



DIVISION OF
CORPORATION FINANCE

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

February 28, 2023

Kathleen Wells
Latham & Watkins LLP

Re: The Cheesecake Factory Incorporated (the "Company")
Incoming letter dated February 27, 2023

Dear Kathleen Wells:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Green Century Capital Management et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponents have withdrawn the Proposal and that the Company therefore withdraws its January 30, 2023 request for a no-action letter from the Division.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 on which this response is based 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: Annie Sanders
Green Century Capital Management

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January 30, 2023

VIA ELECTRONIC MAIL

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

Re: **Stockholder Proposal to The Cheesecake Factory Incorporated from Green Century Capital Management and As You Sow Foundation Fund**

To the addressee set forth above:

This letter is submitted pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. The Cheesecake Factory Incorporated (the “**Company**”) has received a stockholder proposal and supporting statement (attached hereto as Exhibit A, the “**Proposal**”) from Green Century Capital Management and the As You Sow Foundation Fund (collectively, the “**Proponent**”) for inclusion in the Company’s proxy statement for its 2023 annual meeting of stockholders. The Company hereby advises the staff (the “**Staff**”) of the Division of Corporation Finance that it intends to exclude the Proposal from its proxy statement for the 2023 annual meeting (the “**Proxy Materials**”). The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the “**Commission**”) if the Company excludes the Proposal pursuant to Rule 14a-8(i)(10), as the Company has substantially implemented the Proposal.

By copy of this letter, we are advising the Proponent of the Company’s intention to exclude the Proposal. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D, we are submitting by electronic mail (i) this letter, which sets forth our reasons for excluding the Proposal and (ii) the Proponent’s letter submitting the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter not less than 80 days before the Company intends to file its Proxy Materials.

I. The Stockholder Proposal.

The Proposal submitted for inclusion in the Proxy Materials provides in part as follows:

Resolved: Shareholders request that The Cheesecake Factory issue a report, at reasonable expense and excluding confidential information,

disclosing how it can achieve deforestation-free commodity supply chains by 2025.

Supporting Statement: In achieving this goal, proponents recommend:

- Eliminating native vegetation conversion and primary forest logging from company supply chains as part of a deforestation-free goal;
- Estimating the greenhouse gas emissions associated with deforestation and land-use change from the company's supply chains;
- Consideration of guidance from the Accountability Framework initiative in setting targets and plans; and
- Annual disclosure of quantitative progress toward these best practices.

II. Grounds for Exclusion.

The Company intends to exclude this Proposal from its Proxy Materials and respectfully requests that the Staff concur that the Company may exclude the Proposal on the following grounds.

A. Rule 14a-8(i)(10) – The Proposal may be excluded because the Company has substantially implemented the Proposal.

i. Rule 14a-8(i)(10) Background.

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal. In explaining the scope of a predecessor to Rule 14a-8(i)(10), the Commission stated that the exclusion is “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” Exchange Act Release No. 12598 (July 7, 1976) (discussing the rationale for adopting the predecessor to Rule 14a-8(i)(10), which provided as a substantive basis for omitting a stockholder proposal that “the proposal has been rendered moot by the actions of the management”).

At one time, the Staff interpreted the predecessor rule narrowly, considering a proposal to be excludable under this provision only if it had been “‘fully’ effected” by the company. *See* Exchange Act Release No. 19135 at § II.B.5. (Oct. 14, 1982). By 1982, however, the Commission recognized that the Staff’s narrow interpretation of the predecessor rule “may not serve the interests of the issuer’s security holders at large and may lead to an abuse of the security holder proposal process,” in particular by enabling proponents to argue “successfully on numerous occasions that a proposal may not be excluded as moot in cases where the company has taken most but not all of the actions requested by the proposal.” *Id.* Accordingly, the Commission proposed in 1982, and adopted in 1983, a revised interpretation of the rule to permit the omission of proposals that had been “substantially implemented.” *See* Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the “**1983 Release**”) (indicating that the Staff’s

“previous formalistic application of” the predecessor rule “defeated its purpose” because the interpretation allowed proponents to obtain a stockholder vote on an existing company policy by changing only a few words of the policy). The Commission later codified this revised interpretation in Exchange Act Release No. 40018 at n.30 (May 21, 1998). Accordingly, the actions requested by a proposal need not be “fully effected” by the company to be excluded; rather, to be excluded, they need only have been “substantially implemented” by the company. *See* 1983 Release. Thus, when a company has already taken action to address the underlying concerns and essential objectives of a stockholder proposal, the proposal has been “substantially implemented” and may be excluded. *See, e.g., Exelon Corp.* (avail. Feb. 26, 2010) and *Exxon Mobil Corp. (Burt)* (avail. Mar. 23, 2009).

Applying this standard, the Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (avail. Mar. 28, 1991). Even if a company’s actions do not go as far as those requested by the stockholder proposal, however, they nonetheless may be deemed to “compare favorably” with the requested actions. *See, e.g., Walgreen Co.* (avail. Sept. 26, 2013) (permitting exclusion of a proposal requesting elimination of supermajority voting requirements in the company’s governing documents where the company had eliminated all but one of the supermajority voting requirements); *Johnson & Johnson* (avail. Feb. 17, 2006) (permitting exclusion of a proposal that requested the company to confirm the legitimacy of all current and future U.S. employees because the company had verified the legitimacy of 91% of its domestic workforce); and *Masco Corp.* (avail. Mar. 29, 1999) (permitting exclusion of a proposal seeking adoption of a standard for independence of the company’s outside directors because the company had adopted a standard that, unlike the one specified in the proposal, added the qualification that only material relationships with affiliates would affect a director’s independence). Thus, differences between a company’s actions and a stockholder proposal are permitted as long as the company’s actions satisfactorily address the proposal’s essential objectives. *See, e.g., Exxon Mobil Corp.* (avail. Mar. 19, 2010).

The Staff has consistently concurred with the exclusion of stockholder proposals under Rule 14a-8(i)(10) where a proposal requested a report on a particular subject matter and the company already publicly disclosed information relevant to such subject. *See, e.g., Anthem, Inc.* (avail. Mar. 19, 2018) (excluding a proposal requesting a sustainability report describing the company’s ESG performance and targets where the company already provided such disclosures on the company’s website and in a separate corporate responsibility report); *eBay Inc.* (avail. Mar. 29, 2018) (excluding a proposal requesting a report on the feasibility of integrating sustainability metrics into CEO performance measures where the company already reported such requirements on its website and planned to enhance disclosure of such metrics in its proxy statement); *Mondelez International, Inc.* (avail. Mar. 7, 2014) (excluding a proposal requesting a report on the human rights risks of the company’s operations and supply chain where the company had achieved the essential objective of the proposal by publicly disclosing its risk-management processes); *Entergy Corp.* (avail. Feb. 14, 2014) (excluding a proposal requesting a report “on policies the company could adopt to take additional near-term actions to reduce its greenhouse gas emissions” when the company already provided environmental sustainability

disclosures in separate reports available on its website); *Boeing Co.* (avail. Feb. 17, 2011) (excluding a proposal requesting a report on the company's human rights standards where the company had achieved the essential objective of the proposal through its internal risk management process and by making certain reports and a code of conduct publicly available); *Exelon Corp.* (avail. Feb. 26, 2010) (excluding a proposal requesting a report on different aspects of the company's political contributions where the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report); and *Caterpillar, Inc.* (avail. Mar. 11, 2008) (excluding a proposal requesting a report on global warming where the company had already published a sustainability report that contained information relating to its environmental initiatives).

- ii. The Company has substantially implemented the Proposal through its annual Corporate Social Responsibility ("CSR") Report, and has planned commitment to set specific no deforestation targets through the Science Based Targets initiative (the "SBTi").

The Proposal requests that the Company "issue a report, at reasonable expense and excluding confidential information, disclosing how it can achieve deforestation-free commodity supply chains by 2025." Since 2020, the Company has published its deforestation reduction progress on an annual basis in its CSR Report, which can be found on the Company's website at <https://www.thecheesecakefactory.com/corporate-social-responsibility>. In its most recent CSR Report, the Company stated its 2025 goals related to sourcing sustainably certified palm oil and establishing a buying preference for fully traceable palm oil that does not come from deforestation or clearing of high carbon stocks. The CSR Report also discusses the Company's progress in working towards zero deforestation in its key ingredients related to social, animal welfare and environmental areas, particularly from the sourcing of produce, cocoa, coffee and tea. *See* the CSR Report pp. 33 and 47. Moreover, a key objective of the Proposal appears to be for the Company to make a "timebound commitment to eliminate supply chain deforestation," and the Proposal cites restaurant companies such as McDonald's and Yum! Brands that have already done so. As discussed in further detail below, the Company plans to announce its commitment to the SBTi's Forest, Land and Agricultural ("**FLAG**") guidance in its 2022 CSR Report, which is scheduled to be published in May 2023. This commitment will satisfy the timebound commitment objective of the Proposal. Accordingly, we believe the Company has substantially implemented the Proposal and the Proposal may therefore be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(10).

In April 2022, the Company publicly announced its commitment to set targets through the SBTi to reduce its carbon emissions in alignment with the Paris Agreement, working toward a reduction of greenhouse gas ("**GHG**") emissions with the goal of achieving 1.5 degree-aligned net zero emissions by 2050. In September 2022, the SBTi adopted new FLAG guidance, which focuses specifically on reducing emissions from land management, land use change and deforestation, in alignment with the Paris Agreement emissions targets referenced above. A key requirement of the new FLAG guidance is that companies must set a zero deforestation target for no later than 2025. More broadly, the FLAG guidance creates a platform for companies to report their land-based emissions and removals, and track their progress toward science-based targets

using the accounting and reporting structure that will be set forth in the GHG Protocol Land Sector and Removals (“**GHGP LSR**”) guidance. The draft GHGP LSR is currently in the pilot testing phase and is expected to be finalized and published later in 2023.

The Company plans to officially announce its commitment to setting and reporting under the SBTi’s FLAG targets in its 2022 CSR Report, currently scheduled to be published in May 2023. This commitment will, among other things, require the Company to publicly commit to no deforestation, covering all scopes of emissions across the Company’s primary deforestation-linked commodities, with a target date to achieve such commitment of no later than December 31, 2025. Although the Company has already begun the comprehensive land sector and removals inventory that it will use for the SBTi target setting validation process, it intends to wait until the final GHGP LSR guidance is released to finalize its deforestation and SBTi FLAG targets; otherwise, it would be committing to achieve target metrics that have not yet been finalized and approved. Following the release of the final GHGP LSR guidance, the Company intends to finalize and officially set its FLAG targets and make such targets publicly available in its 2023 CSR Report planned to be published in 2024.

As demonstrated in the chart below, the Company has already taken and has detailed plans to take further actions in substantial implementation of the Proposal:

The Proposal	The Company’s Actions
<p>Resolved: Shareholders request that The Cheesecake Factory issue a report, at reasonable expense and excluding confidential information, disclosing how it can achieve deforestation-free commodity supply chains by 2025.</p>	<p>Since 2020, the Company has annually published its deforestation reduction progress against its 2025 goals related to its commodity supply chain in its annual CSR Report. <i>See</i> CSR Report pp. 33 and 47. In addition, the Company’s current plan to publicly commit to a no deforestation target across its primary deforestation-linked commodities by December 2025 will result in the Company making a timebound commitment to achieve deforestation-free commodity supply chains by 2025.</p>
<p>Supporting Statement: In achieving this goal, proponents recommend:</p>	
<ul style="list-style-type: none"> Eliminating native vegetation conversion and primary forest logging from company supply chains as part of a deforestation-free goal; 	<p>The SBTi’s FLAG guidance requires the Company to publicly commit to no deforestation, covering all scopes of emissions across the Company’s primary deforestation-linked commodities (which for the Company are beef, soy, paper/pulp, palm oil, coffee and cocoa), with a target date to achieve such commitment of no later than December 31, 2025.</p>

<ul style="list-style-type: none"> • Estimating the greenhouse gas emissions associated with deforestation and land-use change from the company’s supply chains; 	<p>In connection with its preparation for announcing its commitment to the SBTi’s FLAG guidance, the Company is currently conducting a GHG inventory for its food ingredients and paper products based on the draft GHGP LSR guidance, which takes into account GHG emissions from land management and land-use change resulting from deforestation.</p>
<ul style="list-style-type: none"> • Consideration of guidance from the Accountability Framework initiative in setting targets and plans; and 	<p>The SBTi recommends that companies align their no-deforestation commitments with the Accountability Framework initiative (“<i>AFi</i>”) guidance. As such, the Company is currently reviewing both the SBTi’s guidance and AFi’s guidance with the goal of ensuring that the Company’s FLAG commitment and targets will align with the shared vision and methodology of the SBTi and the AFI.</p>
<ul style="list-style-type: none"> • Annual disclosure of quantitative progress toward these best practices. 	<p>The Company already reports annually on its initiatives and progress towards deforestation in its supply chain, including by reporting on its produce, cocoa, coffee, tea, palm oil and paper products supply chains in its CSR Report, available on the Company’s website: https://www.thecheesecakefactory.com/corporate-social-responsibility. Following the release of the final GHGP LSR guidance, the Company intends to finalize and officially set its FLAG targets and make such targets publicly available in its 2023 CSR Report. In future years, the Company intends to expand the scope of its annual reporting to disclose its progress toward its climate and deforestation reduction targets.</p>

As evidenced by the Staff’s no-action letter precedents cited above, a company is not required to implement a stockholder proposal exactly as proposed, so long as the company has satisfied the essential objectives of the proposal. When the actions the Company has already taken and plans to undertake are compared to the Proposal, it is clear that the Company has substantially implemented the Proposal through its deforestation and supply chain-related reporting included in its annual CSR Report and its intention to publicly commit to a no deforestation target across its primary deforestation-linked commodities by December 2025.

As discussed above, the Rule 14a-8(i)(10) exclusion is “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” The Company’s existing deforestation and supply chain-related annual reporting and its current and ongoing efforts to combat deforestation, including its planned timebound commitment to eliminate supply chain deforestation, demonstrate its substantial implementation of the Proposal. In fact, were the Proposal to be voted on and pass, there is nothing additional that the Company could or would do in furtherance of the objectives of the Proposal. A requirement that the Company create a standalone report on how it can achieve deforestation-

free commodity supply chains would not provide any new information to stockholders beyond what the Company already reports in its annual CSR Report and expects to provide in connection with its commitment to the SBTi's FLAG targets, nor would it expedite the Company's timeline for publicly disclosing its additional no-deforestation-related goals – it would only serve to divert the Company's time and resources away from an important issue that has “already ... been favorably acted upon by the [Company's] management” and its board of directors. Accordingly, the Company intends to exclude the Proposal under Rule 14a-8(i)(10), because the Company has substantially implemented the Proposal.

III. Conclusion.

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned at (650) 463-2677 to discuss any questions you may have regarding this matter.

Very truly yours,

/s/ Kathleen Wells

Kathleen Wells
of LATHAM & WATKINS LLP

Enclosures

cc: Annie Sanders, Green Century Capital Management
Thomas Peterson, As You Sow Foundation Fund
Scarlett May, The Cheesecake Factory Incorporated

Exhibit A

Proposal from Green Century Capital Management and As You Sow Foundation Fund

Whereas: The Cheesecake Factory (CAKE) uses palm oil, soy, beef, paper/pulp, coffee and cocoa in its products and packaging. These commodities are leading drivers of deforestation and native vegetation conversion globally, which are responsible for approximately 11 percent of global greenhouse gas emissions.

A recent report from the UN Framework Convention on Climate Change identifies deforestation as a source of policy and supply-chain-related cost impacts, demand-related revenue impacts, and regulatory and reputational risks. While CAKE states that the company “is working towards zero deforestation from the sourcing of produce, cocoa, coffee, and tea,” as well as palm oil, this aspiration not only lacks a specific, time-bound commitment, but also omits key commodities such as beef, soy, and paper/pulp, which comprise three of the top four commodity drivers of deforestation. Furthermore, in its 2021 CSR report, CAKE estimates that only 62 percent of its key produce ingredients are free from deforestation, leaving nearly 40 percent exposed to deforestation risk.

The Intergovernmental Panel on Climate Change advises that greenhouse gas emissions must be halved by 2030 and reach net zero by 2050 to limit warming to 1.5°C and prevent the worst consequences of climate change. CAKE has committed to setting 1.5°C-aligned emissions targets with the Science Based Targets initiative (SBTi), which has identified 2025 as the date by which companies must achieve deforestation-free supply chains in order to align with a 1.5°C scenario. CAKE may be unable to deliver on its climate commitment if it does not eliminate supply chain deforestation by 2025, thereby exposing the company to reputational risk.

While leading restaurant companies including McDonald’s and Yum! Brands have made timebound commitments to eliminate supply chain deforestation, CAKE does not disclose its forest footprint and lacks a policy to address deforestation risk from all sourced forest-risk commodities. As comprehensive no-deforestation policies and action plans become the industry standard, CAKE’s lack thereof increasingly lags peer companies positioning themselves to address these deforestation risks.

Finally, 35 financial institutions with nearly US \$9 trillion in AUM have committed to eliminating agricultural-commodity-driven deforestation from their portfolios by 2025. As an increasing number of asset managers incorporate deforestation risk into their investment decision making, CAKE must achieve a deforestation-free supply chain by 2025 or risk becoming uninvestable.

Resolved: Shareholders request that The Cheesecake Factory issue a report, at reasonable expense and excluding confidential information, disclosing how it can achieve deforestation-

free commodity supply chains by 2025.

Supporting Statement: In achieving this goal, proponents recommend:

- Eliminating native vegetation conversion and primary forest logging from company supply chains as part of a deforestation-free goal;
- Estimating the greenhouse gas emissions associated with deforestation and land-use change from the company's supply chains;
- Consideration of guidance from the Accountability Framework initiative in setting targets and plans; and
- Annual disclosure of quantitative progress toward these best practices.

February 27, 2023

VIA ELECTRONIC MAIL

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

Re: **Stockholder Proposal to The Cheesecake Factory Incorporated from Green Century Capital Management and As You Sow Foundation Fund**

To the addressee set forth above:

On January 30, 2023, we submitted a letter on behalf of The Cheesecake Factory Incorporated (the “*Company*”) requesting that the staff of the Division of Corporation Finance (the “*Staff*”) concur that the Company could exclude a stockholder proposal and supporting statement (the “*Proposal*”) submitted by Green Century Capital Management and As You Sow Foundation Fund (collectively, the “*Proponent*”) from the Company’s proxy statement for its 2023 annual meeting of stockholders.

Pursuant to a withdrawal agreement dated February 24, 2023, the Proponent withdrew the Proposal. Based on the withdrawal of the Proposal, the Company hereby informs the Staff that the Company is withdrawing its no-action request of January 30, 2023 relating to the Proposal.

Please contact the undersigned at (650) 463-2677 to discuss any questions you may have regarding this matter.

Very truly yours,

/s/ Kathleen Wells

Kathleen Wells
of LATHAM & WATKINS LLP

Enclosures

cc: Annie Sanders, Green Century Capital Management
Thomas Peterson, As You Sow Foundation Fund
Scarlett May, The Cheesecake Factory Incorporated