



DIVISION OF  
CORPORATION FINANCE

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

March 7, 2023

Elizabeth A. Ising  
Gibson, Dunn & Crutcher LLP

Re: PepsiCo, Inc. (the "Company")  
Incoming letter dated December 30, 2022

Dear Elizabeth A. Ising:

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

The Proposal requests that the board of directors adopt an enduring policy and amend the governing documents as necessary in order that two separate people hold the office of the chairman and the office of the CEO.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(11). We note that the Proposal is substantially duplicative of a previously submitted proposal that will be included in the Company's 2023 proxy materials. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(11).

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

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

December 30, 2022

**VIA E-MAIL**

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

Re: *PepsiCo, Inc.*  
*Shareholder Proposal of Kenneth Steiner*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, PepsiCo, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the “2023 Proxy Materials”) a shareholder proposal (the “Duplicate Proposal”) and statements in support thereof (the “Duplicate Proposal Supporting Statement”), received from John Chevedden on behalf of Kenneth Steiner (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be sent at the same time to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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## THE DUPLICATE PROPOSAL

The Duplicate Proposal, titled “Independent Board Chairman,” states:

Shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board on an expedited basis.

Although it is a best practice to adopt this policy soon this policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

A copy of the Duplicate Proposal, the Duplicate Proposal Supporting Statement and related correspondence with the Proponent is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Duplicate Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(11) because the Duplicate Proposal substantially duplicates another proposal previously submitted to the Company that the Company intends to include in the 2023 Proxy Materials.

## ANALYSIS

### **The Duplicate Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates An Earlier Submitted Proposal That The Company Intends To Include In Its 2023 Proxy Materials**

#### *A. Background*

On October 28, 2022, the Company received a shareholder proposal titled “Request for Board of Directors to Adopt Policy for an Independent Chair” from Paul Chesser on behalf of the National Legal and Policy Center requesting that the Company adopt a

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policy providing for an independent board chairman (the “Prior Proposal”, and together with the Duplicate Proposal, the “Proposals”) and statement in support thereof (the “Prior Proposal Supporting Statement”, and together with the Duplicate Proposal Supporting Statement, the “Supporting Statements”).<sup>1</sup> The Prior Proposal and the Prior Proposal Supporting Statement, as well as related correspondence, are attached to this letter as Exhibit B.

The Prior Proposal states:

Shareholders request the Board of Directors adopt as policy, and amend the governing documents as necessary, to require hereafter that that two separate people hold the office of the Chairman and the office of the CEO as follows:

**Selection of the Chairman of the Board:** The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board may select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board seeks an Independent Chairman of the Board.

The Chairman shall not be a former CEO of the company.

Selection of the Chairman of the Board shall be consistent with applicable law and existing contracts.

The Company received the Duplicate Proposal on November 3, 2022, which is after the date on which the Company first received the Prior Proposal. The Duplicate Proposal was subsequently revised by the Proponent, which revised proposal was received by the Company on November 24, 2022. *See* Exhibit A and Exhibit B. The Company intends to include the Prior Proposal in its 2023 Proxy Materials.

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<sup>1</sup> On October 31, 2022, three days after the Company received the Prior Proposal via overnight mail, Mr. Chesser sent the Company an email to confirm its receipt of the Prior Proposal. *See* Exhibit B.

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## B. Analysis

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it “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.” The Commission has stated that “the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” Exchange Act Release No. 12999 (Nov. 22, 1976). When two substantially duplicative proposals are received by a company, the Staff has indicated that the company may exclude the later of the proposals it received from its proxy materials, unless the initial proposal otherwise may be excluded. *See, e.g., Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994).

A later proposal may be excluded as substantially duplicative of an earlier proposal despite differences in terms or breadth and despite the proposals requesting different actions. *See, e.g., Amazon.com, Inc.* (avail. Apr. 6, 2022) (concurring that a proposal requesting the board commission an independent third-party audit on workplace health and safety, evaluating productivity quotas, surveillance practices, and the effects of these practices on injury rates and turnover was substantially duplicative of a proposal requesting the board commission an independent audit and report of the working conditions and treatment that warehouse workers face); *Exxon Mobil Corp.* (avail. Mar. 13, 2020) (concurring with the exclusion of a proposal as substantially duplicative where the Staff explained that “the two proposals share a concern for seeking additional transparency from the [c]ompany about its lobbying activities and how these activities align with the [c]ompany’s expressed policy positions” despite the proposals requesting different actions); *Exxon Mobil Corp.* (avail. Mar. 9, 2017) (concurring with the exclusion of a proposal requesting a report on the company’s political contributions as substantially duplicative of a proposal requesting a report on lobbying expenditures); *Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring that a proposal seeking a review and report on the company’s loan modifications, foreclosures, and securitizations was substantially duplicative of a proposal seeking a report that would include “home preservation rates” and “loss mitigation outcomes,” which would not necessarily be covered by the other proposal); *Chevron Corp.* (avail. Mar. 23, 2009, *recon. denied* Apr. 6, 2009) (concurring that a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company’s expanding oil sands operations in the Canadian boreal forest was substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company’s products and operations). The Staff has traditionally referred to Rule 14a-8(i)(11)’s substantial duplication standard as assessing whether the later proposal presents the same “principal

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thrust” or “principal focus” as a previously submitted proposal. *See Pacific Gas & Electric Co.* (avail. Feb. 1, 1993).

As demonstrated below, the Proposals share the same principal thrust or focus.<sup>2</sup> In this regard, both Proposals seek adoption of a policy that the chairman (the “Chairman”) of the Company’s Board of Directors (the “Board”) be an independent director. A comparison of the two Proposals demonstrates that they address the same subject matter and share the same objective of having the Company adopt a policy providing for an independent Board Chairman:

- the titles of both Proposals refer to the Board having an independent Chairman;
- both Proposals request that the Board adopt a policy that “separate people hold the office of the Chairman and the office of the CEO”;
- the Proposals use identical language to describe the requested policy—“Whenever possible, the Chairman of the Board shall be an Independent Director”;
- both Proposals request amendments to the Company’s “governing documents as necessary” to implement the requested policy;
- both Proposals note that the policy may be phased in for the next Chief Executive Officer transition (as the Prior Proposal notes, applied on a prospective basis so as to not violate any existing contractual obligation);
- both Proposals provide that the Board may “select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board [seeks][is seeking] an Independent Chairman of the Board”; and

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<sup>2</sup> We note that the Commission has proposed amendments to Rule 14a-8(i)(11) to provide “that a proposal ‘substantially duplicates’ another proposal if it ‘addresses the same subject matter and seeks the same objective by the same means.’” Exchange Act Release No. 34-95267 (July 13, 2022). We believe that the Duplicate Proposal satisfies this standard as well for the reasons noted below, specifically the Proposals each seek to require that the Chairman be an independent director and each would accomplish that shared objective by the same means—the adoption of a permanent policy requiring that the positions of Chairman and CEO be separate and that the Chairman be an independent director.

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- both Proposals ask that the requested policy be permanent in its application (the Prior Proposal requests that the policy should “require hereafter” that separate people hold the two offices and the Duplicate Proposal requests the policy be “enduring”).

Moreover, the Supporting Statements demonstrate that the Proposals have the same thrust and focus and share the same concerns and objectives:

- both Supporting Statements address the different roles that the Chairman and Chief Executive Officer fill and claim those roles are better served when filled by different individuals;
- both Supporting Statements set forth potential benefits of having an independent Chairman; and
- both Supporting Statements discuss concerns related to combining the roles of Chairman and Chief Executive Officer.

Although the Duplicate Proposal and the Prior Proposal use some different words to phrase their shared request that the Company adopt a policy requiring that the Chairman be independent and deploy distinct arguments in their supporting statements in support of that request, these are not substantive differences that detract from the overall shared principal thrust or focus of the Proposals.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(11) of substantially duplicative proposals relating to an independent board chair. For example, in *PepsiCo, Inc.* (avail. Feb. 8, 2022), the Staff concurred with the exclusion of a proposal requesting that the Board “adopt as policy, and amend the bylaws as necessary, to require hereafter that the Chair of the Board of Directors be an independent member of the Board, consistent with applicable law and existing contracts” under Rule 14a-8(i)(11) where the principal thrust of both proposals was the adoption of a policy requiring an independent board chairman. *See also The Southern Co.* (avail. Mar. 6, 2020), (concurring with the exclusion of a proposal requesting that the board “adopt as policy, and amend [its] governing documents as necessary, to require that the [c]hairman of the [b]oard be an independent member of the [b]oard whenever possible,” under Rule 14a-8(i)(11) where the principal thrust of both proposals was the adoption of a policy requiring an independent board chairman); *Comcast Corp.* (avail. Mar. 14, 2019) (concurring with the exclusion of a proposal requesting that the board adopt a policy to require that the chair of the board of directors be independent, whenever possible, under Rule 14a-8(i)(11) where the two proposals contained virtually identical resolved clauses);

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*Pfizer Inc.* (avail. Dec. 20, 2018) (same); *The Kroger Co.* (avail. Apr. 4, 2018) (concurring with the exclusion of a proposal requesting that the board adopt a policy and amend the company's governing documents to require that the board chair, whenever possible, be an independent director and to phase in the policy for the next CEO transition so it does not violate any existing agreement, because it substantially duplicated a previously submitted proposal requesting that the board adopt a policy and amend the bylaws to require the board chair to be independent and to apply the policy prospectively so as not to violate any contractual obligation); *Pfizer Inc.* (avail. Jan. 11, 2018) (concurring with the exclusion of a proposal requesting that the board adopt a policy that, whenever possible, the board chair should be a director who has not previously served as an executive officer of the company and who is independent of management, and to implement the policy without violating any contractual obligation, because it substantially duplicated a previously submitted proposal requesting that the board adopt a policy and amend the bylaws to require the board chair, whenever possible, be an independent director and to phase in the policy for the next CEO transition); and *Nabors Industries Ltd.* (avail. Feb. 28, 2013) (concurring with the exclusion of a proposal requesting adoption of a policy to require the chair to be an independent director who has not previously served as an executive officer of the company and to implement the policy so as not to violate any contractual obligation, because it substantially duplicated a previously submitted proposal requesting adoption of a policy to require the board chair to be an independent director and to apply the policy prospectively so as to not violate any contractual obligation). As described above, the principal thrust of the Proposals is the adoption of a policy providing for an independent board Chairman. Accordingly, like the precedent cited above, even though the Proposals have certain inconsequential differences in their terms, the Duplicate Proposal substantially duplicates the Prior Proposal and is excludable pursuant to Rule 14a-8(i)(11).

Furthermore, the Staff has consistently concurred with the exclusion of proposals under Rule 14a-8(i)(11) when the earlier and later-received proposals presented the same principal thrust or focus even when the supporting statements are worded differently. For example, in *Pepsico, Inc.*, as noted above, the Staff concurred with the exclusion under Rule 14a-8(i)(11) of an independent board chair proposal where the supporting statement argued that combining the roles of CEO and chairman "greatly diminished the roles" and "weaken[ed the company's] governance structure, and cited "expert perspectives" to support its position. The supporting statement in the earlier-received proposal took a different approach, citing share price related benefits of an independent chairman and expressing concern with the Company's lead director and the fact that the Company did not provide shareholders with the "right to act by written consent." Similarly, in *The Southern Co.*, the Staff concurred with the exclusion of an independent board chair proposal where the supporting statement outlined certain management-related benefits of



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an independent chair and expressed concern with the company's corporate governance practices, including the company's failure "to adopt a simple majority vote standard for company elections," but the earlier-received proposal's supporting statement raised concerns related to the company's "strategic transformation necessary for [the company] to capitalize on the opportunities available in the transition to a low carbon economy." Despite the different concerns expressed in the supporting statements of the proposals at issue, the Staff concurred that the proposals in *PepsiCo, Inc.* and *The Southern Co.* shared the same principal thrust such that relief under Rule 14a-8(i)(11) was appropriate. *See also Comcast Corp.*, (concurring with the exclusion of an independent board chair proposal, with a supporting statement outlining certain management-related benefits of an independent chair and expressing concern with the company's current employment practices as substantially duplicative of an earlier-received proposal, with a supporting statement raising concerns with a certain "beneficial owner of [company] class B common stock (with 100-to-one voting power)"); *Pfizer Inc. (International Brotherhood of Teamsters General Fund)* (avail. Feb. 28, 2019) (concurring with the exclusion of a proposal requesting information on certain categories of lobbying expenditures and related company risks, with a supporting statement that "describe[d] the [p]roponents' concern that the lack of lobbying disclosure creates reputational risk when such lobbying contradicts public positions," as substantially duplicative of an earlier-received proposal with a supporting statement that "describe[d] lobbying in the context of [the company's] free speech and freedom of association rights"); *Danaher Corp.* (avail. Jan. 19, 2017) (concurring with the exclusion of a proposal to adopt goals for reducing greenhouse gas emissions, with a supporting statement describing reasons to do so, as substantially duplicative of an earlier-received proposal with a supporting statement describing risks and opportunities associated with climate change).

As noted above, while the resolved clauses of the Proposals vary slightly in phrasing, they both request that the Company adopt a policy and amend the Company's governing documents to require that the Chairman be independent. Aspects of the supporting statements in the Proposals are also very similar. For example, both Proposals associate an independent Chairman with potential for certain corporate governance outcomes and advocate for the separation of the roles of Chairman and Chief Executive Officer. While the Supporting Statements also contain some differing arguments in support of their shared request, consistent with the aforementioned precedent, this does not change the conclusion that the Duplicate Proposal would have its key focus addressed through implementation of the Prior Proposal and shares the same principal thrust or focus.

Finally, as noted above, the purpose of Rule 14a-8(i)(11) "is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act

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Release No. 12999 (Nov. 22, 1976). As the Duplicate Proposal substantially duplicates the Prior Proposal, if the Company were required to include both Proposals in its 2023 Proxy Materials, there is a risk that the Company's shareholders would be confused when asked to vote on both Proposals. In such a circumstance, shareholders could assume incorrectly that there are substantive differences between the Proposals and the requested actions. In addition, if the voting outcome on the Proposals differed, the shareholder vote would not provide guidance on what actions shareholders want the Company to pursue, given that the same actions would be necessary to implement either the Duplicate Proposal or the Prior Proposal.

For the reasons discussed above, the principal thrust or focus of the Proposals is the same. Moreover, the Company intends to include the Prior Proposal in the 2023 Proxy Materials. Accordingly, the Company believes that the Duplicate Proposal may be excluded under Rule 14a-8(i)(11).

## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Duplicate Proposal from its 2023 Proxy Materials pursuant to Rule 14a-8(i)(11).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Chloe Chung, the Company's Counsel, Governance & Engagement, at (914) 831-4264.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Chloe Chung, PepsiCo, Inc.  
John Chevedden

**EXHIBIT A**

**From:** John Chevedden [REDACTED]  
**Date:** November 3, 2022 at 1:45:50 PM EDT  
**To:** "Carriello, Amy {PEP}" <Amy.Carriello@pepsico.com>, "Lee, Alicia {PEP}" <Alicia.Lee@pepsico.com>, "Hurley, Megan {PEP}" <Megan.Hurley@pepsico.com>  
**Subject:** Rule 14a-8 Proposal (PEP)

**WARNING:** Email originated outside of PepsiCo.

Dear Ms. Carriello,  
Please see the attached rule 14a-8 proposal.  
Please confirm that this is the correct email  
address for rule 14a-8 proposals.

John Chevedden

Kenneth Steiner

Mr. David J. Flavell  
Corporate Secretary  
PepsiCo, Inc. (PEP)  
700 Anderson Hill Road  
Purchase NY 10577  
PH: 914 253-2000  
FX: 914-253-2070

Dear Mr. Flavell,

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

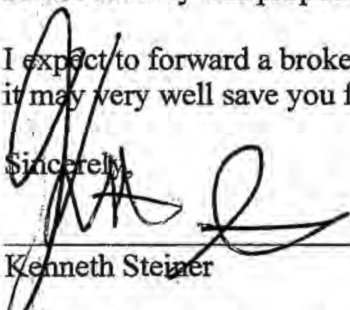
My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for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

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

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

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

Sincerely,

  
\_\_\_\_\_  
Kenneth Steiner

10/6/22  
\_\_\_\_\_  
Date

cc: Alicia Lee <Alicia.Lee@pepsico.com>  
Amy Carriello <amy.carriello@pepsico.com>

[PEP – Rule 14a-8 Proposal, November 3, 2022]  
[This line and any line above it – *Not* for publication.]

**Proposal 4 – Independent Board Chairman**

Shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board.

Although it is a best practice to adopt this policy soon this policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

A Lead Director is no substitute for an independent Board Chairman. A lead director is not responsible for the strategic direction of the company. And a Chairman/CEO can ignore the advice and feedback from a lead director. According to the 2022 PepsiCo annual meeting proxy the DuPont Lead Director has limited duties, some of which the person can decline, and lacks in having exclusive powers, for example:

- Presiding at all meetings of the Board at which the Chairman is not present
- Serving as a liaison between the Chairman and the independent directors  
(Others can also do this.)
- Having authority to approve information sent to the Board  
(Can choose not to exercise this authority)
- Approving meeting agendas for the Board  
(A task that can potentially be accomplished in the hour before a meeting. No role in initiating or developing the agenda.)
- Approving meeting schedules to but only to assure that there is enough time  
(A task that can potentially be accomplished in the hour before a meeting.)
- Having the authority to call meetings of the independent directors  
(But not able to call a meeting of the entire Board. Can choose not to exercise this authority.)
- If requested by major shareholders, ensuring that he or she is available for direct communication  
(Not an oversight duty.)

Plus management fails to give shareholders enough information on this topic to make an informed decision. There is no management comparison of the *exclusive powers* of the Office of the Chairman and the *de minimis exclusive powers* of the Lead Director.

Please vote yes:

**Independent Board Chairman – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

"Proposal 4" stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

This proposal is not intended to be more than 500 words. Should it exceed 500 words after notification to the proponent then the words that exceed 500 words shall be taken out of the proposal starting with the last full sentence of the proposal and moving upwards as needed to omit full sentences.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.

If there is objection to the title please negotiate or seek no action relief.

Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.



FOR

*Shareholder  
Rights*

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**From:** John Chevedden [REDACTED]  
**Sent:** Thursday, November 24, 2022 12:26 PM  
**To:** Carriello, Amy (PEP) <Amy.Carriello@pepsico.com>; Lee, Alicia (PEP) <Alicia.Lee@pepsico.com>; Hurley, Megan (PEP) <Megan.Hurley@pepsico.com>; SPA - PepsiCo Investor Relations <PepsiCoInvestorRel@pepsico.com>  
**Subject:** Rule 14a-8 Proposal (PEP) REVISED

**WARNING:** Email originated outside of PepsiCo.

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Rule 14a-8 Proposal (PEP)      REVISED

Dear Ms. Carriello,  
Please see the attached rule 14a-8 proposal.  
Please confirm that this is the correct email address for rule 14a-8 proposals.  
John Chevedden





Kenneth Steiner  
[REDACTED]

Mr. David J. Flavell  
Corporate Secretary  
PepsiCo, Inc. (PEP)  
700 Anderson Hill Road  
Purchase NY 10577  
PH: 914 253-2000  
FX: 914-253-2070

Revised November 23, 2022

Dear Mr. Flavell,

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

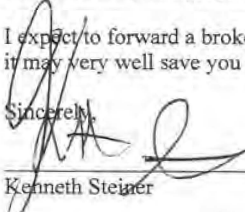
My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for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

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

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

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

Sincerely,

  
Kenneth Steiner

10/6/22  
Date

cc: Alicia Lee <Alicia.Lee@pepsico.com>  
Amy Carriello <amy.carriello@pepsico.com>

[PEP – Rule 14a-8 Proposal, November 3, 2022 | Revised November 23, 2022]

[This line and any line above it – *Not* for publication.]

**Proposal 4 – Independent Board Chairman**

Shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board on an expedited basis.

Although it is a best practice to adopt this policy soon this policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

A Lead Director is no substitute for an independent Board Chairman. A lead director is not responsible for the strategic direction of the company. And a Chairman/CEO can ignore the advice and feedback from a lead director. According to the 2022 PepsiCo annual meeting proxy the PepsiCo Lead Director has limited duties, some of which the person can decline, and lacks in having exclusive powers, for example:

- Serving as a liaison between the Chairman and the independent directors  
(Others can also do this.)
- Having authority to approve information sent to the Board  
(Can choose not to exercise this authority)
- Approving meeting agendas for the Board  
(A task that can potentially be accomplished in the hour before a meeting. No role in initiating or developing the agenda.)
- Approving meeting schedules to but only to assure that there is enough time  
(A task that can potentially be accomplished in the hour before a meeting.)
- Having the authority to call meetings of the independent directors  
(But not able to call a meeting of the entire Board. Can choose not to exercise this authority.)

Plus management fails to give shareholders enough information on this topic to make a more informed decision. There is no management comparison of the *exclusive powers* of the Office of the Chairman and the *de minimis exclusive powers* of the Lead Director.

Please vote yes:

**Independent Board Chairman – Proposal 4**

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

**Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.** If there is objection to the title please negotiate or seek no action relief as a last resort.

“Proposal 4” stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. **I intend to continue holding the same required amount of Company shares through the date of the Company’s 2023 Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [REDACTED]

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).  
Please alert the proxy editor.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.



**EXHIBIT B**

---

# National Legal and Policy Center

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*"promoting ethics in public life"*



October 25, 2022

Mr. David Flavell  
Executive Vice President, General Counsel and Corporate Secretary  
PepsiCo, Inc.  
700 Anderson Hill Road  
Purchase, NY 10577

VIA UPS & EMAIL: david.flavell@pepsico.com

Dear Mr. Flavell/Corporate Secretary:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in PepsiCo, Inc.'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 33 shares of the Company's common stock with a value exceeding \$2,000, which shares have been held continuously for more than three years prior to this date of submission. 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 adopt a policy for an Independent Chair in corporate governance. 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 no less than 10 calendar days, nor more than 30 calendar days, after submission of the proposal. I can be reached at [REDACTED] or at [REDACTED]. I am available Monday through Friday from 9am to 5pm, Eastern Time.

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 [REDACTED].

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

Phone: [REDACTED] Email: [REDACTED]

Sincerely,

A handwritten signature in cursive script that reads "Paul Chesser". The signature is fluid and written in dark ink.

Paul Chesser  
Director  
Corporate Integrity Project

Enclosure: "Request for Board of Directors to  
Adopt Policy for an Independent Chair" proposal

## Request for Board of Directors to Adopt Policy for an Independent Chair

### RESOLVED:

Shareholders request the Board of Directors adopt as policy, and amend the governing documents as necessary, to require hereafter that that two separate people hold the office of the Chairman and the office of the CEO as follows:

**Selection of the Chairman of the Board:** The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board may select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board seeks an Independent Chairman of the Board.

The Chairman shall not be a former CEO of the company.

Selection of the Chairman of the Board shall be consistent with applicable law and existing contracts.

### SUPPORTING STATEMENT:

The Chief Executive Officer of PepsiCo, Inc. is also Board Chairman. We believe these roles – each with separate, different responsibilities that are critical to the health of a successful corporation – are greatly diminished when held by a singular company official, thus weakening its governance structure.

Expert perspectives substantiate our position:

- According to the Council of Institutional Investors ( <https://bit.ly/3pKrtJK> ), “A CEO who also serves as chair can exert excessive influence on the board and its agenda, weakening the board’s oversight of management. Separating the chair and CEO positions reduces this conflict, and an independent chair provides the clearest separation of power between the CEO and the rest of the board.”
- A 2014 report from Deloitte ( <https://bit.ly/3vQGqe1> ) concluded, “The chairman should lead the board and there should be a clear division of responsibilities between the chairman and the chief executive officer (CEO).”
- A pair of business law professors wrote for *Harvard Business Review* ( <https://bit.ly/3xvcIOA> ) in March 2020 that “letting the CEO chair the board can compromise board discussion quality, weakening the corporation’s risk management ability... Splitting the CEO and board chair jobs between two people can help strengthen the quality of questions the corporation asks itself. When

those questions remain weak, the organization is less likely to develop strategies that mitigate risk.”

- Proxy adviser Glass Lewis advised ( <https://bit.ly/3xwuJwa> ) in 2021, “the presence of an independent chair fosters the creation of a thoughtful and dynamic board not dominated by the views of senior management. Further, we believe that the separation of these two key roles eliminates the conflict of interest that inevitably occurs when a CEO is responsible for self-oversight.”



**From:** Paul Chesser [REDACTED]  
**Sent:** Monday, October 31, 2022 4:04 PM  
**To:** Flavell, David {PEP} <david.flavell@pepsico.com>  
**Cc:** Lee, Alicia {PEP} <Alicia.Lee@pepsico.com>; Nastanski, Cynthia {PEP} <Cynthia.Nastanski@pepsico.com>  
**Subject:** Shareholder resolution for 2023 annual meeting

**WARNING:** Email originated outside of PepsiCo.

Dear Mr. Flavell/Corporate Secretary,

Attached please find cover letter with enclosed shareholder proposal for consideration at PepsiCo, Inc.'s 2023 annual shareholder meeting.

I overnighted it last week via UPS, but I apparently overlooked emailing it, as I noted in my cover letter — my apologies.

I have also attached a proof of ownership letter for our holdings from Fidelity Investments.

If you could confirm receipt of both items, I would appreciate it.

Sincerely,

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

January 12, 2023

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

**# 1 Rule 14a-8 Proposal**  
**PepsiCo, Inc. (PEP)**  
**Independent Board Chairman**  
**Kenneth Steiner**

Ladies and Gentlemen:

This is a counterpoint to the December 30, 2022 no-action request.

*The Boeing Company* (December 20, 2022) suggests that the National Legal and Policy Center is having a big problem with broker letters.

I do not believe that rule 14a-8 was intended to enable management to overlook a defective broker letter and thereby include the proposal of Proponent A in its annual meeting proxy (without a valid broker letter) in preference to Proponent B (with a valid broker letter).

Management should promptly forward to the Staff the National Legal and Policy Center broker letter (if any) submitted to PepsiCo, Inc.

Sincerely,

  
John Chevedden

cc: Kenneth Steiner

Alicia Lee

JOHN CHEVEDDEN

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January 19, 2023

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

**# 2 Rule 14a-8 Proposal**  
**PepsiCo, Inc. (PEP)**  
**Independent Board Chairman**  
**Kenneth Steiner**

Ladies and Gentlemen:

This is a counterpoint to the December 30, 2022 no-action request.

A proposal by the National Legal and Policy Center on the long established topic of an independent board chairman might be described as a proposal that is intended to be against an independent board chairman.

The January 4, 2023 National Legal and Policy Center Notice of Exempt Solicitation in regard to Visa, Inc. (V) boldly injects divisive political views into the issue of improved corporate governance and thus has the potential to alienate about 50% of shareholders.

Accordingly the National Legal and Policy Center proposal may not stand a chance of obtaining the same level of support as a proposal on the same topic by a proponent that does not digress into a disruptive discourse on divisive political issues.

Proposals on established governance improvement topics by the National Legal and Policy Center could be called poaching proposals because they steal the topic from a proponent that does not dump divisive political views into the discussion.

Certain National Legal and Policy Center proposals seem to be self-defeating by blasting shareholders with its unequivocal divisive political views and thereby rob shareholders, management and the Board from a realistic view on the level of support for an established governance improvement proposal topic.

Shareholders are thus led to vote against the proponent rather on the merits of the proposal.

The NLPC proposal can also be called a personal grievance proposal against management personnel that may have a Democratic or liberal viewpoint.

Sincerely,

  
John Chevedden

cc: Kenneth Steiner

Alicia Lee

# NLPC Highlights 1993 – 2022

**2022** – Activision Blizzard CEO Bobby Kotick declined to run for re-election to the Coca-Cola board after NLPC demanded that Coca-Cola CEO James Quincey seek his removal in the wake of a sexual misconduct scandal at Activision Blizzard.

**2022** – Charmain Bogue, a top official of the Department of Veterans Affairs (VA), resigned rather than answer questions from the VA's Inspector General about conflicts of interest that were uncovered and publicized by NLPC

**2021**- NLPC exposed that Hunter Biden's art dealer received an inordinate amount of COVID "loans" after Biden became president, and filed a Complaint with the Small Business Administration.

**2021**- Following NLPC's exposé that Black Lives Matter (BLM) cofounder Patrisse Cullors owned four homes, she was forced to resign from the group.

**2020**- NLPC exposed that the University of Pennsylvania, home of the Biden Center for Diplomacy and Global Engagement, received \$67 million in donations from China, including \$22 million that were anonymous, which the University failed to disclose.

**2019**- NLPC alleged in a Federal Election Commission Complaint that Rep. Ilhan Omar (D-MN) directed most of her campaign spending to a political consultant she would soon marry, and used campaign funds for personal travel.

**2019**– In a Complaint to the Internal Revenue Service, NLPC detailed how a nonprofit headed by Maya Rockey Moore Cummings, wife of Rep. Elijah Cummings (D-MD), served as conduit for private benefits of the Cummings. Mrs. Cummings lost the election to replace her husband following his death.

**2019**- NLPC filed a Complaint with the Federal Election Commission, currently pending, alleging that Rep. Alexandria Ocasio-Cortez (D-NY) secretly funneled hundreds of thousands of dollars to Congressional candidates to circumvent disclosure.

**2018** – NLPC initiated a constitutional challenge to Special Counsel Robert Mueller. Rejected by U.S. Court of Appeals for the District of Columbia, the suit nonetheless raised questions about Mueller's actions and legitimacy.

January 25, 2023

VIA E-MAIL

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

Re: *PepsiCo, Inc.*  
*Supplemental Letter Regarding Shareholder Proposal of Kenneth Steiner*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

On December 30, 2022, we submitted a letter (the “No-Action Request”) on behalf of our client, PepsiCo, Inc. (the “Company”), to inform the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that the Company intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the “2023 Proxy Materials”) a shareholder proposal (the “Duplicate Proposal”) entitled “Independent Board Chairman” received from John Chevedden (the “Representative”) on behalf of Kenneth Steiner. The No-Action Request sets forth the basis for our view that the Duplicate Proposal properly may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(11) because the Duplicate Proposal substantially duplicates another proposal previously submitted to the Company by the National Legal and Policy Center (“NLPC”) that the Company intends to include in the 2023 Proxy Materials.

This supplemental letter responds to subsequent correspondence from the Representative.

**The Subsequent Correspondence**

On January 12, 2023 and January 19, 2023, the Representative submitted responses to the No-Action Request (each a “Response” and together the “Responses”), copies of which are attached hereto as Exhibit S-1. In the January 12 Response, the Representative alleges that NLPC may not have submitted sufficient proof of ownership and demands that the Company forward the proof of ownership provided by NLPC to the Staff to demonstrate that NLPC satisfied the requirements of Rule 14a-8. We acknowledge receipt of the January 19 Response. However, it does not raise any issues relevant to this supplemental letter.

Office of Chief Counsel  
Division of Corporation Finance  
January 25, 2023  
Page 2

## Response and Analysis

The Representative alleges that NLPC, whose proposal was submitted to the Company prior to the Duplicate Proposal, may not have provided the Company with sufficient proof of ownership to satisfy the requirements of Rule 14a-8. In support of his unfounded assertion, the Representative cites *The Boeing Company* (avail. Dec. 20, 2022), which he claims suggests that NLPC is “having a big problem with broker letters.” However, the proponent whose proposal was at issue in *Boeing* was the National Center for Public Policy Research, not NLPC. Accordingly, *Boeing* has no factual bearing on the Representative’s unfounded allegations regarding the sufficiency of NLPC submission materials or his unreasonable demand that the Company forward NLPC’s submission materials to the Staff.

While we disagree with the Representative’s premise that a company should provide the Staff with submission materials relating to a previously submitted proposal when relying on Rule 14a-8(i)(11) to exclude a subsequently received proposal, we are nonetheless providing the Staff with the documentation the Representative requests. Attached as Exhibit S-2 hereto is the proof of ownership that NLPC provided to the Company. Based upon the foregoing and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Duplicate Proposal from its 2023 Proxy Materials.

Correspondence regarding this letter should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Chloe Chung, the Company’s Counsel, Governance & Engagement, at (914) 831-4264.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Chloe Chung, PepsiCo, Inc.  
John Chevedden

**EXHIBIT S-1**



**From:** John Chevedden [REDACTED] PII  
**Sent:** Thursday, January 12, 2023 1:47 PM  
**To:** Office of Chief Counsel <shareholderproposals@SEC.GOV>  
**Cc:** Lee, Alicia {PEP} <Alicia.Lee@pepsico.com>  
**Subject:** # 1 Counterpoint to No Action Request `(PEP)`

**WARNING:** Email originated outside of PepsiCo.

# 1 Counterpoint to No Action Request `(PEP)`

Ladies and Gentlemen,  
Please see the attached counterpoint to the no action request.

Sincerely,  
John Chevedden

January 12, 2023

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

**# 1 Rule 14a-8 Proposal**  
**PepsiCo, Inc. (PEP)**  
**Independent Board Chairman**  
**Kenneth Steiner**

Ladies and Gentlemen:

This is a counterpoint to the December 30, 2022 no-action request.

*The Boeing Company* (December 20, 2022) suggests that the National Legal and Policy Center is having a big problem with broker letters.

I do not believe that rule 14a-8 was intended to enable management to overlook a defective broker letter and thereby include the proposal of Proponent A in its annual meeting proxy (without a valid broker letter) in preference to Proponent B (with a valid broker letter).

Management should promptly forward to the Staff the National Legal and Policy Center broker letter (if any) submitted to PepsiCo, Inc.

Sincerely,

  
John Chevedden

cc: Kenneth Steiner

Alicia Lee

**From:** John Chevedden [REDACTED] PII  
**Sent:** Thursday, January 19, 2023 1:37 PM  
**To:** Office of Chief Counsel <shareholderproposals@SEC.GOV>  
**Cc:** Lee, Alicia {PEP} <Alicia.Lee@pepsico.com>  
**Subject:** # 2 Counterpoint to No Action Request `(PEP)

**WARNING:** Email originated outside of PepsiCo.

# 2 Counterpoint to No Action Request `(PEP)

Ladies and Gentlemen,  
Please see the attached counterpoint to the no action request.

Sincerely,  
John Chevedden

JOHN CHEVEDDEN

---

January 19, 2023

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

**# 2 Rule 14a-8 Proposal**  
**PepsiCo, Inc. (PEP)**  
**Independent Board Chairman**  
**Kenneth Steiner**

Ladies and Gentlemen:

This is a counterpoint to the December 30, 2022 no-action request.

A proposal by the National Legal and Policy Center on the long established topic of an independent board chairman might be described as a proposal that is intended to be against an independent board chairman.

The January 4, 2023 National Legal and Policy Center Notice of Exempt Solicitation in regard to Visa, Inc. (V) boldly injects divisive political views into the issue of improved corporate governance and thus has the potential to alienate about 50% of shareholders.

Accordingly the National Legal and Policy Center proposal may not stand a chance of obtaining the same level of support as a proposal on the same topic by a proponent that does not digress into a disruptive discourse on divisive political issues.

Proposals on established governance improvement topics by the National Legal and Policy Center could be called poaching proposals because they steal the topic from a proponent that does not dump divisive political views into the discussion.

Certain National Legal and Policy Center proposals seem to be self-defeating by blasting shareholders with its unequivocal divisive political views and thereby rob shareholders, management and the Board from a realistic view on the level of support for an established governance improvement proposal topic.

Shareholders are thus led to vote against the proponent rather on the merits of the proposal.

The NLPC proposal can also be called a personal grievance proposal against management personnel that may have a Democratic or liberal viewpoint.

Sincerely,

  
John Chevedden

cc: Kenneth Steiner

Alicia Lee

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**2022** – Charmain Bogue, a top official of the Department of Veterans Affairs (VA), resigned rather than answer questions from the VA's Inspector General about conflicts of interest that were uncovered and publicized by NLPC

**2021**- NLPC exposed that Hunter Biden's art dealer received an inordinate amount of COVID "loans" after Biden became president, and filed a Complaint with the Small Business Administration.

**2021**- Following NLPC's exposé that Black Lives Matter (BLM) cofounder Patrisse Cullors owned four homes, she was forced to resign from the group.

**2020**- NLPC exposed that the University of Pennsylvania, home of the Biden Center for Diplomacy and Global Engagement, received \$67 million in donations from China, including \$22 million that were anonymous, which the University failed to disclose.

**2019**- NLPC alleged in a Federal Election Commission Complaint that Rep. Ilhan Omar (D-MN) directed most of her campaign spending to a political consultant she would soon marry, and used campaign funds for personal travel.

**2019**– In a Complaint to the Internal Revenue Service, NLPC detailed how a nonprofit headed by Maya Rockey Moore Cummings, wife of Rep. Elijah Cummings (D-MD), served as conduit for private benefits of the Cummings. Mrs. Cummings lost the election to replace her husband following his death.

**2019**- NLPC filed a Complaint with the Federal Election Commission, currently pending, alleging that Rep. Alexandria Ocasio-Cortez (D-NY) secretly funneled hundreds of thousands of dollars to Congressional candidates to circumvent disclosure.

**2018** – NLPC initiated a constitutional challenge to Special Counsel Robert Mueller. Rejected by U.S. Court of Appeals for the District of Columbia, the suit nonetheless raised questions about Mueller's actions and legitimacy.

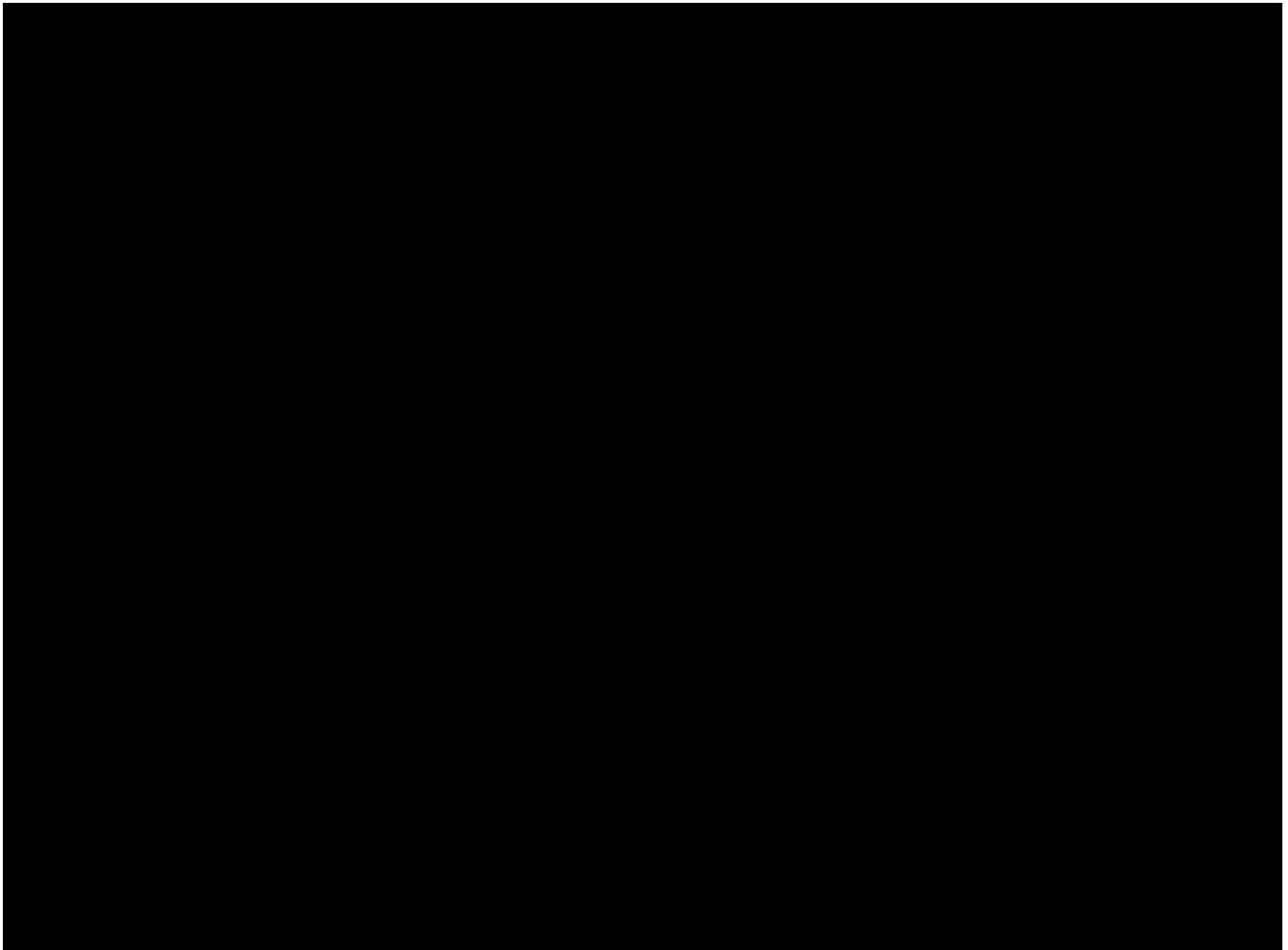
**EXHIBIT S-2**

Fidelity Brokerage Services LLC  
100 Crosby Parkway, Covington, KY 41015



October 25, 2022

Corporate Secretary  
PepsiCo Inc.  
Shareholder Proposal October 25, 2022  
Re: Shareholder Resolution of National Legal and Policy Center





JOHN CHEVEDDEN

---

February 5, 2023

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

**# 3 Rule 14a-8 Proposal**  
**PepsiCo, Inc. (PEP)**  
**Independent Board Chairman**  
**Kenneth Steiner**

Ladies and Gentlemen:

This is a counterpoint to the December 30, 2022 no-action request.

A proposal by the National Legal and Policy Center on the long established topic of an independent board chairman might be described as a proposal that is intended to be against an independent board chairman.

The attached January 4, 2023 National Legal and Policy Center Notice of Exempt Solicitation in regard to Visa, Inc. (V) boldly injects divisive political views into the issue of improved corporate governance on page 5 and 6 and thus has the potential to alienate about 50% of shareholders.

The National Legal and Policy Center could have a similar Notice of Exempt Solicitation in regard PepsiCo, Inc. which would then raise the question of whether the shareholders who vote against are voting against the proposal topic or against the National Legal and Policy Center's divisive political positions.

The NLPC proposal at Visa received only 17% support which is well below average for this proposal topic.

Sincerely,

  
John Chevedden

cc: Kenneth Steiner

Alicia Lee

NOTICE OF EXEMPT SOLICITATION  
Pursuant to Rule 14a-103

Name of the Registrant: Visa Inc.

Name of persons relying on exemption: National Legal and Policy Center

Address of persons relying on exemption: 107 Park Washington Court, Falls Church, VA 22046

*Written materials are submitted pursuant to Rule 14a-6(g) (1) promulgated under the Securities Exchange Act of 1934. Submission is not required of this filer under the terms of the Rule but is made voluntarily in the interest of public disclosure and consideration of these important issues.*



**PROXY MEMORANDUM**

**TO:** Shareholders of Visa Inc.

**RE:** The case for voting YES on Shareholder Proposal No. 5 on the 2023 Proxy Ballot (“To vote on a stockholder proposal requesting an independent board chair policy”)

*This is not a solicitation of authority to vote your proxy. Please DO NOT send us your proxy card; National Legal and Policy Center is not able to vote your proxies, nor does this communication contemplate such an event. NLPC urges shareholders to vote for Proposal No. 5 following the instructions provided on management's proxy mailing.*

*The following information should not be construed as investment advice.*

National Legal and Policy Center (“NLPC”) urges shareholders to **vote YES** on Proposal No. 5, which it sponsors, on the 2023 proxy ballot of Visa Inc. (“Visa” or the “Company”). The Resolved clause states:

Shareholders request the Board of Directors adopt as policy, and amend the bylaws as necessary, to require hereafter that the Chair of the Board of Directors be an independent member of the Board, consistent with applicable law and existing contracts. If the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time.

As has been long recognized under the American form of government, separation of powers and checks and balances are healthy practices. When it comes to leadership of public corporations, which are owned by a broad ideological and economic spectrum of shareholders, those practices also enhance accountability and self-examination. While not perfectly analogous to a representative republic form of democracy, the separation of responsibilities between a chief executive officer and a chair of the board enables each to focus on critical matters that fall under their respective purviews.

At the same time, one person occupying both the Chair and CEO roles infuses that leader with an inordinate amount of insufficiently-checked power. As we cite from the Council of Institutional Investors in our proposal's supporting statement, "A CEO who also serves as chair can exert excessive influence on the board and its agenda, weakening the board's oversight of management. Separating the chair and CEO positions reduces this conflict, and an independent chair provides the clearest separation of power between the CEO and the rest of the board."

As the legendary late ITT Corporation CEO Harold Geneen wrote in his 1984 book *Managing*:<sup>1</sup>

If the board of directors is really there to represent the interests of the stockholders, what is the chief executive doing on the board? Doesn't he have a conflict of interest? He's the professional manager. He cannot represent the shareholders and impartially sit in judgment of himself.

And as two business law professors argued in the *Harvard Business Review*, "letting the CEO chair the board can compromise board discussion quality, weakening the corporation's risk management ability."<sup>2</sup>

The *HBR* co-authors, Joseph Mandato of Stanford University and William Devine of Menlo College, cite as examples "debacles" from recent years at Boeing, WeWork and Facebook (now Meta), in which they argue that a board of directors might be less willing to challenge a Chair and CEO, if both are the same person.

"A CEO feedback session whose import is underscored by having the CEO's organizational equal—i.e., the board chair—conduct it is not possible, of course, when the board chair is the CEO," the co-authors wrote. "This makes it harder to check a top exec steering the corporation astray."

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<sup>1</sup> Geneen, Harold. *Managing*, Doubleday, Jan. 1, 1984.

<sup>2</sup> Mandato, Joseph and Devine, William. "Why the CEO Shouldn't Also Be the Board Chair," *Harvard Business Review*, March 4, 2020. See <https://hbr.org/2020/03/why-the-ceo-shouldnt-also-be-the-board-chair>.

## Visa's Response to Our Resolution

In their proxy statement of opposition, the Company board of directors cite the need for “flexibility” in their ability to design a leadership structure, characterizing our proposal as “rigid” and “prescriptive.”

To that we plead: “Guilty as charged.” Looking at the United States government example, is our constitutional form of government too “rigid” and “prescriptive?” Or should elected (or even appointed) leaders have elastic rules to play by – like Visa’s – so the preferences of a few powerful elites can be accommodated, dependent on shifting priorities like personal relationships, politics, peer acceptance, Twitter favorability, and other irrelevant subjectivisms beyond fiduciary duties?

Speaking of that, the Visa directors also argue that it is their “fiduciary duty” to “routinely evaluate and determine the most appropriate Board leadership structure for the Company and our stockholders in light of the needs of the Board and the Company at any given time.”

This is nonsense. Returning to our U.S. government example, would national oversight by our elected leaders be better served if, say, Congress decided it would be best if the roles of Speaker of the House and the President of the United States were held by the same person – but at another random “given time,” decided it was not the best practice? Such determinations are more subject to flawed, personal human opinions than to what’s best for the “needs of the Board and the Company.” Shareholders depend on consistency in knowing the rules that leadership plays by.

The Board also contends – like every other company with a similar set-up – that separation of the Chair and CEO roles is not necessary, because the Company has “a strong Lead Independent Director” who has “robust, well-defined leadership powers and responsibilities.” These “powers” include:

- The ability to call meetings!
- Chairing board meetings when the Chair/CEO is too busy managing the Company!
- Providing feedback and acting as a liaison to the Chair/CEO!
- ‘Facilitating communication’!
- Doing things the rest of the Board asks him or her to do!

In reality, the “Lead” Independent Director sounds more like a secretary than a “strong” or “robust” counter to the Chair/CEO.

## **Enabling Al Kelly's 'Execution'**

When it comes to leadership structure, the concentration of power in a one-person Chair/CEO redounds little, if any, innate benefit to a Company and its shareholders, that a separated Chair and CEO structure could not also accomplish. On the other hand, Chair and CEO responsibilities are more likely to dilute the effectiveness and fulfillment of each role, if both are held by one person.

In the Boeing example cited by Mandato and Devine, the co-authors cite former Chair/CEO Dennis Muilenburg's three-year tenure, during which the company successfully lobbied to ease government oversight of new airplane designs.<sup>3</sup> A subsequent series of events "is suspected to have led to two plane crashes and the tragic loss of 346 lives, the grounding of almost 500 planes worldwide, and company losses that will exceed \$18 billion" (as of March 2020).

The two professors noted that during Muilenburg's reign, he sought to remake the company as a "global industrial champion," who debated openly with SpaceX founder/CEO Elon Musk over whose rocket would carry the first person to Mars. Meanwhile, he allegedly fostered an employee culture that disrespected and mocked regulators, among whom the twice-crashed 737 MAX was referred to as "a joke."

"Boeing might have benefitted from a board chair initiating a closed executive session that considered Muilenburg's fixation on global and interplanetary aspirations," Mandato and Devine wrote. "Perhaps those aspirations could have been identified as what they turned out to be: signals that the corporation's priorities had veered dangerously out of alignment."

Even now Boeing is trying to recover from the disastrous 737 MAX "cascade of errors, shortcuts and management failures"<sup>4</sup> that marked the Muilenburg era – but is still losing ground to rival Airbus.<sup>5</sup>

In the current case with Visa, the Board argues in its opposition to our proposal that the combined Chair/CEO arrangement has allowed Mr. (Al) Kelly to "effectively manage the business" and to "execute on our strategic priorities." But the Board does not specify what constitutes the "business" or "strategic priorities," that could not have been managed and executed by a separate Chair and CEO.

## **Questioning Mr. Kelly's Leadership as Chairman and CEO**

However, there are several examples where we call into question Mr. Kelly's leadership, with his powerful combined positions. Consider:

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<sup>3</sup> Ibid.

<sup>4</sup> Cohn, Scott. "One year after the 737 Max's return, Boeing is still trying to get back on course," CNBC, Jan. 24, 2022. See <https://www.cnbc.com/2022/01/24/the-737-max-may-be-back-but-boeing-is-still-trying-to-get-back-on-course.html>.

<sup>5</sup> Jolly, Jasper. "Boeing 737 Max disaster casts long shadow as planemaker tries to rebuild fortunes," *The Guardian*, June 25, 2022. See <https://www.theguardian.com/business/2022/jun/25/max-disaster-casts-long-shadow-as-boeing-tries-to-rebuild-its-fortunes>.

- He continued the Company’s quite-visible sponsorship of the 2022 Beijing Winter Olympics, despite a diplomatic boycott by the U.S. “There is no way around it,” wrote U.S. Sen. Marco Rubio of Florida. “By supporting the Winter Olympic Games, [sponsors, including Visa] are helping the [Communist Chinese Party] whitewash slavery and genocide.”<sup>6</sup>
- He capitulated to the violent, anti-police,<sup>7</sup> “Black Lives Matter” riots of 2020, decrying “social injustice and racial inequality,” implying that the thousands of employees who represent the Company are insufficiently respectful and sensitive to minorities.<sup>8</sup> “These corporations in America...they’ll blow a gasket, you know, for these small issues in the United States,” said Florida Gov. Ron DeSantis. “But yet they’re willing to underwrite games of the country that’s committing genocide.”<sup>9</sup>
- In his response<sup>10</sup> to the fraudulent BLM movement,<sup>11</sup> Mr. Kelly pledged to institute quotas at Visa for “under-represented” racial groups among executives and in overall hiring. “We want to achieve these goals for Black and African American people, and for Latinx people,” said Mr. Kelly, ignorant of the fact that the virtue-signaling term “Latinx” offends<sup>12</sup> many Latin Americans and Hispanics. “Our initial emphasis will be on Black and African American talent,” he added.
- A federal judge in California ruled in a child pornography lawsuit against Visa, and against Pornhub’s parent company MindGeek, that “Visa knew that MindGeek’s websites were teeming with monetized child porn”; that there was a “criminal agreement to financially benefit from child porn that can be inferred from [Visa’s] decision to continue to recognize MindGeek as a merchant despite allegedly knowing that MindGeek monetized a substantial amount of child porn”; and that “the court can comfortably infer that Visa intended to help MindGeek monetize child porn” by “knowingly provid[ing] the

<sup>6</sup> Rubio, Sen. Marco. “In Olympics coverage, NBC should stand for 'National Beijing Corporation',” FoxNews.com, Feb. 11, 2022. See <https://www.foxnews.com/opinion/olympics-nbc-china-national-beijing-corporation>.

<sup>7</sup> “Police Widow Blames BLM-Supporting ‘Woke’ Companies for Husband’s Murder,” National Legal and Policy Center, July 20, 2022. See <https://www.nlpc.org/corporate-integrity-project/police-widow-blames-blm-supporting-woke-companies-for-husbands-death/>.

<sup>8</sup> Kelly, Al. “Black Lives Matter: Visa commits to further action and accountability,” Visa.com, July 16, 2020. See <https://usa.visa.com/visa-everywhere/blog/bdp/2020/07/15/a-message-from-1594835009150.html>.

<sup>9</sup> Laco, Kelly. “DeSantis slams Big Tech and media for 'whitewashing' the 'genocide Olympics,' says Biden is weak on China, FoxNews.com, Feb. 9, 2022. See <https://www.foxnews.com/politics/desantis-interview-biden-weakness-china-big-tech-genocide-olympics>.

<sup>10</sup> Kelly, op cit.

<sup>11</sup> Flaherty, Peter. “BLM Tax Return Confirms Self-Dealing, High Living,” National Legal and Policy Center, May 19, 2022. See <https://www.nlpc.org/corporate-integrity-project/blm-tax-return-confirms-self-dealing-high-living/>.

<sup>12</sup> Lopez Terregrosa, Luisita. “Many Latinos say ‘Latinx’ offends or bothers them. Here’s why,” NBCNews.com, Dec. 14, 2021. See <https://www.nbcnews.com/think/opinion/many-latinos-say-latinx-offends-or-bothers-them-here-s-ncna1285916>.

tool used to complete the crime.”<sup>13</sup> An influential activist investor said, “Visa’s conduct here is inexcusable, likely to cause the company incalculable financial and reputational damage,” and will “create serious... personal liability and potential criminal liability for the board.”

- He succumbed to pressure from progressive political leaders to adopt a specific purchase code for firearms merchants,<sup>14</sup> making it easier for anti-Second Amendment rights advocates in political power to flag gun sales. “This new system is ripe for abuse and brings to mind similar policies of Big Tech companies and payment processors that have targeted law-abiding Americans for engaging in constitutionally protected activities. I urge you to immediately reverse course,” wrote U.S. Sen. Josh Hawley of Missouri, in a letter to Mr. Kelly and other major payment processing company CEOs.<sup>15</sup> Two dozen state attorneys general also wrote to Mr. Kelly, warning that the new code may violate state consumer protection laws.<sup>16</sup>
- Rather than hear shareholders’ legitimate concerns at annual meetings as they choose to address them, instead Mr. Kelly and his team avoid such discomfort, and hold “sham question and answer session(s) with planted softball questions.”<sup>17</sup>

## Conclusion

As these several examples show, the Company has made multiple missteps and poor judgments under Chairman/CEO Kelly, that the “strong” and “robust” Lead Independent Director – and the Board overall – failed to mitigate or prevent. A separate chair, with an outside perspective and clearly designated powers, has more implied authority to help avoid such risks.

These all present a strong case for permanently changing Visa’s structural policy to require an independent chair.

Thus we urge you to vote FOR Shareholder Proposal No. 5 on the 2023 Proxy, requesting an independent board chair policy, at the Visa Inc. Annual Meeting on January 24, 2023.

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<sup>13</sup> Spangler, Todd. “Visa ‘Intended to Help’ Pornhub and Its Parent Company Monetize Child Porn, Judge Finds in Allowing Case to Move Forward,” *Variety*, July 31, 2022. See <https://variety.com/2022/digital/news/pornhub-visa-child-pornography-court-ruling-1235330052/>.

<sup>14</sup> Sweet, Ken. “Visa, Mastercard, AmEx to start categorizing gun shop sales,” Associated Press, Sept. 10, 2022. See <https://apnews.com/article/gun-violence-shootings-new-york-city-politics-4aae50c67e40f9683f604a8683acc391>.

<sup>15</sup> Hawley, Josh. “Hawley Blasts Visa, MasterCard, AmEx for Plans to Track Gun Purchases,” Sept. 13, 2022. See <https://www.hawley.senate.gov/hawley-blasts-visa-mastercard-amex-plans-track-gun-purchases>.

<sup>16</sup> Thornberry, Max. “Tennessee, Montana AGs lead effort questioning credit card CEOs about tracking gun purchases,” *FoxBusiness.com*, Sept. 20, 2022. See <https://www.foxbusiness.com/politics/tennessee-montana-ags-lead-effort-questioning-credit-card-ceos-tracking-gun-purchases>.

<sup>17</sup> “Visa Slammed for Sponsoring the Upcoming Beijing Olympics,” National Center for Public Policy Research, Jan. 25, 2022. See <https://nationalcenter.org/ncppr/2022/01/25/visa-slammed-for-sponsoring-the-upcoming-beijing-olympics/>.

THE FOREGOING INFORMATION MAY BE DISSEMINATED TO SHAREHOLDERS VIA TELEPHONE, U.S. MAIL, E-MAIL, CERTAIN WEBSITES AND CERTAIN SOCIAL MEDIA VENUES, AND SHOULD NOT BE CONSTRUED AS INVESTMENT ADVICE OR AS A SOLICITATION OF AUTHORITY TO VOTE YOUR PROXY.

THE COST OF DISSEMINATING THE FOREGOING INFORMATION TO SHAREHOLDERS IS BEING BORNE ENTIRELY BY THE FILERS.

PROXY CARDS WILL NOT BE ACCEPTED BY US. PLEASE DO NOT SEND YOUR PROXY TO US. TO VOTE YOUR PROXY, PLEASE FOLLOW THE INSTRUCTIONS ON YOUR PROXY CARD.

For questions regarding Visa Inc. – Proposal #5 – the Shareholder Proposal Requesting the Board of Directors to Adopt a Policy for an Independent Chair submitted by National Legal and Policy Center, please contact Paul Chesser, director of NLPC's Corporate Integrity Project, via email at [pchesser@nlpc.org](mailto:pchesser@nlpc.org).



**Item 5.07 Submission of Matters to a Vote of Security Holders.**

The 2023 Annual Meeting of Stockholders of Visa Inc. (the "Company") was held on January 24, 2023, and the Company's Class A common stockholders voted on five proposals that are described in detail in the Company's definitive proxy statement, dated December 1, 2022. Set forth below are the matters the stockholders voted on and the final voting results.

**Proposal 1:** Election of ten director nominees:

<u>Nominee</u>	<u>Votes For</u>	<u>% For</u>	<u>Votes Against</u>	<u>% Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
Lloyd A. Carney	1,173,849,753	93.9 %	73,267,710	5.9 %	2,344,841	135,823,973
Kermit R. Crawford	1,243,509,987	99.5 %	4,716,367	0.4 %	1,235,950	135,823,973
Francisco Javier Fernández-Carbajal	1,216,681,658	97.4 %	31,709,059	2.5 %	1,071,587	135,823,973
Alfred F. Kelly, Jr.	1,210,372,657	96.9 %	38,021,962	3.0 %	1,067,685	135,823,973
Ramon Laguarta	1,234,875,423	98.8 %	13,499,973	1.1 %	1,086,908	135,823,973
Teri L. List	1,234,667,163	98.8 %	13,788,710	1.1 %	1,006,431	135,823,973
John F. Lundgren	1,229,224,445	98.4 %	19,182,400	1.5 %	1,055,459	135,823,973
Denise M. Morrison	1,217,665,850	97.5 %	30,651,781	2.5 %	1,144,673	135,823,973
Linda J. Rendle	1,238,761,234	99.1 %	9,706,915	0.8 %	994,155	135,823,973
Maynard G. Webb, Jr.	1,212,586,541	97.0 %	28,276,346	2.3 %	8,599,417	135,823,973

Each of the ten nominees was elected to the Company's Board of Directors, each to hold office until the next annual meeting of stockholders and until his or her successor has been duly elected or until his or her earlier resignation or removal.

**Proposal 2:** Approval, on an advisory basis, of the compensation paid to our named executive officers:

Votes For:	1,120,862,119	89.7 %
Votes Against:	119,640,078	9.6 %
Abstentions:	8,960,107	0.7 %
Broker Non-Votes:	135,823,973	

The proposal was approved.

**Proposal 3:** Advisory vote on the frequency of future advisory votes to approve executive compensation:

One Year:	1,237,711,436	99.2 %
Two Years:	1,476,518	0.1 %
Three Years:	8,754,461	0.7 %
Abstentions:	1,519,889	

Based on the results of this advisory vote, and consistent with the Board's recommendation, the Board has determined to hold an advisory vote on executive compensation every year until the next required advisory vote on the frequency of future advisory votes on executive compensation.

**Proposal 4:** Ratification of the appointment of KPMG LLP as the Company's independent registered public accounting firm for the 2023 fiscal year:

Votes For:	1,363,161,311	98.4 %
Votes Against:	20,871,134	1.5 %
Abstentions:	1,253,832	0.1 %

The appointment was ratified.

**Proposal 5:** Stockholder proposal requesting an independent board chair policy:

Votes For:	217,632,303	17.4 %
Votes Against:	945,671,501	75.7 %
Abstentions:	86,158,500	6.9 %
Broker Non-Votes:	135,823,973	

The proposal was not approved



JOHN CHEVEDDEN

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February 14, 2023

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

**# 4 Rule 14a-8 Proposal**  
**PepsiCo, Inc. (PEP)**  
**Independent Board Chairman**  
**Kenneth Steiner**

Ladies and Gentlemen:

This is a counterpoint to the December 30, 2022 no-action request.

This proposal is the only 2023 proposal on this topic at PepsiCo that will not risk sabotaging itself by potentially clouding the issue with red meat culture war issues like the so-called “violent, anti-police, ‘Black Lives Matter’ riots,” the “fraudulent BLM movement,” and “making it easier for anti-Second Amendments rights advocates.”

Sincerely,

  
John Chevedden

cc: Kenneth Steiner

Alicia Lee