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

DIVISION OF
CORPORATION FINANCE

December 22, 2023

Edward R. Berk
Deere & Company

Re: Deere & Company (the "Company")
Incoming letter dated October 19, 2023

Dear Edward R. Berk:

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

The Proposal requests that the Company publish a report analyzing the congruency of the Company's policies in support of greenhouse gas reduction and renewable energy use with those priorities' effects on the ongoing viability of the industries that constitute the vast majority of the Company's revenue base.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Although the Company's prior disclosures discuss the effects of its policies on agricultural customers, in our view, the Company has not substantially implemented the Proposal.

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/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Paul Chesser
National Legal and Policy Center

JOHN DEERE

Deere & Company
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Edward R. Berk
Corporate Secretary &
Associate General Counsel

October 19, 2023

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: *Shareholder Proposal to Deere & Company by National Legal and Policy Center*

Ladies and Gentlemen:

This letter is submitted on behalf of Deere & Company, a Delaware corporation (the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude a shareholder proposal and related supporting statement (the "Proposal") submitted by the National Legal and Policy Center (the "Proponent"), from its proxy materials for its 2024 Annual Meeting of Shareholders (the "2024 Proxy Materials"). The Company received the Proposal on August 25, 2023. For the reasons set forth below, we request confirmation that the Division of Corporation Finance (the "Staff") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2024 Proxy Materials in reliance on the provisions of Rule 14a-8(i)(10) and Rule 14a-8(i)(7) under the Exchange Act, as described below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), this letter and its attachments are being e-mailed to the Staff at shareholderproposals@sec.gov. As required by Rule 14a-8(j), this letter and its attachments are concurrently being sent to the Proponent as notice of the Company's intent to omit the Proposal from its 2024 Proxy Materials no later than eighty (80) calendar days before the Company currently intends to file its definitive 2024 Proxy Materials with the Commission. Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or Staff. Accordingly, we hereby notify the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff in response to this letter, a copy of that correspondence should be concurrently provided to the undersigned on behalf of the Company.

THE PROPOSAL

The Proposal sets forth the following proposed resolution for the vote of the Company's shareholders at the 2024 Annual Meeting of Shareholders:

Resolved: Deere & Company shall publish a report, at reasonable expense, analyzing the congruency of the Company's policies in support of greenhouse gas reduction and renewable energy use, with those priorities' effects on the ongoing viability of the industries that constitute the vast majority of the Company's revenue base – and therefore Deere's own future.

A copy of the Proposal, as well as all related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2024 Proxy Materials pursuant to:

- Rule 14a-8(i)(10) because the Proposal already has been substantially implemented; and
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because It Already Has Been Substantially Implemented

The Proposal requests that the Company's board of directors (the "Board") issue a report that analyzes whether the Company's support of greenhouse gas reduction and renewable energy use is adverse to the ongoing viability of the agriculture, forestry, and construction industries. The objective of the Proposal is to provide investors with insight as to how the Company's sustainability-related policies impact the industries the Company serves, its core customers, and ultimately, the Company's revenue. As explained in more detail below, publicly available sources on the Company's website—especially the Company's 2022 Sustainability Report (the "2022 Report")—contain information sufficient to substantially implement the essential objective of the Proposal.

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

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials "[i]f the company has already substantially implemented the proposal." The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "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). "[A] determination that the [c]ompany 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. 6, 1991, *recon. Granted* Mar. 28, 1991). In other words, substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed the proposal's underlying concerns and its essential objective, but it does

not require that the concerns and objective be addressed in the exact way, or using the exact means, requested by the shareholder proponent. *See, e.g.*, *PG&E Corporation* (avail. Mar. 10, 2010) (concurring with the exclusion of a proposal seeking a "semiannual report disclosing specified information concerning the company's charitable contributions" where the company's existing disclosures on its website and corporate charitable contributions program substantially implemented the proposal, and the Staff noted that the company's "policies, practices and procedures compare[d] favorably with the guidelines of the proposal"); *see also Wal-Mart Stores, Inc.* (AFL-CIO Reserve Fund et al.) (avail. Mar. 30, 2010) ("Wal-Mart 2010") (concurring with the exclusion of a proposal under Rule 14a-8(i)(10) where "Wal-Mart's policies, practices and procedures compare favorably with the guidelines of the proposal and that Wal-Mart has, therefore, substantially implemented the proposal"); *The Wendy's Co.* (avail. Apr. 10, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report assessing human rights risks of the company's operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the assessment's results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments).

As particularly relevant here, the Staff consistently has concurred with the exclusion of shareholder proposals requesting reports where the company has already publicly disclosed the subject matter or contents of the requested report. *See, e.g.*, *Entergy Corp.* (avail. Feb. 14, 2014) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal calling for a report "on policies the company could adopt to take additional near-term actions to reduce its greenhouse gas emissions" where the company already provided environmental sustainability disclosures on its website and in a separate report).

In Exchange Act Release No. 95267 (July 13, 2022), the Commission proposed to amend Rule 14a-8(i)(10) to provide that proposals would be excludable if a company has already implemented the "essential elements" of the proposal. While the Commission has not yet adopted that proposed amendment, and it is therefore not applicable to the Staff's review of this letter, it is notable that the Commission stated that even under the proposed standard, "a proposal need not be rendered entirely moot, or be fully implemented in exactly the way a proponent desires, in order to be excluded. A company may be permitted to exclude a proposal it has not implemented precisely as requested if the differences between the proposal and the company's actions are not essential to the proposal."

B. The Proposal Already Has Been Substantially Implemented Through Prior Publications and Disclosures by the Company

The Company has previously provided on its website an analysis of the impact (and the potential benefits) of its policies in support of greenhouse gas reduction and renewable energy use on the industries the Company serves and on the Company's profitability. The Company's website and its 2022 Report[1] contain information directed to investors, customers, and the general public about the Company's "Leap Ambitions," the results of research into certain sustainability goals and the status of ongoing product development and technology adoption.

The Company has stated on its website that "[its] Leap Ambitions are focused goals designed to boost economic value and sustainability for [its] customers [and that] [its] strategy focuses on delivering intelligent, connected machines and applications that will revolutionize production systems in agriculture and construction, unlocking customer economic value across the lifecycle

[1] https://www.deere.com/assets/pdfs/common/our-company/sustainability/sustainability-report-2022.pdf

in ways that are more sustainable for all."[2] Notably, the 2022 Report asserts that pursuing these Leap Ambitions is estimated to result in an incremental addressable market opportunity of more than $150 billion.[3] The 2022 Report further states that "[m]any of John Deere's Leap Ambition goals are designed to support, connect to, and enhance one another...Deere is not only seeking to reduce emissions from equipment but unlocking opportunities for customers to reduce emissions of their operations as well. [Certain Deere products] are designed to decrease pesticide and fertilizer inputs while reducing passes in the field, which increases fuel economy and works to lower CO_2e emissions."[4]

The Company's significant investments in the development of new technologies that help to reduce greenhouse gas emissions are detailed in the 2022 Report. For example, one of the Company's Leap Ambitions is a 20% improvement in crop protection efficiency by 2030 per unit of output.[5] The 2022 Report notes that crop protection inputs represent an estimated 20% of an average row crop producer's budget, and traditional broadcast application of these herbicides, insecticides and fungicides results in an underutilization rate of more than two-thirds of that expense.[6] Recognizing this problem, the Company developed its See & Spray™ technology that allows for targeted spraying applications, resulting in fewer chemicals being applied to places where they are not necessary. The 2022 Report goes on to note that the Company's See & Spray™ Ultimate solution "can also be used to broadcast fungicide and target spray herbicide, combining two passes into one...[which] can mean fewer trips through the field, which in turn works to save fuel, time and reduce CO_2e emissions"[7] for the Company's customers. Similarly, with respect to a Leap Ambition calling for a 20% improvement in nitrogen use efficiency by 2030 per unit of output, the Company developed ExactShot to help optimize starter fertilizer usage, by targeting only the seed during a planting pass, which could result in a reduction in the amount of in-furrow starter fertilizer by more than 60%. The Company estimates that across the U.S. corn crop, ExactShot could save over 93 million gallons of starter fertilizer annually, as well as aiding in labor usage and reducing vehicle fuel consumption by eliminating extra trips into the field.[8] All these efforts would benefit the industries the Company serves, its customers, and ultimately, the Company's revenue.

The 2022 Report also addresses the Company's ongoing research into the benefits of sustainable agricultural practices, including a partnership with Iowa State University to study tillage practices and how various conservation methods can impact profits and soil health. These efforts could help to increase customers' ability to maximize yield, productivity and versatility, further improving their ability to efficiently and effectively use their land and other resources to enhance their longevity and profitability.[9]

And the 2022 Report's analysis and discussion of the customer-facing benefits of the Company's Leap Ambitions is not limited to the agriculture space. The 2022 Report details the Company's Leap Ambition to obtain 50% grade management adoption within the construction industry by 2026. By utilizing smart technology to enhance machine performance and efficiency, productivity could be improved by as much as 30%, which means fewer hours and resources, including fuel

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2 https://www.deere.com/en/stories/featured/2021-sustainability-report/
3 2022 Report at 11.
4 *Id.* at 23.
5 *Id.* at 18.
6 *Id.*
7 *Id.* at 19.
8 *Id.* at 22.
9 *See id.* at 16.

burn, would be required to complete a job[10]. This improves the overall cost structure for performing the work and can drive positive margins for the Company's customers. Similarly, investments in driving adoption of Intelligent Boom Control in forestry operations (with a Leap Ambition of 100% adoption by 2026) help to drive efficiencies by allowing operators (especially inexperienced ones) to be more productive, efficient and consistent.[11]

Even the Company's greenhouse gas emission reduction Leap Ambition, which calls for a 30% reduction in upstream and downstream (or Scope 3) CO_2e emissions by 2030, is shown to have potential benefits for the industries in which the Company operates and its customers beyond a decreased amount of CO_2e emissions. The Company's efforts to create a more efficient internal combustion engine are leading to the development of an engine that would burn five percent less fuel per unit of work than a standard 6.8L engine, and a 30% improvement over previous models in overall performance and reduced fuel consumption for an updated 13.6L engine.[12] The Company has stated that these more efficient and powerful engines represent a meaningful advantage for the Company's customers, who may be able to improve profitability and productivity by saving fuel and time as a result of the Company's pursuit of its Leap Ambitions.

These public disclosures address the Proposal's underlying concerns and its essential objective by providing the Company's assessment of how its sustainability-related goals impact (and ultimately benefit) its customers, by, among other things, improving their profitability by reducing the amount of inputs—particularly time, labor and fuel—necessary to accomplish the same amount of work and in many cases to accomplish more work. In fact, the 2022 Report does this much more effectively than the supporting statement accompanying the Proposal, which does not explain how the Company's pursuit of its Leap Ambitions, such as targets for transitioning to renewable electricity or efforts to keep global warming below 1.5°C, have any impact on the Company's customers as such, or on the Company's or its customers' revenue.

The Staff has consistently permitted exclusion of shareholder proposals seeking reports where the company's disclosures contain comparable, albeit not identical, information to that requested by a proponent. For example, in *Exelon Corp.* (avail. Feb. 26, 2010), the Staff concurred with the exclusion under Rule 14a-8(i)(10) of a proposal that requested a report on different aspects of the company's political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided "an up-to-date view of the [c]ompany's policies and procedures with regard to political contributions". Also, in *Wal-Mart 2010*, the Staff concurred with the company's exclusion of a shareholder proposal where the company's existing Global Sustainability Report, which was available on the company's website, substantially implemented the proposal's request for the company to adopt six principles for national and international action to stop global warming, even though the Global Sustainability Report set forth only four principles. *See also Caterpillar, Inc.* (avail. Mar. 11, 2008) (concurring with the company's exclusion of a shareholder proposal requesting that the company prepare a global warming report where the company had already published a report that contained information relating to its environmental initiatives).

Just as in those cases, the Company's disclosures in its website and its 2022 Report compare favorably to the underlying concern of the Proposal and the Company has directly addressed the Proposal's essential objective of providing insight as to how the Company's sustainability-related

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10 *Id.* at 27.
11 *Id.*
12 *Id.* at 32.

policies impact the industries the Company serves, its core customers, and ultimately, the Company's revenue. Accordingly, because the Company's website and the 2022 Report substantially implement the Proposal, and, consistent with the well-established precedent cited above, the Proposal may properly be excluded under Rule 14a-8(i)(10).

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

In addition to being excludable because it has been substantially implemented, the Proposal may be excluded under Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business. The Proposal asks the Board to provide a report on the impact of the Company's Leap Ambitions on the industries the Company serves, the Company's customers, and ultimately, the Company's revenue. As discussed in detail in the 2022 Report, this request implicates the Company's strategic decisions with respect to existing product offerings and ongoing product development, which is a clear example of a proposal that may be excluded because it concerns the Company's day-to-day management. Despite the Proponent's attempt to frame the Proposal as related to a significant policy issue—sustainability, climate change and decarbonization—the Proposal is, in reality, a matter directly related to the scope of the Company's profitability and its current and planned suite of products and services, which does not transcend the Company's ordinary business operations. Finally, the Proposal seeks to micromanage the Company because it probes too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.

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

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if it "deals with a matter relating to the company's ordinary business operations." According to the Commission, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word; instead, the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). *See also* Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration is related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). The Proposal implicates both of these considerations.

B. The Proposal May Be Excluded Because It Relates to the Company's Strategic Choices Relating to its Current and Future Product Offerings

The Company has stated that its Leap Ambitions are "focused, measurable goals set to make [its] customers more efficient, profitable, and sustainable".[13] The Company's Leap Ambitions and the

[13] *Id.* at 4.

actions taken by the Company in its pursuit of these goals involve specific product offerings and targeted research and development activities. Therefore, by arguing that certain sustainability-related products and research and development efforts are ultimately harmful to the Company's core customers, the Proposal's scope is inherently limited to a matter squarely implicating the Company's strategic business choices and competitive positioning. The Staff has consistently concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(7), where, as here, they relate to the scope of a company's business operations, including proposals requesting that a company emphasize or de-emphasize particular product offerings. For example, in *General Electric Co.* (avail. Jan. 7, 2011), a proposal directed the company's board of directors to focus on defining, growing and enhancing certain of the company's businesses and to de-emphasize and reduce the role and influence of GE Capital because "[f]inancial services should not be a core business of the General Electric Company." In its no-action request, the company argued that the proposal may properly be excluded under Rule 14a-8(i)(7) because, *inter alia*, it sought to change the company's product offerings, including the products and services offered within a particular line of business. The Staff concurred with the exclusion of the proposal, noting in particular that it related "to the emphasis that the company places on various products and services it offers for sale." See also *Pepco Holdings, Inc.* (avail. Feb. 18, 2011) (concurring with the exclusion of a proposal urging the company to pursue the market for solar technology as concerning the sale of particular products and services); *Comcast Corp.* (avail. Feb. 15, 2011) (concurring with the exclusion of a proposal to market and sell a particular type of wireless broadband product and noting that the proposal related to "the products offered for sale" by the company); *Wal-Mart Stores, Inc. (Albert)* (avail. Mar. 30, 2010) (concurring with the exclusion of a proposal requiring that all company stores stock certain amounts of locally produced and packaged food as concerning the sale of particular products); *Alliant Techsystems Inc.* (avail. May 7, 1996) (concurring with the exclusion of a proposal requesting that the board establish a policy to end all research, development, production and sales of antipersonnel mines, noting that "the proposal is directed at matters relating to the conduct of the [c]ompany's ordinary business operations (i.e., the sale of a particular product)"). Moreover, a shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has long held that a proposal requesting the preparation of a report may be excludable under Rule 14a-8(i)(7) where the subject matter of the report involves the ordinary business of the issuer. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983).

Similar to the proposals in the cited letters, the Proposal seeks to dictate the scope of the Company's product offerings and ongoing research and development projects by arguing that products and other initiatives that are designed to reduce greenhouse gas emissions and increase the use of renewable energy are harmful to the Company's core customers. Decisions regarding the products the Company sells or avenues of research the Company chooses to pursue implicate myriad factors that must be considered by the Company's management, including the preferences of the Company's customers, the Company's expectations with respect to future legislation and regulation of its products, the products offered by the Company's competitors, the Company's overall long-term strategy, the availability of funds to pursue certain research and development activities and attractiveness of other potential uses of capital, the scientific and technical feasibility of current and planned future product development, and the availability of sufficient quantity and quality of products to both meet current and expected future customer demand. Balancing such interests in order to determine which products to maintain, increase, or phase out, and which research projects to begin, continue or terminate is a complex issue and is "so fundamental to management's ability to run [the c]ompany on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." See 1998 Release. As these are ordinary business matters, the Proposal is excludable.

C. The Proposal Fails to Raise an Issue of Broad Societal Impact that Transcends the Company's Ordinary Business Operations

In the 1998 Release, the Commission stated 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;" "[h]owever, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable." *Id.* *See* SLB 14L, Part B.2. Nevertheless, the Staff has made clear that the mere fact that a proposal is framed to invoke issues that, in different contexts, have been found to implicate significant policy issues is not sufficient to render a proposal non-excludable. For example, in *Walmart Inc.* (avail. Mar. 6, 2020) ("Walmart 2020"), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report "on the use of contractual provisions requiring employees of Walmart to arbitrate employment-related claims" where the proposal's supporting statement raised issues including discrimination, sexual harassment, and wage theft. The company argued that the proposal's invocation of such issues was insufficient to preclude exclusion given the proposal's focus on the company's management of its workforce. Similarly, in *Kroger Co.* (avail. Apr. 25, 2023) ("Kroger"), a proposal requested that the company's board of directors take steps to pilot participation in the Fair Food Program "in order to mitigate severe risks of forced labor and other human rights violations in Kroger's produce supply chain." Kroger argued that the proposal focused on the company's day-to-day relationships with its suppliers, and that the proposal's recitation of human rights issues that might raise a significant social policy issue did not transform the otherwise ordinary business proposal into one that transcends ordinary business. The Staff concurred with the exclusion, suggesting that it did not find that the proposal raised a significant social policy issue. *See also Dollar Tree, Inc.* (avail. May 2, 2022) (concurring with the exclusion of a proposal requesting preparation of a report on risks to the company's business strategy in the face of increasing labor market pressure, including how the company's strategy will enable competitive employment standards, including wages, benefits and employee safety); *Amazon.com, Inc.* (AFL-CIO Reserve Fund) (avail. Apr. 8, 2022) ("Amazon") (concurring with the exclusion of a proposal requesting preparation of a report on the impact of the company's workforce turnover related to the COVID-19 pandemic on the company's diversity, equity and inclusion efforts on the basis that the proposal relates to, and does not transcend, ordinary business matters); *Walmart Inc.* (avail. Apr. 8, 2019) (concurring in the exclusion of a proposal under Rule 14a-8(i)(7) requesting a report evaluating the risk of discrimination that may result from the company's policies and practices for hourly workers taking absences from work for personal or family illness because it related "generally to the [c]ompany's management of its workforce, and [did] not focus on an issue that transcends ordinary business matters").

Furthermore, the Staff's recent no-action determinations under Rule 14a-8(i)(7) and guidance in SLB 14L reconfirm several key principles underlying the ordinary business exclusion. First, as demonstrated in *Kroger*, the Staff will not recast matters that are inherently operational as social policy issues. Second, as demonstrated in *Amazon*, 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 (such as diversity, equity and inclusion considerations). Finally, SLB 14L makes clear that a proposal can overcome the ordinary business exclusion only if the proposal "focuses on a significant social policy."

Despite the Proponent's attempt to frame the Proposal as focused on a social policy issue by invoking, among others, carbon offsets / credits and politically driven decarbonization plans, the

Proposal fails to present an issue of broad societal impact that transcends the Company's product offerings and its customers, *i.e.*, the Company's ordinary business. The climate change aspect of the Proposal is, at best, secondary to the Proposal's design to mandate the Company's approach to sustainability-related innovation. Exactly as in *Walmart 2020*, the Proponent's attempt to shoehorn the complex policy issues associated with climate change and renewable energy into its Proposal by referring to them in the supporting statement does not alter the fact that the Proposal itself is squarely focused on the Company's strategic product offerings, its development and research choices and how those choices impact the Company's customers, and ultimately (in the words of the Proponent), the Company's "own future." The Proposal therefore fails to focus on any significant social policy issue that transcends the ordinary business of the Company. For these reasons, the significant social policy issue exception does not support inclusion of the Proposal in the Company's 2024 Proxy Materials.

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

In addition to interfering with management's day-to-day operations, the Proposal seeks to "micro-manage" the Company by "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *See* 1998 Release. The 1998 Release states that "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." In SLB 14L, the Staff further clarified that a proposal can be excluded on the basis of micromanagement if a proposal "inappropriately limits discretion of the board or management."

The Staff has consistently concurred in the exclusion of stockholder proposals that attempt to micromanage a company by substituting stockholder judgment for that of management with respect to such complex day-to-day business operations that are beyond the knowledge and expertise of shareholders and so seeks to limit management's freedom to make strategic business decisions. *See Eli Lilly and Company* (avail. March 1, 2019) (concurring with the exclusion of a proposal on the basis of micromanagement where the proposal requested the board to implement a policy that it would not fund, conduct or commission the use of the "Forced Swim Test" and sought "to impose specific methods for implementing complex policies") *SeaWorld Entertainment, Inc.* (avail. March 30, 2017, reconsideration denied April 17, 2017) (concurring with the exclusion of a proposal on the basis of micromanagement where the proposal requested the replacement of live orca exhibits with virtual reality experiences and probed "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").

In addition, in SLB 14L, the Staff stated that "in order to assess whether a proposal probes matters 'too complex' for shareholders, as a group, to make an informed judgment, [the Staff] may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic." The Proposal concerns matters that cannot be properly evaluated without an extremely intricate and interrelated assessment of strategic, regulatory, competitive, technical, product safety, quality and reliability, and other factors. *See* Part II.B, *supra*. Such a complex evaluation is the province of management and the Board, not shareholders.

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

CONCLUSION

For the reasons discussed above, we believe that the Company may properly omit the Proposal from its 2024 Proxy Materials under Rule 14a-8(i)(10) and Rule 14a-8(i)(7). As such, we respectfully request that the Staff concur with our view and not recommend enforcement action to the Commission if the Company omits the Proposal from its 2024 Proxy materials. Should the Staff have any questions regarding this matter, please feel free to contact me at 309 748 2674 or by email at BerkEdwardR@JohnDeere.com.

Sincerely,

Edward R. Berk
Corporate Secretary, Deere & Company

CC:

Julie Rosales
Deere & Company
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Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
Email: pchesser@nlpc.org

Enclosures: Exhibit A

EXHIBIT A

Edward Berk

From: Paul Chesser [redacted]
Sent: Friday, August 25, 2023 2:31 PM
To: Edward Berk
Cc: Luke Perlot
Subject: Shareholder proposal for 2024 annual meeting
Attachments: Deere-proposal-cover-letter-2024.pdf

Dear Mr. Berk/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at Deere & Company's 2024 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[redacted]

NATIONAL LEGAL AND POLICY CENTER

August 25, 2023

Mr. Edward Berk
Corporate Secretary & Associate General Counsel
Deere & Company
One John Deere Place
Moline, Illinois 61265-8098

VIA UPS & EMAIL: BerkEdwardR@johndeere.com

Dear Mr. Berk/Corporate Secretary:

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

National Legal and Policy Center (NLPC) is the beneficial owner of eight shares of the Company's common stock with a value exceeding $2,000, which shares have been held continuously for more than three years. NLPC intends to hold the shares through the date of the Company's next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Directors to produce a Customer and Company Sustainability Congruency Report. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I am able to meet with the Company in person or via teleconference between the hours of 9:00 a.m. and 2:00 p.m. Central Time, Monday through Friday, between September 5 and September 22, 2023. I can be reached at [redacted] or at [redacted]

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a "no-action" letter should be forwarded to me at 2217 Matthews Township Parkway, Suite D-229, Matthews, NC 28105.

Sincerely,

Paul Chesser
Director
Corporate Integrity Project

Enclosure: "Customer and Company Sustainability Congruency Report" proposal

Customer and Company Sustainability Congruency Report

Supporting Statement: Deere and Company ("Company"), best known for its heavy machinery products powered by fossil fuels, has long enjoyed – and still maintains – a core customer base of *which the majority consists of three major industries: agriculture, forestry and* construction/mining.

Other than energy extraction and transportation, perhaps no other industries have been targeted by alarmist pressure groups as these serviced by Deere have. Yet rather than preserve and protect them from such assaults – which produce nothing beneficial environmentally or economically – instead the Company embraces their hostile agenda both in rhetoric and in action.

In its operations, Deere promotes its compliance with this agenda with what it has branded as *"Leap Ambitions." Examples include:*[1]

- a "50% reduction of operational [carbon dioxide equivalent] emissions…by 2030;"
- That it "surpassed its 2022 renewable electricity goal by achieving nearly 59 percent renewable electricity as of the end of 2022;"
- That it accomplished its operational greenhouse gas reduction goals, in part, by its "partnership with Mesquite Sky Wind…the energy it supplies is equivalent to more than 20% of our global electricity footprint;"
- That it "has secured long-term agreements through 2030 for projects…[that] will achieve more than 50% of global renewable electricity in Germany, Spain, the Netherlands, India, Mexico, and Brazil;"
- That its GHG reduction goals were validated by the Science Based Targets initiative, which are allegedly "consistent with what's required to keep global warming to 1.5°C, which is needed to prevent the most damaging effects of climate change, according to the latest climate science."[2]

The Company's perception of the "science" and its approach to "solutions" are both deeply flawed, and severely damage the farm, forestry, and construction/mining sectors. The expansion of costly wind and solar energy require massive swaths of land, much of which is converted from agricultural use or necessitates clear-cutting of forests.[3] Several studies have shown that wind farms *raise* ground level temperatures, which could become a significant problem as more are built (as is projected).[4] Deere's use of the term "equivalent" denotes participation in offsets or

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[1] https://www.deere.com/en/our-company/sustainability/emissions/.
[2] https://www.newswire.ca/news-releases/john-deere-receives-sbti-validation-of-greenhouse-gas-emission-reduction-targets-813095384.html.
[3] https://www.motherjones.com/environment/2023/04/electrify-everything-scope-data/.
[4] https://cowboystatedaily.com/2023/05/05/studies-show-wind-farms-raise-temperatures-and-impact-could-become-significant-as-more-are-built/.

credits schemes, which are widely viewed as scams.[5] And the 1.5°C goal is a target established by political operatives and sycophantic media, not scientific expertise.[6]

There is little doubt that politically-driven decarbonization plans cause significant hardships to Deere's core client industries.

Resolved: Deere & Company shall publish a report, at reasonable expense, analyzing the congruency of the Company's policies in support of greenhouse gas reduction and renewable energy use, with those priorities' effects on the ongoing viability of the industries that constitute the vast majority of the Company's revenue base – and therefore Deere's own future.

[5] https://www.washingtonpost.com/travel/2023/04/17/carbon-offsets-flights-airlines/.
[6] https://www.sec.gov/Archives/edgar/data/70858/000109690623000735/nlpc_px14a6g.htm.

Edward Berk

From: Edward Berk
Sent: Thursday, August 31, 2023 2:27 PM
To: Paul Chesser
Cc: Luke Perlot
Subject: RE: Shareholder proposal for 2024 annual meeting
Attachments: 31 August NLPC Letter.pdf

Dear Mr. Chesser:

I can confirm receipt of the materials you sent last week. Please see the attached letter re your recent Rule 14a-8 proposal. Please don't hesitate to contact me with any questions. Thanks.

Best regards,
Edward Berk

Edward R. Berk
Associate General Counsel and Corporate Secretary
Deere & Company World Headquarters
One John Deere Place
Moline, Illinois 61265, USA
BerkEdwardR@JohnDeere.com

From: Paul Chesser [redacted]
Sent: Friday, August 25, 2023 2:31 PM
To: Edward Berk <berkedwardr@johndeere.com>
Cc: Luke Perlo[redacted]
Subject: Shareholder proposal for 2024 annual meeting

Dear Mr. Berk/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at Deere & Company's 2024 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org

[redacted]

JOHN DEERE

Deere & Company
Law Department
One John Deere Place, Moline, IL 61265 USA
Phone: (309) 748-2674
Fax: (309) 749-0085
Email: BerkEdwardR@JohnDeere.com

Edward R. Berk
Corporate Secretary &
Associate General Counsel

August 31, 2023

VIA EMAIL AND OVERNIGHT COURIER

National Legal and Policy Center
Attn: Paul Chesser
2217 Matthews Township Parkway, Suite D-229
Matthews, NC 28105

[redacted]

Re: Notice of Deficiency Relating to Stockholder Proposal

Dear Mr. Chesser:

On August 25, 2023 (the "Submission Date"), we received the stockholder proposal (the "Proposal") sent on behalf of the National Legal and Policy Center (the "Proponent") via email for inclusion in Deere & Company's (the "Company") proxy materials for its 2024 Annual Meeting of Stockholders (the "Annual Meeting"). The purpose of this letter is to notify you that we have not received sufficient proof of the Proponent's ownership as required by Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended.

Rule 14a-8(b) provides that a stockholder proponent must submit sufficient proof of their continuous ownership for the applicable holding period preceding and including the Submission Date of:

- At least $2,000 in market value of the Company's securities entitled to vote on the Proposal for at least three years; or
- At least $15,000 in market value of the Company's securities entitled to vote on the Proposal for at least two years; or
- At least $25,000 in market value of the Company's securities entitled to vote on the Proposal for at least one year.

Our search of the database of our registered stockholders shows that the Proponent is not a registered stockholder, and as a result, we are unable to verify this ownership requirement. Therefore, pursuant to Rule 14a-8(b), the Proponent must demonstrate its eligibility to submit the Proposal by submitting to us a written statement from the "record" holder of the securities (usually a bank or broker) verifying that the Proponent has continuously held the requisite number of securities for the applicable holding period preceding and including the Submission Date, as described above. The SEC's Staff Legal Bulletins No. 14F and 14G (together, the "Bulletins") provide additional guidance with

respect to the standard for proof of ownership. According to the Bulletins, for purposes of satisfying the proof of ownership requirement under Rule 14a-8(b)(2), only participants in The Depository Trust Company ("DTC") and their affiliates, as described in the Bulletins, should be viewed as "record" holders of securities that are deposited with the DTC. If the Proponent's broker is an introducing broker, the Proponent may also be able to learn the identity and telephone number of the DTC participant through its account statements, because the clearing broker identified on such account statements will generally be the DTC participant. If the DTC participant knows the Proponent's broker or bank's holdings, but does not know the Proponent's holdings, the Proponent can satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, as of the Submission Date, the required amount of securities was continuously held for the applicable holding period—one from the Proponent's broker or bank confirming the Proponent's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

To remedy the procedural defect identified in this letter, please respond with the appropriate ownership verification and information discussed above as further detailed in Rule 14a-8 and the guidance set forth in the Bulletins. We have attached copies of the Bulletins and Rule 14a-8 as Exhibit A hereto. The Proponent's response must be postmarked or transmitted electronically with the appropriate documentation and information within 14 calendar days of receipt of this letter, the response timeline imposed by Rule 14a-8(f). If the Proponent does not adequately correct the procedural deficiency discussed in this letter within the 14 days of receipt of this letter, Deere & Company may be allowed to exclude the Proposal from consideration at its Annual Meeting and in its proxy materials. If the Proponent adequately corrects the procedural defect within the 14-day period, Deere & Company reserves the right to seek relief from the SEC on other grounds, as appropriate.

Please transmit your response electronically to BerkEdwardR@JohnDeere.com. Alternatively, you may address your response to me at the address on this letter.

Sincerely,

Edward R. Berk
Corporate Secretary

Cc: National Legal and Policy Center Nat'l Headquarters

Enclosures

EXHIBIT A

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

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

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

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

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

submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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

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

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

D. Use of website addresses in proposals and supporting statements

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

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

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

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

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

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

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

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

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

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

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

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

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

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

Modified: Oct. 16, 2012

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants;

introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Modified: Oct. 18, 2011

Title 17 —Commodity and Securities Exchanges
Chapter II —Securities and Exchange Commission
Part 240 —General Rules and Regulations, Securities Exchange Act of 1934
Subpart A —Rules and Regulations Under the Securities Exchange Act of 1934
Regulation 14A: Solicitation of Proxies

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5,78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C.5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat.1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted. Section 240.3a4–1 also issued under secs. 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121 as amended; Section 240.3a12–8 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), and 23(a), 15 U.S.C. 78w(a); *See Part 240 for more*

Editorial Note: Nomenclature changes to part 240 appear at 57 FR 36501, Aug. 13, 1992, and 57 FR 47409, Oct. 16, 1992.

§ 240.14a-8 Shareholder proposals.

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

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

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

(1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

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

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

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

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

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

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

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d–101), Schedule 13G (§ 240.13d–102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

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

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

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

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

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

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

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10–Q (§

249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

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

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

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

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

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

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

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

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

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S–K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a–21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a–21(b) of this chapter.

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

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

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

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

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

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

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

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its

submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Edward Berk

From: Paul Chesser [redacted]
Sent: Thursday, August 31, 2023 3:12 PM
To: Edward Berk
Cc: Luke Perlot
Subject: Re: Shareholder proposal for 2024 annual meeting

Received, thank you. - Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
https://www.nlpc.org/corporate-integrity-project/

On Aug 31, 2023, at 3:26 PM, Edward Berk <berkedwardr@johndeere.com> wrote:

Dear Mr. Chesser:

I can confirm receipt of the materials you sent last week. Please see the attached letter re your recent Rule 14a-8 proposal. Please don't hesitate to contact me with any questions. Thanks.

Best regards,
Edward Berk

Edward R. Berk
Associate General Counsel and Corporate Secretary
Deere & Company World Headquarters
One John Deere Place
Moline, Illinois 61265, USA
BerkEdwardR@JohnDeere.com

Public

From: Paul Chesser [redacted]
Sent: Friday, August 25, 2023 2:31 PM
To: Edward Berk <berkedwardr@johndeere.com>
Cc: Luke Perlo[redacted]
Subject: Shareholder proposal for 2024 annual meeting

Dear Mr. Berk/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at Deere & Company's 2024 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[redacted]
<31 August NLPC Letter.pdf>

Edward Berk

From: Paul Chesser [redacted]
Sent: Monday, September 11, 2023 9:35 AM
To: Edward Berk
Cc: Luke Perlot
Subject: Re: Shareholder proposal for 2024 annual meeting
Attachments: Deere-proof-ownership-letter-Sept2023.pdf

Dear Mr. Berk,

This email responds to your email alleging a deficiency in the submission of our "Customer and Company Sustainability Report on GHG Policies" proposal for Deere & Company. I have attached a verification letter from Fidelity of our holdings.

If you could confirm receipt, I would appreciate it.

Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[redacted]

On Aug 31, 2023, at 3:26 PM, Edward Berk <berkedwardr@johndeere.com> wrote:

Dear Mr. Chesser:

I can confirm receipt of the materials you sent last week. Please see the attached letter re your recent Rule 14a-8 proposal. Please don't hesitate to contact me with any questions. Thanks.

Best regards,
Edward Berk

Edward R. Berk
Associate General Counsel and Corporate Secretary
Deere & Company World Headquarters
One John Deere Place
Moline, Illinois 61265, USA
BerkEdwardR@JohnDeere.com

Public

From: Paul Chesser [redacted]
Sent: Friday, August 25, 2023 2:31 PM
To: Edward Berk <berkedwardr@johndeere.com>
Cc: Luke Perlot [redacted]
Subject: Shareholder proposal for 2024 annual meeting

Dear Mr. Berk/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at Deere & Company's 2024 annual shareholder meeting. If you could confirm receipt of this, I would appreciate it.

Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[redacted]
<31 August NLPC Letter.pdf>

NATIONAL LEGAL AND POLICY CENTER

September 11, 2023

Mr. Edward Berk
Corporate Secretary & Associate General Counsel Deere & Company
One John Deere Place
Moline, Illinois 61265-8098

VIA EMAIL: BerkEdwardR@deere.com

Dear Mr. Berk/Corporate Secretary:

This letter responds to your Aug. 31 letter alleging a deficiency in the Aug. 25, 2023 submission of our "Customer and Company Sustainability Report on GHG Policies" proposal. I have attached a verification letter from Fidelity Investments of our holdings.

I can be reached at [redacted] or at [redacted] if you have any further questions. Further correspondence can also be sent to me at 2217 Matthews Township Parkway, Suite D-229, Matthews, NC 28105.

Sincerely,

Paul Chesser
Director
Corporate Integrity Project

Enclosure: Fidelity Investments shareholder verification letter

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

NATIONAL LEGAL AND POLICY CTR
ATTN: PETER THOMAS FLAHERTY
107 PARK WASHINGTON CT
FALLS CHURCH, VA 22046-4519

September 7, 2023

Dear Deere and Co. Corporate Secretary:

This letter is provided at the request of National Legal and Policy Center, a customer of Fidelity Investments.

As of August 25, 2023, National Legal and Policy Center held, and has held continuously for at least three years, 8.000 shares of Deere and Co. Common Stock.

This security is registered in the name of National Financial Services LLC, a DTC participant (DTC number 0226), a Fidelity Investments subsidiary. The DTC clearinghouse number for Fidelity is 0266.

I hope this information is helpful. For any other issues or general inquiries, please call your Private Client Group at [redacted] Thank you for choosing Fidelity Investments.

Sincerely,

Lex Morris

Lex Morris
Personal Investing Operations

Our File: W238177-05SEP23

Edward Berk

From: Edward Berk
Sent: Tuesday, September 12, 2023 11:15 AM
To: Paul Chesser
Cc: Luke Perlot
Subject: RE: Shareholder proposal for 2024 annual meeting

Thanks for your email, Paul. I confirm receipt.
Best,
Ed

From: Paul Chesser [redacted]
Sent: Monday, September 11, 2023 9:35 AM
To: Edward Berk <berkedwardr@johndeere.com>
Cc: Luke Perlot [redacted]
Subject: Re: Shareholder proposal for 2024 annual meeting

[EXTERNAL] This Message Is From an Unknown Sender
You have not previously corresponded with this sender. Do not follow guidance, click links, or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Berk,

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Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[redacted]

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Best regards,
Edward Berk

Edward R. Berk
Associate General Counsel and Corporate Secretary
Deere & Company World Headquarters
One John Deere Place
Moline, Illinois 61265, USA
BerkEdwardR@JohnDeere.com

Public

From: Paul Chesser [redacted]
Sent: Friday, August 25, 2023 2:31 PM
To: Edward Berk <berkedwardr@johndeere.com>
Cc: Luke Perlot [redacted]
Subject: Shareholder proposal for 2024 annual meeting

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Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
nlpc.org
[redacted]
<31 August NLPC Letter.pdf>

NATIONAL LEGAL AND POLICY CENTER

November 6, 2023

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

Re: *Deere & Company*
Shareholder Proposal of the National Legal and Policy Center ("NLPC")
Securities Exchange Act of 1934—Rule 14a-8

VIA EMAIL: shareholderproposals@sec.gov

Ladies and Gentlemen:

This letter responds to the letter dated October 19, 2023 from Edward R. Berk, Corporate Secretary and Associate General Counsel for Deere & Company ("Deere" or "Company"), requesting that the Division of Corporation Finance ("Staff") take no action if the Company excludes our shareholder proposal ("Proposal") from its proxy materials ("Proxy") for its 2024 annual shareholder meeting.

The Company's request provides insufficient justification for exclusion and should be denied no-action relief.

The Company's excuses to exclude our Proposal from the Proxy – because it allegedly has already been "substantially implemented" pursuant to Rule 14a-8(i)(10); and that it allegedly fails to address a "significant social policy issue" that transcends the Company's "ordinary business operations" pursuant to Rule 14a-8(i)(7) – are erroneous. Contrary to Deere's claims in its letter seeking no-action relief, NLPC's Proposal requests the Company deliver a report that addresses the *incongruency* between its energy policy priorities and its impacts upon its core customer base – information which does *not* presently exist in its publicly available materials for shareholders, customers and the general public. Additionally, our Proposal most certainly *does* address a *significant* social policy issue that transcends ordinary business.

Nonetheless, if the Staff determines to issue the Company relief, that act would raise significant constitutional and administrative law issues.

Should the Staff find our Proposal omissible, we intend to seek reconsideration of that decision from the SEC Commissioners. We ask that the Staff reach its conclusions

Nat'l Headquarters: 107 Park Washington Court, Falls Church, Virginia 22046

Phone: (703) 237-1970 Email: pchesser@nlpc.org

and notify us promptly, in sufficient time for potential appeal in advance of the Company's proxy materials printing schedule.

Relatedly, we ask that any information pertinent to this proceeding, conveyed between the Company and the Staff by any means whatever, promptly be conveyed to us as well, as required by Section G.9 of SLB No. 14.[1] This particularly applies to any communications by the Company or any representative of the Company to the Staff of its plans or schedule for printing proxy materials, and includes phone calls, which cannot be used to evade the transparency requirements and are generally discouraged by SEC Staff under section G.10.[2]

Finally, we ask the Staff to render its no-action determination in light of our stated intention to seek reconsideration, and to issue it with sufficient timeliness to avoid functionally denying us a reconsideration opportunity that is facially a part of this review system.

As to the Company's no-action request, following I will address the Company's "Analysis" of two points of objection to our Proposal submission, in the order presented in its October 19 letter.

Deere & Company has* not *substantially implemented what NLPC has requested, and therefore the Proposal should NOT be excluded from its Proxy under Rule 14a-8(i)(10).

NLPC's Proposal addresses the "significant social policy issue" of energy supply, availability, affordability and use, and inquires whether the Company's pursuit of a "transition" from fossil fuels to "alternative" energy sources is necessary or even possible, to meet the equipment and product needs that Deere supplies to the agriculture, forestry and construction/mining industries. The Company's position uncritically accepts the heavily debated and politically-driven demand for decarbonization, which among its other initiatives drives its "Leap Ambitions" green marketing scheme, without consideration for the feasibility of such efforts, and by neglecting the extreme economic harm they impose wherever they are attempted.

The Company's assertion that it has already "substantially implemented" the elements of our requested report is almost entirely based upon Deere's 2022

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[1] https://www.sec.gov/pdf/cfslb14.pdf; https://www.sec.gov/corpfin/staff-legal-bulletin-14d-shareholder-proposals; https://www.sec.gov/interps/legal/cfslb14.htm.
[2] https://www.sec.gov/interps/legal/cfslb14.htm.

Sustainability Report,[3] footnoting from a dozen different parts of the report in its no-action request to the Staff. Unfortunately, the Company's "Leap Ambitions" citations from the report amount to "all hat and no cattle,"[4] ignoring what we request, and instead distracting with its own irrelevant marketing boasts, rather than fulfilling what we request.

To reiterate the specific claims the Company makes that we seek to have addressed in the Proposal:

- a "50% reduction of operational [carbon dioxide equivalent] emissions…by 2030;"
- That it "surpassed its 2022 renewable electricity goal by achieving nearly 59 percent renewable electricity as of the end of 2022;"
- That it accomplished its operational greenhouse gas reduction goals, in part, by its "partnership with Mesquite Sky Wind…the energy it supplies is equivalent to more than 20% of our global electricity footprint;"
- That it "has secured long-term agreements through 2030 for projects…[that] will achieve more than 50% of global renewable electricity in Germany, Spain, the Netherlands, India, Mexico, and Brazil;"
- That its GHG reduction goals were validated by the Science Based Targets initiative, which are allegedly "consistent with what's required to keep global warming to 1.5°C, which is needed to prevent the most damaging effects of climate change, according to the latest climate science."[5]

In the Proposal we specifically challenge the validity, the legitimacy, the necessity, the economic viability, and the environmental benefit of the above referenced "Leap Ambition" goals and alleged accomplishments. The Proposal calls attention to land use and forest clearing issues necessitated by the projects that Deere boasts about; the effect on massive amounts of wind on ground-level temperatures; dubious carbon dioxide credit trading schemes the Company cites as "equivalent" to actual reductions in emissions, which are widely viewed as vulnerable to corruption and scams; and the

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[3] 2022 Sustainability Report, Deere & Company. See https://www.deere.com/assets/pdfs/common/our-company/sustainability/sustainability-report-2022.pdf.

[4] See https://idioms.thefreedictionary.com/all+hat+and+no+cattle.

[5] https://www.newswire.ca/news-releases/john-deere-receives-sbti-validation-of-greenhouse-gas-emission-reduction-targets-813095384.html.

[il]legitimacy and attainability of the necessity to achieve a 1.5°C reduction goal in the first place.

Rather than address any of those aspects of the energy use and economic/environmental impact of those policies, as our Proposal requests, Deere's "Leap Ambitions" that it highlights in its 2022 Sustainability Report address irrelevancies such as:

- "An incremental addressable market opportunity of more than $150 billion."
- "Unlocking opportunities for customers to reduce emissions of their operations."
- "Decreas[ing] pesticide and fertilizer inputs while reducing passes in the field…"
- Crop protection inputs and herbicide, insecticide and fungicide underutilization rates
- Technologies that could "save over 93 million gallons of starter fertilizer annually…"
- "Tillage practices and…conservation methods [that] can impact profits and soil health…"

I could go on citing the Company's other diversions from what our Proposal seeks, but the Staff should get the picture. In the end, the points Deere cites may all be desirable and beneficial things for its customer base, but they fail to address the deeply concerning, overarching policy approach upon which these initiatives have their basis.

At this point it is also relevant to remind the Company and the Staff of the scientific fact that more carbon dioxide in the atmosphere is a *good* thing for agriculture and forestry.

For these and other reasons, the Company's claim that its 2022 Sustainability Report "compare[s] favorably to the underlying concern of the Proposal and the Company has directly addressed the Proposal's essential objective of providing insight as to how the Company's sustainability-related policies impact the industries the Company serves," should be rejected by the Staff.

The Proposal* does *raise an issue of broad societal impact that transcends the Company's ordinary business operations, and therefore the Proposal should NOT be excluded from its Proxy under Rule 14a-8(i)(7).

Contrary to the Company's assertions, the Proposal does *not* address the Company's "ordinary business" in a way that is "micromanaging," nor in a way that supersedes the transcendent public policy issue of climate change and decarbonization, which has imposed an extremely burdensome and harmful energy cost upon individuals and businesses worldwide. As our proposal cites, these policies have significant implications for the majority of Deere's customer base in agriculture, forestry and construction/mining.

The Company's mistaken characterization of the Proposal

In its no-action request, the Company states that our Proposal "asks the Board to provide a report on the impact of the Company's Leap Ambitions on the industries the Company serves, the Company's customers, and ultimately, the Company's revenue." This is false. Rather, the Proposal seeks the following, which is the entirety of our "Resolved" clause:

> *Deere & Company shall publish a report, at reasonable expense, analyzing the congruency of the Company's policies in support of greenhouse gas reduction and renewable energy use, with those priorities' effects on the ongoing viability of the industries that constitute the vast majority of the Company's revenue base – and therefore Deere's own future.*

The Proposal's "Resolved" clause does not seek a report solely on the consequences resulting from the Company's implementation of its so-called "Leap Ambitions," but instead asks for a realistic scientific and economic explanation of how its overarching adoption of greenhouse gas reduction and renewable energy affect the majority of its customer base, and how that is *congruent* with those industries' long-term viability.

Further, the Company accuses NLPC of trying to "shoehorn" the "complex policy issues associated with climate change and renewable energy into its Proposal by referring to them in the supporting statement," which it says "does not alter the fact that the Proposal itself is squarely focused on the Company's strategic product offerings, its development and research (R&D) choices and how those choices impact the Company's customers…."

On the contrary, the Proposal's reference to Deere's "Leap Ambitions" are not

limited to its "product offerings" and R&D – which it argues encompasses its "everyday business" – but are also extended to its broad policies upon which it seeks to appease pressure groups and political activists that are hostile to the Company's historic (and popular) business foundation, which has serviced the agriculture, forestry, mining and construction industries. Such policies the Proposal calls attention to – which are *not* only part of the Company's "product offerings" but also broader energy policy initiatives – are its efforts to attain self-imposed renewable energy goals, by spending precious shareholder resources on far-away renewable energy projects and engaging in heavily criticized carbon offset chicanery. Calling Deere's renewable energy scheming for what it really is, if the Company was truly 100-percent dependent on sources like wind and solar, it would be non-operational and bankrupt almost instantly.

Why this significant social policy issue transcends ordinary business

The heart of the Proposal calls into question Deere's striving for "validation" from the [anything but] Science Based Targets initiative, which show the Company's "targets are consistent with what's required to keep global warming to 1.5°C, which is needed to prevent the most damaging effects of climate change, according to the latest climate science."[6] According to Deere's press release:

> *SBTi defines and promotes best practice in emissions reductions and net zero targets in line with climate science and brings together a team of experts to provide companies with independent assessment and validation of targets.*

Terms that the Company throws around, like "best practice," "net zero targets," "climate science," and a "team of experts" are undefined and meaningless. Shareholders and interested parties are expected to take them at face value as though there was credible substantiation to support them. In most cases, there isn't.

The Company fails to question the underlying greenhouse gas ("GHG") emissions objectives themselves. Deere relies on corporate media-driven narratives which portend extreme climate catastrophe, that is inconsistent with sound scientific principles and are unlikely. Therefore, the urgent climate mitigation strategies employed by the Company should be re-examined in light of their effects on the majority of their customers.

The Company must also consider the dubious "risks" of climate change versus the actual global economic and health risks of energy shortages caused by the activists' war against fossil fuels, and versus the unviable, unrealistic near-term transition to renewable

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[6] "John Deere Receives SBTi Validation of Greenhouse Gas Emission Reduction Targets," Deere & Company, Oct. 21, 2022. See https://www.deere.com/en/news/all-news/john-deere-receives-sbti-validation-of-greenhouse-gas-emission-reduction-targets/.

energy. Given those risks, we question whether Deere should even participate in a debate best left to the public entities who enact policy based upon elections and the will of voters. In any case, the Company should revisit the underlying policies upon which it has established its framework.

Unreliable research

Deere's initiatives are guided by the Paris Agreement's goal to limit global warming to 1.5°C above pre-industrial levels.[7] These targets are neither legally binding nor backed by scientific evidence, and the catastrophic climate scenarios cited by corporate media organizations as justification for these targets are improbable.

One hundred ninety-five parties signed the Paris Agreement at the twenty-first session of the Conference of Parties (COP21), the rulemaking body of the United Nations Framework Convention on Climate Change (UNFCCC).[8]

However, the content of the Paris Agreement is heavily informed by the Intergovernmental Panel on Climate Change ("IPCC"),[9] another product of the UN.[10] The UNFCCC even invited the IPCC to create the *Special Report on Global Warming of 1.5°C* to help governments meet the emissions goals outlined in the Paris Agreement.[11] However, the IPCC's primary purpose is to provide periodic "Assessment Reports" comprised of up-to-date climate research and mitigation policy proposals for both governments and the private sector.[12]

The IPCC released the *Sixth Assessment Report* (AR6) results for Working Group 1 in 2021[13] and the final *Synthesis Report* in March 2023.[14] The *Synthesis Report* claims that "without urgent, effective, and equitable mitigation and adaptation actions, climate change increasingly threatens ecosystems, biodiversity, and the livelihoods, health and wellbeing of current and future generations."

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[7] United Nations Framework Convention on Climate Change. "Paris Agreement," 2015. See https://unfccc.int/sites/default/files/english_paris_agreement.pdf

[8] Denchak, M. "Paris Climate Agreement: Everything You Need To Know," *NRDC,* 2021, February 19. See https://www.nrdc.org/stories/paris-climate-agreement-everything-you-need-know#sec-whatis

[9] IPCC. "FAQ Chapter 1," See https://www.ipcc.ch/sr15/faq/faq-chapter-1/.

[10] IPCC. "About." See https://www.ipcc.ch/about/.

[11] IPCC. "Global Warming of 1.5 C." See https://www.ipcc.ch/sr15/.

[12] IPCC. "Preparing Reports." See https://www.ipcc.ch/about/preparingreports/.

[13] IPCC. "Climate Change: The Physical Science Basis." See https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/.

[14] IPCC. "Synthesis Report of the IPCC Sixth Assessment Report." See https://www.ipcc.ch/report/ar6/syr/.

However, Deere should note two issues about the IPCC's research process.

First, the IPCC is not an organization of scientists at its core. Instead, according to the IPCC website, "the IPCC is an organization of governments that are members of the United Nations or WMO (World Meteorological Organization)."[15] The member governments "elect a bureau of scientists for the duration of an assessment cycle" and "bureau members select experts to prepare IPCC reports."[16]

Second, bureau members do not conduct original research during the assessment process. Instead, they "report based on an assessment of all relevant scientific, technical and social-economic information."[17]

The Global Warming Policy Foundation ("GWPF"), a UK-based think tank, explained in a 2022 paper[18] how layers of bureaucracy produce a gap between the public perception of climate risk and the actual data. For example, the AR6 and *Synthesis Report* are accompanied by a *Summary for Policymakers* ("SPM"), authored primarily by government representatives who are *not* scientists. Moreover, the SPM is often written before the Assessment Report is completed. Then it is summarized further by a press release. Finally, legacy media outlets cite the press release. As a result, the report's contents are diluted with each step, [mis]leading to a gap between actual data and public perception.

Therefore, Deere should not be fooled by vague references to the poorly substantiated Paris Agreement, IPCC, or even an amorphous "scientific consensus." Instead, the Company should recognize that the sensationalized concept of climate catastrophe is primarily a corporate media creation, based on a weak foundation of unlikely worst-case scenarios.

Catastrophic scenarios unlikely

In its efforts to appease the Climate Industrial Complex and its would-be enforcers, Deere claimed to conduct research for a "Task Force on Climate-Related Financial Disclosure" that "rated the impact and likelihood of each risk and opportunity

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[15] IPCC. "About." See https://www.ipcc.ch/about/

[16] IPCC. "Structure." See https://www.ipcc.ch/about/structure/.

[17] IPCC. "Preparing Reports." See https://www.ipcc.ch/about/preparingreports/

[18] Alexander, R. "Chinese Whispers: How Climate Science Gets Lost In Translation," Global Warming Policy Foundation, 2022. See https://www.thegwpf.org/content/uploads/2022/10/Alexander-Chinese-Whispers.pdf

under a "high emissions" scenario (RCP 8.5) and a "low emissions" scenario (RCP 2.6).[19]

During the creation of AR5, the IPCC developed four scenarios called Representative Concentration Pathways (RCP). The RCPs represent alternative climate futures based on different greenhouse gas emission scenarios. The IPCC labeled each RCP according to its projected level of radiative forcing in the year 2100. The RCPs range from RCP 2.6, which represents a scenario where greenhouse gas emissions peak around 2020 and decline thereafter, to RCP 8.5, which represents a scenario where greenhouse gas emissions continue to rise throughout the century, resulting in a temperature increase of 4.5°C or more by 2100.

The RCPs represent potential outcomes, but they are not predictions. The IPCC did not assign likelihoods to the pathways because there are high degrees of uncertainty associated with future emissions and their impacts on the climate system. Instead, the RCPs are tools for exploring a range of possible outcomes, however improbable they may be.

While RCP 8.5 is the worst-case scenario, it is highly unlikely. Yet media organizations, activist groups, and even scientific bodies like the IPCC have routinely portrayed the extreme consequences of RCP 8.5 as the default outcome. According to a 2020 article by Zeke Hausfather, director of climate and energy at the Breakthrough Institute in Oakland, and Glen Peters, research director at the CICERO Center for International Climate Research in Oslo:

> *A sizeable portion of the literature on climate impacts refers to RCP 8.5 as business as usual, implying that it is probable in the absence of stringent climate mitigation. The media then often amplifies this message, sometimes without communicating the nuances. This results in further confusion regarding probable emissions outcomes, because many climate researchers are not familiar with the details of these scenarios in the energy-modeling literature.*[20]

The catastrophic outcomes cited by media organizations and UN officials are not backed by data-driven sound science, so the aggressive emissions reduction measures advocated by pressure groups and political activists should be re-examined by the Company.

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[19] "2022 Task Force on Climate-Related Financial Disclosure" report, Deere & Company. See https://www.deere.com/assets/pdfs/common/our-company/sustainability/tcfd-2022.pdf.

[20] Hausfather, Z., & Peters, G. P. "Emissions – the 'business as usual' story is misleading," *Nature Publishing Group,* January 29, 2020. See https://www.nature.com/articles/d41586-020-00177-3.

Green energy technologies are unrealistic

Deere's efforts to adopt a transition plan with its greenhouse gas emissions reduction targets suggest that renewable energy technologies will be able to fill the gap. And renewable energy advocates in the recent past have consistently cited declining costs. But even if that was true, those days are over, as the *Wall Street Journal* reported recently:[21]

> *Soaring costs are pushing up the price of big wind-power projects, challenging the country's shift to renewable energy and potentially leading to larger-than-expected bills for residents.*
>
> *New York state officials in recent days unveiled a slate of wind-farm proposals that would result in higher electricity rates for residents than previously approved plans. That has firms behind older bids rushing to see if they can resubmit their plans at or near the new rate.*
>
> *The projects are among the country's biggest and are being closely watched because they show how a nascent industry that is key to the U.S. energy transition will work through the upheaval of escalating costs.*

Renewable energy sources are also far less reliable. While power generation plants can burn fossil fuels at any time, wind and solar farms – the two primary forms of renewable energy generation – rely on uncontrollable weather patterns [a phenomenon farmers know well], and they're vulnerable to dead seasons during the summer and winter.[22]

Wind and solar generation also demand hefty power storage capacity to be logistically feasible. Renewable energy systems must have sufficient storage to cover dead seasons without wind or direct sunlight, which may be prolonged, but only occur a few times yearly. In addition, energy storage must exceed expected requirements to ensure reliability. As a result, battery storage sits idle for most of the year, making energy

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[21] Uberti, David. "America's Offshore Wind Ambitions Are Coming With Bigger Price Tags," *Wall Street Journal*, Oct. 31, 2023. See https://www.wsj.com/business/energy-oil/americas-offshore-wind-ambitions-are-coming-with-bigger-price-tags-95693495.

[22] Waterton, J. "Intermittent approach to renewable energy," *The Guardian*, June 29, 2018. See https://www.theguardian.com/environment/2018/jun/29/intermittent-approach-to-renewable-energy

storage an incredibly inefficient approach on both a raw material and cost basis.[23] [24] [25]

And as the Proposal points out, the aggressive deployment of wind and solar, and the expansion of the grid needed to accommodate them, demands massive conversion of land use,[26] with deep implications for Deere's agriculture and forestry customer base. As energy expert Robert Bryce has reported:[27]

> *In 2012, the National Renewable Energy Laboratory estimated that if the U.S. were to attempt to derive 90% of its electricity from renewable sources, it would have to roughly double its high-voltage transmission capacity. The US now has about 240,000 miles of high-voltage transmission lines. Put another way, trying to run the electric grid on renewables would require enough high-voltage transmission to circle the Earth nearly 10 times.*
>
> *Last year, I contacted Jean Reaves Rollins, the president of the Atlanta-based consulting firm C Three Group, which tracks the growth of energy infrastructure across the U.S. I asked her to provide numbers for the growth of America's high-voltage (230kV and above) transmission system since 2008. Rollins and her team graciously provided me with the data. The numbers are sobering.*
>
> *Between 2008 and 2021, according to C Three Group, the U.S. high-voltage transmission system grew by about 1,700 miles per year. Thus, at current rates of growth, doubling the size of America's high-voltage transmission grid will take about 140 years!*

Bryce also reports:[28]

> *The key problem with wind and solar (in addition to their incurable intermittency) is their low power density. For wind, it is 1 watt per square*

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[23] BloombergNEF. "Lithium-ion Battery Pack Prices Rise for First Time to an Average of $151/kWh," *Bloomberg*, December 6, 2022. See https://about.bnef.com/blog/lithium-ion-battery-pack-prices-rise-for-first-time-to-an-average-of-151-kwh/

[24] Trancik, J., et. al. "Storage Requirements and Costs of Shaping Renewable Energy Toward Grid Decarbonization," August 7, 2019. https://www.cell.com/joule/fulltext/S2542-4351(19)30300-9.

[25] Roberts, D. "Getting to 100% renewables requires cheap energy storage. But how cheap?" Vox.com, September 20, 2019. See https://www.vox.com/energy-and-environment/2019/8/9/20767886/renewable-energy-storage-cost-electricity.

[26] Richard Meyer on X. See https://twitter.com/RichardMeyerDC/status/1649085514195308547.

[27] Bryce, Robert. "Out of Transmission," Robert Bryce on Substack, Feb. 9, 2023. See https://robertbryce.substack.com/p/out-of-transmission.

[28] Bryce, Robert. "Blowback!," Robert Bryce on Substack, June 1, 2023. See https://robertbryce.substack.com/p/blowback.

> *meter. Solar's power density is about 10 watts per square meter. That low power density means they need lots of land (or ocean) to produce significant quantities of electricity. And we don't have any "vacant" land available. Indeed, the Renewable Rejection Database proves that local communities from Maine to Hawaii have been resisting the energy sprawl that comes with wind and solar for years.*

In all its published materials on climate change, emissions goals and renewable energy pursuits, the Company omits logistic, scientific and economic analyses such as those cited in the aforementioned examples. Instead Deere takes the easy way out in seeking pacification of its loudest critics, with advocacy-produced "research," by employing modeling of future temperature and energy deployment with "garbage-in-garbage-out" data inputs and outcomes. Our Proposal calls for serious analysis based on real-world science and economics, not fantasy, and what the true implications are for the customers it serves.

Public opinion

Though less important than the weak evidence and science that flimsily undergirds Deere's policies, public opinion on climate and science also suggests that the Company should be concerned about what its potential customers and the public *actually* believe, not what media sensationalists and alarmist pressure groups tell them to believe. For example, in March 2023 Rasmussen Reports found:[29]

> *A majority of voters agree with a Republican presidential candidate's criticism of climate change as a "religion" that isn't really about the climate at all.*
>
> *A new Rasmussen Reports national telephone and online survey finds that 60% of Likely U.S. voters agree – including 47% who Strongly Agree – with Vivek Ramasamy's recent statement that climate change has become a religion that "actually has nothing to do with the climate" and is really about power and control. Thirty-five percent (35%) disagree with Ramaswamy's statement, including 25% who Strongly Disagree.*

Likewise, an extensive business survey conducted over the Summer of 2023 by Bloomberg on environmental, social and governance ("ESG") principles – under which Deere's climate and energy policies are firmly slotted – discovered that "almost 70% of those who aren't involved directly in ESG say the investment strategy is nothing more

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[29] "Is Climate Change a False Religion?," Rasmussen Reports, March 14, 2023. See https://www.rasmussenreports.com/public_content/politics/biden_administration/is_climate_change_a_false_religion.

than a fad, while just 18% of those who are engaged expect ESG issues to become more critical in business and markets, down from 25% in the earlier survey."[30]

These survey examples, among many that have been conducted in recent years, are only cited here to illustrate how sharply divided and vigorously debated the issue is, and to illustrate how much the issue "transcends ordinary business."

Conclusion

As outlined above with voluminous evidence and explanatory details – most of which are omitted in the Company's no-action request – the Proposal is fully compliant with all aspects of Rule 14a-8. For this reason, NLPC asks the Staff to recommend enforcement action should the Company omit the Proposal.

A copy of this correspondence has been timely provided to the Company. If you have any questions or need more information, please feel free to contact me via email at pchesser@nlpc.org or by telephone at 662-374-0175.

Sincerely,

Paul Chesser
Director
Corporate Integrity Project

Cc: Edward R. Berk & Julie Rosales, Deere & Company

[30] Quinson, Tim. "ESG Strategy Receives Tough Feedback in Latest Bloomberg Survey," Bloomberg, Aug. 3, 2023. See https://www.bloomberg.com/news/articles/2023-08-03/esg-strategy-receives-tough-feedback-in-latest-bloomberg-survey.