capitalism and Freedom*, I have called it a ‘fundamentally subversive doctrine’ in a free society, and have said that in such a society, ‘there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.’<sup>26</sup>*

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<sup>23</sup> Jay Coen-Gilbert, Andrew Kassoy and Bart Houlihan, *Don’t Believe the Business Roundtable Until It’s CEO’s Actions Match Their Words*, FAST COMPANY (August 22, 2019).

<sup>24</sup> Karl Smith *Corporations Can Shun Shareholders, But Not Profits*, BLOOMBERG OPINION (August 27, 2019).

<sup>25</sup> Christopher Carosa *Did Business Roundtable Just Break A Fiduciary Oath?*, [FiduciaryNews.com](http://fiduciarynews.com), August 27, 2019 available at <http://fiduciarynews.com/2019/08/did-business-roundtable-just-break-a-fiduciary-oath/>.

<sup>26</sup> Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits* N.Y. TIMES, Sept. 13, 1970 (magazine).

Showing that the controversy is long-lived, the 50<sup>th</sup> anniversary of the essay in 2020 set off another round of commentary.<sup>27</sup>

## **B. The Proposal Addresses the Policy Issue of Stakeholder Interests**

The outpouring of legislative activity around benefit corporations, regulatory and legislative activity around trustee obligations to consider external corporate costs and commentary around the Statement raise two related but distinct significant policy issues: first, should corporations focus more on stakeholders interests and if so, how? The Proposal addresses these issues. As a conventional corporation, the Company must subordinate stakeholders to the interests of shareholders—the board of directors or management can consider stakeholder interests only to the degree that they serve shareholder interests. As shown above, however, many commentators believe the Statement is necessary but insufficient on its own because attaining a fair and durable prosperity will sometimes demand that companies put the interests of stakeholders over those of shareholders.

Shareholder primacy is clearly an issue of great policy significance being addressed in legislatures around the country and the world, and even in the latest race for the U.S. presidency. Moreover, Company actions that prioritize shareholders matter deeply to all of us. In a recent study (the “Schroders Report”), a leading asset manager determined that publicly listed companies imposed social and environmental costs on the economy with a value of \$2.2 trillion annually—more than 2.5% of global GDP and more than half of the profits those companies earned.<sup>28</sup> These costs have many sources, including pollution, water withdrawal, climate change and employee stress. The study shows exactly the areas where corporations are likely to ignore stakeholder interests, to the detriment of the global economy. The public health costs that a food and beverage business create falls clearly within this problematic paradigm.

By participating in this common corporate practice of prioritizing the financial return to its shareholders above all stakeholder concerns, corporations harm those very shareholders, the vast majority of whom are diversified.<sup>29</sup> Such shareholders and beneficial owners suffer when companies follow the shareholder primacy model and impose costs on the economy that lower GDP, which reduces overall equity value.<sup>30</sup> Thus, while corporations may increase their isolated return to shareholders under the rule of shareholder primacy by ignoring the costs they externalize to stakeholders, their diversified shareholders will ultimately pay these costs. Such shareholders (along with the world’s population and economy) would benefit from corporate governance that enabled corporations to prioritize the stakeholders to whom the Statement refers.

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<sup>27</sup> See, e.g., *Friedman 50 Years later*, PROMARKET (collecting 27 essays about Friedman’s article and its legacy) (Stigler Center for the Study of the Economy and the State).

<sup>28</sup> <https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf>

<sup>29</sup> Indeed, the top three holders of Company shares are mutual fund companies Vanguard, State Street and BlackRock, whose clients are generally indexed or otherwise broadly diversified investors.

<sup>30</sup> See, e.g., <https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator> (total market capitalization to GDP “is probably the best single measure of where valuations stand at any given moment”) (quoting Warren Buffet).

The Proposal will address this issue, by asking the Company to describe the external costs that it imposes on stakeholders, providing context to its shareholders, and permitting them to understand whether the value proposition of the Company is truly sustainable, or whether its profits rely on the exploitation of common resources and vulnerable populations. The Company itself has repeatedly recognized the critical nature of the relationship between corporations and stakeholders, including by executing the Statement along with another 180 large corporations. But while it recognized the issue, it also sidestepped it, because under the doctrine of shareholder primacy, the commitment expressed in the Statement is an empty promise.

Thus, the Proposal's request for a report on how the Company externalizes public health costs addresses the significant policy issue whether corporations should account for stakeholder interests and is therefore not excludable for purposes of Rule 14a-8(i)(7).

**C. The Proposal concerns a significant policy issue and should not be excluded because it touches on products and services**

The Company Letter argues for an exclusion under Rule 14a-8(i)(7) because the Proposal relates to products and services offered to customers. Where the focus of the Proposal is clearly on a significant policy issue, the fact that it may touch on issues related to products and services does not cause it to be excludable. This was made clear in the Staff Legal Bulletin 14H, October 22, 2015:

*[T]he Commission has stated that proposals focusing on a significant policy issue are not excludable under the ordinary business exception "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." [Release No. 34-40018] Thus, a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the "nitty-gritty of its core business." (emphasis added)*

The Company Letter cites prior Staff decisions where, generally, the proposal focused on products and services and lacked an overriding significant policy issue, or where the proposal sought to dictate outcomes at the company in the offering of particular products or services. This is not an instance in which the proposal focuses on attempting to limit or prescribe the sale of particular products or services. Instead, it asks the company to study the impacts that it has already acknowledged in a manner that will allow its investors to understand the true costs of its entire business more clearly.

In this instance, the distinction comes down to two key factors: first, that the focus is on a significant policy issue rather than merely on particular modes of business, and second, that it does not actually require any changes to products or services sold, but only an assessment relative to the significant policy issue. This distinction is illustrated by *Merrill Lynch & Co.*

(February 25, 2000), where the proposal requested that the board issue a report reviewing the underwriting, investing, and lending criteria of Merrill Lynch with a view to incorporating criteria related to a transaction's impact on the environment, human rights, and risk to the company's reputation. The proposal was found not excludable under Rule 14a-8(i)(7).

Similarly, proposals addressing climate change have been found not excludable under Rule 14a-8(i)(7) despite addressing a company's lending and investment portfolio. The Staff has long determined that proposals addressing climate risk are appropriate for financial services companies so long as such proposals do not delve into the individual application of such policies to customers. For instance, in *PNC Financial Services Group, Inc.* (February 13, 2013) the Proposal requested that the Board report to shareholders PNC's assessment of the greenhouse gas emissions resulting from its lending portfolio and its exposure to climate change risk in lending, investing, and financing activities. The Staff determined that the Proposal was not excludable because it addressed the significant policy issue of climate change. PNC had argued, as the Company does here, that the Proposal micromanaged the business. The Staff rejected the claim. The present proposal is analogous, because it looks to specific impacts on the economy and investors of the food and beverage business, much as the PNC Financial Services proposal looking to quantify the greenhouse gas impact.

In short, there is no basis for an assertion that a proposal, regardless of whether it addresses a significant policy issue, is excludable simply because it touches upon the Company's primary business. The key question demonstrated by prior Staff decisions is whether the subject matter requiring a focus on the business is limited to a significant policy issue and whether the proposal is written in a manner that does not micromanage. The Proposal is compliant and not excludable under Rule 14a-8(i)(7).

#### **D. The Proposal Does Not Micromanage**

The Proposal does not micromanage the Company but rather requests the board to widen the aperture of its focus by reporting on the effect that its business has on stakeholders through additional public health costs that do not show up on its balance sheet.

Far from constituting micromanagement—focusing on any particular activity or operation—the disclosure asks the Company to describe a critical consequence of its overall food and beverage business. The Company Letter states that “the Proposal requests a report regarding the Company's development and provisions of particular products (those offered by the Company's food and beverage business.)” But a policy issue that asks for a general report regarding the entire business is in no sense “particular;” it is seeking an assessment of the public health costs the Company's entire business, as described in its Annual Report filed with the SEC:

*We are a leading global food and beverage company with a complementary portfolio of brands, including Frito-Lay, Gatorade, Pepsi-Cola, Quaker and Tropicana. Through our operations, authorized bottlers, contract manufacturers and other third*

*parties, we make, market, distribute and sell a wide variety of convenient beverages, foods and snacks, serving customers and consumers in more than 200 countries and territories.*<sup>31</sup>

The same report provides a partial list of the Company's brands:

*1893, Agusha, Amp Energy, Aquafina, Aquafina Flavorsplash, Arto Lifewater, Aunt Jemima, Bare, Bolt24, bubly, Cap'n Crunch, Cheetos, Chester's, Chipita, Chipsy, Chokis, Chudo, Cracker Jack, Crunchy, Diet Mountain Dew, Diet Mug, Diet Pepsi, Diet 7UP (outside the United States), Domik v Derevne, Doritos, Duyvis, Elma Chips, Emperador, Evolve, Frito-Lay, Fritos, Fruktovy Sad, G2, Gamesa, Gatorade, Grandma's, H2oh!, Health Warrior, Imunele, Izze, J-7 Tonus, Kas, KeVita, Kurkure, Lay's, Life, Lifewtr, Lubimy, Manzanita Sol, Marias Gamesa, Matutano, Mirinda, Miss Vickie's, Mother's, Mountain Dew, Mountain Dew Amp Game Fuel, Mountain Dew Code Red, Mountain Dew Ice, Mountain Dew Kickstart, Mountain Dew Zero Sugar, Mug, Munchies, Muscle Milk, Naked, Near East, Off the Eaten Path, O.N.E., Paso de los Toros, Pasta Roni, Pepsi, Pepsi Black, Pepsi Max, Pepsi Zero Sugar, Propel, Quaker, Quaker Chewy, Rice-A-Roni, Rold Gold, Rosquinhas Mabel, Ruffles, Sabritas, Sakata, Saladitas, San Carlos, Sandora, Santitas, 7UP (outside the United States), 7UP Free (outside the United States), Sierra Mist, Sierra Mist Zero Sugar, Simba, Smartfood, Smith's, Snack a Jacks, SoBe, SodaStream, Sonric's, Stacy's, Sting, Stubborn Soda, SunChips, Toddy, Toddynho, Tostitos, Trop 50, Tropicana, Tropicana Pure Premium, Tropicana Twister, VWater, Vesely Molochnik, Walkers and Ya.*<sup>32</sup>

The Proposal does not address any of the 200 countries in which the Company does business or any of its multitudinous brands. It is simply ridiculous to assert that the proposal relates to any particular product. Moreover, the Company letter argues that because the report of external costs relates to the Company's business it is excludable as ordinary business. This misconceives the purpose of the exception. As the Staff has explained, "The purpose of the exception is 'to confine the resolution of ordinary business problems to the 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>33</sup> Here, the Proposal clearly transcends ordinary business by going to the heart of a public policy issue: how does the business account for the harms it passes on to stakeholders through public health costs?

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<sup>31</sup> PepsiCo Annual Report on Form 10-K, available at [https://investors.pepsico.com/docs/album/investors/q4-2019/q4-2019-form-10k\\_j5g3yk7vbs7bxywg.pdf](https://investors.pepsico.com/docs/album/investors/q4-2019/q4-2019-form-10k_j5g3yk7vbs7bxywg.pdf)

<sup>32</sup> *Id.* at 6.

<sup>33</sup> Staff Legal Bulletin No. 14I (2017) (citing Release No. 34-40018(May 21, 1998)).

Effecting the Proposal will leave problem-solving firmly in the hands of the board and management—it does not address any particular product, service, or decision. Instead, it asks the Company, through disclosure, to address a significant policy issues by providing its shareholders with sufficient context to understand how the Company’s business fits into the policy debate around corporate responsibility to stakeholders. As the 1998 Release quoted above says:

*However, proposals relating to such [day-to-day] matters 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.*

The Company’s business sits squarely in the center of that debate, as the media covers matters such as its lobbying against public health measures,<sup>34</sup> and the sugary drink industry’s advertising focus on Black children, as “Pepsico [sic] contributed approximately 42% of sugary drink and energy drink ads viewed by Black children and preschoolers.”<sup>35</sup> The public health costs of such business activities surely transcends the Company’s ordinary business and is not excludable under Rule 14a-8(i)(7).

***E. The Proposal advances a private ordering response to the policy issue of shareholder primacy***

The changing law around shareholder primacy, and wide adoption of and debate over the Statement, and the media focus on the Company’s effects on public health demonstrate that disclosure of external public health costs is a significant policy issue. They also demonstrate the functional responsiveness and flexibility of the ordinary business doctrine to respond to significant policy issues on which the SEC is not yet prepared to act by fostering investor private ordering and policy experimentation through the shareholder proposal process. The SEC has a long tradition of recognizing the importance of private ordering, including the important role of the shareholder proposal process, through which investors and companies can develop effective remedies to market challenges and inefficiencies.

Commission Chair Mary Jo White gave a speech in 2016 describing the prominent examples of market-wide success in private ordering, including the near disappearance of staggered boards, majority vote standards becoming the norm across the S&P 500, and the recent successes of proxy access proposals resulting in 35% of the S&P 500 adopting proxy access, compared to 1% just two years prior.<sup>36</sup> For each of these examples of private ordering, the

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<sup>34</sup> See, e.g., <https://www.npr.org/sections/thesalt/2018/11/05/664435761/big-soda-and-the-ballot-soda-industry-takes-cues-from-tobacco-to-combat-taxes>

<sup>35</sup> *Sugary Drink Facts 2020* at 39, available at [https://media.ruddcenter.uconn.edu/PDFs/Sugary\\_Drink\\_FACTS\\_Full%20Report.pdf](https://media.ruddcenter.uconn.edu/PDFs/Sugary_Drink_FACTS_Full%20Report.pdf).

<sup>36</sup> Mary Jo White, Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability, June 27, 2016, <https://www.sec.gov/news/speech/chair-white-icgn-speech.html>. See also Commissioner Hester Peirce, *Keynote*

shareholder proposal process was a pivotal engine for change.

While continuing to deliberate on any policy fixes that the Commission might choose to enact,<sup>37</sup> the Proposal represents an important opportunity for the market to begin to develop better data, analysis, and engagement regarding the clash between stakeholder commitment and shareholder primacy.

## F. Scope is limited to the significant policy issue

Exceptions to the general rule allowing a proposal that transcends ordinary business to be excludable have been made where the proposal addresses both ordinary business and transcendent social policy issues. Examples of proposals that have crossed the line to address both ordinary and transcendent issues include *Bank of America Corporation* (February 26, 2019) where the proposal requested that the company begin an orderly process of retaining advisors to study strategic alternatives and empower a committee of its independent directors to evaluate those alternatives with advisors in exercise of their fiduciary responsibilities to maximize shareholder value. The staff noted that “the Proposal appears to relate to both extraordinary transactions and non-extraordinary transactions and therefore allowed exclusion. To the same effect are *Donegal Group Inc.* (February 15, 2013), *Analysts International Corp* (March 11, 2013), *Anchor Bancorp, Inc.* (July 11, 2013). Another example of this phenomenon occurred in *Exxon Mobil Corporation* (March 6, 2012) where the proposal requested that the Board prepare a report discussing possible short and long term risks to the company's finances and operations posed by the environmental, social, and economic challenges associated with the oil sands. Because the proposal included reporting on “economic challenges associated with oil sands” that

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*Speech: Protecting the Public While Fostering Innovation and Entrepreneurship: First Principles for Effective Regulation*, (Feb. 8, 2019) (“Private ordering is the baseline because, as the book explains, ‘when property rights are well defined and transferable, and individuals are able to strike trustworthy exchange agreements, markets will emerge and channel productive resources to ... [the] production of the goods and services individuals value most.’”) (quoting Thomas Lambert, HOW TO REGULATE: A GUIDE FOR POLICYMAKERS.)

<sup>37</sup> Disclosure of the type contemplated by the Proposal—that focused on the effect of a reporting entity on others, rather than the traditional securities law focus on items that are only material to the entity itself—is known as double materiality, is a recent focus of discussion:

*Interestingly, the EU Commission released earlier in 2019 the [Consultation Document](#) on the Update of the Non-Binding Guidelines on the EU Non-Financial Reporting Directive (NFRD). It was the first policy to merge these perspectives in one.*

*The Document introduces a new definition of materiality – called “double materiality”. The first perspective concerns the potential or actual impacts of climate-related risk and opportunities on the “performance, development and position” of the company (indicated as “financial materiality”, with an investor type of audience). The latter refers to the “external impacts of the company’s activities” (labeled as “environmental and social materiality”, whose audience consists of consumers, civil society, employees, and investors too).*

*Materiality, the Ultimate Reference Guide*, available at <https://www.datamaran.com/materiality-definition/>. See also Alexander, *supra* n. 18 at 30 (“We recommend that current SEC disclosure requirements in its investor protection regime be expanded to address not just matters material to a company’s financial performance, but also information relevant to systemic risk and the impact of the company on all of the interests of its shareholders and stakeholders.”)

was not limited in scope to environmental and social issues, it included reporting on both ordinary business and transcendent policy issues and therefore exclusion was allowed under Rule 14a-8(i)(7).

In contrast, the scope of the Proposal is narrowly and correctly drawn to only address the significant policy issues--the subject of widespread debate--associated with the subordination of the interests of stakeholders to shareholders. It does not extend beyond the relevant social policy issue.

The focus on economic impact of the company's business does not make it an excludable ordinary business matter when the reason for the issue involved to be a significant policy issue revolves around economic impact on investors and the economy. For example, *J.P. Morgan Chase & Co.* (March 19, 2010) denied an ordinary business exclusion for a proposal that requested a report to shareholders on the firm's policy concerning the use of initial and variance margin (collateral) on all over-the-counter derivatives trades and its procedures to ensure that the collateral is maintained in segregated accounts and is not rehypothecated. The proponents had noted in the supporting statement that "For many years, the proponents have been concerned about the long-term consequences of irresponsible risk in investment products and have expressed these concerns to the company . . . . We believe that the report requested in this proposal will offer information needed to adequately assess our company's sustainability and overall risk, in order to avoid future financial crises." In denying the request for no-action, the Staff specifically noted "We note that the proposal raises concerns regarding the relationship between JPMorgan Chase's policies regarding collateralization of derivatives transactions and systemic financial risk. In our view, the proposal focuses on a significant policy issue for JPMorgan Chase."

Contrast the case cited by the Company, *Ameren Corporation* (February 8, 2018), where the proposal requested disclosure of costs to investors associated with the continued storage of high-level waste at a nuclear power plant. The Staff allowed exclusion as relating to ordinary business. In that instance, however, there was no predominant focus on a significant policy issue. Rather, the focus of the proposal was exclusively on impacts to investors of a routine regulated activity at the operation, the storage of high-level waste. The proposal did not focus on environmental impacts of the waste, which is an identified significant policy issue, but only on the impacts on investors.

Here, the Proposal directly addresses the economic impact caused by the significant policy issue of stakeholder interests in Company activity.

## **2. The Proposal is not excludable pursuant to Rule 14a-8(i)(3)**

The Company's argument that the Proposal is vague is grasps at straws to try to find vagueness in a clearly written proposal. As the Company Letter correctly states: "The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because 'neither the [share]holders



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.”

The Proposal easily meets that test. “External public health costs” is a fairly simple idea, even if the underlying calculation is complex. Indeed, the Proposal cites the Schroder Report<sup>38</sup> a recent study from a leading asset manager that uses a methodology to assign social costs externalized by publicly traded companies around the world, including many costs associated with the food and beverage business.<sup>39</sup> That study determined that publicly listed companies imposed social and environmental costs on the economy with a value of \$2.2 trillion annually—more than 2.5% of global GDP and more than half of the profits those companies earned. It calculated costs for items that imposed social (i.e., external) costs, including obesity, water withdrawal and antimicrobial resistance, all costs that might result from the Company’s supply chain or products. Overall, the Schrodgers Report shows that food and beverage companies have negative social impact. Thus, the Company could use a methodology like the one used in the Schrodgers Report to show external costs, although it could of course exercise its discretion to use other methodologies.

Nor should it be difficult to explain the manner in which those costs affect diversified shareholders. Economic literature can reveal how social costs affect GDP—one recent study showed that “the impact of obesity and overweight on the U.S. economy has eclipsed \$1.7 trillion, an amount equivalent to 9.3 percent of the nation's gross domestic product.”<sup>40</sup> Such costs lower GDP, and there is a vast economic literature that explaining how lowered GDP affects overall market value stock market value.<sup>41</sup> Finally, it is no mystery how that overall market return affects a diversified investor, for whom the most important factor determining an return will not be how the companies in that portfolio perform relative to other companies (“alpha”), but rather how the market performs as a whole (“beta”). As one work describes this, “According to widely accepted research, alpha is about one-tenth as important as beta, [, which] drives some 91 percent of the average portfolio’s return.”<sup>42</sup>

Given the relative straightforward nature of the request, the attempts to describe it as vague are not credible. For instance, the Company Letter asserts that the Proposal fails to define “shareholders who rely on overall stock market return,” as if either the shareholders or board would have difficulty understanding such a self-defining concept. Indeed, the Proposal provides

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<sup>38</sup> *Supra*, n. 29.

<sup>39</sup> <https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf>.

<sup>40</sup> *Economic Impact of Excess Weight Now Exceeds \$1.7 Trillion*, SCIENCE NEWS (October 18, 2018) available at <https://www.sciencedaily.com/releases/2018/10/181030163458.htm>.

<sup>41</sup> See, e.g., *See Universal Ownership: Why Environmental Externalities Matter to Institutional Investors*, Appendix IV (demonstrating linear relationship between GDP and a diversified portfolio) available at [https://www.unepfi.org/fileadmin/documents/universal\\_ownership\\_full.pdf](https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf); cf. <https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator> (total market capitalization to GDP “is probably the best single measure of where valuations stand at any given moment”) (quoting Warren Buffet).

<sup>42</sup> Steven Davis, Jon Lukmonik and David Pitt-Watson, *WHAT THEY DO WITH YOUR MONEY*, p. 50 (2016).

examples in the form of the Company's three largest shareholders.

The No-Action Request poses a series of rhetorical questions purporting to show that the Proposal is unclear with respect to "the scope" of the requested study:

*However, the Proposal fails to define the term "shareholders who rely on overall market returns," and neither the Proposal nor the Supporting Statement provides sufficient context to explain the scope of the requested assessment. For example, does the Proposal require the Company to assume that all of its shareholders "rely on overall market returns" and assess the external public health costs with respect to the "vast majority" of them? Or, alternatively, is the Company required to first identify those shareholders who rely on overall market returns and then assess the impact of external public health costs on the majority of that subset of shareholders? In either case, such vague and unexplained distinctions among the Company's shareholders are complicated by the fact that the Company's shareholder base changes every day. Accordingly, without further explanation or context, it is unclear what shareholders are the focus of the requested report.*

The answer is obvious within the four corners and logic of the Proposal: "no, the Company does not have to assume all of its shareholders are rely on overall stock market return, just as it does not have to assume that every item it discloses is important to every Company shareholder." Nor does the Company have to identify which shareholders rely on overall market return, although, as the Proposal highlights, the top three shareholders of the Company are mutual or index funds, as are many others.

But what the Proposal clearly does request is that the Company provide a report on how costs that are external to the Company affect the performance of the diversified portfolios of the owners of the Company. Thus, there is nothing "vague" or "unexplained;" indeed, the Proposal cites Warren Buffet, widely regarded as one of the world's most successful investors,<sup>43</sup> as to why those diversified shareholders would care about GDP.

The next imaginary instance of vagueness asserted in the Company Letter is that it is susceptible of "multiple and conflicting interpretations:"

*Among other possible interpretations, the Proposal could be interpreted as requiring the Board to commission a broad macro-economic report analyzing all impacts, direct and indirect, social, financial, reputational, environmental and otherwise, that the Company's "food and beverage business" could conceivably create. Alternatively, the Proposal could be interpreted as narrowly focused on the Company's cost and pricing model for its food and*

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<sup>43</sup> *Forbes* online profile ("Known as the "Oracle of Omaha," Warren Buffett is one of the most successful investors of all time") available at <https://www.forbes.com/profile/warren-buffett/?sh=3d8a1a146398>.

*beverage products and their impacts on customers' overall budgets and the nature and amount of the products that they buy (leading them potentially toward healthier or less healthy options). A shareholder may be in favor of supporting a report addressing the nutritional content of the Company's food and beverage products and how they affect the daily calorie intakes of consumers.*

There is literally nothing in the Proposal that suggests either bizarre reading of the Proposal. The Proposal could not be read to require a report "analyzing all impacts, direct and indirect, social, financial, reputational, environmental and otherwise" because it is clearly confined to health costs. Nor could it be read to require the sort of narrow reading that only addresses the Company's cost and pricing model (unless the Company determined that those were the only aspects of the business that created material external costs, in which case such a confined report would be responsive and appropriate.)

There is no question that compilation of such a report will require discretion and business judgment on the part of the Company because they will have to make decisions as to appropriate methodologies to describe such costs, but that is an entirely appropriate role for the board and management. These are hard questions and being asked to report on them may be uncomfortable for the Company's management, but it there is nothing vague about it.

## CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2021 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at [rick@theshareholdercommons.com](mailto:rick@theshareholdercommons.com) or 302-593-0917.

Sincerely,

*Frederick Alexander*

Frederick Alexander

cc: Elizabeth Ising  
John Montgomery

## PROPOSAL

[PEP – PepsiCo Corporation: Rule 14a-8 Proposal, November 19, 2020]  
[This line and any line above it – *Not* for publication.]

ITEM 4\* – External Public Health Cost Disclosure

**RESOLVED, shareholders ask that the board commission and disclose a report on the external public health costs created by the food and beverage business of our company (the “Company”) and the manner in which such costs affect the vast majority of its shareholders who rely on overall market returns.**

Our company recently signed the Business Roundtable Statement of the Purpose of a Corporation (the “Statement”), which reads, “we share a fundamental commitment to all of our stakeholders. . . . We commit to deliver value to all of them, for the future success of our companies, our communities and our country.”

However, the Company is a conventional corporation, so that directors’ fiduciary duties emphasize the company and its shareholders, but not stakeholders (except to the extent they create value for shareholders over time). Accordingly, when the interests of shareholders and stakeholders such as workers or customers clash, the Company’s primary duty excludes all but shareholders. North Carolina has not adopted any laws to let corporations avoid this duty.<sup>44</sup>

The World Health Organization assesses the unpriced social burdens of obesity as equaling almost 3% of global GDP annually.<sup>45</sup> This cost, year after year, is devastating to economic growth. Yet the Company does not disclose any methodology to address the public health costs of its business. Thus, shareholders have no guidance as to costs the Company is externalizing and consequent economic harm. This information is essential to shareholders, the majority of whom are beneficial owners with broadly diversified interests. As of the 2020 proxy statement, the Company’s top three holders were Vanguard, BlackRock, and State Street, which are generally indexed or otherwise broadly diversified.

Such shareholders and beneficial owners are unalterably harmed when companies follow Delaware’s “shareholder primacy” model and impose costs on the economy that lower GDP, which reduces equity value.<sup>46</sup> While the Company may profit by ignoring costs it externalizes, diversified shareholders will ultimately pay these costs, and they have a right to ask what they are.

The company’s prior disclosures and prior shareholder proposals do not address this issue, because they do not address the *costs the public health costs that the business imposes on shareholders as diversified investors who must fund retirement, education, public goods, and other critical social needs*. This is a separate social issue of great importance. A study would help shareholders determine whether to seek a

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<sup>44</sup> <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=4777&context=nclr>

<sup>45</sup> <https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf>.

<sup>46</sup> See, e.g., <https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator> (total market capitalization to GDP “is probably the best single measure of where valuations stand at any given moment”) (quoting Warren Buffet).

change in corporate direction, domicile, structure, or form in order to better serve their interests and to match the commitment made in the Statement.

Please vote for: External Public Health Cost Disclosure – Proposal [4\*]



[This line and any below are *not* for publication]  
Number 4\* to be assigned by the Company

*The graphic above is intended to be published with the rule 14a-8 proposal.*

*The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.*

*The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.*

**Reference SEC Staff Legal Bulletin No. 141 (CF)**

**[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.*