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September 25, 2020

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

BY E-MAIL

Re: Hormel Foods Corporation – Notice of Intent to Exclude from Proxy Materials Shareholder Proposal of The Humane Society of the United States

Dear Ladies and Gentlemen:

This letter is submitted on behalf of Hormel Foods Corporation, a Delaware corporation ("Hormel"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of Hormel's intention to exclude from its proxy materials for its 2021 Annual Meeting of Stockholders scheduled for January 26, 2021 (the "2021 Proxy Materials") a shareholder proposal (the "Proposal") from The Humane Society of the United States (the "Humane Society"). Hormel requests confirmation that the staff of the Division of Corporation Finance (the "Staff") will not recommend an enforcement action to the Commission if Hormel excludes the Proposal from its 2021 Proxy Materials in reliance on Rule 14a-8.

Pursuant to Rule 14a-8(j) and *Staff Bulletin No. 14D* (November 7, 2008), we have submitted this letter and its attachments to the Commission via email at shareholderproposals@sec.gov. A copy of this submission is being sent simultaneously to the Humane Society as notification of Hormel's intention to exclude the Proposal from its 2021 Proxy Materials. We would also be happy to provide you with a copy of each of the no-action letters referenced herein on a supplemental basis per your request.

Hormel intends to file its 2021 Proxy Materials on or about December 16, 2020.

The Proposal

Hormel received the Proposal by mail on or about August 17, 2020. A full copy of the Proposal is attached hereto as Exhibit A. The Proposal's resolution reads as follows:

> **RESOLVED:** shareholders request that Hormel confirm that the company faces no material losses from compliance or noncompliance with Proposition 12. If the company cannot so confirm, then shareholders request a risk analysis of any decision to comply or not to comply with Proposition 12, including the risks inherent in the company's failure to disclose such risks in its 10-K and 10-Q reports. These disclosures should be made within three months of the 2021 annual meeting, at reasonable cost, and omit propriety information.

Background Information

Proposition 12 is a law passed in California's general election on November 6, 2018 requiring specific animal welfare standards for certain pork products produced or sold in California. The law is scheduled to take effect on January 1, 2022. Certain lawsuits are currently pending challenging various aspects of the law.

Hormel is a global branded food company with over $9 billion in annual revenue in fiscal 2019 across more than 80 countries worldwide. Its brands include *SKIPPY®, SPAM®, Hormel® Natural Choice®, Applegate®, Justin's®, Wholly®, Hormel® Black Label®, Columbus®* and more than 30 other beloved brands.

Bases for Exclusion

Hormel believes that the Proposal may be properly excluded from the 2021 Proxy Materials pursuant to:

- Rule 14a-8(i)(10) because Hormel has already substantially implemented the Proposal and
- Rule 14a-8(i)(7) because the Proposal relates to Hormel's ordinary business operations.

Analysis

I. The Proposal May Be Excluded under Rule 14a-8(i)(10) Because Hormel Has Already Substantially Implemented the Proposal.

Rule 14a-8(i)(10) permits the exclusion of a shareholder proposal "[i]f the company has already substantially implemented the proposal." Hormel's confirmation that the company faces no material losses from compliance or noncompliance with Proposition 12 is evident from its public disclosures, and also through specific public affirmations.

A. Background

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if it has already substantially implemented the proposal. The Commission stated in 1976, in discussing the predecessor to Rule 14a-8(i)(10), that the exclusion is "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by management." Exchange Act Release No. 12598 (July 7, 1976). The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application of [the rule] defeated its purpose." Exchange Act Release No. 34-20091 (Aug. 16, 1983). The Commission codified this revised interpretation in Exchange Act Release No. 40018 at n. 30 (May 21, 1998). Therefore, Rule 14a-8(i)(10) does not require companies to implement every detail of a proposal in order for a proposal to be excluded so long as a company's prior actions address the essential objective and underlying concerns of the proposal. *See, e.g., AGL Resources, Inc.* (Mar. 5, 2015); *Exelon Corp*. (Feb. 26, 2010); *Anheuser-Busch Cos., Inc*. (Jan. 17, 2007); *ConAgra Foods, Inc*. (Jul. 3, 2006); *Talbots Inc*. (Apr. 5, 2002).

B. Analysis

Applying this standard, the Staff has previously recognized that a determination of whether a company has substantially implemented a proposal should depend upon "whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco Inc*. (*Recond.*) (Mar. 28, 1991). In the *Texaco Inc.* letter, the proponents asked the company to adopt a set of environmental guidelines, and the Staff found the company's current disclosures compared favorably with the proposal despite the fact that the company had not implemented the specific set of guidelines requested by the proponents. The Staff has repeatedly found that a company's actions may "compare favorably" with a proposal despite not addressing the entirety of the actions requested by the proposal. *See, e.g., Walgreen Co*. (Sept. 26, 2013); *Johnson & Johnson* (Feb. 17, 2006); *Masco Corp*. (Mar. 29, 1999). The Staff has also permitted exclusion under Rule 14a-8(i)(10) where a company has satisfied the essential objectives of the proposal even though the company's actions in implementing the proposal add certain procedural limitations or restrictions not contemplated by the proposal. *See General Dynamic Corp*. (Feb. 6, 2009); *Hewlett-Packard Co*. (Dec. 11, 2007). *See also Exelon Corporation* (Feb. 26, 2010) and *Exxon Mobil Corporation* (Mar. 23, 2009), in which the Staff found in each that the shareholder proposal requesting disclosure of political contributions was excludable under substantial implementation where the company's website contained information that addressed a substantial proportion of the topics addressed in the shareholder proposal.

Hormel's confirmation that the company faces no material losses from compliance or noncompliance with Proposition 12 is evident from its periodic reports filed with the Commission and its other public disclosures. As the Proposal itself states, Hormel has not specifically discussed Proposition 12 in its Form 10-Ks or 10-Qs. As the Proposal observes, if Hormel believed that Proposition 12 posed such material risks, Hormel would have been required to include disclosures to that effect. On the other hand, companies are not required to affirmatively list <u>all</u> factors that may impact its business to some extent, or its analysis of why

some factors are not material to its business. Rather, under the current rules, companies are required to disclose "the most significant" factors that make an investment in the company speculative or risky, and under amendments recently adopted by the Commission that are not yet effective, going forward companies will be required to disclose "material" risks. Companies are also required to describe any "known trends or uncertainties that have had or that the registrant reasonably expects will have a *material* favorable or unfavorable impact on net sales or revenues or income from continuing operations" (emphasis added). All public companies are required to have in place disclosure controls and procedures designed to ensure that information required to be disclosed by the issuer in all the reports that it files with the Commission is recorded, processed, summarized and reported, within the time periods specified. Hormel has such controls and procedures in place to identify and analyze various factors impacting its business to determine whether they constitute the "most significant" risks (or, going forward, "material" risks) to its business or constitute "known trends or uncertainties" requiring disclosure. Accordingly, it is evident from Hormel's Form 10-K and Form 10-Q disclosures—through the absence of discussion of Proposition 12 therein—that Hormel does not believe it faces material losses from compliance or noncompliance with Proposition 12, a fact which the Proposal itself appears to acknowledge.

Furthermore, when specifically questioned about the expected impacts of Proposition 12 on Hormel by an analyst on a publicly accessible virtual conference held via the internet on September 8, 2020, a representative of Hormel explained steps Hormel was taking toward compliance with Proposition 12. Furthermore, Hormel's Chief Financial Officer responded, " . . . we've been analyzing the impact to Hormel and we're quite confident that this will have an immaterial impact to Hormel." These statements were made during the Barclays Global Consumer Staples virtual investor conference at which representatives of Hormel participated. The full transcript of Hormel's portion of the presentation and fireside chat is attached as Exhibit B (see bottom of page 7 to top of page 8). Notice of the investor conference and the means by which interested members of the public, including Hormel's stockholders, could participate via the internet was distributed through a broadly disseminated press release issued by Hormel on August 26, 2020. As a result, this information is considered publicly available under the rules of the Commission, including Regulation FD.

The Proposal's supporting statement includes numerous references to statements a representative of Hormel made in a declaration filed with the United States District Court for the Central District of California (the "Declaration") in connection with certain litigation related to Proposition 12. The supporting statement implies that the quoted statements from the Declaration suggest that Hormel believes the impacts of Proposition 12 will be material to Hormel. There is no basis for such an implication. As mentioned above, the word "material" is often used in SEC rules and securities disclosure concepts and is a well-understood term. There is no basis for concluding that statements referring to incurring "significant costs" or processes becoming "significantly more complex and less efficient," particularly in the context in which they were made and where words like "significant" are not specifically defined, are tantamount to "material" impacts on Hormel.

Similarly, the Proposal requests confirmation that neither compliance nor noncompliance would have a material impact on Hormel, and the Proposal refers to statements in the Declaration that avoiding the costs of Proposition 12 would require Hormel to exit the California market.

Consistent with Hormel's disclosures cited above that it is implementing steps to comply with Proposition 12, noncompliance is not currently viewed by Hormel as a likely alternative; however, even if exiting the California market for whole pork meat were pursued, the potential loss of "tens of millions of dollars in annual sales" as asserted in the Declaration would not be material to an organization with Hormel's size and diversified businesses.

The Proposal's request is set forth in the alternative – Hormel either (i) confirm that the company faces no material losses from compliance or noncompliance with Proposition 12 or (ii) if the company cannot so confirm, then the Proposal requests a report. The Proposal does not request that the confirmation take any particular form or appear in a report – it only requests a report if Hormel has not made the requested confirmation.

Accordingly, as both evident from Hormel's SEC filings and specifically stated in a public forum, Hormel has confirmed that it faces no material losses from compliance or noncompliance with Proposition 12 and thus has fully implemented the Proposal.

II. The Proposal May Be Excluded under Rule 14a-8(i)(7) Because it Relates to Hormel's Ordinary Business Operations.

Rule 14a-8(i)(7) permits the exclusion of a shareholder proposal if it relates to the company's "ordinary business" operations. Hormel's analysis and disclosure of individual laws and regulations regarding animal welfare, including analysis of their expected impact on Hormel, concerns Hormel's ordinary business matters and does not focus on a significant policy issue.

A. Background

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. The Commission has provided guidance relating to this term and stated that "ordinary business" does not mean "ordinary" in the common meaning of the word, but rather the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the purpose of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and further identified two key considerations that underlie this policy. The first consideration is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id*. The Commission cited examples of such tasks, which included "management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." *Id*. The second consideration is "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgement." *Id*. (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id*. While "proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. *Id*. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C (June 28, 2005).

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has long held that a proposal requesting the preparation of a report may be excludable under Rule 14a-8(i)(7) where the subject matter of the report involves the ordinary business of the issuer. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983). Furthermore, the Proposal's request that the Company disclose specific risks does not preclude exclusion if the underlying subject matter of the proposal relates to ordinary business. As the Staff indicated in Staff Legal Bulletin No. 14E (Oct. 27, 2009), in evaluating shareholder proposals that request a risk assessment:

> "[R]ather 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. . . . [S]imilar to the way in which 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."

Here, the Proposal seeks confirmation of whether Hormel faces material losses from compliance or noncompliance with Proposition 12, which is a risk assessment related to the economic and other business impacts of a new law. As indicated above, Hormel has already implemented the Proposal, and it has done so because the Proposal's request pertains to Hormel's ordinary business matters.

B. Analysis

The Proposal is excludable under Rule 14a-8(i)(7) as relating to Hormel's ordinary business operations because it addresses the Company's assessment and management of potential economic consequences, including operational cost and sales impacts related to its pork products. The supporting statement references statements by a Hormel representative in the Declaration stating that implementation of Proposition 12 will cause Hormel to "incur significant costs" and that a decision by Hormel to exit the California pork market could cause Hormel to "lose tens of millions of dollars in annual sales." It also refers to other statements regarding the impact to customer goodwill, which could also impact Hormel's sales. The reason the Hormel representative was able to make those statements is because—as part of its ordinary business operations—Hormel assesses and manages the potential impact on its business of new laws and

regulations affecting its operations. Reviewing and addressing these matters is a complex process and is "so fundamental to management's ability to run [the] company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." *See* 1998 Release. For example, this analysis requires considerations of the exact nature and scope of operational changes, impacts to Hormel's supply chain, the ability to pass through incremental costs in the cost of products and the downstream impact of any loss of goodwill with customers if certain products are not available.

The Proposal is similar to the proposal that the Staff concurred could be excluded in *McDonald's Corporation* (March 12, 2019). There, the Staff considered a proposal which it described as requesting McDonald's to disclose the economic risks it faces as a result of campaigns targeting the company over concerns about cruelty to chickens. The Staff concluded the proposal was excludable under Rule 14a-8(i)(7) as focusing primarily on matters relating to the company's ordinary business operations. The proposal's supporting statement in *McDonald's*, similar to the Proposal's supporting statement, emphasized cost and other financial impacts to the company. *See also Exxon Mobil Corp.* (March 6, 2012) (concurring that a proposal seeking 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" (emphasis added) was excludable under Rule 14a-8(i)(7) "as relating to [the company's] ordinary business operations" as "the proposal address[ed] the 'economic challenges' associated with the oil sands and [did] not, in [its] view, focus on a significant policy issue"); *The TJX Companies, Inc.* (March 29, 2011) (concurring with the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and a report to shareholders on the assessment as "relating to TJX's ordinary business operations" because "the proposal relates to decisions concerning the company's tax expenses and sources of financing").

Here, the Proposal refers to Proposition 12, a law enacted in California to establish minimum requirements for confining certain farm animals, but does not focus on any substantive issues related to animal welfare. Rather, the Proposal and its supporting statement focus on assessment and management of economic consequences—namely, an assessment of any "material losses"—arising from compliance or noncompliance with the new law. In this regard, the Proposal is similar to the above-referenced no-action letters where the proposals focused on the economic risks the company faced as a result of other external factors. *See also PetSmart, Inc.* (March 24, 2011) (concurring that a proposal requesting that the board require its suppliers to certify they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents" was excludable under Rule 14a-8(i)(7) noting, "[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping'"). Like the above-referenced proposals, the Staff should also conclude the Proposal is excludable under Rule 14a-8(i)(7).

Accordingly, because the Proposal concerns ordinary business matters and does not focus on a significant policy issue, the Proposal may be excluded pursuant to Rule 14a-8(i)(7).

Conclusion

Based upon the forgoing analysis, Hormel respectfully requests that the Staff confirm that it will not recommend any enforcement action to the Commission if Hormel excludes the Proposal from its 2021 Proxy Materials pursuant to Rule 14a-8. We would be happy to provide you with any additional information and answer any questions that you may have regarding this matter. Should you disagree with the conclusions set forth in this letter, we would appreciate the opportunity to confer with you prior to the determination of the Staff's final position.

Please do not hesitate to contact me at Amy.Seidel@FaegreDrinker.com or (612) 766-7769 if we can be of any further assistance in this matter.

Thank you for your consideration.

Regards,

FAEGRE DRINKER BIDDLE & REATH LLP

Amy C. Seidel, Partner

Enclosures

cc: Brian D. Johnson
Vice President and Corporate Secretary
Hormel Foods Corporation
1 Hormel Place
Austin, MN 55912
bdjohnson@hormel.com

Matthew Prescott
Senior Director of Food and Agriculture
The Humane Society of the United States
2100 L Street, NW
Washington, D.C. 20037
mprescott@humanesociety.org

EXHIBIT A

August 14, 2020

Hormel Foods Corporation
ATTN: Corporate Secretary
1 Hormel Place
Austin, MN 55912

Via USPS and email: ljmarco@hormel com

RE: Shareholder proposal for inclusion in the 2021 proxy materials

Dear Ms. Marco,

Enclosed with this letter is a shareholder proposal submitted for inclusion in the proxy statement for the 2021 annual meeting and a letter from The Humane Society of the United States' (HSUS) brokerage firm, BNY Mellon, confirming ownership of Hormel Foods common stock. The HSUS has continuously held at least $2,000 in market value of Hormel stock for the one-year period preceding and including the date of this letter and will hold at least this amount through and including the date of the 2021 shareholder meeting.

Please e-mail me to confirm receipt of this proposal.

And if Hormel will attempt to exclude any portion of this proposal under Rule 14a-8, please advise me within 14 days. Thank you for your assistance.

Sincerely,

Matt Prescott

Matthew Prescott
Senior Director of Food and Agriculture
The Humane Society of the United States
240-620-4432
mprescott@humanesociety org

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August 14, 2020

Lori Marco
SVP of External Affairs & General Counsel
Hormel Foods Corporation
1 Hormel Place
Austin, MN 55912

Dear Ms. Marco,

BNY Mellon National Association, custodian for The Humane Society of the United States, verifies that The HSUS has continuously held at least $2,000.00 in market value of Hormel Foods common stock for the one-year period preceding and including the date of this letter. Thank you.

Sincerely,

Stacy Stout

Stacy Stout
Vice President, Client Service Manager
BNY Mellon Wealth Management
Family Office Group
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Risk Disclosure Proposal

In 2018, California passed a law ("Proposition 12") requiring specific animal welfare standards for some pork produced or sold statewide.

In 2019, Hormel's Director of Pork Operations and Procurement filed a declaration with the United States District Court for the Central District of California ("the declaration") testifying under penalty of perjury that Proposition 12's implementation will cause Hormel to "incur significant costs" and result in the company having to create "an entire new product line and distribution system." As the declaration asserts, some of "[t]hese changes will make processing and distribution significantly more complex and less efficient."

Hormel can avoid the costs of Proposition 12 compliance "only by being forced out of the California market for whole pork meat," the declaration concludes. The declaration further states: "If Hormel were driven from the California market, it would lose tens of millions of dollars in annual sales. The forced exit from this major market would impose harms beyond sales directly lost. Hormel depends on brand recognition and consumer goodwill to win and retain customers. The disappearance of Hormel products from California would have a substantial effect on Hormel's relationships with its customers and its good will in the California market. . . . Hormel will be required to expend substantial time and effort to become compliant with Proposition 12 . . . or we will suffer the harm of being locked out of the California market and losing customer goodwill when its products are no longer available in California."

However, none of Hormel's 10-K or 10-Q reports mention Proposition 12, let alone disclose it as a risk to the company or its shareholders. These omissions necessarily mean that, in fact, the company does not—despite the aforementioned declaration—face any material losses attributable to compliance or noncompliance with Proposition 12. After all, if the company did face the extraordinary risks and losses described in the declaration, shareholders would have been entitled, under federal securities law, to a full risk disclosure from management.

RESOLVED: shareholders request that Hormel confirm that the company faces no material losses from compliance or noncompliance with Proposition 12. If the company cannot so confirm, then shareholders request a risk analysis of any decision to comply or not to comply with Proposition 12, including the risks inherent in the company's failure to disclose such risks in its 10-K and 10-Q reports. These disclosures should be made within three months of the 2021 annual meeting, at reasonable cost, and omit proprietary information.

EXHIBIT B