August 31, 2021

Via Electronic Mail: shareholderproposals@sec.gov

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

Re: Campbell Soup Company – Shareholder Proposal submitted by the Humane Society of the United States

Ladies and Gentlemen:

I am writing on behalf of the Humane Society of the United States (the "Proponent"), who has submitted a shareholder proposal (the "Proposal") to the Campbell Soup Company (the "Company"). The Proposal, attached to Proponent's previous submission as Exhibit 1, seeks a vote that would require a virtual participation component be added to shareholder meetings, which would further significant policy issues that include health and safety, inclusiveness and equity, and environmental sustainability.

On July 14, 2021, the Company submitted a no-action request, to which Proponent replied on August 2, 2021 ("Reply"). On August 19, 2021, the Company submitted a supplemental correspondence, to which Proponent here replies. A copy of this reply is being emailed concurrently to counsel for the Company.

Despite having the burden of proof under Rule 14a-8(g), the Company's two-page supplement largely ignores, rather than refutes, the Reply's extensive, company-specific fact evidence and detailed analysis of the no-action decisions on which the Company imprudently relied in its initial letter. For example, Proponent noted in its reply that the Proposal's supporting statement expressly "discusses health, social, and environmental issues that would be furthered by adopting a policy to add a virtual component to shareholder meetings." *See* Reply, p. 2. Proponent offered evidence of the broad public interest in virtual meeting participation and how it advances these important policy issues. *See* Reply, pp. 3-5. Proponent cited to specific Company statements about the importance of, and its commitment to advance, such issues. *See* Reply, pp. 5-6. Moreover, Proponent pointed to staff guidance addressing Rule 14a-8(i)(7) challenges to proposals raising significant

policy issues, calling for a board analysis and well-reasoned, substantive discussion that explains why such issues are not sufficiently significant to the Company seeking to exclude the Proposal. *See* Reply, pp. 2, 4-5, 6.

Instead of addressing or refuting (or even acknowledging) the significant policy issues expressly raised by the Proposal—and the Company's own emphatic statements about their importance to it—the supplemental letter narrowly claims the Proposal involves just "hybrid meetings" and does not implicate any issues that are of sufficient significance to the Company. *See* Supplement, p. 1. It summarily concludes "that the Proposal does not raise any transcendent policy issues requiring a board analysis." *Id.* But the Company misunderstands the staff legal bulletins it cites for its position. The bulletins don't call for a board analysis *after* there's been a determination of whether a policy issue is sufficiently significant to a company; rather, the board analysis is what's needed to make such a determination in the first place:

> We continue to believe that a well-developed discussion of the board's analysis of *whether* the particular policy issue raised by the proposal … is sufficiently significant in relation to the company, in the case of Rule 14a-8(i)(7), can assist the staff in evaluating a company's no-action request …
>
> In our view, a well-developed discussion will describe in sufficient detail the specific substantive factors the board considered *in arriving at its conclusion that an issue … is not sufficiently significant in relation to the company*, in the case of Rule 14a-8(i)(7).
>
> Staff Legal Bulletin No. 14J (emphasis added).

The Company next argues that a line on page 11 of Proponent's Reply "mischaracterizes the Company's existing ability to hold a virtual or hybrid shareholder meeting." Supplement, p. 2. At the outset, Proponent notes that the Resolved clause was prominently placed in a block quote on the first page of its Reply and the full text of the proposal was attached as an exhibit. Nonetheless, the Company takes issue with a sentence that says the Proposal "simply asks whether management should add a virtual meeting component."[1] *Id.* The Company then states it "already has the *ability*" to decide to hold a shareholder meeting with a virtual component. *Id.* (emphasis added).

[1] The sentence appears in a paragraph disputing the Company's claim that the Proposal implicates managerial complexities; the complete sentence reads as follows: "[The Proposal] simply asks whether management should add a virtual meeting component that would serve public health, accessibility, inclusiveness, and environmental benefits." Reply, p. 11.

But neither Proponent's Reply, nor the Proposal itself, raises any question of the Company's ability, but rather whether a policy should be adopted that the Company exercise that ability. The Proposal is not about whether the Company *could* decide to add a virtual component to its shareholder meetings, but whether the company *should* add that virtual component to its meetings. *See generally* Reply and Ex. 1. To the extent the Company implies that "could" and "should" are the same, the mischaracterization is its own. The Proposal calls for a shareholder vote to adopt a policy adding a virtual participation component when conducting Company meetings.[2]

Finally, the Company includes a paragraph string-citing the staff decisions it included in its initial no-action letter. *See* Supplement, p. 2. But what is glaringly missing from that paragraph is even a single sentence refuting Proponent's detailed, decision-specific analysis of why those matters are inapplicable to the instant Proposal. *See* Reply, pp. 7-12. As such, nothing in this paragraph of the Company's supplement actually supplements its original letter; rather it is merely a repeat of its initial filing, ignoring entirely the Reply's thorough examination of each cited decision and explanations distinguishing them.

CONCLUSION

Silence is a recurring theme of the Company's no-action correspondence. Nowhere in its initial or supplemental letters does the Company even mention, let alone dispute, the significant issues expressly implicated by the Proposal's virtual meeting policy, including shareholder health and safety, inclusion and accessibility, and environmental sustainability. Nowhere does the Company address its own public statements regarding the importance of such issues, which are documented in Proponent's Reply. Nowhere does it make any claim or offer any Board analysis determining such issues are not of sufficient significance to the Company. And to Proponent's detailed explanations of the Company's flawed interpretations of staff guidance and previous decisions, there is again only silence.

The Company has failed to carry its burden under Rule 14a-8(g) of establishing that the Proposal is excludable on the basis of Rule 14a-8(i)(7). Accordingly, we request that the Company's petition for no-action be declined.

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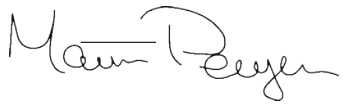
[2] Proponent acknowledges it mistakenly referred to the Company's home state as Texas, rather than New Jersey. *See* Reply, pp. 3-4. Instead of citing the Texas law on virtual meetings, the citation should be to the relevant New Jersey law, N.J.S.A. 14A:5-1.

Respectfully,



Matthew Penzer
Special Counsel
The Humane Society of the United States
1255 23rd Street, NW, Suite 450
Washington, D.C. 20037
mpenzer@humanesociety.org
240.271.6144

cc:
Charles A. Brawley, III

Charles A. Brawley, III
Vice President, Corporate Secretary & Deputy General Counsel

Campbell Soup Company
1 Campbell Place
Camden, NJ 08103
856-342-3649
Fax: 856-342-3889

August 19, 2021

VIA E-MAIL (shareholderproposals@sec.gov)
U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

Re: Campbell Soup Company – 2021 Annual Meeting of Shareholders | Proposal of The Humane Society of the United States Pursuant to Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

We are writing on behalf of Campbell Soup Company (the "Company"), which seeks to omit from its definitive proxy statement on Schedule 14A, form of proxy and related materials for the Company's 2021 Annual Meeting of Shareholders (collectively, the "2021 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from The Humane Society of the United States (the "Proponent") pursuant to Rule 14a-8 under the Exchange Act.

We are responding to the letter submitted by the Proponent, dated August 2, 2021 (the "Proponent's Response"), and this letter supplements the No-Action Request. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934 (the "Exchange Act"), a copy of this letter is also being sent to the Proponent.

As Staff Legal Bulletin No. 14K (October 16, 2019) explains, "[t]he staff takes a company-specific approach in evaluating significance," and "the focus of an argument for exclusion under Rule 14a-8(i)(7) should be on whether the proposal deals with a matter relating to that company's ordinary business operations." Here, the proposal suggesting hybrid meetings is not specifically significant to the Company and does not implicate factors that "are not self-evident" (Staff Legal Bulletin No. 14J) as differentiated from *TJX Companies, Inc.* (Apr. 9, 2020) precedent cited by the Proponent, which related to the humane treatment of animals addressed to a company that sells clothing potentially made from animals. In this instance, we believe that the Proposal does not raise any transcendent policy issues requiring a board analysis.

Moreover, the Proponent's Response mischaracterizes the Company's existing ability to hold a virtual or hybrid shareholder meeting. Specifically, the Proponent's Response states that the Proposal "simply asks whether management should add a virtual meeting component" (Proponent's Response, page 11). In fact, the Company already has the ability to conduct such a meeting. Pursuant to Article I, Section I of the Company's By-Laws, and under New Jersey law[1], the Board of Directors may determine to hold a meeting "in part or solely by means of remote communication."[2]

As previously discussed, and consistent with New Jersey law, the Company believes that the means and methods selected for conducting meetings and communicating with the Company's shareholders should lie with the Board and management, and are inherently fundamental to management's ability to run the Company on a day-to-day basis. This view is consistent with the Staff's positions in each of *Target Corporation*, *Smith & Wesson Brands, Inc.*, *Comcast Corp.*, *Frontier Communications Corp.*, *Alaska Air Group, Inc.*, *HP, Inc.*, and *EMC Corp.*, in which the Staff concurred that the determination of whether to convene annual meetings in person or virtually relates to the Company's ordinary business operations, and therefore the corresponding proposals should be excluded pursuant to Rule 14a-8(i)(7).

Based on the foregoing and the reasons stated in the No-Action Request, we respectfully request that the Staff will not recommend enforcement action to the Commission if Campbell Soup Company omits the Proposal from our 2021 Proxy Materials.

Should any additional information be desired, please contact me at charlie_brawley@campbells.com or (856) 342-3649.

Thank you for your consideration.

Regards,

Charles A. Brawley, III
Vice President, Corporate Secretary &
Deputy General Counsel

cc: Adam G. Ciongoli

[1] The Company is headquartered in New Jersey, and not, as incorrectly referenced in the Proponent's Response, in Texas.

[2] By-Laws of Campbell Soup Company, amended and restated effective June 24, 2020, filed with the SEC on June 25, 2020.

August 2, 2021

Via Electronic Mail: shareholderproposals@sec.gov

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

Re: Campbell Soup Company – Shareholder Proposal submitted by the Humane Society of the United States

Ladies and Gentlemen:

I am writing on behalf of the Humane Society of the United States (the "Proponent"), who is the beneficial owner of common stock of Campbell Soup Company (the "Company") and who has submitted a shareholder proposal (the "Proposal") to the Company. I am in receipt of a letter dated July 14, 2021 ("Company Letter") sent to the Securities and Exchange Commission on behalf of the Company. In that letter, the Company contends that the Proposal may be excluded from the Company's 2021 proxy statement. A copy of this reply is being emailed concurrently to counsel for the Company.

SUMMARY

The Proponent submitted the Proposal to the Company requesting the following:

> "**RESOLVED**: Shareholders ask that Campbell Soup Co. develop and adopt a policy, and amend its governing documents as necessary, to ensure that moving forward, its annual and special shareholder meetings will be held either in whole or in part through virtual means (i.e., webcast or other on-line system) and that virtual attendance be allowed. This policy should be formally adopted within six months of the 2021 annual meeting and take effect immediately thereafter."

The full Proposal is attached as Exhibit 1.

The Proposal's supporting statement discusses health, social, and environmental issues that would be furthered by adopting a policy to add a virtual component to

shareholder meetings. *See* Exh. 1. These include eliminating "health risks" for vulnerable shareholders (the importance of which has been especially apparent during the pandemic), furthering inclusiveness and equity by incorporating a policy that permits all shareholders "to participate in annual meetings, regardless of financial, physical, or other barriers." *Id.* Also, "removing the necessity of all shareholders to travel would provide an environmental benefit to the company's ESG practices." *Id.*

To these important issues, the Company's letter is entirely silent. The Company seeks to exclude the Proposal on the basis of Rule 14a-8(i)(7), claiming only that the Proposal concerns matters of ordinary business. The Company is incorrect. But even if it were correct, the Company cannot meet its burden under 14a-8(g) by ignoring well-established staff guidance that calls for board analyses, well-reasoned discussion, and substantive bases to that prove the important issues expressly raised *are not* of significance to the Company. *See The TJX Companies, Inc.* (Apr. 9, 2020)(noting that the company had not "provided a board analysis or other analysis addressing the significance of the Proposal to the Company's business operations" and "accordingly" not concurring in exclusion); *see also* Staff Legal Bulletin No. 14K (Oct. 16, 2019).

The Proposal seeks a shareholder vote on a high-level policy that implicates issues of shareholder health and safety, inclusion and accessibility, and on environmental sustainability, such as energy and emissions reduction. These have long been significant social issues and have taken on extraordinary significance in light of the global pandemic, civil rights demonstrations, and a renewed government focus on combatting climate change. Indeed, the Company itself has touted its commitment to each of these issues. In light of this, and innovations in remote work and communications tools, the Proposal simply asks shareholders in broad terms whether the Company should incorporate a policy of adding a virtual attendance component to its annual and special meetings.

The Proposal does not involve ordinary business matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they would not, as a practical matter, be subject to direct shareholder oversight." Release No. 34-40018 (May 21, 1998). Moreover, unlike other proposals cited in the Company's letter, the Proposal here contains no prescriptions as to format, conduct, or content of meetings (e.g., shareholder questions, voting, etc.). In fact, it even leaves to management discretion the type of virtual component to adopt, a virtual-only meeting or a "hybrid," in which a virtual participation component accompanies an in-person meeting.

Because the Proposal seeks a shareholder vote on a significant policy issue, while still preserving maximum discretion to management in its implementation, the Proposal may not be excluded from the Company's 2021 proxy materials.

ANALYSIS

The Proposal May Not be Excluded under Rule 14a-8(i)(7).

The Proposal cannot be excluded under Rule 14a-8(i)(7) because it does not relate to "ordinary business practices" and, in any event, it raises a significant policy issue that transcends the Company's ordinary business. *See* Release No. 34-40018 (May 21, 1998).

A. The Proposal raises a significant policy issue that transcends the Company's ordinary business.

Despite the Company's conspicuous omission of the issue, Proponent begins its analysis here because of the dispositive effect of a significant policy issue that transcends the Company's ordinary business.[1] The Proposal's subject matter involves adopting a shareholder virtual attendance and participation policy at the Company's annual and special meetings. As explained in Proponent's supporting statement the decision whether to adopt such a policy raises significant issues involving shareholder health and safety, inclusion and equity, and environmental sustainability. The Company's failure to even acknowledge these expressly referenced issues anywhere in its letter—or mention the supporting statement at all—is astonishing, given the Division's repeated guidance that the subject matter analysis considers proposals and supporting statements together as an integrated whole. *See* Staff Legal Bulletin No. 14C (June 28, 2005)(explaining that consideration of the focus of a proposal to determine whether it raises a significant policy issue includes "both the proposal and the supporting statement as a whole"); *see also* Staff Legal Bulletin No. 14E (October 27, 2009)(explaining that "[t]o the extent a proposal *and supporting statement* have focused on a company minimizing or eliminating operations that may adversely affect the environment or the public's health, we have not permitted companies to exclude these proposals under Rule 14a-8(i)(7)")(emphasis added). Its silence here notwithstanding, the Company has publicly expressed support and a strong interest in furthering these important policies, which is understandable given their widespread public debate.

2020 was a game-changer for virtual shareholder meetings. The public discourse about virtual meetings had been increasing in the years prior to 2020, but the global pandemic and superior technological advancements have propelled public debate to unprecedented levels. The majority of states have laws permitting some form of virtual meetings, including the Company's home state of Texas. *See* Texas

[1] The Company makes no "micromanagement" argument, which would be a consideration under Rule 14a-8(i)(7) separate from the subject matter of the Proposal. *Id.* Staff Legal Bulletin No. 14J (October 23, 2018). This is understandable in light of the Proposal's narrow focus on a high-level policy issue, without intricate detail or prescriptive rules for implementation of the policy.

Business Organizations Code, Sec. 6.002; *see also* Broadridge Infographic, States that Allow and Prohibit Virtual Shareholder Meetings, current as of April 14, 2021, www.broadridge.com/_assets/pdf/br-vsm-state-policy-infographic_04-14-21.pdf. Broadridge Financial Solutions, which provides a hosting platform for virtual meetings, notes that the number of virtual meetings it hosts have been increasing each of the last five years, with the pandemic leading to a 6-fold increase in 2020 over the previous year. Virtual Shareholder Meetings: 2020 Facts and Figures, www.broadridge.com/_assets/pdf/vsm-facts-and-figures-2020-brochure-april-2021.pdf. A multi-stakeholder working group reported that, prior to the health focus of 2020, companies that held meetings virtually "cited the 'environmentally friendly' aspects of online events, greater convenience for an expanded pool of shareholders to participate in corporate governance." Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings (Rutgers Center for Corporate Law and Governance, Council of Institutional Investors, Society for Corporate Governance), December 10, 2020, p. 8. The report recognized the potential for virtual shareholder meetings to be an "important part" of company engagement and to "provide more substantive content on a broader set of subjects of importance to its shareholders, including environmental, social and governance ("ESG"), sustainability, and corporate citizenship." *Id.*, p. 19.

Proxy advisory firms Glass Lewis and ISS issued recent policy statements supporting the use of virtual meeting technology. Glass Lewis "believes that virtual meeting technology can be a useful complement to a traditional, in-person shareholder meeting by expanding participation of shareholders who are unable to attend a shareholder meeting in person (i.e. a "hybrid meeting")." Guidelines, An Overview of the Glass Lewis Approach to Proxy Advice, United States, 2020. Similarly, ISS will "[g]enerally vote for management proposals allowing for the convening of shareholder meetings by electronic means, so long as they do not preclude in-person meetings." ISS, Proxy Voting Guidelines, Benchmark Policy Recommendations, November 19, 2020. With respect to virtual-only meetings, the firms would seek disclosures that assure that shareholders will be afforded similar rights and opportunities as they would at in-person meetings (so that virtual technology isn't used to restrict shareholder participation instead of making it more accessible). *Id.*; *see generally*, A Virtual Meeting Playbook, Covington & Burling LLP, Oct. 22, 2020, www.cov.com/-/media/files/corporate/publications/2020/10/a-virtual-metting-playbook.pdf.

Despite having the burden of proof under Rule 14a-8(g), the Company's seven-page letter nowhere disputes that adopting a policy that incorporates a virtual meeting component furthers important social issues. Nor does the Company dispute that the Proposal does, in fact, involve issues of public health, of shareholder inclusiveness and equity, or that it furthers the Company's energy and emissions reduction goals. The implausibility that would attend such a counter-factual position perhaps explains the Company's failure to provide a board analysis and

substantive, well-reasoned discussion in its letter, despite the last three legal bulletins explaining the staff's expectation that they be included and detailing the substantive content they should contain. *See* Staff Legal Bulletin No. 14I (November 1, 2017)(stating that the staff expects "a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance" and that explains "the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned"); Staff Legal Bulletin No. 14J (October 23, 2018)(reaffirming the expectation of a substantive analysis and offering a non-exclusive list of factors the analysis may include); Staff Legal Bulletin No. 14K (October 16, 2019)(explaining that when proposal raises an apparently significant policy issue, the company's letter "should focus on the significance of the issue to that company" and if that is not done, "the staff believes the matter may not be excluded under Rule 14a-8(i)(7)"); *see also General Motors Company* (Apr. 18, 2018)(unable to concur in exclusion of a proposal relating to greenhouse gas issues where the no-action request did "not include a discussion of the board's analysis"); *The TJX Companies, Inc*. (Apr. 9, 2020)(same).

Moreover, the Company's own public statements on the types of policy issues raised in the proposal demonstrate its views on their significance. For example, in his introductory letter to stakeholders in the Company's 2021 Corporate Responsibility Report, Mark Clouse, President and CEO of Campbell Soup Company, discussed at length the Company's commitments to health, to "creating an inclusive and diverse company," and to the belief that the Company "can help drive social change," touting its efforts to "fight racism and discrimination." *Id.* Given these stated Company values, a significant policy issue is surely raised by a Proposal that simply asks whether the Company's professed commitment to inclusion, equality, and equity should extend to shareholders by incorporating virtual meeting participation that would make more accessible the diverse perspectives of its investors.

The Company also publicly touts its commitment to environmentally responsible practices. *See* Responsibility Report, p. 13. The significance of the Company's environmental claims—as well as any potential disparity in their scope—is of an even greater focus in a year which has seen multiple Executive Orders relating to the climate "crisis." *See, e.g.*, Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 FR 7037, Jan. 20, 2021. On March 4, the SEC announced the creation of a Climate and ESG Enforcement Task Force, expressly recognizing the "increasing investor focus and reliance on climate and ESG-related disclosure and investment." SEC Release, 2021-42. Indeed, the Division has not permitted exclusion of proposals that "have focused on a company minimizing or eliminating operations that may adversely affect the environment or the public's health." Staff Legal Bulletin No. 14E (October 27, 2009). The instant Proposal follows this line of precedent in asking shareholders to vote on whether the Company should adopt a policy pursuant to its

environmental commitments that incorporates virtual meeting participation, which could minimize or eliminate energy and emissions associated with the transportation and physical hosting requirements of in-person meetings.

The Company further states that engagement with stakeholders is "critical to effectively executing our corporate responsibility strategy" and identifies issues of engagement for each type of stakeholder. *See* Corporate Responsibility Report, p. 20. For investors, the Company indicates that issues of engagement include "Health & Well-Being Strategies," "Governance Practices," "Ethical Business Practices," and "Sustainability Strategies." *Id.*, p. 21. Among the vehicles the Company purports to utilize for this critical engagement, the Company lists "Annual Shareholder Meetings." *Id.* Yet when presented with a shareholder proposal that expressly raises such issues, the Company ignores them and seeks to keep the Proposal from reaching shareholders at all.

Nonetheless, the Company claims its commitment to corporate responsibility and sustainability will only get stronger going forward:

> As we look ahead and build upon our years of progress in advancing corporate responsibility and sustainability initiatives, we are taking a more holistic approach to environmental, social and governance opportunities. Our new approach will help us further bring our purpose to life for our consumers, customers, investors, the environment and the communities we call home.
>
> Responsibility Report, p. 5.

The Company's failure to discuss, or even acknowledge, corporate responsibility and sustainability issues even when expressly presented in the Proposal does not bode well for its claimed determination to be a force for social change. For purposes of the instant Proposal, Staff Legal Bulletin No. 14K makes clear the consequence of such wholesale omission:

> When a proposal raises a policy issue that appears to be significant, a company's no-action request should focus on the significance of the issue to that company. If the company does not meet that burden, the staff believes the matter may not be excluded under Rule 14a-8(i)(7).

B. The Proposal does not involve the type of day-to-day business decisions that cannot practically be submitted to a shareholder vote.

The Commission has explained that "ordinary business matters" for purposes of rule 14a-8(i)(7) are those tasks that 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." Release No. 34-40018 (May 21, 1998). The purpose of the exception 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." *Id.*, *see also*, Staff Legal Bulletin 14K (Oct. 16, 2019).

The instant Proposal does not intrude on any such on-the-ground business practices, but instead focuses in broad terms on a policy issue that shareholders may practically consider and vote on at an annual meeting. (Indeed, as the previous section notes, the health and ESG issues relating to adoption of virtual meeting policies are already being widely publicly debated.) Nonetheless, the Company asserts three bases for exclusion, that the Proposal relates to the Company's determination of whether to hold annual meetings in person, the conduct of shareholder meetings, and the Company's communications with shareholders. Rather than provide any substantive, well-reasoned analysis of how the Proposal actually infringes on management's ability to conduct core business matters, the Company relies only on boilerplate generalities, mischaracterizations of the Proposal, and claims of categorical exclusions, none of which are sufficient to carry its burden under Rule 14a-8(g).

1. <u>The Proposal does not intrude on management's ability to make ordinary business decisions relating to shareholder meetings.</u>

For the first assertion, the Company attempts to portray the adoption of a virtual attendance policy as "complex" by offering a highly generalized list of management considerations that relate more to implementation of a policy than adoption of it, and that could equally apply to nearly any shareholder vote to adopt a new policy. Company Letter, p. 3. But implementation of shareholder-adopted policies routinely results in companies having to make implementation decisions, such as costs, security, staffing, and the like. Such implementation considerations, however, do not speak to the relevant issue of whether the Proposal involves decisions "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." Release No. 34-40018 (May 21, 1998)(emphasis added). The Proposal does not require shareholders to micromanage the Company's implementation discretion, but only to vote on the adoption of a general policy of virtual participation in meetings as part of the Company's commitment to health, diversity, and sustainability. Nowhere in the Company's letter does it explain why shareholders could not, as a practical matter, make an informed vote on that.

The Company then cites several no-action responses in which it claims the decision to incorporate a virtual meeting component was found to be ordinary business. Company Letter, p. 4. But that's not what the Division said in these decisions, which involved proposals that were materially different than the instant

Proposal (which perhaps explains why the Company gives each cite no more than a single generalized sentence or parenthetical, without any analysis of the substance of the proposals at issue). The Company first cites to *Target Corp.* (April 9, 2021), simply stating that exclusion was permitted and that the proposal, "among other things," included a provision to hold meetings in "zoom type format" when in-person meetings are not possible. Company Letter, p. 4. But while the instant Proposal calls only for a high-level vote on the policy of virtual meeting attendance, the "other things" called for in the *Target* proposal included prescriptive implementation requirements and meeting procedures. Specifically, the proposal would have imposed the following requirements, none of which are present in the instant Proposal:

- Virtual meetings should be conducted in a specific format "in which all participants can be heard and seen via their internet connected devices";
- Participation be permitted by "shareholders registered for meeting attendance, and Target associates";
- "All shareholders who wish to ask questions may speak their questions directly, and not have them read by another";
- "All participants who choose to be seen may be seen at all times during the meeting";
- "[A]ll persons who are called upon by meeting director when recognized are to be seen as well as heard."

The Company next cites to several Staff decisions granting no-action relief on proposals relating to whether to hold annual meetings in person. Company Letter, p. 4. But these decisions are fundamentally distinguishable from the one now under consideration. While the instant Proposal seeks to adopt a virtual participation policy that would further significant policy issues relating to health, inclusion, and sustainability, the decisions cited by the Company involved the opposite, i.e., proposals that sought to force companies to hold in-person meetings. *See, e.g. American Outdoor Brands Corp.*[2] (June 25, 2019); *Comcast Corp.* (Feb. 28, 2018). It is a manifestly different proposition to adopt a virtual accessibility component to meetings than to force a company's directors and executives to gather and stage an in-person shareholder meeting, which necessarily involves substantially greater logistical planning, including scheduling, venue, transportation, and lodging requirements. Such disruption presents a markedly distinct intrusion into day-to-day business matters than the adoption of a virtual participation component to the Company's meetings.

[2] The Company mistakenly refers to the issuer in this matter as "Smith & Wesson Brands, Inc." The no-action request was made by, and the Division's response was issued to, American Outdoor Brands Corp., which did not change its name until the following year. *See* Press Release, *American Outdoor Brands Prepares for Spin-Off With Name and Stock Ticker Symbol Change*, May 27, 2020. Proponent uses the American Outdoor Brands name in all references to that company relating to the June 25, 2019, decision.

Further, the proposals in these decisions do not involve the transcendent policy issues raised by instant Proposal. Quite the opposite, in that forcing the physical transportation to and staging of an in-person meeting does not advance, and in many ways inhibits, the important policy issues of protecting human health, fostering inclusion and equity, and treading lightly on the environment. Ironically, this very point was made in one of the above decisions cited by the Company. American Outdoor Brands revealed that its adoption of virtual meetings "increased accessibility and availability to the Company's stockholders who previously were unable to attend such meetings in-person" and "provide a broad platform for stockholders to engage with the Board and management during the meeting and to vote on proposals and other matters presented to the Company's stockholders at the meeting for their consideration and vote." Letter to SEC, May 10, 2019, *American Outdoor Brands Corp.* (June 25, 2019). The company's decision to hold meetings virtually "provides an enhanced opportunity for more widespread stockholder attendance and participation at the Company's annual meetings than was previously available to the Company's stockholders" at in-person meetings. *Id.*

2. <u>The Proposal does not regulate the actual conduct of shareholder meetings.</u>

The Company next mischaracterizes the Proposal as one that seeks to "regulate the conduct" of meetings, despite the lack of such prescription anywhere in the text. Company Letter, pp. 5-6. But like *Target*, discussed in the previous section, the Company relies on decisions that are highly prescriptive, which is plainly apparent even in the parenthetical descriptions of them in the Company's letter. Company Letter, pp. 5-6 (citing decisions involving proposals that would have prescribed "rules of conduct at all shareholder meetings," a "question-and-answer period" in conjunction with a company's annual meeting, that a company's chairman "answer with accuracy the questions asked by shareholders," that time be provided "before and after the annual meeting for shareholder dialogue with [the company's] directors," that "all shareholders be entitled to attend and speak at all annual meetings," and that time be provided "at each annual meeting for shareholders to ask questions, and receive replies directly from, the non-employee directors," and to "prescribe" an "amount of time each stockholder may speak and when such speaker may ask a follow-up question).

By contrast, the Proposal here contains no prescriptions as to format, conduct, or content of the annual meetings (e.g., shareholder questions, voting, visuals, etc.). It even leaves to management discretion the type of virtual component to adopt, a virtual-only meeting or a "hybrid" component that compliments an in-person meeting. *See generally*, A Virtual Meeting Playbook, *supra* (listing considerations for virtual meeting best practice considerations). The Proposal addresses only a significant policy issue at its highest level and preserves to the Company's discretion all decisions about meeting content and conduct.

The Company next cites *Con-way, Inc.* (Jan. 22, 2009), arguing that exclusion was permitted of a "proposal requesting that the company broadcast future annual meetings over the Internet using webcast technology, *since the proposal involved* 'shareholder relations and the conduct of annual meetings.'" Company Letter, p. 5 (emphasis added). This isn't a fair contextual reading of the decision. While the Division did recognize that the proposal at issue involved ordinary business aspects of shareholder relations and the conduct of annual meetings, it did not say that the simple fact of involving those topics itself automatically rendered the proposal excludable. And a closer look at the actual proposal in *Con-Way* reveals that it was far more prescriptive than the Company's description of it. The proposal mandated "three essential elements":

1) Live video-audio broadcast of Con-way Executives, Directors and Shareholders participating in the Annual Meetings.

2) Live video-audio broadcast of Executives and Directors participating from Company headquarters or other locations.

3) Post meeting, on-demand distribution via Con-way's website of entire video-audio recordings of its Annual Meetings.

Con-Way, Letter of Company, Dated December 9, 2008, p. 2. True enough, the proposal involves an issue of shareholder relations and the conduct of meetings, but the actual content of the proposal demonstrates its prescriptive and potentially disruptive nature. In this regard, it is far more akin to the proposals discussed above, but materially different than the instant proposal.

The Company next cites *Northeast Utilities* (Mar. 3, 2008), presenting it as an example where exclusion was permitted for a proposal that a "company allow stockholder voting to be conducted by electronic means." Company Letter, p. 5. What the "handwritten and at times illegible and incoherent" proposal actually called for was for Northeast Utilities to hold its annual meeting "at the same time and date" as another, independent company, and that the same agenda be set for the meetings and the common shareholders of the two companies should be able to attend one meeting and electronically cast votes to the other company "by electronic transmission." *See* No-Action Request Letter of Northeast Utilities, Dated January 8, 2008, pp. 2, 7. It should also be noted that the Division's response letter indicates its concurrence was based on the proposal's content relating to "the date of shareholder meetings." Division Response Letter to Northeast Utilities, March 3, 2008. There were certainly more problems than that with the proposal (including voting between shareholders of independent companies), but no other bases for exclusion were addressed and the Company's comparison of that proposal to the

instant one is plainly misplaced, as are the remaining decisions in the string citation closing that section of the Company's letter.

3. The Proposal does not regulate the Company's communications with shareholders.

The Company's last assertion suggests a broad exclusionary category for "policies for communicating with its shareholders generally" and that includes "decisions about the timing and methods of, and the forum and procedures for, communicating with its shareholders." Company Letter, p. 6. But such a sweepingly broad rule cannot be supported under the test framed by the Commission's 1998 release and the Staff Legal Bulletins since. Nor do the various decisions cited by the Company support such a categorical rule.

The Company here again resorts to boilerplate generalities, rather than a substantive analysis and discussion, to argue that "how to communicate with shareholders" is too complex to be voted on by them. *Id.* The Company cites various considerations, including "effectiveness," "branding," "availability of technology," "costs and benefits." But the Proposal doesn't take these decisions away from management. It simply asks whether management should add a virtual meeting component that would serve public health, accessibility, inclusiveness, and environmental benefits. In that regard, it is very much consistent with the one additional factor the Company lists as an important consideration about communication: "the likelihood that a shareholder would *elect* to communicate with management through remote communication vis-à-vis in-person communication." *Id.* (emphasis added). Thus, including the Proposal in the proxy materials would tell management exactly what they want to know, whether shareholders favor adoption of a virtual meeting policy.

The Company fares no better with its final string of citations, which it claims implicate "the same issues" as the instant Proposal. *Id.*, p. 7. The first decision cited involved a proposal calling for a shareholder vote to compel the Board of Directors to answer questions alleging misconduct involving the Board. *ARIAD Pharmaceuticals, Inc.* (June 1, 2016), Exhibit A to No-Action Letter, Dated March 21, 2016. The proposal in *Peregrine Pharmaceuticals, Inc.* (Jul. 16, 2013), called for a 45-minute period on company conference calls when certain shareholders "can ask management, board members and/or consultants on the call questions that *relate to the operations* of the Company." Letter from Peregrine Pharmaceuticals, Dated June 6, 2013 (emphasis added). *Ford Motor Co.* (Mar. 1, 2010) would have required that Ford provide paper copies to all shareholders of financial disclosures that were already publicly available. Letter from Ford, Dated January 11, 2010. And the final decision the Company claims "implicates the same issues" as the instant Proposal is

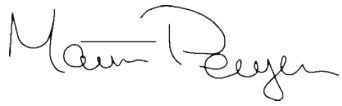
Ford Motor Co. (Feb. 12, 2008), which involved a proposal that called for publication of a direct mailing address for each director and nominee for director "so that stockowners can send communications" (the proposal also prohibited any employee or company agent other than the director or the nominee from handling any of the mail). Letter from Ford, Exh. 1, Dated December 21, 2007.

None of the cited decisions remotely implicates the same high-level policy issue of the instant Proposal. Nor do any of them support the Company's underlying premise that proposals are categorically excludable if they relate in any way to the manner of shareholder relations and communications. Indeed, if this were true, it would be difficult to see how any proposals that call for disclosures or reports could ever be included in proxy materials, since all of them concern a company's communication with shareholders. Yet, the Company nonetheless presses its assertion that the Proposal is excludable simply by virtue of its relation to the Company's communications with shareholders. Company Letter, p. 7. Such broad categorical arguments—without a substantive analysis of how the Proposal's relation to shareholder communications actually interferes with management's ability to run day-to-day business operations—cannot satisfy the Company's burden to demonstrate it is entitled to exclude the Proposal. *See* 17 C.F.R. § 240.14a–8(g).

CONCLUSION

In conclusion, the Company has failed to carry its burden under Rule 14a-8(g) of establishing that the Proposal is excludable on the basis of Rule 14a-8(i)(7). Accordingly, we request that the Company's petition for no-action be declined.

Respectfully,



Matthew Penzer
Special Counsel
The Humane Society of the United States
1255 23rd Street, NW, Suite 450
Washington, D.C. 20037
mpenzer@humanesociety.org
240.271.6144

cc:
Charles A. Brawley, III

Exhibit 1

Shareholder Proposal Regarding Virtual Meetings

Resolved: Shareholders ask that Campbell Soup Co. develop and adopt a policy, and amend its governing documents as necessary, to ensure that moving forward, its annual and special shareholder meetings will be held either in whole or in part through virtual means (i.e., webinar or other on-line system) and that virtual attendance be allowed. This policy should be formally adopted within six months of the 2021 annual meeting and take effect immediately thereafter.

Supporting Statement:

Campbell Soup held its 2020 annual shareholder meeting via virtual webcast. Shareholders support this format and seek to ensure virtual meetings and attendance continue into the future. Please consider the following:

The COVID-19 pandemic has highlighted for many companies the need to ensure continuity of business operations through virtual or remote means. Countless employees have been expected (or even required) to work remotely. Business travel has been dramatically curtailed as the U.S. Centers for Disease Control and Prevention (CDC) has issued health and safety warnings related to air travel. And meetings of all types have been held virtually in greater numbers than ever before.

Yet under its current by-laws, the company may choose to only hold its annual and special shareholder meetings in-person, requiring attendance to be physical, even in circumstances where the CDC recommends against, or when unexpected conditions prevent, travel.

To put it simply, this is unfair and unnecessary: it increases the health risks for any shareholder who may wish to present a proposal, ask a question, or even just attend such a meeting; for company executives and other employees who may be required to attend; for board members; and for support staff at meeting venues.

It also likely deters attendance by forcing shareholders to choose between protecting their health or risking illness in order to exercise their basic shareholder rights.

The advantages of virtual meetings are significant: they add convenience and reduce time and expenses for shareholders, management, and board members; and they promote wider engagement between the company and shareholders.

Further, virtual meetings contribute to various company social and sustainability policies. They further an inclusive company culture by enabling all shareholders an equal opportunity to participate in annual meetings, regardless of financial, physical, or other barriers. And removing the necessity of all shareholders to travel would provide an environmental benefit to the company's ESG practices.

The COVID-19 pandemic has fundamentally changed the way companies think about and hold meetings. In addition to the business advantages virtual meetings provide, it is fundamental that shareholders should be allowed to attend meetings and exercise their rights without putting themselves and others at increased risk. And corporate executives and employees, as well as board members, should be allowed to do the same. For this reason, you are encouraged to vote FOR this proposal.

CHARLES A. BRAWLEY, III
Deputy General Counsel, Vice President and Corporate Secretary
856-342-3649 Phone

July 14, 2021

VIA E-MAIL (shareholderproposals@sec.gov)
U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

Re: Campbell Soup Company – 2021 Annual Meeting of Shareholders | Proposal of The Human Society of the United States Pursuant to Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

We are writing on behalf of Campbell Soup Company, a New Jersey company (the "Company"), which seeks to omit from its definitive proxy statement on Schedule 14A, form of proxy and related materials for the Company's 2021 Annual Meeting of Shareholders (collectively, the "2021 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from The Humane Society of the United States (the "Proponent") pursuant to Rule 14a-8 under the Exchange Act. In accordance with Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days next preceding the date the Company intends to file with the Commission the 2021 Proxy Materials; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to furnish registrants with a copy of any correspondence that such proponents elect to submit to the Commission or to the staff of the Commission's Division of Corporation Finance (the "Staff"). Accordingly, pursuant to this correspondence we are hereby respectfully informing the Proponent that if the Proponent elects to submit correspondence to the Commission or to the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned, acting on behalf of the Company, pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal submitted to the Company by the Proponent states:

> "RESOLVED: Shareholders ask that Campbell Soup Co. develop and adopt a policy, and amend its governing documents as necessary, to ensure that moving forward, its annual and special shareholder meetings will be held either in whole or in part through virtual means (i.e., webinar or other on-line system) and that virtual attendance be allowed. This policy should be formally adopted within six months of the 2021 annual meeting and take effect immediately thereafter."

A copy of the Proposal, including the supporting statements made by the Proponent in support thereof as well as related correspondence with the Proponent, are attached hereto as Exhibit A.

We hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating To The Company's Ordinary Business Operations

A. Background of Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if it "deals with a matter relating to the company's ordinary business operations." According to the Commission, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). The 1998 Release states that the general policy underlying 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." In the 1998 Release, the Commission outlined two central considerations for determining whether the ordinary business exclusion applies: (1) whether the subject matter of the proposal relates to a task "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight"; and (2) "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

As discussed below, the Company believes that the Proposal relates to issues that are inherently fundamental to management's ability to run the Company on a day-to-day basis. First, the Proposal relates to the determination by the Company's Board of Directors (the "Board") and management of whether to convene annual and special meetings virtually. Second, the Proposal relates to the conduct of the Company's annual and special meetings. Third, the Proposal relates to the means and methods selected by the Board and management for communicating with the Company's shareholders. These issues are fundamental to management's ability to run the Company and involve a consideration of multiple and complex factors that would be impracticable for shareholders to decide. Accordingly, the Company believes, and respectfully requests the Staff's concurrence in the Company's view, that the Proposal can be omitted from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

B. The Proposal may be excluded under Rule 14a-8(i)(7) from the 2021 Proxy Materials because it relates to the Company's determination of whether to hold Annual Meetings virtually or in person

The Proposal requests that the Company "develop and adopt a policy, and amend its governing documents as necessary, to ensure that moving forward, its annual and special shareholder meetings will be held either in whole or in part through virtual means (i.e., webinar or other on-line system) and that virtual attendance be allowed." The Company believes the Proposal may be omitted from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7), as relating to ordinary business operations, because it seeks to dictate the Company's decision as to whether to hold annual meetings virtually (in whole or in part). As discussed below, a determination of whether to hold virtual, in person or hybrid annual or special meetings of shareholders is precisely the type of issue that should be resolved by management and that the ordinary course of business exclusion is designed to remove such matters from shareholder decision-making.

In determining whether a shareholder meeting should be held in person or solely or in part by virtual means of communication[1], the Company must consider, among other factors, the various costs associated with having a virtual meeting, an in-person meeting or both simultaneously, the availability of staffing resources, location availability, security concerns, the accessibility to shareholders, the likelihood that a shareholder will choose to access a virtual meeting and/or attend an in-person meeting, shareholder relations and the necessary technology required to hold a virtual meeting and any potential technical issues. Such matters would require complex and informed

[1] In March 2020, in response to the COVID-19 pandemic, New Jersey Governor Murphy signed a bill into law amending Section 14A:5-1 of the New Jersey Business Corporation Act to permit virtual-only shareholder meetings during a State of Emergency declared by the Governor. At times when New Jersey is not in a State of Emergency, New Jersey remains a "hybrid" state with respect to virtual shareholder meetings and can only have a virtual shareholder meeting so long as there is also an actual physical location for the meeting where shareholders can attend in person. In June 2021 Governor Murphy signed an executive order lifting the COVID-19 Public Health Emergency. In June 2021 the New Jersey legislature passed a bill (A-4918), currently awaiting the Governor's signature, that would allow for a shareholder meeting to be held solely or in part by virtual means upon the election of the company beyond a State of Emergency.

analysis by the Company's management and Board, and therefore, as stated in the 1998 Release, the "[shareholders], as a group, [are not] in a position to make an informed judgment" on such matters. The Company's management and Board have intimate knowledge of these factors and are better equipped than shareholders to evaluate such a decision.

Given the complex Board and managerial judgments inherent in determining whether a company should convene an annual or special meeting in whole or in part through virtual means, the Company notes that the Staff has previously found that decision firmly to be a matter of ordinary business.

Most recently, the Staff permitted the exclusion of a proposal pursuant to Rule 14a-8(i)(7) submitted to Target Corporation stating, among other things, that "should it not be possible to hold Shareholder Meetings where members and associates meet in-person, that such meetings be held in zoom type format." *See Target Corporation* (April 9, 2021). The Staff permitted Smith & Wesson Brands, Inc. to omit a proposal from its proxy materials a proposal requesting that its board of directors "adopt a corporate governance policy affirming the continuation of in-person annual meetings in addition to internet access to the meeting, adjust its corporate practices accordingly, and publicize this policy to investors" on the basis that, pursuant to Rule 14a-8(i)(7), "the determination of whether to hold annual meetings in person" involves a company's ordinary business operations. *See Smith & Wesson Brands, Inc.* (June 25, 2019). *See also Comcast Corp*. (Feb. 28, 2018) (concurring in the omission pursuant to Rule 14a-8(i)(7) of a proposal that the board of directors "adopt a corporate governance policy affirming the continuation of in-person meetings in addition to internet access to meetings"). In addition, in each of the following recent no-action requests, the Staff found a basis for and permitted the omission from company proxy materials of similar proposals relating to the determination of whether to convene annual meetings in-person. In *Frontier Communications Corp*. (Feb. 19, 2019), the company received a proposal which would "[r]equire Frontier Communications Board to conduct a face-to-face Annual Meeting" and seek to "chang[e] all relevant Frontier Communications Corporation governance documents to require such a face-to-face meeting to replace the current 'remote' or 'virtual' meeting." In *Alaska Air Group, Inc.* (Jan. 25, 2017) and *HP, Inc.* (Dec. 28, 2016), each company received a proposal requesting that the respective company's board of directors "adopt a corporate governance policy to initiate or restore in-person annual meetings and publicize this policy to investors." As in *Smith & Wesson Brands, Inc. and Comcast Corp*., the Staff permitted the omission of each such proposal on the basis that the decision as to whether to convene in-person annual meetings involves the company's ordinary business operations. The Company further notes that in *EMC Corp*. (Mar. 7, 2002), the Staff permitted the omission pursuant to Rule 14a-8(i)(7) of a proposal requesting the company to "adopt a corporate governance policy affirming the continuation of in-person annual meetings, adjust its corporate practices policies [sic] accordingly, and make this policy available publicly to investors," because it related "to EMC's ordinary business operations."

Consistent with the Staff's positions in each of *Target Corporation, Smith & Wesson Brands, Inc., Comcast Corp*., *Frontier Communications Corp*., *Alaska Air Group, Inc*., *HP, Inc*. and *EMC Corp*., the Company believes, and respectfully requests the Staff's concurrence in the

Company's view, that the Proposal can be omitted from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7), as the Proposal relates to the Company's ordinary business operations and, specifically, to the determination of whether to convene annual meetings in-person or virtually or to include a virtual component.

C. The Proposal may be excluded under Rule 14a-8(i)(7) from the 2021 Proxy Materials because it relates to the conduct of the Annual Meeting through the mode of communication

The Proposal relates to, and attempts to regulate, the conduct of the annual meeting by dictating the mode or means through which the Company communicates with its shareholders at its annual meeting (i.e., that "annual and special shareholder meetings be held either in whole or in part through virtual means"). The Staff has routinely permitted under Rule 14a-8(i)(7) the omission of proposals seeking to oversee the conduct of a company's annual meeting as relating to a company's ordinary business. *See, e.g., USA Technologies, Inc.* (Mar. 11, 2016) (concurring in the omission of a proposal that sought a bylaw amendment to include rules of conduct at all meetings of shareholders); *Servotronics, Inc.* (Feb. 19, 2015) (concurring in the omission of a proposal "concerning the conduct of shareholder meetings" where the proposal requested that "a question-and-answer period be included in conjunction with [the company's] [a]nnual [s]hareholder [m]eetings" because "proposals concerning the conduct of shareholder meetings generally are excludable under Rule 14a-8(i)(7)"); *Mattel, Inc.* (Jan. 14, 2014) (concurring in the omission of a proposal requesting that the chairman of the company "answer with accuracy the questions asked by shareholders at the [a]nnual [m]eeting" on ordinary course of business grounds); *Citigroup Inc. (Mathis)* (Feb. 7, 2013) (concurring in the omission of a proposal requesting "a reasonable amount of time before and after the annual meeting for shareholder dialogue with [the company's] directors"); *Bank of America Corp.* (Dec. 22, 2009) (concurring in the omission of a proposal recommending that all shareholders be entitled to attend and speak at all annual meetings because "[p]roposals concerning the conduct of shareholder meetings generally are excludable under rule 14a-8(i)(7)"); *Bank of America Corp. (Slaton)* (Feb. 16, 2006) (same); *Exxon Mobil Corp.* (Mar. 2, 2005) (concurring in the omission of a proposal seeking to set aside time at each annual meeting for stockholders to ask questions and receive replies directly from non-employee directors); and *Citigroup Inc.* (Jan. 14, 2004) (concurring in the omission of a proposal seeking to prescribe, among other things, the amount of time each stockholder may speak and when such speaker may ask a follow-up question).

Moreover, on numerous occasions, the Staff has agreed that proposals relating to the webcast and use of electronic media and communications technology to record and conduct annual meetings, as this Proposal does, may be excluded under Rule 14a-8(i)(7) as relating to the ordinary business of conducting annual meetings. *See, e.g., Con-way, Inc.* (Jan. 22, 2009) (concurring in the omission of a proposal requesting that the company broadcast future annual meetings over the Internet using webcast technology, since the proposal involved "shareholder relations and the conduct of annual meetings"); *Northeast Utilities* (Mar. 3, 2008) (concurring in the omission of a proposal requesting, among other things, that the company allow stockholder voting to be conducted by electronic means); *Commonwealth Energy Corp.* (Nov. 15, 2002) (concurring in the

omission of a proposal requesting that, among other things, the company make audio or video recordings of its annual meetings as relating to "shareholder relations and the conduct of annual meetings"); and *Irvine Sensors Corp.* (Jan. 2, 2001) (concurring in the omission of a proposal requesting that the company webcast its annual meetings since the proposal related to "procedures for establishing regular communications and updates with shareholders").

Therefore, because the Proposal improperly attempts to regulate the conduct at the Company's annual shareholder meetings, the Company requests that it be excluded from the Company's 2021 Proxy Materials as relating to ordinary business operations.

D. The Proposal may be excluded under Rule 14a-8(i)(7) from the 2021 Proxy Materials because it relates to the Company's communications with its shareholders

The Company also believes that the Proposal can be omitted from its 2021 Proxy Materials under Rule 14a-8(i)(7) because it relates to, and attempts to regulate, the Company's means and methods of communications with its shareholders at the annual meeting, which is a matter concerning the Company's ordinary business, and an integral part of the broader category of company policies for communicating with its shareholders generally. The Company further believes that decisions about the timing and methods of, and the forum and procedures for, communicating with its shareholders are precisely the type of ordinary business operations that the ordinary business exclusion set forth in Rule 14a-8(i)(7) is designed to remove from shareholder decision-making. These decisions "could not, as a practical matter, be subject to direct shareholder oversight." See the 1998 Release, at 29, 108.

The main objective of the Proposal is "to ensure that moving forward, [the Company's] annual and special shareholder meetings will be held either in whole or in part through virtual means (i.e., webinar or other on-line system) and that virtual attendance be allowed." The Proposal also seeks for the Company to "develop and adopt a policy, and amend its governing documents as necessary" and such "policy should be formally adopted within six months of the 2021 annual meeting and take effect immediately thereafter." Respectfully, the Company believes that the method and means by which the Company determines to communicate with its shareholder at the annual meeting is an ordinary business matter "rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." See the 1998 Release, at 29, 107. It is a determination best suited for the Board's and management's analysis and judgment. The Company's existing By-laws provide for communication with shareholders at the annual meeting through in person or remote communication. The decision of how to communicate with its shareholders is the product of the Company's complex consideration of, among other things, the effectiveness of the communication, the branding of the Company, the availability of appropriate technology, the likelihood that a shareholder would elect to communicate with management through remote communication vis-à-vis in-person communication, and various costs and benefits associated with the available means and mediums of communication – all of which the Board and management have a greater degree of knowledge of and are able to consider more thoroughly than the shareholders, as a group.

Thus, the Company respectfully believes that the Proposal implicates the same issues as those raised by the proposals permissibly omitted under Rule 14a-8(i)(7) that attempted to interfere with company communications with shareholders, whether at annual meetings or otherwise. *See, e.g., ARIAD Pharmaceuticals, Inc.* (June 1, 2016) (concurring with the exclusion of a proposal that required the company's board to respond to questions specified in the proposal); *Peregrine Pharmaceuticals, Inc.* (Jul. 16, 2013) (concurring in the omission of a proposal requesting that management respond to stockholder questions on public company conference calls because the proposal related to "the ability of shareholders to communicate with management"); *Ford Motor Co.* (Mar. 1, 2010) (concurring in the omission of a proposal relating to how the company distributes restated financial statements to stockholders since "[p]roposals concerning the methods used by a company to distribute or present information to its shareholders are generally excludable under rule 14a-8(i)(7)"); and *Ford Motor Co.* (Feb. 12, 2008) (Staff did not recommend enforcement action with respect to omission of a proposal requesting the board adopt a policy for distributing the directors' direct mailing addresses to stockholders).

Consistent with the precedents described above, the Proposal similarly seeks to regulate the conduct of the annual meeting by requiring annual and special shareholder meetings "be held in whole or in part through virtual means (i.e., webinar or other on-line system)" and therefore prescribing the manner of communication between the Company and its shareholders.

In light of the foregoing, the Company believes that the Proposal is excludable on ordinary business operations grounds pursuant to Rule 14a-8(i)(7) because it improperly seeks to regulate the mode of communication by the Company with its shareholders and seeks to dictate the manner by which the Company communicates with its shareholders.

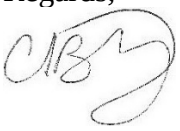
Conclusion

Based upon the foregoing, the Company respectfully requests that the Staff confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2021 Proxy Materials pursuant to Rule 14a-8. We would be happy to provide any additional information and answer any questions regarding this matter.

Should you have any questions, please contact me at charlie_brawley@campbells.com or (856) 342-3649.

Thank you for your consideration.

Regards,



Charles A. Brawley, III
Vice President, Corporate Secretary &
Deputy General Counsel

cc: Adam G. Ciongoli

Exhibit A

THE HUMANE SOCIETY
OF THE UNITED STATES

May 26, 2021

Charlie Brawley
VP, Corporate Secretary and Deputy General Counsel
Campbell Soup Company
1 Campbell Place
Camden, NJ 08103-1701

And via email: charlie_brawley@campbellsoup.com

Dear Mr. Brawley,

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 Campbell Soup common stock. The HSUS has continuously held at least $2,000 in market value 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 the company 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

BNY MELLON
WEALTH MANAGEMENT

Stacy Stout
Vice President
Client Service Manager

BNY Mellon Wealth Management
Family Office
500 Grant Street, Floor 38
Pittsburgh, PA 15258

T 412.236.1775
stacy.stout@bnymellon.com

May 26, 2021

Charlie Brawley
VP, Corporate Secretary and Deputy General Counsel
Campbell Soup Company
1 Campbell Place
Camden, NJ 08103-1701

And via email: charlie_brawley@campbellsoup.com

Dear Mr. Brawley,

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 Campbell Soup common stock for the one-year period preceding and including the date of this letter. Thank you.

Sincerely,

Stacy L. Stout

Stacy Stout
Vice President, Client Service Manager
BNY Mellon Wealth Management
Family Office Group
500 Grant Street, 38th Floor/Suite 3840/151-3840
Pittsburgh, PA 15258
T (412) 236-1775 | F (866) 230-4247
bnymellonwealth.com

Shareholder Proposal Regarding Virtual Meetings

Resolved: Shareholders ask that Campbell Soup Co. develop and adopt a policy, and amend its governing documents as necessary, to ensure that moving forward, its annual and special shareholder meetings will be held either in whole or in part through virtual means (i.e., webinar or other on-line system) and that virtual attendance be allowed. This policy should be formally adopted within six months of the 2021 annual meeting and take effect immediately thereafter.

Supporting Statement:

Campbell Soup held its 2020 annual shareholder meeting via virtual webcast. Shareholders support this format and seek to ensure virtual meetings and attendance continue into the future. Please consider the following:

The COVID-19 pandemic has highlighted for many companies the need to ensure continuity of business operations through virtual or remote means. Countless employees have been expected (or even required) to work remotely. Business travel has been dramatically curtailed as the U.S. Centers for Disease Control and Prevention (CDC) has issued health and safety warnings related to air travel. And meetings of all types have been held virtually in greater numbers than ever before.

Yet under its current by-laws, the company may choose to only hold its annual and special shareholder meetings in-person, requiring attendance to be physical, even in circumstances where the CDC recommends against, or when unexpected conditions prevent, travel.

To put it simply, this is unfair and unnecessary: it increases the health risks for any shareholder who may wish to present a proposal, ask a question, or even just attend such a meeting; for company executives and other employees who may be required to attend; for board members; and for support staff at meeting venues.

It also likely deters attendance by forcing shareholders to choose between protecting their health or risking illness in order to exercise their basic shareholder rights.

The advantages of virtual meetings are significant: they add convenience and reduce time and expenses for shareholders, management, and board members; and they promote wider engagement between the company and shareholders.

Further, virtual meetings contribute to various company social and sustainability policies. They further an inclusive company culture by enabling all shareholders an equal opportunity to participate in annual meetings, regardless of financial, physical, or other barriers. And removing the necessity of all shareholders to travel would provide an environmental benefit to the company's ESG practices.

The COVID-19 pandemic has fundamentally changed the way companies think about and hold meetings. In addition to the business advantages virtual meetings provide, it is fundamental that shareholders should be allowed to attend meetings and exercise their rights without putting themselves and others at increased risk. And corporate executives and employees, as well as board members, should be allowed to do the same. For this reason, you are encouraged to vote FOR this proposal.

CHARLES A. BRAWLEY, III
Deputy General Counsel, Vice President and
Corporate Secretary
856-342-3649 Phone

June 9, 2021

Via Email and Overnight Mail

Mr. Matthew Prescott
Senior Director of Food and Agriculture
The Humane Society of the United States
1255 23rd St., NW Suite 450
Washington, DC 20037

Re: Notice of Deficiency under Rule 14a-8
Shareholder Proposal for Campbell Soup Company's 2021 Annual Meeting of Shareholders

Dear Mr. Prescott:

We are in receipt of your letter dated May 26, 2021, which enclosed a shareholder proposal regarding virtual meetings (the "Proposal") on behalf of The Humane Society of the United States (the "Proponent") as a purported shareholder of Campbell Soup Company (the "Company"). We received the Proposal via email on May 26, 2021. We also received the Proposal via overnight mail on May 27, 2021.

The purpose of this letter is to inform you that the Proposal does not comply with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and therefore is not eligible for inclusion in our proxy statement for our 2021 Annual Meeting of Shareholders. Securities and Exchange Commission ("SEC") regulations require us to bring the following deficiency to your attention.

As you know, Rule 14a-8(b) provides that, to be eligible to submit a shareholder proposal, a proponent must have continuously held a minimum of $2,000 in market value of the Company's securities entitled to be voted on the proposal for at least one year as of January 4, 2021, and from January 4, 2021 through the date the proposal was submitted to the Company.

Our records do not list the Proponent as being a record holder of the Company's common stock. Because the Proponent is not a record holder, its ownership may be substantiated in either of two ways:

1. by providing a written statement from the record holder of the shares of the Company's common stock beneficially owned by the Proponent, verifying that, (i) the Proponent

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has continuously held at least $2,000 of the Company's shares for at least one year as of January 4, 2021 and (ii) the Proponent has continuously held at least $2,000 of the Company's shares from January 4, 2021 through the date the Proposal was submitted to the Company (May 26, 2021); or

2. by providing a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or any amendment to any of those documents or updated forms, reflecting the ownership by the Proponent of the requisite number or value of shares of the Company's common shares as of or before the date on which the eligibility period began, together with a written statement that the Proponent continuously held the requisite shares (i) for at least one year as of January 4, 2021 and (ii) from January 4, 2021 through the date the Proposal was submitted to the Company (May 26, 2021).

The Proponent's current letter offers proof of ownership for only one year prior to May 26, 2021 but not proof of ownership for at least one year as of January 4, 2021 and from January 4, 2021 through the date the Proposal was submitted to the Company (May 26, 2021).

As you know, the staff of the SEC's Division of Corporation Finance (the "Division") has provided guidance to assist companies and shareholders with complying with Rule 14a-8(b)'s eligibility criteria. This guidance, contained in Staff Legal Bulletin No. 14F (October 18, 2011) and Staff Legal Bulletin No. 14G (October 16, 2012), clarifies that proof of ownership for Rule 14a-8(b) purposes must be provided by the "record holder" of the securities, which is either the person or entity listed on the Company's stock records as the owner of the securities or a DTC participant (or an affiliate of a DTC participant). A proponent who is not a record owner must therefore obtain the required written statement from the DTC participant through which the proponent's securities are held. If a proponent is not certain whether its broker or bank is a DTC participant, the proponent may check the DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf. If the broker or bank that holds the proponent's securities is not on DTC's participant list, the proponent must obtain proof of ownership from the DTC participant through which its securities are held. If the DTC participant knows the holdings of the proponent's broker or bank, but does not know the proponent's holdings, the proponent may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required number or value of securities had been continuously held by the proponent for at least one year preceding January 4, 2021 and from January 4, 2021 through the date of submission of the proposal (for the Proponent's Proposal, May 26, 2021) with one statement from the proponent's broker or bank confirming the required ownership, and the other statement from the DTC participant confirming the broker or bank's ownership.

For the Proposal to be eligible for inclusion in the Company's 2021 proxy materials, the information requested above must be furnished to us electronically or be postmarked no later than 14 calendar days from the date you receive this letter. If the information is not provided, the Company may exclude the Proposal from its proxy materials pursuant to Rule 14a-8(f). The requested information may be provided to the undersigned at Campbell Soup Company, World Headquarters, One Campbell Place, Camden, NJ 08103 or by email at charlie_brawley@campbells.com.

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In accordance with SEC Staff Legal Bulletin Nos. 14 and 14B, a copy of Rule 14a-8, including Rule 14a-8(b), is enclosed for your reference. Also enclosed for your reference is a copy of Staff Legal Bulletin Nos. 14F and 14G.

Very truly yours,

Charlie Brawley
Vice President, Corporate Secretary &
Deputy General Counsel

Enclosures

§ 240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to “you” are to a shareholder seeking to submit the proposal.

(a) ***Question 1:*** What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word “proposal” as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) ***Question 2:*** Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter),

or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least $2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least $2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least $2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) ***Question 3:*** How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) ***Question 4:*** How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) ***Question 5:*** What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal 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. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) ***Question 6:*** What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) ***Question 7:*** Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) ***Question 8:*** Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) ***Question 9:*** If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (I)(1):
Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most

proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) ***Violation of law:*** If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (I)(2):
We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) ***Violation of proxy rules:*** If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) ***Personal grievance; special interest:*** If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) ***Relevance:*** If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) ***Absence of power/authority:*** If the company would lack the power or authority to implement the proposal;

(7) ***Management functions:*** If the proposal deals with a matter relating to the company's ordinary business operations;

(8) ***Director elections:*** If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) ***Conflicts with company's proposal:*** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (I)(9):
A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) ***Substantially implemented:*** If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (I)(10):

A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.,* one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

(11) ***Duplication:*** If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) ***Resubmissions.*** If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) ***Specific amount of dividends:*** If the proposal relates to specific amounts of cash or stock dividends.

(j) ***Question 10:*** What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) ***Question 11:*** May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) ***Question 12:*** If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) ***Question 13:*** What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE:

At 85 FR 70294, Nov. 4, 2020, § 240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and

- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required

verification of ownership as of the date they plan to submit the proposal using the following format:

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision

triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

http://www.sec.gov/interps/legal/cfslb14f.htm

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D, SLB No. 14E and SLB No. 14F.

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)…."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.[1] By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.[2] If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but

covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.[4]

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders 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. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference

after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

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[1] An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

[2] Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

[3] Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

[4] A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

http://www.sec.gov/interps/legal/cfslb14g.htm

THE HUMANE SOCIETY OF THE UNITED STATES

June 18, 2021

Charlie Brawley
VP, Corporate Secretary and Deputy General Counsel
Campbell Soup Company
1 Campbell Place
Camden, NJ 08103-1701

Via email: charlie_brawley@campbellsoup.com

Dear Mr. Brawley,

Last week, I left you a detailed message in response to your June 9, 2021, claim of deficiency in the HSUS shareholder proposal materials for the Campbell Soup Company's 2021 annual meeting. As I noted, your claim inaccurately relies on new SEC procedures that are not applicable to 2021 meetings, so couldn't be the basis for a claim of deficiency in the HSUS submission. I further pointed you to the specific language in the Federal Register notice that states the new procedures "will apply to any proposal submitted for an annual or special meeting to be held *on or after January 1, 2022*." Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, 85 FR 70240-01, November 4, 2020 (emphasis added). Yet despite this clear text and my courtesy attempt to reach out to you about it, you did not return my call, instead leaving in place a plainly incorrect claim of deficiency.

That said, this matter is easily resolved. HSUS is voluntarily providing here the information you requested. Attached is a letter from BNY Mellon, dated June 14, 2021, verifying HSUS has continuously held at least $2,000.00 in market value of Campbell Soup common stock for at least one year as of January 4, 2021, and has continuously maintained at least $2,000 of such securities from January 4, 2021 through (and beyond) the date the proposal was submitted to the company on May 26, 2021. I trust this information satisfies your request and remedies any claim of deficiency for the proposal submission.

Thank you,

Matthew Penzer
Special Counsel, Animal Protection Law
The Humane Society of the United States
240-271-6144
mpenzer@humanesociety.org

BNY MELLON
WEALTH MANAGEMENT

Stacy Stout
Vice President
Client Service Manager

BNY Mellon Wealth Management
Family Office
500 Grant Street, Floor 38
Pittsburgh, PA 15258

T 412.236.1775
stacy.stout@bnymellon.com

June 14, 2021

Charlie Brawley
VP, Corporate Secretary and Deputy General Counsel
Campbell Soup Company
1 Campbell Place
Camden, NJ 08103-1701

And via email: charlie_brawley@campbellsoup.com

Dear Mr. Brawley,

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 Campbell Soup common stock for at least one year as of January 4, 2021, and has continuously maintained at least $2,000 of such securities from January 4, 2021 through the date of this letter. Thank you.

Sincerely,

Stacy L. Stout

Stacy Stout
Vice President, Client Service Manager
BNY Mellon Wealth Management
Family Office Group
500 Grant Street, 38th Floor/Suite 3840/151-3840
Pittsburgh, PA 15258
T (412) 236-1775 | F (866) 230-4247
bnymellonwealth.com