



DIVISION OF
CORPORATION FINANCE

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

August 14, 2023

Sophia Hudson
Kirkland & Ellis LLP

Re: Fox Corporation (the "Company")
Incoming letter dated August 10, 2023

Dear Sophia Hudson:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Kenneth Steiner (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its July 3, 2023 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Sophia Hudson, P.C.
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July 3, 2023

VIA E-MAIL (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 Fox Corporation from John Chevedden on Behalf of
Kenneth Steiner*

Ladies and Gentlemen:

We are writing on behalf of our client, Fox Corporation, 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 (collectively, the “Proposal”) submitted by John Chevedden on behalf of Kenneth Steiner (the “Proponent”) from its proxy statement and form of proxy for its 2023 Annual Meeting of Stockholders (the “2023 Proxy Materials”). The Proposal was received by the Company on May 19, 2023. The Company believes it may properly exclude the Proposal from its 2023 Proxy Materials for the reasons discussed below. The Company requests 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 2023 Proxy Materials.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB No. 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 being filed with the Commission and are concurrently being sent to the Proponent as notice of the Company’s intent to omit the Proposal from its 2023 Proxy Materials, no later than eighty (80) calendar days before the Company currently intends to file its definitive 2023 Proxy Materials with the Commission. Pursuant to Rule 14a-8(k) and SLB No. 14D, the Company requests that the Proponent concurrently provide to the undersigned a copy of any correspondence that is submitted to the Commission or the Staff in response to this letter.

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Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to the undersigned via e-mail at the address noted in the last paragraph of this letter.

I. The Proposal

The Proposal is attached hereto as Exhibit A. The Proposal sets forth the following proposed resolution:

RESOLVED: Shareholders request that the Fox Corporation Board prepare and publish a report, excluding confidential information, assessing the potential negative social impact and risks to the Company of inadequate differentiation between Fox’s on-air news content and opinion content, and assess the viability and risk mitigation impact of providing public differentiation between news and the opinion and entertainment-based nature of its non-news shows.

II. Basis for Excluding the Proposal

The Company believes it may properly omit the Proposal from its 2023 Proxy Materials in reliance on Rule 14a-8(i)(3), as the Proposal violates the Commission’s proxy rules by inserting a materially false or misleading statement, or Rule 14a-8(i)(7), as the Proposal impermissibly seeks a report on matters that fall within the “ordinary business” of the Company and does not raise a significant social policy issue.

III. Analysis

A. *The Proposal May be Excluded under Rule 14a-8(i)(3) as Violating the Commission’s Proxy Rules*

Rule 14a-8(a)(i)(3) allows a company to exclude a shareholder proposal if such proposal or the accompanying supporting statement violates the proxy rules promulgated under the Exchange Act, including Rule 14a-9, which prohibits materially false or misleading statements in connection with the solicitation of proxies. The Staff has stated that exclusion of a proposal under Rule 14a-8(i)(3) may be appropriate where “substantial portions of the supporting statement are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which she is being asked to vote.” (Staff Legal Bulletin No. 14B (Sep. 15, 2004)). Further, courts have held that shareholders are entitled to know “precisely the breadth of the proposal on which they are asked to vote.” *New York City Employees’ Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992).

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The Proponent has requested the publication of a graphic (the “Graphic”) with the Proposal that displays an altered on-screen logo of the Company’s Fox News Media business (“Fox News”) that labels the logo “Fox Opinion” rather than “Fox News.” In Staff Legal Bulletin No. 14I (Nov. 1, 2017), the Staff noted that while Rule 14a-8(d) “does not preclude shareholders from using graphics to convey information about their proposals,” it “recognizes the potential for abuse” in connection with the use of graphics. The Staff goes on to list situations under which exclusion of a graphic would be appropriate under Rule 14a-8(i)(3), including where “there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.”

The Proposal asks stockholders to vote on a request that the Company’s board prepare and publish a report assessing differentiation between Fox’s on-air news content and opinion content and the viability and risk mitigation impact of providing public differentiation between news and opinion. The Graphic is presumably meant to be an illustration of what “public differentiation” could look like. However, it goes far beyond the scope of the Proposal, which requests a report assessing whether public differentiation would mitigate risk, and not a vote on any specific form of differentiation. If the Company were to include the Graphic in the 2023 Proxy Materials, a reasonable stockholder is likely to conclude that the Proposal requires a vote on a specific alteration to the Company’s logos, as opposed to the publication of a report on the general topic of public differentiation as a purported risk mitigation strategy. Thus the Graphic confuses the nature of the Proposal and creates uncertainty as to the matter subject to vote. The Graphic is therefore exactly the type of misleading statement the Staff has opined violates the prohibitions of Rule 14a-9. As a result, at a minimum the Graphic should be excluded from the Proxy Materials.

B. *The Proposal May be Excluded under Rule 14a-8(i)(7) Because the Proposal Relates to the Company’s “Ordinary Business Operations”*

(i) *Overview of Rule 14a-8(i)(7)*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company’s “ordinary business operations.” According to the Commission, 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.” *Exchange Act Release No. 40018* (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission described the two central considerations for the ordinary business exclusion. 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 relates to “the degree to which the proposal seeks to ‘micro-manage’ the

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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 Commission has stated that a stockholder proposal that seeks a report on the merits of engaging in an action, rather than requesting the underlying action, still warrants exclusion under Rule 14a-8(i)(7) if the subject matter of the report “involves a matter of ordinary business.” *Exchange Act Release No. 20091* (Aug. 16, 1983). See also, *e.g.*, *Johnson Controls, Inc.* (avail. Oct. 26, 1999), “[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business...it may be excluded under [R]ule 14a-8(i)(7).”

(ii) *The Proposal May Be Excluded under Rule 14a-8(i)(7) Because it Relates to the Company’s News Programming*

When evaluating a proposal that relates to a company engaging in an assessment of risk, the Staff has focused on the subject matter to which the risk pertains, or that gives rise to the risk, to determine whether the proposal relates to the company’s ordinary business. See Staff Legal Bulletin No. 14E (Oct. 27, 2009). Here, the Proposal requests a report on the risks related to “on-air news content and opinion content.” On-air news and opinion content is core to the Company’s ordinary business operations: indeed, it is one of the principal products and services that the Company offers.

The Staff has consistently acknowledged that shareholder proposals that relate to the products and services offered by a company are excludable under Rule 14a-8(i)(7). For example, in *Wells Fargo & Co.* (Jan. 28, 2013, recon. denied Mar. 4, 2013), the Staff granted no-action relief under Rule 14a-8(i)(7) where the proposal requested a report discussing the adequacy of the company’s policies in addressing the social and financial impacts of the company’s direct deposit advance lending service, explaining that “the proposal relates to the products and services offered for sale by the [company]” and that “[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7).” Similarly, in *JPMorgan Chase & Co.* (Mar. 16, 2010), the Staff permitted the exclusion of a proposal under Rule 14a-8(i)(7) where such proposal requested the company’s board implement a policy mandating that the company cease issuing refund anticipation loans, which the proponent claimed were predatory loans. In its no-action request, the company acknowledged that the proposal addressed an issue that the Staff recognized as a “significant policy issue.” The company noted, however, that its “decisions as to whether to offer a particular product to its clients and the manner in which the [c]ompany offers those products and services, including pricing, are precisely the kind of fundamental, day-to-day operational matters meant to be covered by the ordinary business operations exception under Rule 14a-8(i)(7).” See also *Verizon Communications Inc.* (Jan. 29, 2019) (permitting exclusion under

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Rule 14a-8(i)(7) of a proposal requesting that the company offer its shareholders the same discounts on its products and services that are available to its employees, noting that the proposal “relates to the [c]ompany’s ‘discount pricing policies’”); *Pfizer Inc.* (Mar. 1, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report describing steps taken by the company to prevent the sale of its medicines for use in executions, noting that the proposal “relates to the sale or distribution of [the company’s] products”); *The Walt Disney Co.* (Nov. 23, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company’s board approve the release of a certain film on Blu-ray, noting that the proposal “relates to the products and services offered for sale by the company”); *The TJX Companies, Inc.* (Apr. 16, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company’s board develop and disclose a new universal and comprehensive animal welfare policy applying to the company’s sale of products, with the majority of the proposal focusing on the company’s sale of products containing fur).

Moreover, the Staff has consistently concurred in the exclusion under Rule 14a-8(i)(7) of proposals that seek to insert shareholders directly into such ordinary business decisions of media companies by requesting that a company make specific changes in the way it presents news and the format of its programming. For example, in *Time Warner, Inc.* (avail. Mar. 13, 2018), the Staff concurred in the exclusion of a proposal under Rule 14a-8(i)(7) where a proposal requested that Time Warner’s board of directors “adopt a policy requiring that [the company’s] news operations tell the truth and issue an annual report to shareholders explaining instances where the [c]ompany failed to meet this basic journalistic obligation.” Further, in *The Walt Disney Co.* (avail. December 12, 2017), the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a substantially similar proposal to the one in *Time Warner Inc.*, finding that “the [p]roposal relates to the content of news programming.” See also *CBS Corp.* (avail. Mar. 22, 2013) (concurring in the exclusion of a proposal under Rule 14a-8(i)(7) that requested that “the board of directors ensure that CBS’s news programming adheres to CBS’s corporate policy concerning accurate reporting, and that the board should report to shareholders with regard to this issue,” noting that “the proposal relates to the content of news programming”); *General Electric Co.* (avail. Dec. 10, 2009) (concurring in the exclusion of a proposal requesting that “the GE-NBC news department should cease all its liberal editorializing” on grounds that it “relates to the content of news programming”). Additionally, the Staff has consistently agreed that the nature, presentation and content of media programming relate to a company’s ordinary business. See, e.g., *Netflix, Inc.* (avail. Mar. 14, 2016) (concurring with the exclusion of a proposal requesting that “the company issue a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making” as relating to “nature, presentation and content of programming and film

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production”); *Comcast Corp.* (avail. Mar. 24, 2015) (concurring with the exclusion of a proposal requesting that the company “provid[e] oversight and public reporting” regarding smoking and other matters that may endanger young people’s well-being or otherwise harm the reputation of the company as relating to “the nature, presentation and content of programming and film production”); *The Walt Disney Co.* (avail. Nov. 22, 2006) (concurring with the exclusion of a proposal requesting that Disney report on steps undertaken to avoid stereotyping in its products because the proposal related to the nature, presentation and content of programming); *General Electric Co.* (avail. Feb. 1, 1999) (concurring with the exclusion of a proposal requesting that the company’s board prohibit all unbiblical programming by NBC and reprimand a particular employee on the basis that the proposal related to the content of programming).

Here, the Proponent seeks to insert stockholders directly into decisions about the content and presentation of the Company’s news programming, specifically how news and opinion content is presented on Fox News. Fox News’s programming is a key product and service of the Company. Indeed, the Graphic highlights the day-to-day nature of the subject matter of the Proposal, that is, Fox News’s on-screen graphics. It is akin to a proposal suggesting a company change the packaging of its products. As this long list of precedent demonstrates, proposals, like the Proposal, that relate to the nature, presentation and content of a company’s programming constitute the ordinary business of a company and are excludable under Rule 14a-8(i)(7).

(iii) *The Proposal Seeks to Micromanage the Company*

In addition to introducing stockholders into a fundamental aspect of the Company’s management’s ability to run Fox News on a day-to-day basis, the Proposal seeks to impermissibly micromanage 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.” 1998 Release. The Proposal is comparable to several proposals that the Staff permitted to be excluded recently under Rule 14a-8(i)(7) for seeking to micromanage the companies “by probing too deeply into matters of a complex nature.” In *Deere & Company* (Jan. 3, 2022), *Verizon Communications Inc.* (Mar. 17, 2022), and *American Express* (Mar. 11, 2022), the Staff concurred in the exclusion of proposals requesting publication of employee-training materials to allow investors to evaluate management’s handling of risk associated with employment discrimination. Similarly, the Proposal requests a report on the presentation of the Company’s on-air content and associated risks and includes the Graphic as a risk mitigation strategy.

The Company’s process with respect to news reporting and presentation involves numerous complex considerations by an experienced management team and professional journalists, including which news to report, the content of the news to be reported, and the presentation of on-air content. As argued by the company in *Deere & Company* regarding the requested content in

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the proposal: “[D]ecisions concerning internal [diversity, equity, and inclusion] efforts are multifaceted 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.” Similarly, delivering on-air content requires numerous complex decisions informed by journalistic expertise and experience. Stockholders by and large cannot be expected to have journalistic expertise or experience, and thus decisions regarding on-air content are not an appropriate subject for stockholder oversight. Again, the Graphic illustrates the Proposal’s flaw in this regard, simplistically suggesting a change to the Company’s on-air graphics as a purported risk mitigation strategy, glossing over the multifaceted determinations involved in the Company’s delivery of on-air content and ignoring whether changing logos even would be feasible in the context of Fox News’s live programming. The Proposal seeks to intervene in matters that are squarely within the necessary purview of management and are not suited for stockholder oversight. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(7).

(iv) *The Proposal Does Not Raise a “Significant Policy Issue”*

The well-established precedent set forth above demonstrates that the Proposal addresses ordinary business matters, and therefore is excludable under Rule 14a-8(i)(7). In Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Staff noted a plan to “realign” with the Commission’s standard in the 1998 Release, first articulated in 1976, by focusing on “the social policy significance of the issue that is the subject of the shareholder proposal” rather than “the nexus between a policy issue and the company.” In *Amazon.com, Inc.* (avail. Apr. 8, 2022), Amazon argued that the proposal, which requested a report on workforce turnover and an assessment of its impact on the company’s diversity, equity and inclusion, merely “touches upon a significant social policy issue” but primarily relates to an ordinary business matter, and is distinguishable from a proposal related to human capital management practices that raise specific social policy issues “with a broad societal impact.” As demonstrated by the Staff’s concurrence, citing potential social policy implications in a proposal does not qualify as “focusing” on such issues, even if the social policies happen to be the subject of substantial public focus. The underlying subject of the Proposal—decisions regarding on-air content—is not a significant policy issue that transcends the Company’s ordinary business operations. While the Proposal references the social implications of news on society and politics, the focus of the Proposal primarily relates to the delivery of on-air content and not any particular policy issue. In sum, the Proposal focuses directly on newsroom operations, an area long-held to be within the realm of managerial responsibility and not a topic that transcends ordinary business. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(7).

For the reasons discussed above, the Company believes that it may properly omit the Proposal from its 2023 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company’s view and not recommend enforcement action to the

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Commission if the Company omits the Proposal from its 2023 Proxy Materials. Should the Staff have any questions regarding this matter, please feel free to contact me at (212) 446-4750 or by e-mail at sophia.hudson@kirkland.com.

Sincerely,

Sophia Hudson, P.C.
Kirkland & Ellis LLP

CC: Viet Dinh, Chief Legal and Policy Officer, Fox Corporation
Laura A. Cleveland, Senior Vice President and Corporate Secretary, Fox Corporation

Enclosure: Exhibit A - Proposal and Supporting Statement

Exhibit A

Proposal and Accompanying Correspondence

Kenneth Steiner

[REDACTED]

Ms. Laura A. Cleveland
Corporate Secretary
Fox Corporation (FOX)
1211 Avenue of the Americas
New York, New York 10036
PH: [REDACTED]

Dear Ms. Cleveland,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

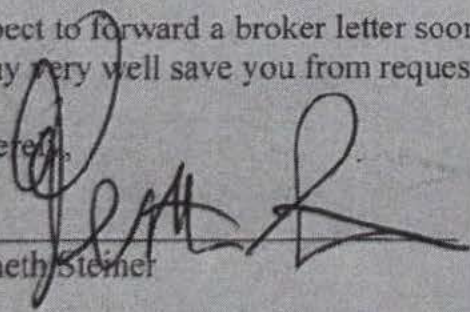
[REDACTED]

[REDACTED]

to facilitate prompt and verifiable communications.
Please identify this proposal as my proposal exclusively.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,


Kenneth Steiner

5/18/23
Date

cc: Steven Tomsic [REDACTED]
Katherine M. Primas [REDACTED]

Resolution Title: Fox News Report on “News” vs. “Opinion” Risk

WHEREAS: The recent Dominion lawsuit against Fox News has highlighted the risk of a news organization inadequately differentiating its news reporting from its opinion and entertainment programming. The ongoing perception by Fox News viewers of non-news shows as journalism poses significant risks to our Company and to our national democracy.

Fox recently settled a lawsuit, for \$787.5 million, stemming from statements made on Fox News alleging illegitimacy of the 2020 election.¹ The settlement came after a court rejected Fox’s legal defense that the statements were “pure opinion,” noting that the statements “were made by newscasters holding themselves out to be sources of accurate information.”²

Failure to differentiate between journalism and opinion poses a clear threat to an informed electorate and a thriving American democracy. When opinion content is masked as news, and suggests that a presidential election is invalid, the basis of our democracy is shaken. Due to inadequately differentiated news and opinion content, studies show that Fox viewers are more likely to be misinformed about issues including elections and the integrity of voting systems,³ COVID-19⁴ and climate change,⁵ among others. Typically, it is Fox’s opinion shows that are identified as the basis for the misinformation.⁶

The blurring of lines between opinion and journalism also introduces business risk in the form of potential reputational damage. Twenty-one percent of Fox News viewers said they trusted the network less in light of evidence revealed by the Dominion lawsuit.⁷

A clear differentiation between Fox’s opinion and news shows can mitigate these risks, thereby serving the Company’s and shareholders’ interests without limiting the free speech of hosts or the programming that Fox News provides.

RESOLVED: Shareholders request that the Fox Corporation Board prepare and publish a report, excluding confidential information, assessing the potential negative social impact and risks to the Company of inadequate differentiation between Fox’s on-air news content and opinion content, and assess the viability and risk mitigation impact of providing public differentiation between news and the opinion and entertainment-based nature of its non-news shows.

SUPPORTING STATEMENT: Shareholders request that the report include:

¹ <https://www.cnn.com/2023/04/18/media/fox-dominion-settlement/index.html>

² <https://www.cnn.com/2023/03/31/media/fox-news-dominion-lawsuit/index.html>

³ <https://www.prii.org/research/competing-visions-of-america-an-evolving-identity-or-a-culture-under-attack/>

⁴ <https://www.kff.org/coronavirus-covid-19/press-release/covid-19-misinformation-is-ubiquitous-78-of-the-public-believes-or-is-unsure-about-at-least-one-false-statement-and-nearly-at-third-believe-at-least-four-of-eight-false-statements-tested/>

⁵ <https://www.independent.co.uk/climate-change/news/misinformation-denial-fox-news-media-b2225682.html>

⁶ <https://www.washingtonpost.com/news/monkey-cage/wp/2018/11/06/blame-fox-not-facebook-for-fake-news/>;
<https://www.salon.com/2020/07/17/fox-news-peddled-misinformation-about-the-coronavirus-253-times-in-five-days-study/>

⁷ <https://variety.com/2023/tv/news/fox-news-dominion-lawsuit-viewers-less-trust-1235554399/>

- Analysis of risk mitigation from a third-party expert that includes legal, financial, and reputational risk;
- Analysis of the viability and value of risk-mitigation strategies that increase the distinction between news and opinion content, such as replacing the on-screen "Fox News" branding during opinion shows with an alternative branding demonstrating their opinion-based nature.

From: [John Chevedden](#)
To: [Cleveland, Laura](#); [Tomsic, Steven](#); [Katherine M. Primas](#)
Subject: Rule 14a-8 Proposal (FOX)
Date: Friday, May 19, 2023 11:22:18 PM
Attachments: [image001.jpg](#)
[Scan2023-05-19_201624.pdf](#)

Dear Ms. Cleveland,

Please see the attached rule 14a-8 proposal.

Please confirm that this is the correct email address for rule 14a-8 proposals.

Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

I so request.

The proponent is available for a telephone meeting on the first Monday and Tuesday after

10-days of the proposal submittal date at noon PT.

Please arrange in advance in a separate email message regarding a meeting.

The graphic is intended for publication.

John Chevedden



From: John Chevedden [REDACTED]
Sent: Monday, May 22, 2023 10:04 PM
To: Cleveland, Laura; Tomsic, Steven; Katherine M. Primas
Subject: (FOX)

Dear Ms. Cleveland,

The below image and caption is intended for publication with the rule 14a-8 proposal.

John Chevedden

This is an example of a potential on-screen logo that may clarify content to reduce litigation risk




From: [Cleveland, Laura](#)
To: [John Chevedden](#)
Subject: Stockholder proposal
Date: Wednesday, May 24, 2023 5:10:18 PM
Attachments: [FOX Letter \(Steiner-Chevedden Proposal\).pdf](#)

Mr. Chevedden:

Thank you for the proposal requesting FOX prepare and publish a report assessing the potential negative impact and risks of inadequate differentiation between FOX on-air news and opinion and assessing the viability of providing differentiation between news/opinion/entertainment. We welcome the opportunity to discuss the proposal. However, before we discuss, we would like to ensure that the proposal is a proper one. To that end, we have attached a letter highlighting certain procedural deficiencies in the proposal. We have also sent this letter via mail.

We look forward to receiving your response to our letter and subsequently discussing the proposal.

Kind regards,
Laura

Laura A. Cleveland
Senior Vice President and Corporate Secretary | FOX
1211 Ave of the Americas, 44th Floor | New York | NY | 10036 | tel: 

Laura A. Cleveland
Senior Vice President
and Corporate Secretary



May 24, 2023

Via Email & Overnight mail

Mr. John Chevedden

PII

Re: Rule 14a-8 stockholder proposal dated May 19, 2023 (the "Proposal")

On May 19, 2023, Fox Corporation (the "Company") received the Proposal submitted by you on behalf of Mr. Kenneth Steiner (the "Proponent") for consideration at the Company's 2023 Annual Meeting of Stockholders.

The purpose of this letter is to notify you (pursuant to the requirements of Rule 14a-8(f) under Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) that the above referenced submission of the Proposal fails to satisfy certain eligibility and procedural requirements specified under Rule 14a-8(b). Pursuant to Rule 14a-8(f) of the Exchange Act, your response to this letter must be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter (the "Deadline"). If you fail to remedy the deficiency before the Deadline, the Company may exclude the Proposal from its proxy statement.

Under Rule 14a-8(b) of the Exchange Act, in order to be eligible to submit a proposal, a stockholder must have continuously held (i) at least \$2,000 in market value of the Company's securities entitled to vote on the Proposal for at least three years, (ii) at least \$15,000 in market value of the Company's securities entitled to vote on the Proposal for at least two years, or (iii) at least \$25,000 in market value of the Company's securities entitled to vote on the Proposal for at least one year. As of the date hereof, we have not received proof that the Proponent has satisfied such ownership requirements under Rule 14a-8(b)(2) of the Exchange Act as of the date that the Proposal was submitted to the Company.

To remedy this defect, you must submit sufficient proof demonstrating that the Proponent is a stockholder with continuous ownership of the required amount of shares of the Company's securities entitled to vote on the Proposal for the relevant period.

Furthermore, under Rule 14a-8(b)(1)(vi) of the Exchange Act, in order to be eligible to submit a proposal, a stockholder cannot aggregate its holdings with those of another stockholder or group of stockholders to meet the requisite amount of securities necessary to be eligible to submit a proposal. We request confirmation that the Proponent has not

aggregated its holdings with those of another stockholder or group of stockholders to meet the requisite amount of securities necessary to be eligible to submit the Proposal.

This letter will constitute the Company's notice to you under Rule 14a-8(f) of the Exchange Act of this deficiency. As noted above, Rule 14a-8(f) of the Exchange Act requires that your response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to Laura Cleveland, Senior Vice President and Corporate Secretary, c/o Fox Corporation, 1211 Avenue of the Americas, New York, New York 10036. Alternatively, and preferably, you may transmit any response by email to me at [REDACTED].

Please note that the requests in this letter are without prejudice to any other rights that the Company may have to exclude the Proposal from its proxy materials on any other grounds permitted by Rule 14a-8.

If you have any questions with respect to the foregoing, please contact me at [REDACTED]. For your reference, I enclose a copy of Rule 14a-8 of the Exchange Act.

Sincerely,



Laura A. Cleveland
Senior Vice President and Corporate Secretary

Enclosures:

Rule 14a-8 under the Securities Exchange Act of 1934, as amended

Regulation 14A

Regulation 14A Rule 14a-8

<http://www.oursecfiling.com/document/read/R19 IDANDNQ R19 IDA0JPQ>

Rule 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 a means for the shareholder to specify by ballot 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 day and specific time 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-filer; 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 entitled 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 shareholder.

(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 shareholder's 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 the e document 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 year , two year , 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) [Expired January 1, 2023; See [SEC Release No. 34-89964](#); September 23, 2020.]

(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 requirement and submitting multiple proposal for a particular shareholder ' meeting

(d) Question 4 How long can my proposal be?

The proposal, including any accompanying supporting statement, may not exceed 500 word

(e) Question 5 What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company' annual meeting, you can in most case 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 report 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 day before the date of the company' proxy statement released to shareholder 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 material

(3) If you are submitting your proposal for a meeting of shareholder 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 [Rule 14a-8](#)?

(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 day 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' properly determined deadline. If the company intends to exclude the proposal, it will later have to make a

submission under [Rule 14a-8](#) and provide you with a copy under [Question 10](#) below, [Rule 14a-8\(j\)](#).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholder, then the company will be permitted to exclude all of your proposal from its proxy material 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 shareholder 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 [Rule 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 shareholder 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 [Rule 14a-8](#) should specify the point 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 material 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 dividend

(j) **Question 10 What procedure must the company follow if it intends to exclude my proposal?**

(1) If the company intends to exclude a proposal from its proxy material, it must file its reason 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 a shareholder 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, [Rule 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 material, 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 statement no later than 30 calendar days before it files definitive copies of its proxy statement and form of proxy under [Rule 14a-6](#).

From: [John Chevedden](#)
To: [Cleveland, Laura](#)
Subject: (FOX)
Date: Thursday, May 25, 2023 5:26:49 PM

Dear Ms. Cleveland,
Mr Steiner's broker letter will show that he is not aggregating shares.
John Chevedden

From: [John Chevedden](#)
To: [Cleveland, Laura](#)
Subject: (FOX)
Date: Wednesday, May 31, 2023 10:09:09 PM
Attachments: [Scan2023-05-31_190304.pdf](#)

Dear Ms. Cleveland,
Please see the below broker letter.
John Chevedden

From: [Cleveland, Laura](#)
To: [John Chevedden](#)
Subject: (FOX)
Date: Friday, June 2, 2023 2:16:20 PM
Attachments: [Scan2023-05-31_190304.pdf](#)

Mr. Chevedden, thank you for this ownership letter. We will reach out to you as soon as possible to set up a telephone meeting.

Regards,
Laura

From: John Chevedden [REDACTED]
Sent: Wednesday, May 31, 2023 10:09 PM
To: Cleveland, Laura [REDACTED]
Subject: (FOX)

Dear Ms. Cleveland,
Please see the below broker letter.
John Chevedden

July 24, 2023

VIA EMAIL

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Email: shareholderproposals@sec.gov

**Re: Shareholder Proposal to Fox Corporation from John Chevedden on Behalf of
Kenneth Steiner**

Ladies and Gentlemen:

Kenneth Steiner (the “Proponent”) is the beneficial owner of common stock of Fox Corporation (“Fox” or the “Company”) and has filed a shareholder proposal (the “Proposal”) with the Company. I write in response to the letter dated July 3, 2023, sent to the Securities and Exchange Commission by Sophia Hudson of Kirkland & Ellis LLP (the “Company Letter”).

In the Company Letter, Fox argues that the Proposal may be excluded from the Company’s 2023 proxy statement. The Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, Proponents respectfully request that the Staff inform the Company that it is denying the no action request. A copy of this letter is being emailed concurrently to the Company’s counsel.

SUMMARY

The Proposal requests Fox News to report on the risks posed to the Company by its inadequate differentiation between news and opinion content. The stakes of the problem identified by the Proposal were recently laid bare by the \$787.5 million dollars the company paid to Dominion Voting Systems to settle a defamation lawsuit stemming from statements made by Fox’s on-air entertainment personalities regarding the legitimacy of the 2020 election. The settlement came after the court rejected Fox’s legal defense that the statements at issue were “pure opinion” because, as the Court noted, the statements came from “newscasters holding themselves out to be adequate sources of information.”¹ Subsequent lawsuits have been filed, including a defamation lawsuit from Smartmatic for \$2.7 billion and a recent case by Ray Epps alleging defamation with actual malice, a standard that poses the risk of punitive damages.²

Not only does the inadequate differentiation of on-air news and entertainment programming create significant and demonstrable risk to Fox, it also poses a clear threat to the informed electorate necessary to American democracy. Studies demonstrate that Fox viewers are more likely than viewers of competitors’ products to be misinformed about significant issues including election integrity, COVID-19, and climate change.³

¹ <https://www.cnn.com/2023/03/31/media/fox-news-dominion-lawsuit/index.html>

² See <https://www.msn.com/en-us/news/us/ray-epps-takes-fox-news-to-court-extremist-mass-killings-on-the-rise/ar-AA1dR3vy>

³ See *infra* (Proposal at citations 3-5 & No-Action Response at citations 4-7).

The Company seeks to exclude the Proposal under Rule 14a-8(i)(7) as relating to the Company's ordinary business. However, because the Proposal raises a significant social policy issue and does not seek to micromanage the Company's business, there is no basis to exclude the Proposal under this Rule.

The Company also argues that a graphic, included with the Proposal as an exemplar of how the Company could differentiate news and opinion, should be excluded under Rule 14a-8(i)(3)'s prohibition against vague and indefinite statements. However, as the Company acknowledges, the graphic is merely (and explicitly) intended to serve as an "illustration" of a potential measure the Company could take to differentiate on-air news and opinion content. Such an example does not muddle the Proposal's clear request, and no reasonable investor presumed to have read the proposal would be confused.

THE PROPOSAL

Whereas: The recent Dominion lawsuit against Fox News has highlighted the risk of a news organization inadequately differentiating its news reporting from its opinion and entertainment programming. The ongoing perception by Fox News viewers of non-news shows as journalism poses significant risks to our Company and to our national democracy.

Fox recently settled a lawsuit, for \$787.5 million, stemming from statements made on Fox News alleging illegitimacy of the 2020 election.¹ The settlement came after a court rejected Fox's legal defense that the statements were "pure opinion," noting that the statements "were made by newscasters holding themselves out to be sources of accurate information."²

Failure to differentiate between journalism and opinion poses a clear threat to an informed electorate and a thriving American democracy. When opinion content is masked as news, and suggests that a presidential election is invalid, the basis of our democracy is shaken. Due to inadequately differentiated news and opinion content, studies show that Fox viewers are more likely to be misinformed about issues including elections and the integrity of voting systems,³ COVID-19⁴ and climate change,⁵ among others. Typically, it is Fox's opinion shows that are identified as the basis for the misinformation.⁶

The blurring of lines between opinion and journalism also introduces business risk in the form of potential reputational damage. Twenty-one percent of Fox News viewers said they trusted the network less in light of evidence revealed by the Dominion lawsuit.⁷

¹ <https://www.cnn.com/2023/04/18/media/fox-dominion-settlement/index.html>

² <https://www.cnn.com/2023/03/31/media/fox-news-dominion-lawsuit/index.html>

³ <https://www.prr.org/research/competing-visions-of-america-an-evolving-identity-or-a-culture-under-attack/>

⁴ <https://www.kff.org/coronavirus-covid-19/press-release/covid-19-misinformation-is-ubiquitous-78-of-the-public-believes-or-is-unsure-about-at-least-one-false-statement-and-nearly-at-third-believe-at-least-four-of-eight-false-statements-tested/>

⁵ <https://www.independent.co.uk/climate-change/news/misinformation-denial-fox-news-media-b2225682.html>

⁶ <https://www.washingtonpost.com/news/monkey-cage/wp/2018/11/06/blame-fox-not-facebook-for-fake-news/>
<https://www.salon.com/2020/07/17/fox-news-peddled-misinformation-about-the-coronavirus-253-times-in-five-days-study/>

⁷ <https://variety.com/2023/tv/news/fox-news-dominion-lawsuit-viewers-less-trust-1235554399/>

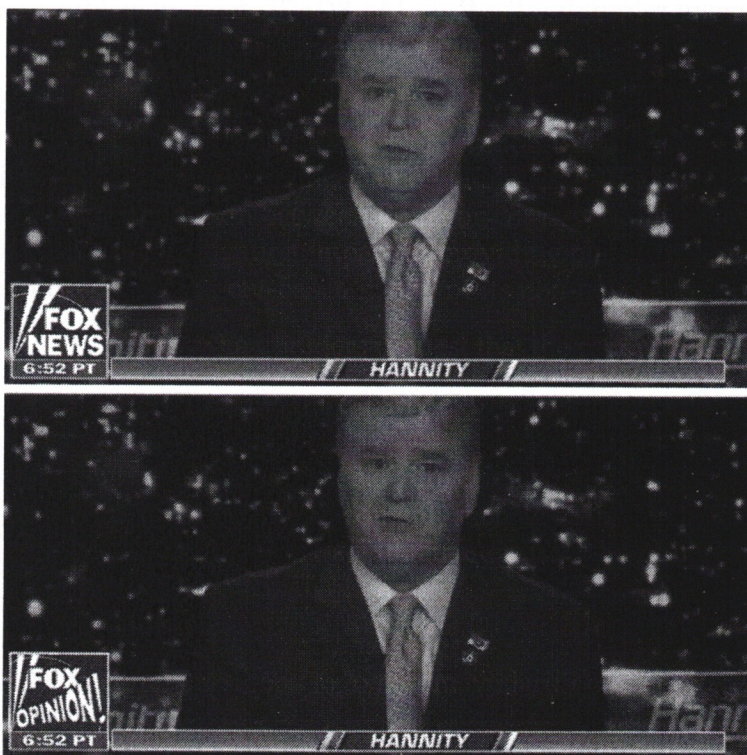
A clear differentiation between Fox's opinion and news shows can mitigate these risks, thereby serving the Company's and shareholders' interests without limiting the free speech of hosts or the programming that Fox News provides.

RESOLVED: Shareholders request that the Fox Corporation Board prepare and publish a report, excluding confidential information, assessing the potential negative social impact and risks to the Company of inadequate differentiation between Fox's on-air news content and opinion content, and assess the viability and risk mitigation impact of providing public differentiation between news and the opinion and entertainment-based nature of its non-news shows.

SUPPORTING STATEMENT: Shareholders request that the report include:

- Analysis of risk mitigation from a third-party expert that includes legal, financial, and reputational risk;
- Analysis of the viability and value of risk-mitigation strategies that increase the distinction between news and opinion content, such as replacing the on-screen "Fox News" branding during opinion shows with an alternative branding demonstrating their opinion-based nature.

This is an example of a potential on-screen logo that may clarify content to reduce litigation risk



ANALYSIS

I. The Proposal raises a significant social policy issue and does not micromanage the Company.

Fox argues that the Proposal may be excluded under Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations and because it micromanages the Company.

Rule 14a-8(i)(7) incorporates two principles. First, the Commission has recognized that certain day-to-day tasks “[can] not, as a practical matter, be subject to direct shareholder oversight.” *Exchange Act Release No. 40018* (May 21, 1998) (“1998 Release”). Second, Rule 14a-8(i)(7) also permits the exclusion of proposals that micromanage 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.* As articulated by the SEC in recent guidance, in assessing micromanagement, the Staff 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.” Staff Legal Bulletin No. 14L (Nov. 3, 2021).

A. The Proposal raises a significant issue of social policy.

The Company's argument misapplies the Rule 14a-8(i)(7) standard and misidentifies the significant social policy issue raised by the Proposal.

The Company first argues that the Proposal may be excluded because it “relates to the Company's News Programming,” *i.e.*, its ordinary business. Company Letter at 4. However, proposals that relate to a company's day-to-day business but which raise “significant social policy issues” are generally not excludable. *See* 1998 Release. This is true “even if the significant social policy issue relates to the ‘nitty-gritty of [a company's] core business.’” Staff Legal Bulletin No. 14L. This exception is essential for preserving shareholders' right to raise important issues by means of the company's proxy statement, while also recognizing the board's authority over most day-to-day business matters. *See id.*

Under the significant social policy exception, the Staff routinely permits proposals that relate intimately to companies' core businesses, even when the companies argue that those proposals interfere with “both the types of products and services offered for sale by the Company as well as the Company's relationship with its customers.” *See e.g., The Travelers Companies, Inc.* (Mar. 30, 2023) (proposal requested company report “if and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities”). This holds in areas closely related to this Proposal. For example, in *Meta Platforms, Inc.* (Mar. 30, 2022), the proposal requested that the Company publish an independent report on the “actual and potential human rights impacts of Facebook's targeted advertising policies and practices.” Meta argued that because “substantially all of the Company's revenue is generated from advertisements, these advertising decisions are core to the Company's business and an essential part of management's responsibilities for running the Company's day-to-day operations.” In denying the No Action letter, the Staff concluded that the proposal transcended ordinary business by raising the human rights impacts of Facebook's content management

policies and was therefore not excludable. Similarly, in *Alphabet, Inc.* (Apr. 12, 2022), the proposal requested a report on the “Company’s existing policies and practices to address the human rights impact of its content management policies to address misinformation and disinformation across its platforms. The Company’s no-action request was denied despite its argument that the proposal implicated “the core of the Company’s business and operations.”

Despite the Company’s *pro forma* objection, the Proposal clearly addresses a significant policy issue: the responsible behavior of large media companies like Fox in light of the dangers that misinformation poses to American democracy. Misinformation from non-journalist, on-air personalities working for a major media company like Fox “News” is a persistent subject of widespread commentary and debate.¹ A 2021 poll found that ninety-five percent of Americans identified the rampant spread of misinformation as a problem,² and a 2022 follow-up found that three-quarters of Americans believed that it was leading to increased political extremism and hate crimes.³ Studies have suggested that commentary from Fox’s non-journalist commentators had a meaningful impact on the polarized early response to the COVID-19 pandemic,⁴ and that misinformation from Fox’s primetime lineup likewise likely had a meaningful impact on COVID-19 vaccination rates.⁵ The role that Fox’s non-journalist personalities played in promoting falsehoods about the 2020 election is well-documented.⁶ Similarly, Fox’s non-journalist hosts routinely peddle falsehoods about climate change,⁷ leading to meaningful, non-partisan differences in belief among news viewers.⁸

The Company Letter’s argument that the Proposal “references the social implications of news on society and politics,” but does not relate to “any particular policy issue,” therefore, misunderstands the point. The dis- and misinformation presented by Fox News’ hosts, and its negative impact on critical social policy issues such as health, climate, and democracy, *is* the significant policy issue raised by the Proposal. Indeed, the Staff has already acknowledged that the role that major media platforms play in spreading misinformation is a significant policy issue that transcends ordinary business. *See, e.g., Alphabet, Inc.* (Apr. 12, 2022).

The precedents relied upon in the Company Letter are readily distinguishable. For example, in *Wells Fargo & Co.* (Jan. 28, 2013), the Staff concluded that a proposal requesting a report on the

¹ *E.g.*, <https://www.ft.com/content/78826749-892b-42b6-9053-ef613016ae93>;
<https://www.washingtonpost.com/politics/2021/11/08/unique-role-fox-news-misinformation-universe/>;
<https://www.nytimes.com/2023/04/16/business/media/fox-news-dominion-trial.html>;

² <https://apnews.com/article/coronavirus-pandemic-technology-business-health-misinformation-fbe9d09024d7b92e1600e411d5f931dd>

³ <https://apnews.com/article/religion-crime-social-media-race-and-ethnicity-05889f1f4076709c47fc9a18dbec818a>

⁴ <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/6B0EB93F6BA17608D82B4D23EDA75E50/S0008423920000396a.pdf/how-right-leaning-media-coverage-of-covid-19-facilitated-the-spread-of-misinformation-in-the-early-stages-of-the-pandemic-in-the-us.pdf>

⁵ <https://cepr.org/voxeu/columns/impact-fox-news-us-covid-19-vaccination-campaign>;

<https://www.washingtonpost.com/politics/2022/10/10/vaccines-coronavirus-fox-news/>

⁶ <https://www.cnn.com/2020/11/05/media/fox-news-prime-time-election/index.html>;

<https://www.cbsnews.com/news/rupert-murdoch-fox-dominion-defamation/>

⁷ <https://www.citizen.org/news/climate-change-denial-dominates-86-of-fox-news-climate-segments/>

⁸ https://www.wilsonquarterly.com/quarterly/_/republicans-who-watch-cnn-believe-in-global-warming-fox-news-nope

“social and financial impacts of direct deposit advance lending” was excludable because it “concern[ed] the sale of particular products and services.” However, in *Wells Fargo*, both the proponent and the company agreed that “predatory lending” was a significant social policy issue that would override the ordinary business exception. The company’s primary argument, therefore, was that its “Direct Deposit Advance does not constitute predatory lending, and thus the Proposal does not raise an overriding policy issue.” In short, *Wells Fargo* does not stand for the proposition that proposals relating to a company’s products or services are *always* excludable. Rather, it appears that the Staff concurred with the company’s argument that the proposal did not raise the policy issue of predatory lending. By contrast, this Proposal unambiguously raises a policy issue that the Staff has already determined to be significant. Nor is *JPMorgan Chase & Co.* (Mar. 16, 2010) apposite. There, the proposal demanded that the board “implement a policy mandating that JPMorgan Chase cease” offering refund anticipation loans. Like the Company’s other citations to *Verizon Communications Inc.* (Jan. 29, 2019) (proposal requested that company offer shareholders discounts on its products), and *The Walt Disney Co.* (Nov. 23, 2015) (proposal requested that company sell a specific movie on Blu-ray), the *JPMorgan* proposal’s demand that the company take extremely specific action with regard to certain products bears no resemblance to the Proposal here, which requests that the Company issue a report on the risks associated with its failure to differentiate its news and opinion programming.

Lastly, the Company Letter cites to a series of precedents involving media companies. None are as on-point as *Alphabet, Inc.* (Apr. 12, 2022). They are also readily distinguishable from the Proposal here. Significantly, most of these cases requested implementation of very specific substantive action. The proposal in *Time Warner, Inc.* (Mar. 13, 2018) and *The Walt Disney Company* (Dec. 12, 2017) requested the adoption of a policy requiring that the company’s news operations always tell the truths. The proposals in *General Electric Co.* (Dec. 10, 2009) and (Feb. 1, 1999) demanded that the company “cease all its liberal editorializing,” and prohibit all unbiblical programming, respectively. The proposal in *Comcast Corp.* (Mar. 24, 2015) demanded that the company amend its charter to address products that were allegedly “offensive to the family and community values.” These proposals bear little relationship to the Proposal here, which requests that the Company *report* on the risks generated by inadequate differentiation of news- and opinion-based content, and on potential opportunities to mitigate those risks. It does not demand that the Company always tell the truth or adopt any particular policy with respect to news programming, nor — as the Proposal takes pains to emphasize — does it seek to alter the on-air content of Fox’s programming at all. This likewise distinguishes the Proposal from *Netflix, Inc.* (Mar. 14, 2016). There, the proposal demanded a report on how the company “identifies, analyzes, and oversees” reputational risk associated with offensive or inaccurate portrayals of indigenous peoples. However, the proposal in Netflix demanded disclosure of sensitive business practices relating to a specific, substantive topic of content creation, unlike the Proposal here, which does not seek disclosure of sensitive business practices, but rather seeks a broader analysis of the risks associated with the Company’s failure to adequately differentiate between its news and entertainment content.

In sum, the Proposal addresses a significant policy issue and does not seek to impose “direct shareholder oversight” over any aspect of the Company’s “day-to-day tasks.”

B. The Proposal does not micromanage.

The Company Letter argues briefly that the Proposal seeks to micromanage the Company. This argument is unpersuasive, as evidenced by the wholly inapposite precedent relied upon by the Company Letter. It cites only to the proposals submitted to *Deere & Company* (Jan. 3, 2022), *Verizon Communications Inc.* (Mar. 17, 2022), and *American Express* (Mar. 11, 2022) by NCPPR. The proposal, submitted at all three companies, demanded the disclosure by the companies of *every* piece of employee-training material produced or procured by the companies and supplied to employees, at all levels of company employment. The Staff concluded that the extreme granularity of the proposal justified its exclusion. These precedents have no bearing on the Proposal here.

The Company also misrepresents the Proposal here. The Company argues that its “process with respect to news reporting and presentation involves numerous complex considerations by an experienced management team and professional journalists.” While this may be true, it is irrelevant. The Proposal does not require the Company to report its news in a specific way. It simply requests a report on the risks of inadequately differentiating between news and non-news content. Nor does the Proposal seek shareholder involvement or oversight in the delivery of on-air content. It requests that the Company report on the risks associated with its current practices and whether there are opportunities to mitigate those risks. The Company is free to choose how to do so.

In this respect, once more, the proposal is largely indistinguishable from the one at issue in *Alphabet, Inc.* (Apr. 12, 2022). That proposal sought a report “evaluating the efficacy of the Company’s existing policies and practices to address the human rights impacts of its content management policies to address misinformation and disinformation across its platforms.” The Staff concluded the report did “not seek to micromanage the Company” despite the company’s insistence, like Fox’s here, that the proposal interfered with “complex business, policy, and technical considerations pertaining to its content offerings.” Accordingly, there is no basis to exclude the Proposal under Rule 14a-8(i)(7).

II. The graphic is not confusing.

The Company Letter also argues that the Proposal violates Rule 14a-8(i)(3) because, Fox contends, the included graphic “confuses the nature of the Proposal and creates uncertainty as to the matter subject to vote.” Company Letter at 3. As the Company recognizes, even if this argument were meritorious, the appropriate corrective measure would be the exclusion of just the graphic, rather than of the entire Proposal. *See id.*; *see also* Staff Legal Bulletin No. 14B (Sept. 15, 2004) (noting process by which *portions* of supporting statements may be excluded pursuant to Rule 14a-8(i)(3)).⁹

However, the Company has not satisfied its high burden of demonstrating that the graphic creates a “*strong* likelihood that a reasonable shareholder would be uncertain as to the matter on

⁹ The Company’s 14a-8(i)(7) arguments about ordinary business and micromanagement rely heavily on the inclusion of the graphic in the Proposal. *See* Company Letter at 6, 7. If the Staff were to conclude that omission of the graphic were appropriate under Rule 14a-8(i)(3), the Proposal should be analyzed under Rule 14a-8(i)(3) without the graphic weighing on that analysis.

which she is being asked to vote.” Staff Legal Bulletin No. 14B (emphasis added). Indeed, there is virtually *no* likelihood at all that a reasonable shareholder — *i.e.*, one who has actually read the Proposal — would be confused by the inclusion of the graphic. The text of the Proposal explicitly states that the graphic is merely an example of a potential risk mitigation strategy that the Company might consider in its report. In fact, it does so twice:

- “Shareholders request that the report include: . . . Analysis of the viability and value **of risk-mitigation strategies** that increase the distinction between news and opinion content, **such as** replacing the on-screen “Fox News” branding during opinion shows with an alternative branding demonstrating their opinion-based nature.”¹⁰
- “**This is an example** of a potential on-screen logo that may clarify content to reduce litigation risk.”

The Company’s argument that “a reasonable stockholder is likely to conclude that the Proposal requires a vote on a specific alteration to the Company’s logos, as opposed to the publication of a report on the general topic of public differentiation as a purported risk mitigation strategy,” Company Letter at 3, is baseless. The Proposal requests a report. The reasonable stockholder — just like the Company, which correctly recognized that the graphic is “meant to be an illustration of what ‘public differentiation’ could look like,” Company Letter at 3 — can read.

CONCLUSION

Based on the foregoing, the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. I urge the Staff to deny the no action request.



¹⁰ The phrase “such as” is “used to introduce an example.” <https://www.merriam-webster.com/dictionary/such%20as>

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August 10, 2023

VIA E-MAIL (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 Fox Corporation from John Chevedden on Behalf of
Kenneth Steiner*

Ladies and Gentlemen:

In a letter dated July 3, 2023 (the “No-Action Request”), we requested that the staff of the Division of Corporation Finance (the “Staff”) concur that our client, Fox Corporation (the “Company”), could exclude from its proxy statement and form of proxy for its 2023 Annual Meeting of Stockholders a shareholder proposal and related supporting statement (collectively, the “Proposal”) submitted by John Chevedden on behalf of Kenneth Steiner (the “Proponent”).

In an email delivered on July 26, 2023 and attached hereto as Exhibit A, the Proponent informed the Company of its decision to withdraw the Proposal. Based on the withdrawal of the Proposal, the Company hereby informs the Staff that the Company is withdrawing the No-Action Request.

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KIRKLAND & ELLIS LLP

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
August 10, 2023
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Should the Staff have any questions regarding this matter, please feel free to contact me at (212) 446-4750 or by email at sophia.hudson@kirkland.com.

Sincerely,



Sophia Hudson, P.C.
Kirkland & Ellis LLP

CC: Viet Dinh, Chief Legal and Policy Officer, Fox Corporation
Laura A. Cleveland, Senior Vice President and Corporate Secretary, Fox Corporation

Enclosures: Exhibit A - Proponent Correspondence Withdrawing Proposal

Exhibit A

Proponent Correspondence Withdrawing Proposal

From: Cleveland, Laura
Sent: Thursday, July 27, 2023 2:27 PM
To: [REDACTED]
Cc: shareholderproposals@SEC.GOV
Subject: #2 No Action Request (FOX)

Dear Mr. Chevedden: Thank you for the handwritten letter dated July 26, 2023 advising us of the withdrawal of the proposal for the Fox Corporation 2023 Annual Meeting of Stockholders.

Sincerely,
Laura Cleveland

From: John Chevedden <[REDACTED]>
Sent: Wednesday, July 26, 2023 11:38 PM
To: Office of Chief Counsel <shareholderproposals@SEC.GOV>
Cc: Cleveland, Laura <[REDACTED]>
Subject: #2 No Action Request (FOX)

Ladies and Gentlemen,
Please see the attached.

Sincerely,
John Chevedden

Kenneth Steiner

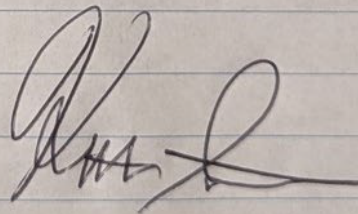
[REDACTED]

Ms. Laura A. Cleveland
Corporate Secretary
Fox Corporation (FOX)
1211 Avenue of the Americas
New York, NY 10036

Dear Ms. Cleveland,

I hereby withdraw my Shareholder
Proposal previously submitted to the Company (FOX)
for the 2023 annual Meeting.

Sincerely,



JULY 26, 2023