



DIVISION OF  
CORPORATION FINANCE

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

June 21, 2023

Kerry S. Burke  
Covington & Burling LLP

Re: The Procter & Gamble Company (the "Company")  
Incoming letter dated June 16, 2023

Dear Kerry S. Burke:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Tulipshare Ltd. (the "Proponent") and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its June 6, 2023 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

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

Sincerely,

Rule 14a-8 Review Team

cc: Constance Ricketts  
Tulipshare Ltd

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BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG  
LONDON LOS ANGELES NEW YORK PALO ALTO  
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 6000

June 6, 2023

## By Electronic Mail

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

### **Re: The Procter & Gamble Company – Shareholder Proposal Submitted by Tulipshare Ltd. and Co-Filers**

Ladies and Gentlemen:

On behalf of The Procter & Gamble Company (the “Company” or “P&G”), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to request confirmation from the staff of the Division of Corporation Finance (the “Staff”) that it will not recommend enforcement action to the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) if the Company excludes a shareholder proposal (the “Proposal”) submitted by Tulipshare Ltd. (the “Proponent”) and co-filers from the proxy materials for its 2023 annual meeting of shareholders.<sup>1</sup> A copy of the Proposal and related materials from the Proponent are attached hereto as Exhibit A.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are emailing this letter to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). We are simultaneously sending a copy of this letter and the exhibit thereto to the Proponent as notice of the Company’s intent to omit the Proposal from its 2023 proxy materials in accordance with Exchange Act Rule 14a-8(j). We take this opportunity to inform the Proponent that a copy of any correspondence it submits to the Commission or the Staff with respect to the Proposal should be provided concurrently to the Company pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D, and request that a copy also be provided to the undersigned at the address above.

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<sup>1</sup> The co-filers, Ariane van Buren and Thomas P. van Buren, have designated the Proponent as their representative. Consequently, materials submitted by the co-filers have been omitted from this request. The Company will supplementally provide such materials to the Staff upon request.

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### THE PROPOSAL

The Proposal states:

**RESOLVED:** Shareholders request the Board adopt a policy, and amend bylaws, to require the Chairman henceforth to be an independent director. This policy shall apply prospectively, to avoid violating any contractual obligations.<sup>2</sup>

### BASIS FOR EXCLUSION

We request that the Staff concur in our view that the Proposal may be excluded from the Company's 2023 proxy materials pursuant to Rule 14a-8(i)(6), because the Company lacks the power or authority to implement the Proposal.

### ANALYSIS

*The Proposal is Excludable Under Rule 14a-8(i)(6) Because the Company Lacks the Power or Authority to Implement the Proposal.*

Rule 14a-8(i)(6) permits the exclusion of a shareholder proposal from a company's proxy materials if "the company would lack the power or authority to implement the proposal." The Proposal requests that the Company's Board of Directors (the "Board") adopt a policy, and amend the Company's regulations, to require the Company's Chairman "henceforth" to be an independent director. Any such loss of independence would result in an automatic violation of the standard required by the Proposal, and once amended, the Company's regulations. As it is not within the power of the Board to ensure that the Company's Chairman retains his or her independence at all times, and because the Proposal does not provide the Board with an opportunity or mechanism to cure such a violation of the Proposal's strict independence standard, the Proposal is beyond the power of the Company and Board to implement and is excludable under Rule 14a-8(i)(6).

The Staff has long held that shareholder proposals mandating that a company chairman be an independent director can be excluded under Rule 14a-8(i)(6). As outlined in Staff Legal Bulletin No. 14C (June 28, 2005) ("SLB 14C"), the Staff's "analysis of whether a proposal that seeks to impose independence qualifications on directors is beyond the power or authority of the company to implement focuses primarily on whether the proposal requires continued independence at all times." SLB 14C further states that "when a proposal is drafted in a manner that would require a director to maintain his or her independence at all times, [the Staff] permit[s] the company to exclude the proposal under rule 14a-8(i)(6) on the basis that the proposal does not provide the board with an opportunity or mechanism to cure a violation of the standard requested in the proposal." Since the Proposal requires the Chairman of the Board to be and maintain his or her independence at all times, and does not provide the Board with an

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<sup>2</sup> The Proposal makes reference to the Company's "bylaws." As an Ohio corporation, the Company does not have "bylaws," but rather has adopted "regulations" under the Ohio General Corporation Law for the governance of the Company and the conduct of its affairs. We refer to the Company's "regulations" in this letter.

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opportunity or mechanism to cure a violation of that standard, the Proposal is excludable pursuant to the Staff's long-held position in SLB 14C. Additionally, permitting exclusion of the Proposal under Rule 14a-8(i)(6) would be consistent with the Staff's analysis of previous no-action requests. *See The Goldman Sachs Group, Inc.* (Jan. 28, 2015) (permitting exclusion under Rule 14a-8(i)(6) of a proposal requiring the chairman of the company be an independent director where the Staff stated that "it does not appear to be within the power of the board of directors to ensure that its chairman retains his or her independence at all times and the proposal does not provide the board with an opportunity or mechanism to cure such a violation of the standard requested in the proposal"); *Time Warner Inc.* (Jan. 26, 2010, *recon. denied* Mar. 23, 2010) (same), *Exxon Mobil Corp.* (Jan. 21, 2010, *recon. denied* Mar. 23, 2010) (same); *First Mariner Bancorp* (Jan. 8, 2010, *recon. denied* Mar. 12, 2010) (same). In particular, the Proposal is nearly identical to the proposals in *Time Warner* and *Exxon Mobil*, which the Staff allowed to be excluded under Rule 14a-8(i)(6) as both of these proposals also mandated that the chair of the company's board of directors be independent at all times and that this policy would be phased in with the next chair.

The Proposal is clearly distinguishable from previous no-action requests where the Staff denied Rule 14a-8(i)(6) no-action relief, because the proposal at issue did not require the board chairman to remain independent at all times or the proposal specifically permitted the company to cure a chairman's loss of independence. *See Caterpillar Inc.* (Mar. 28, 2017) (the proposal required an independent chairman policy only "whenever possible," permitted the board to select a new independent chairman "within a reasonable amount of time" if the current chairman was no longer independent and permitted compliance with the policy to be "waived if no independent director [was] available and willing to serve as Chair"); *Kohl's Corp.* (Feb. 8, 2016) (the proposal permitted the requested independent chairman policy to be "waived if no independent director [was] available and willing to serve as Chair" and permitted the policy to "specify how to select a new independent Chair if a current Chair ceases to be independent between annual shareholder meetings"); *Northrup Grumman Corp.* (Mar. 3, 2015) (the proposal allowed for a "policy departure" from the independence standard requested "under extraordinary circumstances such as the unexpected resignation of the chair"); *Altera Corp.* (Feb. 27, 2015) (same). The Proposal is distinct from these no-action letters as it does not include any of the flexibility present in the proposals noted above and would require the Chairman of the Company's Board to be independent at all times, a situation that the Company lacks the power and authority to guarantee.

## CONCLUSION

Based on the foregoing analysis, and on behalf of the Company, we respectfully request that the Staff concur that the Company may exclude the Proposal and supporting statements from its 2023 proxy materials under Rule 14a-8(i)(6).

\* \* \* \* \*

The Company anticipates finalizing its 2023 proxy materials on or about August 18 2023, and that such materials will need to be finalized for distribution approximately one week


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beforehand. Accordingly, the Company would appreciate receiving the Staff's response to this no-action request by August 11, 2023.

If the Staff disagrees with the Company's view that it can omit the Proposal, we request the opportunity to confer with the Staff prior to the final determination of the Staff's position. If the Staff has any questions regarding this request or requires additional information, please contact me at (202) 662-5297.

Very truly yours,

  
Kerry S. Burke

cc: Aaron B. Shepherd  
Director & Assistant General Counsel  
The Procter & Gamble Company

Constance Ricketts  
Tulipshare Ltd.

## **Exhibit A**



April 27, 2023

**Via Hand Delivery and Electronic Mail**

The Procter & Gamble Company  
c/o The Corporate Secretary's Office  
One Procter & Gamble Plaza  
Cincinnati, OH 45202-3315

Sent via email: [REDACTED], [REDACTED], [REDACTED]

Re: Shareholder Proposal for 2023 Annual Shareholder Meeting

Dear Corporate Secretary,

Tulipshare Ltd. ("Proponent"), who is a shareholder of The Procter & Gamble Company (the "Company") is filing a shareholder proposal for action at the next annual meeting of The Procter & Gamble Company. The Proponent submits the enclosed shareholder proposal for inclusion in the Company's 2023 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

The Proponent has continuously beneficially owned an amount of the Company's stock for a duration of time that enables it to file a shareholder proposal for inclusion in the Company's 2023 proxy statement. These shares will be held through the date of the 2023 annual meeting of shareholders. Proof of ownership is being sent separately. A representative of the Proponent will attend the stockholders' meeting to move the proposal as required.

Tulipshare is available to meet with the Company via teleconference on Friday, May 12 between 3pm ET and 5pm ET; Thursday, May 18 between 2pm ET and 5pm ET; and Tuesday, May 23 between 2pm ET and 5pm ET. Any co-filers will, in their submission letters, authorize Tulipshare to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B), but may participate subject to their availability.

I can be contacted at [REDACTED] or by email at [REDACTED] to schedule a meeting and to address any questions. Please address any future correspondence regarding the proposal to me at this address.

Sincerely,

Constance Ricketts  
Head of Shareholder Activism  
Tulipshare Ltd.

Encl: Shareholder Proposal

**RESOLVED:** Shareholders request the Board adopt a policy, and amend bylaws, to require the Chairman henceforth to be an independent director. This policy shall apply prospectively, to avoid violating any contractual obligations.

**WHEREAS:** To ensure robust corporate governance, the Chair should be an independent director. Allowing one person to occupy both Chair and CEO roles reduces objectivity, and leads to conflict of interest.<sup>1</sup> In PG's case, this structure has created increased environmental, human rights, and governance risks from its commodity sourcing, and a failure to sufficiently address repeatedly raised investor concerns.

A 2020 proposal requesting PG report how it can increase efforts to eliminate deforestation, forest degradation, and associated human rights abuses documented the financial risks PG faced due to its sourcing policies. That proposal received a 67 percent majority vote, and was the first ever forest-related proposal to pass in any corporation's history. PG still lacks time-bound commitments to stop forest degradation from its pulp and palm oil sourcing.<sup>2</sup>

Two different people have held the joint Chair/CEO position since the majority-backed 2020 proposal, highlighting that PG's continued inadequate response may be attributable to its structural flaw.

The regulatory, reputational, competitive, and new litigation risks due to PG's failure to address deforestation, degradation and human rights abuses have increased beyond the risks that led to majority support for the 2020 proposal. For example:

- Regulatory: In 2022, EU Deforestation Regulation passed, banning imports of products (palm oil, palm derivatives, and wood) causing deforestation and forest degradation.<sup>3</sup> The New York Tropical Deforestation Free Procurement Act passed by a significant majority in the NY State Senate, requiring contractors to publicly disclose supply chain data relating to forest-risk commodities and Indigenous Peoples' rights and avoid deforestation and degradation.<sup>4</sup>
- Completeness and accuracy of disclosures: NRDC filed a complaint with the SEC raising concerns that PG's claim to prohibit forest degradation in its pulp supply chain constitutes misinformation. The complaint notes PG discloses evidence its sourcing does cause forest degradation, making its claims to investors and the public implausible. The complaint is being investigated.

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<sup>1</sup> <https://www.ssga.com/library-content/pdfs/ic/proxy-voting-and-engagement-guidelines-us-canada.pdf>; [https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/policies-and-reports/investment\\_stewardship\\_semiannual\\_report\\_2022.pdf](https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/policies-and-reports/investment_stewardship_semiannual_report_2022.pdf); <https://www.glasslewis.com/wp-content/uploads/2022/11/ESG-Initiatives-Voting-Guidelines-2023-GL.pdf?hsCtaTracking=e61a3dd4-34c6-4db9-b01f-aa747107df46%7C61a49f41-b5fc-49f5-902e-dd2516ccf120>; <https://am.jpmorgan.com/content/dam/jpm-am-aem/global/en/institutional/communications/lux-communication/corporate-governance-principles-and-voting-guidelines.pdf>.

<sup>2</sup> <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000080424/513b850b-15e6-45b9-b55b-e685be11e4fa.pdf>; <https://www.greencentury.com/prompted-by-a-green-century-proposal-procter-gamble-makes-progress-on-forest-policies/>.

<sup>3</sup> <https://www.europarl.europa.eu/news/en/press-room/20221205IPR60607/deal-on-new-law-to-ensure-products-causing-deforestation-are-not-sold-in-the-eu>; <https://www.reuters.com/business/environment/eu-agrees-law-preventing-import-goods-linked-deforestation-2022-12-06/>.

<sup>4</sup> <https://foe.org/news/ny-climate-bill-passes-senate/>; <https://www.nysenate.gov/legislation/bills/2023/S4859>.



- Reputational: Protests continue at the Company’s headquarters. Descendants of the Company’s founders have called for action. PG’s reputation has been criticized in the media, including film and television. In 2021 and 2022, PG directors faced Vote No recommendations due to non-compliance with the 2020 proposal. Chair/CEO Jon Moeller received the second fewest votes in favor of his election in 2022.
- Competitive: In 2022, PG received an “F” grade in an assessment of consumer goods companies’ policies regarding deforestation and human rights violations.<sup>5</sup> Furthermore, the Company’s inaction means it is behind its peers in its compliance with EU and US law.

Without objectively assessing root causes of these risks and changing its leadership structure, PG will continue to lag behind peers, facing public criticism and regulatory actions.

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<sup>5</sup> [https://www.ran.org/wp-content/uploads/2022/06/KFS-Scorecard-Brief-2022-\\_WEB.pdf](https://www.ran.org/wp-content/uploads/2022/06/KFS-Scorecard-Brief-2022-_WEB.pdf)

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LONDON LOS ANGELES NEW YORK PALO ALTO  
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 6000

June 16, 2023

## By Electronic Mail

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

### **Re: The Procter & Gamble Company — Shareholder Proposal Submitted by Tulipshare Ltd. and Co-Filers**


Ladies and Gentlemen:

In a letter dated June 6, 2023, The Procter & Gamble Company (the “Company”), requested confirmation pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, that the staff of the Division of Corporation Finance would not recommend enforcement action to the U.S. Securities and Exchange Commission if the Company excluded a shareholder proposal (the “Proposal”) submitted by Tulipshare Ltd. (the “Proponent”) and co-filers from the proxy materials for its 2023 annual meeting of shareholders.

On June 16, 2023, the Proponent withdrew the Proposal, including on behalf of the co-filers. In reliance thereon, the Company is withdrawing its no-action request.

If the Staff has any questions with respect to this matter, please contact me at (202) 662-5297.

Very truly yours,

  
Kerry S. Burke

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Office of Chief Counsel

June 16, 2023

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cc: Aaron B. Shepherd  
Director & Assistant General Counsel  
The Procter & Gamble Company

Constance Ricketts  
Tulipshare Ltd.