



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

January 3, 2022

Todd E. Davies
Deere & Company

Re: Deere & Company (the "Company")
Incoming letter dated October 15, 2021

Dear Mr. Davies:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Center for Public Policy Research for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal seeks the annual publication of the written and oral content of any employee-training materials offered to any subset of the Company's employees by the Company or with its consent, as well as any such materials which the Company sponsored in the creation in whole or part. The Proposal seeks this information so that shareholders can gauge executives' responses to, and management of, reputational and legal risks and financial harm to the Company associated with employment discrimination.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal micromanages the Company by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the Company's employment and training practices. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research



Deere & Company
One John Deere Place, Moline, IL 61265 USA
Phone: +1 (309) 765-5161
Fax: +1 (309) 749-0085
E-mail: DaviesToddE@JohnDeere.com

Todd E. Davies
Associate General Counsel & Corporate Secretary
Global Law Services Group

October 15, 2021

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: *Shareholder Proposal to Deere & Company by the National Center for Public Policy Research*

Ladies and Gentlemen:

This letter is submitted on behalf of Deere & Company, a Delaware corporation (the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude a shareholder proposal and related supporting statement (the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”), from its proxy materials for its 2022 Annual Meeting of Shareholders (the “2022 Proxy Materials”). The Company received the Proposal on September 7, 2021. For the reasons set forth below, we request confirmation that the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2022 Proxy Materials in reliance on the provision of Rule 14a-8(i)(7) under the Exchange Act, as described below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), this letter and its attachments are being e-mailed to the Staff at shareholderproposals@sec.gov. As required by Rule 14a-8(j), this letter and its attachments are concurrently being sent to the Proponent as notice of the Company’s intent to omit the Proposal from its 2022 Proxy Materials no later than eighty (80) calendar days before the Company currently intends to file its definitive 2022 Proxy Materials with the Commission. Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or Staff. Accordingly, we hereby notify the Proponent that if the Proponent elects to submit additional correspondence to the Commission or Staff in response to this letter, a copy of that correspondence should be concurrently provided to the undersigned on behalf of the Company.

I. THE PROPOSAL

The Proposal sets forth the following proposed resolution for the vote of the Company's shareholders at the 2022 Annual Meeting of Shareholders:

Resolved: The Board of Directors will publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of any employee-training materials offered to any subset of the company's employees by the company or with the company's consent, whether in a mandatory or voluntary setting, as well as any such materials the creation of which was sponsored by the company in whole or part.

A full copy of the Proposal and the supporting statement ("Supporting Statement") is attached hereto as Exhibit A.

II. BASIS FOR EXCLUSION

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

III. ANALYSIS

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

The Proposal is excludable under Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business. The Proposal requests that the Board publish annually the written and oral content of any employee training materials offered to Company employees. A proposal directly related to a company's relationship with its workforce is a clear example of a proposal that may be excluded because it relates to the Company's day-to-day management. In addition, even if the Proposal's supporting statement references a current social policy issue and complains about manifestations of that issue at companies generally, the Proposal itself focuses on the ordinary business matter of the Company's employee training and fails to show any connection between the referenced policy issue and the Company. Finally, the Proposal seeks to micromanage the Company by requesting that the Board publish employee training materials regarding any topic, whether mandatory or voluntary, written or oral, without affording management any flexibility or discretion to address and implement its policy regarding the complex matter of diversity, equity, and inclusion.

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”). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. The first is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration is related to “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.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). The Proposal implicates both of these considerations.

B. The Proposal May Be Excluded Because It Relates to the Company’s Management of its Workforce

The Proposal requests that the Company publish annually the written and oral content of any employee training materials offered to Company employees. The Commission and Staff have long held that shareholder proposals may be excluded under Rule 14a-8(i)(7) where, as here, they relate to the company’s management of its workforce. In *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of excludable ordinary business categories: “employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation.” Subsequently, the Commission recognized in the 1998 Release that “management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis” and since then has concurred with countless company requests to exclude proposals that relate to a company’s management of its workforce. *See e.g., Walmart, Inc.* (avail. Apr. 8, 2019) (concurring with the exclusion of a proposal requesting that “the board prepare a report to evaluate the risk of discrimination that may result from the [c]ompany’s policies and practices for hourly workers taking absences from work for personal or family illness” as relating to “management of its workforce”); *Merck & Co., Inc.* (avail. Mar. 7, 2002) (concurring with the exclusion of a proposal requesting that the company keep shareholders informed regarding the resolution of employment disputes as it related to the company’s “management of the workforce”).

Moreover, the Staff has recognized that proposals regarding employee training relate to the management of a company’s workforce and are therefore excludable under Rule 14a-8(i)(7). For example, in *AT&T, Inc.* (avail. Dec. 28, 2015), the Staff concurred with the exclusion of a proposal requesting that AT&T set up an education program for their employees about HIV/AIDS because the proposal “relate[d] to the establishment of an employee education program” and was therefore excludable under Rule 14a-8(i)(7).

Similar to the proposals discussed in the no-action requests above, the Proposal relates to the Company’s relationship with its workforce, and more specifically, the training of its employees. The Company’s decisions with respect to the topics, content and form of its employee training programs are fundamental to the management of the Company’s business and inherently

implicate the day-to-day operations of the Company. As of November 1, 2020, the Company employed approximately 69,600 individuals around the world, including in North America, South America, Europe, Asia and Africa. These individuals perform diverse and complex corporate, customer and manufacturing functions. The Company's training programs seek to provide employees with the tools they need to perform their work, the materials to understand and learn about the Company's values and culture and the materials to mitigate certain compliance risks to the Company. Therefore, the Company's training programs, which are tailored to different geographic regions and job functions, include among other topics: technical operation of equipment, equipment assembly, relationships with customers and dealers, the Company's diverse, equitable and inclusive culture, compliance with the Company's code of business conduct, compliance with anti-bribery/corruption, compliance with management of private data and cybersecurity, compliance with conflicts of interest, discrimination and workplace harassment policies and sexual harassment policies. These programs and their purpose 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.

In addition, the Proposal seeks to direct the Company's communications with investors with respect to matters relating to non-discrimination training in the management of the Company's workforce. The Proposal's Supporting Statement states that companies should disclose to shareholders the materials they use in employee training programs to allow shareholders to assess reputational, legal and financial risks from such programs. In *Moody's Corp.* (oral response Feb. 23, 2021), the Staff concurred with the exclusion of a proposal under Rule 14a-8(i)(7) that requested the company annually publish on its website its EEO-1 Report. In its request for no-action, *Moody's Corp.* stated that "[t]he [c]ompany's decisions with respect to how it reports to investors on the management of its workforce and what disclosures it provides to attract, retain, and engage with its employees, are fundamental to the management of the [c]ompany's business and inherently implicate the day-to-day operations of the [c]ompany." *Id.*

C. The Proposal Does Not Transcend the Company's Ordinary Business Operations

The Company is committed to a diverse, equitable and inclusive culture that celebrates diversity among its employees. The Company has in place a Code of Business Conduct¹, where the Company specifically highlights the value of diversity (welcoming personnel of all types of diversity), equity (ensuring equal and fair treatment of all employees) and inclusion (appreciating and recognizing people's unique contributions) ("DEI"). Additionally, in the Company's 2020 Sustainability Report², the Company emphasizes that having the right mix of talent is vital to the Company's continued growth and industry-leading innovation and highlights various Employee Resource Groups that foster diversity across a variety of interests and issues showcasing the Company's broad view of diversity. These groups include, among many others: "Multicultural," which creates an inclusive and collaborative environment bringing together employees from a variety of racial and ethnic backgrounds to promote understanding; "FLEX (Flexibility Leads to EXcellence)," which supports work-life management; and "NEON" (New & Experienced Organizational Network), which focuses on both business- and social-oriented events and is open

¹ Available at: https://s22.q4cdn.com/253594569/files/doc_downloads/2021/07/Deere_Code_External.pdf (page 20).

² Available at: <https://www.deere.com/assets/pdfs/common/our-company/sustainability/sustainability-report-2020.pdf> (pages 56 and 57).

to all employees, regardless of their years of experience. The Company also recognizes that investors' interest in issues of employee DEI, and issuers' disclosures on such topics, have greatly expanded over the past decade. However, that does not mean that every proposal that touches on DEI raises a significant policy issue that transcends a company's ordinary business.

Even when a proposal references or addresses a significant policy issue within the meaning of the Staff's interpretations of Rule 14a-8(i)(7), it may be excluded when the proposal focuses on ordinary business issues. For example, in *Apple, Inc.* (avail. Dec. 20, 2019, *recon. denied* Jan. 17, 2020), the Staff concurred with the exclusion of a proposal requesting a "report detailing the potential risks associated with omitting 'viewpoint' and 'ideology' from its written equal employment opportunity (EEO) policy" under Rule 14a-8(i)(7), concluding that the proposal did "not transcend the [c]ompany's ordinary business operations". Similarly, in *Deere & Company.* (avail. Nov. 14, 2014), the Staff concurred in the exclusion of a proposal requesting the implementation and enforcement of a company-wide employee code of conduct that included an anti-discrimination policy because the proposal focused on the company's "policies concerning its employees," an ordinary business matter. Here, as in *Apple Inc.* and *Deere & Company.*, while the Supporting Statement references a social policy issue - anti-discrimination - the Proposal itself focuses on the Company's employee training materials, a quintessentially ordinary business matter. Scouring the Company's voluminous training materials (which, as stated above, for a global company like the Company, are tailored to different geographic regions and job functions and the majority of which do not even address DEI) to evaluate how the Company is implementing its policy commitment to DEI is the province of management, not of shareholders.

Moreover, the Supporting Statement does not explain how the anti-racism and racial equity issues it references are in any way significant to the Company, rather than to other companies as a general matter. In *Dollar General Corp.* (avail. Mar. 6, 2020), the Staff concurred in exclusion of a proposal that generally addressed the alleged effects across companies of the use of employee arbitration clauses, stating, "[i]n our view, notwithstanding some references in the supporting statement to potentially important social issues, the [p]roposal as a whole deals with a matter relating to the [c]ompany's ordinary business operations - the overall 'use' of arbitration - and does not focus on any particular policy implication of that use at this particular company."

Similarly, the Supporting Statement complains that some employee trainings have become so "anti-racist" that they have "themselves [become] deeply racist and otherwise discriminatory" and asserts purported benefits for investors if *all* companies disclosed materials used in employee-training programs. However, it does not provide any reason to suggest that anti-racism is an issue pertinent to the Company's employee training programs specifically, nor does it explain the connection between that policy issue and the Company's overall training materials. Thus, as in *Dollar General Corp.*, despite some references to social policy issues, the Proposal does not focus on any particular implication of those issues for employee trainings at the Company.

D. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks to Micro-Manage the Company

In addition to interfering with management's day-to-day operations, 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.” *See* 1998 Release. The 1998 Release states that “[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” In addition, Staff Legal Bulletin 14K (Oct. 16, 2019) (“SLB 14K”) clarified that in considering arguments for exclusion based on micromanagement, the Staff looks to see “whether the proposal...imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” Furthermore, the Staff noted that if a proposal “potentially limit[s] the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company.” *Id.*

Here, the Proposal attempts to supplant the judgment of management and the Board by imposing a specific method for implementing complex policy: publishing *all* written and oral materials used in all employee training programs, whether voluntary or mandatory, in order for investors to have an understanding of the reputational, legal and financial risks to the Company. As made clear from the Supporting Statement, the focus of the Proposal is on DEI efforts within the Company, as made evident by the statement relaying concern that employee training programs have been “pressured” to be “anti-racist” and that such programs have themselves become “deeply racist and otherwise discriminatory.” *See* Supporting Statement. The Supporting Statement concludes that companies should disclose all materials used in their employee training programs “so that shareholders can appropriate [sic] gauge executives’ responses to and management of those risks.” The Proposal intends for shareholders to step into the shoes of management and oversee the “reputational, legal and financial” risks to the Company. *See* Supporting Statement. However, decisions concerning internal DEI efforts are multi-faceted and are based on a range of factors that are outside the knowledge and expertise of shareholders, and therefore inappropriate for such oversight and vote. The Proposal thus prescribes specific actions that the Company’s management must undertake without affording management sufficient flexibility or discretion to address and implement its policy regarding the complex matter of diversity, equality, and inclusion.

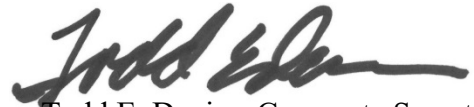
Therefore, the Proposal unduly limits the ability of management and the Board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to the Company’s shareholders and is excludable under Rule 14a-8(i)(7) as seeking to micro-manage the Company.

IV. CONCLUSION

For the reasons discussed above, we believe that the Company may properly omit the Proposal from its 2022 Proxy Materials in reliance on Rule 14a-8(i)(7). As such, we respectfully request that the Staff concur with our view and not recommend enforcement action to the Commission if the Company omits the Proposal from its 2022 Proxy materials. Should the Staff

have any questions regarding this matter, please feel free to contact me at (309) 765-5161 or by email at DaviesToddE@JohnDeere.com.

Sincerely,



Todd E. Davies, Corporate Secretary
Deere & Company

CC:

Hilary Stubben
Deere & Company
Email: StubbenHilaryA@JohnDeere.com

Robert M. Hayward, P.C.
Kirkland & Ellis LLP
Email: robert.hayward@kirkland.com

Ana Sempertegui
Kirkland & Ellis LLP
Email: ana.sempertegui@kirkland.com

Scott Shepard, Director of the Free Enterprise Project,
National Center for Public Policy Research
20 F Street, NW, Suite 700
Washington, DC 20001
Email: sshepard@nationalcenter.org

Enclosures: Exhibit A

EXHIBIT A



September 2, 2021

Todd E. Davies
Corporate Secretary
Deere & Company
One John Deere Place
Moline, Illinois 61265-8098

Dear Mr. Davies,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Deere & Co. (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2022 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to sshepard@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", written in a cursive style.

Scott Shepard

Enclosure: Shareholder Proposal

Employee Training Disclosure Proposal

Resolved: The Board of Directors will publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of any employee-training materials offered to any subset of the company's employees by the company or with the company's consent, whether in a mandatory or voluntary setting, as well as any such materials the creation of which was sponsored by the company in whole or part.

Supporting Statement: An immense amount of public attention has focused in recent years on workplace practices and employee training. All agree that employee success should be fostered and that no employees should face discrimination, but there is much disagreement about what non-discrimination means.

Concern stretches across the ideological spectrum. Much pressure has been exerted by shareholders and others for companies to adopt "anti-racism" programs that seek to establish "racial equity," which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than on the basis of merit.¹ Where such programs have been adopted, however, their adoptions has raised significant objection, including concern that the "anti-racist" programs are themselves deeply racist and otherwise discriminatory.²

All of this concern, disagreement and controversy creates massive risk of reputational, legal and financial harm to the company. Companies should disclose to shareholders the materials that they use in employee-training programs so that shareholders can appropriately gauge executives' responses to and management of those risks. Training materials that are too controversial or toxic to release to shareholders are by that very measure inappropriate for use with employees, so that publication will increase executive thoughtfulness and decrease overall company risk, to the benefit of all stakeholders.

¹ <https://www.sec.gov/Archives/edgar/data/1048911/000120677421002182/ndx3894361-def14a.htm#StockholderProposals88>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyouownike051421-14a8-incoming.pdf>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf>; https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785_58

² <https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/>; <https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337>; <https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.city-journal.org/verizon-critical-race-theory-training>; <https://www.city-journal.org/bank-of-america-racial-reeducation-program>



November 10, 2021

Via email: shareholderproposals@sec.gov

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

RE: Stockholder Proposal of the National Center for Public Policy Research, Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen,

This correspondence is in response to the letter of Todd Davies on behalf of Deere & Company (the “Company”) dated October 15, 2021, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our Shareholder Proposal (the “Proposal”) from its 2022 proxy materials for its 2022 annual shareholder meeting.

RESPONSE TO DEERE & COMPANY’S CLAIMS

Our Proposal asks the Board of Directors to

publish annually, without incurring excessive costs or disclosing genuinely confidential or proprietary information, the written and oral content of any employee-training materials offered to any subset of the company’s employees by the company or with the company’s consent, whether in a mandatory or voluntary setting, as well as any such materials the creation of which was sponsored by the company in whole or part.

The Company seeks to exclude this Proposal pursuant to Rule 14a-8(i)(7), claiming that the Proposal implicates the ordinary business of the Company without transcending that ordinary business, and seeks to micromanage the Company.

Most or all of the Company's arguments have been superseded by SEC Staff Bulletin No. 14L (Staff Bulletin 14L), issued on November 3, 2021.¹ Any arguments possibly remaining are defeated by precedent not cited by the Company, and to which the precedent cited by the Company is no response. The Company is left with no grounds on which to exclude our Proposal.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

Analysis

Part I. Staff Bulletin 14L effectively eliminates the grounds on which the Company has relied in seeking a no-action decision.

A. The Staff Bulletin eliminates analysis on the grounds of the relevance of issues of significant social policy to particular companies.

Staff Bulletin 14L radically changed the standards by which the Staff will make no-action determinations grounded in Rule 14a-8(i)(7). The Staff explained that it

will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.²

The staff in particular emphasized that “proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.”³ Our proposal raises exactly such an issue: whether current employee training raises risks as a result of racially or otherwise discriminatory content.

¹ See Division of Corporation Finance, Shareholder Proposals: Staff Legal Bulletin No. 14L (Nov. 3, 2021), available at U.S. Securities and Exchange Commission <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>.

² *Id.* at B.2.

³ *Id.*

B. The Staff Bulletin revises its micromanagement analysis, which even under the prior rules did not provide no-action grounds in this proceeding.

With regard to the question of whether a proposal seeks to micromanage a company, the staff returned in its analysis to the Commission’s clarification “in the 1998 Release that specific methods, timelines or details do not necessarily amount to micromanagement and are not dispositive of excludability.” It explained:

Consistent with Commission guidance, the staff will take a measured approach to evaluating companies’ micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement. Instead, we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.⁴

The staff quoted the 1998 Release to establish that “some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to ‘ordinary business.’ We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.”

Staff Bulletin 14L thus renders the precedent cited by the Company relating to micromanagement nugatory. But even if that precedent had not been so rendered, the precedent would not have helped the Company’s cause, because our Proposal does not seek to manage the company in any way. It simply asks the company to disclose the non-proprietary, non-confidential portions of its employee-training materials so that the shareholders can decide whether those materials are discriminatory, which would create massive company risks about which shareholders should be aware. But it doesn’t direct the Company’s management to do anything at all in that training – just to let us know what it is doing.

Part II. The remaining issue, whether the subject matter of our Proposal implicates a matter of significant social policy, is established with clear precedent.

In the *Amazon.com, Inc.* (April 7, 2021) proceeding, the Staff established that proposals that raise issues of workplace discrimination – certainly on the grounds of race and other federally suspect characteristics – implicate issues of substantial social policy that transcend ordinary business. There, the proponents offered a proposal that sought that Amazon.com

⁴ *Id.* at B.3.

commission a racial equity audit analyzing the Company's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on the Company's business. The audit may, in the board's discretion, be conducted by an independent third party with input from civil rights organizations, employees, communities in which the Company operates and other stakeholders. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company's website.

Our Proposal likewise seeks disclosures to shareholders that will allow them to evaluate whether the company is engaging in racially discriminatory or otherwise discriminatory behavior in its employee training. But in the interests of efficiency and minimizing expense to the company, we are not asking here that the Company compile a report. We're only asking that it publish for shareholders materials that it develops and distributes to employees, and indeed only that subset of materials that do not contain proprietary or confidential information.

The precedents on which the Company relies to argue that the issues raised are not sufficiently substantial to transcend ordinary business are, of course, superseded by Staff Bulletin 14L, and can provide no independent guidance because it's not clear whether they were decided on still-valid grounds, or grounds that the Staff has disposed of. But even were they still valid, they would not be applicable here. *Apple, Inc.* (avail. Dec. 20, 2019, *recon. Denied* Jan. 17, 2020) did not implicate issues of racial or sex-based discrimination. *Deere & Company* (avail. Nov. 14, 2014), meanwhile, sought to force an employee code of conduct on the Company. We attempt no such thing.

Conclusion

Given the new guidance offered by Staff Bulletin 14L, the Company's grounds for exclusion have been superseded. Our Proposal seeks only disclosures, not in any way the management of the Company, and it does so about matters that the Staff has unquestionably declared of significant social policy interest.

The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject Apple's request for a no-action letter concerning our Proposal.

Office of the Chief Counsel
Division of Corporation Finance
November 10, 2021
Page 5

A copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at sshepard@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Shepard", with a long horizontal flourish extending to the right.

Scott Andrew Shepard

cc: Todd Davies, Corporate Secretary & Associate General Counsel
(DaviesToddE@JohnDeere.com)