



PEPSICO



Tropicana



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December 13, 2013

VIA EMAIL

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

Re: *PepsiCo, Inc.*
Shareholder Proposal of Estella Salvatierra
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that PepsiCo, Inc. (the “Company”) intends to omit from its proxy statement and form of proxy for its 2014 Annual Meeting of Shareholders (collectively, the “2014 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof received from Estella Salvatierra (the “Proponent”). A copy of the Proposal and the supporting statement is attached to this letter as Exhibit A.

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 2014 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff 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 that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

BASIS FOR EXCLUSION

We believe that the Proposal may properly be excluded from the 2014 Proxy Materials pursuant to Rule 14a-8(e)(2) because the Proposal was received at the Company’s principal executive offices after the deadline for submitting shareholder proposals to the Company.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(e)(2) Because It Was Received At The Company’s Principal Executive Offices After The Deadline For Submitting Shareholder Proposals.

The Company may exclude the Proposal under Rule 14a-8(e)(2) because the Company did not receive it at its principal executive offices before the deadline for submitting shareholder proposals to the Company. Under Rule 14a-8(e)(2), a shareholder proposal submitted with respect to a company’s regularly scheduled annual meeting must be received at the company’s “principal executive offices not less than 120 calendar days before the date of the company’s proxy statement released to shareholders in connection with the previous year’s annual meeting.” Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal that does not comply with the rule’s procedural requirements, including if a proponent “fail[s] to submit a proposal by the company’s properly determined deadline.”

The Company received the Proposal at its principal executive offices on November 25, 2013, three days after the November 22, 2013 deadline for submitting proposals as disclosed on page 63 of the Company’s proxy statement filed on March 22, 2013. *See Exhibit B.* Specifically, in accordance with Rule 14a-5(e), the Company’s proxy statement stated:

2014 Shareholder Proposals

PepsiCo welcomes comments or suggestions from its shareholders. If a shareholder wants to have a proposal formally considered at the 2014 Annual Meeting, and included in the Proxy Statement for that meeting, we must receive the proposal in writing on or before the close of business on November 22, 2013 and the proposal must otherwise comply with Rule 14a-8 under the Exchange Act. Proposals must be addressed to the Corporate Secretary of PepsiCo at 700 Anderson Hill Road, Purchase, New York 10577.

The November 22, 2013 deadline was calculated in accordance with Rule 14a-8(e)(2) and SLB 14,¹ as it is 120 days before the anniversary of the release date disclosed in the Company's 2013 proxy statement.²

The Company received the Proposal at its principal executive offices on November 25, 2013, three days after the November 22, 2013 deadline. A tracking log that states the delivery date of November 25, 2013 is attached hereto as Exhibit B.

The Staff has on numerous occasions strictly construed the Rule 14a-8 deadline, permitting companies to exclude from proxy materials those proposals received at companies' principal executive offices after the deadline. *See, e.g., Johnson & Johnson* (avail. Jan. 13, 2010) (concurring with the exclusion of a proposal received one day after the submission deadline); *Tootsie Roll Industries, Inc.* (avail. Jan. 14, 2008) (concurring with the exclusion of a proposal when it was received two days after the submission deadline, which fell on a Saturday); *Smithfield Foods, Inc.* (avail. June 4, 2007) (concurring with the exclusion of a proposal received one day after the submission deadline).

The Proposal is excludable even though, as indicated by the Express Mail label included in Exhibit B, it was mailed before the Company's deadline. The Staff has consistently permitted companies to exclude proposals received at companies' principal executive offices after the deadline, even when the proponent mailed the proposal prior to the deadline and specifically scheduled delivery on or before the deadline. *See, e.g., Equity LifeStyle Properties* (avail. Feb. 10, 2012) (concurring with the exclusion of a proposal when it was received after the submission deadline, even though it was mailed prior to the deadline); *City National Corp.* (avail. Jan. 17, 2008) (concurring with the exclusion of a proposal when it was received one day after the submission deadline, even though it was mailed one week earlier); *Datastream Systems, Inc.* (avail. Mar. 9, 2005) (concurring with the exclusion of a proposal that was sent next day delivery two days before the deadline, but was received after the deadline); *JPMorgan Chase & Co.* (avail. Feb. 8, 2005) (concurring with the exclusion of a proposal that was sent next day delivery on the day before the deadline, but was received after the deadline because of weather conditions).

¹ Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14") explains that, to calculate a shareholder proposal deadline, a company should: start with the release date disclosed in the previous year's proxy statement; increase the year by one; and count back 120 calendar days.

² Page 1 of the Company's 2013 proxy statement stated that "PepsiCo is making this Proxy Statement and the form of proxy first available on or about March 22, 2013." Available at http://www.sec.gov/Archives/edgar/data/77476/000119312513122175/d459507ddef14a.htm#toc459507_45.

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Accordingly, similar to the precedent cited above, the Proposal is excludable because it was received at the Company's principal executive offices after the deadline for submitting shareholder proposals, even though it was sent prior to and scheduled for delivery on the deadline.

The Company has not provided the Proponent with a deficiency notice described in Rule 14a-8(f)(1) because such a notice is not required if a proposal's defect cannot be cured. As stated in Rule 14a-8(f)(1), "[a] company need not provide . . . notice of a deficiency if the deficiency cannot be remedied, such as if [the proponent] fail[s] to submit a proposal by the company's properly determined deadline."

We therefore request that the Staff concur that the Proposal may properly be excluded from the 2014 Proxy Materials because it was not received at the Company's principal executive offices within the time frame required under Rule 14a-8(e)(2).

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 2014 Proxy Materials pursuant to Rule 14a-8(e)(2).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If we can be of any further assistance in this matter, please do not hesitate to call me at (914) 253-2507, or Elizabeth A. Ising of Gibson, Dunn & Crutcher LLP at (202) 955-8287.

Sincerely,



Amy Carriello
Senior Counsel, Corporate Governance

Attachments

cc: Estella Salvatierra

EXHIBIT A

Estella Salvatierra

*** FISMA & OMB Memorandum M-07-16 ***

November 21, 2013

Mr. Larry D. Thompson
Secretary
Pepsico, Incorporated
700 Anderson Hill Road
Purchase, New York 10577

Dear Mr. Thompson:

I am the owner of 239 shares of Pepsico, Incorporated. I have owned these shares continuously for over one year and will hold them through the time of our annual meeting. At that time, I intend to introduce the following resolution:

Resolved: That ex-gays be included in our Supplier Diversity Program.

Supporting Statement

As our Chairman and CEO, Indira Nooyi, said, "(Pepsico needs) a team that reflects the diversity of our consumers. And that starts with creating a workplace where everyone feels welcome, including our gay, lesbian, bisexual, and transgender employees, suppliers, trade customers and partners."

The Superior Court of the District of Columbia ruled that former homosexuals, or ex-gays, constitute a protected class. By specifically including ex-gays in our Supplier Diversity Program we follow in the spirit of Chairman Nooyi as outlined above. Please vote for this resolution.

Sincerely,



Estella Salvatierra

EXHIBIT B



Date: November 25, 2013

Cathleen Gold:

The following is in response to your November 25, 2013 request for delivery information on your Priority Mail Express® item number EI380595114US. The delivery record shows that this item was delivered on November 25, 2013 at 7:24 am in PURCHASE, NY 10577 to E RIVERA. The scanned image of the recipient information is provided below.

Signature of Recipient :

Signature	<i>Eddie Rivera</i>
Printed Name	Eddie Rivera

Address of Recipient :

Address	700 ANDERSON HILL RD
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Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

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Ship a Package

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USPS Tracking™



Customer Service >

Have questions? We're here to help.

Tracking Number: **EJ380595114US**

Scheduled Delivery Day: **November 22, 2013, 12:00 pm**
Money Back Guarantee
Signed for By: **E RIVERA // PURCHASE, NY 10577 // 7:24 am**

Product & Tracking Information

Postal Product	Features:	PO to Addressee
Priority Mail Express 1-Day™	\$100 Insurance Included	
DATE & TIME	STATUS OF ITEM	LOCATION
November 25, 2013, 7:24 am	Delivered	PURCHASE, NY 10577
November 23, 2013, 10:43 am	Available for Pickup	PURCHASE, NY 10577
November 23, 2013, 10:30 am	Available for Pickup	PURCHASE, NY 10577
November 23, 2013, 9:19 am	Available for Pickup	PURCHASE, NY 10577
November 23, 2013, 7:56 am	Sorting Complete	PURCHASE, NY 10577
November 23, 2013, 8:42 am	Arrival at Post Office	PURCHASE, NY 10577
November 22, 2013	Depart USPS Sort Facility	NEWBURGH, NY 12555
November 22, 2013, 4:26 pm	Processed through USPS Sort Facility	WHITE PLAINS, NY 10610
November 22, 2013, 1:30 pm	Processed through USPS Sort Facility	NEWBURGH, NY 12555
November 21, 2013	Depart USPS Sort Facility	DAYTON, OH 45401
November 21, 2013, 7:59 pm	Processed at USPS Origin Sort Facility	DAYTON, OH 45401
November 21, 2013, 5:00 pm	Dispatched to Sort Facility	DAYTON, OH 45432
November 21, 2013, 4:06 pm	Acceptance	DAYTON, OH 45432

Available Options

Proof of Delivery

Email Updates

Track Another Package

Please Rush To Addressee

LEASE PRESS FIRMLY



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1007

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EI 380595114 US



Mailing Label Label 11-B, March 2004

UNITED STATES POSTAL SERVICE

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DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time	<input type="checkbox"/> AM	Employee Signature
Mo. Day		<input type="checkbox"/> PM	
Delivery Attempt	Time	<input type="checkbox"/> AM	Employee Signature
Mo. Day		<input type="checkbox"/> PM	
Delivery Date	Time	<input type="checkbox"/> AM	Employee Signature
Mo. Day		<input type="checkbox"/> PM	

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PC ZIP Code	Day of Delivery	Postage	
45434	<input type="checkbox"/> 1st <input checked="" type="checkbox"/> 2nd <input type="checkbox"/> 3rd Day	\$ 14.95	
Date Accepted	Scheduled Date of Delivery	Return Receipt Fee	
11-21-13	11-22-13	\$	
Mo. Day Year	Scheduled Time of Delivery	COD Fee	Insurance Fee
11-21-13	<input checked="" type="checkbox"/> Noon <input type="checkbox"/> 1 PM	\$	\$
Time Accepted	Military	Total Postage & Fees	
11-21-13	<input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	\$ 14.95	
Flat Rate <input checked="" type="checkbox"/> or Weight	Int'l Alpha Country Code	Acceptance Emp. Initials	
1.8 lbs		G.C.	

FROM: (PLEASE PRINT) PHONE: ESTELLA SALVATERRA

*** FISMA & OMB Memorandum M-07-16 ***

TO: (PLEASE PRINT) PHONE: MR. LARRY THOMPSON
 SECRETARY
 PEPSICO
 700 ANDERSON HILL ROAD
 PURCHASE NY
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