



DIVISION OF
CORPORATION FINANCE

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

January 3, 2024

Lillian Brown
Wilmer Cutler Pickering Hale and Dorr LLP

Re: The Walt Disney Company (the "Company")
Incoming letter dated November 22, 2023

Dear Lillian Brown:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by AFL-CIO Equity Index Funds and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company prepare a transparency report that explains the Company's use of artificial intelligence in its business operations and the board's role in overseeing its usage, and sets forth any ethical guidelines that the Company has adopted regarding its use of artificial intelligence.

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

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Maureen O'Brien
Segal Marco Advisors

November 22, 2023

Lillian Brown

Via Online Shareholder Proposal Form

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

**Re: The Walt Disney Company
Exclusion of Shareholder Proposal by AFL-CIO Equity Index Funds**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2024 annual meeting of shareholders (the “Proxy Materials”), the enclosed shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by Segal Marco Advisors on behalf of AFL-CIO Equity Index Funds, together with co-filers the New York City Employees’ Retirement System, the New York City Fire Pension Fund, the New York City Police Pension Fund and the New York City Board of Education Retirement System (collectively, the “Proponent”), requesting that the Company prepare and disclose on the Company website a report regarding the Company’s use of artificial intelligence (“AI”).

The Company respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that the Proposal relates to the Company’s ordinary business operations.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter, and the Proposal, as well as related correspondence with the Proponent (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent.

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Background

On October 11, 2023, the Company received the Proposal from the Proponent. The Proposal states in relevant part as follows:

RESOLVED: Shareholders request that The Walt Disney Company (the “Company”) prepare and publicly disclose on the Company’s website a transparency report that explains the Company’s use of Artificial Intelligence (“AI”) in its business operations and the Board’s role in overseeing AI usage, and sets forth any ethical guidelines that the company [sic] has adopted regarding its use of AI. This report shall be prepared at a reasonable cost and omit information that is proprietary, privileged, or violative of contractual obligations.

Basis for Exclusion

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because the subject matter of the Proposal directly concerns the Company’s ordinary business operations.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal “deals with a matter relating to the company’s ordinary business operations.” The underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” *See Amendments to Rules on Shareholder Proposals*, Release No. 34-40018 (May 21, 1998) (the “1998 Release”). An exception to this principle may be made where a proposal focuses on significant social policy issues that transcend the day-to-day business matters of the company. *See* 1998 Release. The Staff most recently discussed its interpretation of how it will consider whether a proposal “transcends the day-to-day business matters” of a company in Staff Legal Bulletin No. 14L (November 3, 2021) (“SLB 14L”), noting that it is “realign[ing]” its approach to determining whether a proposal relates to ordinary business with the standards the Commission initially articulated in 1976 and reaffirmed in the 1998 Release. Under this realignment, the Staff will “no longer tak[e] a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)” but rather will consider only “whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.”¹

As set out in the 1998 Release, there are two “central considerations” underlying the ordinary business exclusion. One consideration is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical

¹ SLB 14L also explicitly rescinded prior Staff Legal Bulletin Nos. 14I, 14J and 14K, which set out a company-specific approach to the significant social policy issue analysis.

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matter, be subject to direct shareholder oversight.” The other consideration is that a proposal should not “seek[] to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” We believe the Proposal implicates both of these considerations.

The Company leverages innovative technological strategies and maintains an understanding of emerging technology trends to continuously improve the guest experience and build strong connections with audiences. This includes the development and use of AI and machine learning as fundamental technologies that are integral to a wide variety of applications within the business. The Proposal speaks broadly to the use of AI in the Company’s business operations. As a result, the report requested in the Proposal could encompass potentially every aspect of the Company’s business, including whether and how it chooses to use AI/machine learning (if at all) in the course of routine business operations such as content development and distribution, supply chain management, and financial management and planning, as well as in managing the Company’s use of applications and algorithms throughout its daily processes.

The Proposal may be excluded under Rule 14a-8(i)(7) on the basis that the Proposal relates to the ordinary business activities of the Company. The Staff has consistently concurred in exclusion of proposals addressing a company’s business practices and operations, choice of technologies, conduct of ethical business practices, and management of the workforce on this basis. Moreover, framing a shareholder proposal in the form of a request for a report does not change the underlying nature of the proposal. Instead, a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the company. *See Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Release No. 34-20091 (August 16, 1983) (“[T]he staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable”). Additionally, because of the extensive scope of information on which the Proposal would have the Company report, the Proposal is excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

The Proposal may be excluded because it relates to the Company’s business practices and operations.

The Proposal requests that the Company report on the Company’s use of AI in its business operations. The Staff has consistently concurred with the exclusion of shareholder proposals, like the Proposal, that relate generally to a company’s business operations but seek a more targeted review of certain aspects of those operations. For example, in *JPMorgan Chase & Co.* (March 21, 2023, *recon. denied* April 3, 2023), the Staff concurred in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on company business practices that prioritize non-pecuniary

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factors when it comes to establishing, rejecting, or failing to continue client relationships. *See also Amazon.com, Inc.* (March 16, 2018) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the risks arising from the public debate over the company's growth and societal impact and how the company is managing or mitigating those risks); *CVS Corporation* (February 1, 2000) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company prepare an annual strategic plan report describing its goals, strategies, policies, and programs as "relating to its ordinary business operations (i.e., business practices and policies)"); and *Westinghouse Electric Corporation* (January 27, 1993) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the "operations" over a six year period of a subsidiary that had incurred significant losses, including policies, guidelines, and actual practices in effect at the subsidiary and addressing the conduct of its business, which the Staff noted dealt with the ordinary business matter of "business practices and operations").

The Proposal may be excluded because it relates to the Company's choice of technologies.

Fundamentally, the Proposal focuses on whether and how the Company implements AI across its business operations. It therefore fits clearly into a long line of excludable proposals seeking to address companies' choice of technologies. While the Proposal does not define AI, it cites to a report of the White House Office of Science and Technology (the "AI Bill"), which refers to AI as "automated systems" and adopts a broad definition of the term to include "any system, software, or process that uses computation as whole or part of a system to determine outcomes, make or aid decisions, inform policy implementation, collect data or observations, or otherwise interact with individuals and/or communities."² Through this lens, the use of automated systems more generally is not new.³ And in fact, the Proposal does not request a report related to any

² See "Definitions" at White House Office of Science and Technology Policy, "Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People" (October 2022), available at <https://www.whitehouse.gov/ostp/ai-bill-of-rights>.

³ See, e.g., Adi Ignatius, "The HBR Interview: Technology, Tradition, and the Mouse" (July-August 2011) (describing an interview with Bob Iger, CEO of Disney, in which Mr. Iger stated "I really believed the company should look at technology as a friend. It had been part of the company originally: Walt Disney was a big believer in technology."), available at <https://hbr.org/2011/07/the-hbr-interview-technology-tradition-and-the->; Bill Lyndon, "The Magic of Automation" (September 12, 2012), available at <https://www.automation.com/en-us/articles/2012-2/the-magic-of-automation>; Bernard Marr, "Disney Uses Big Data, IoT And Machine Learning to Boost Customer Experience" (August 24, 2017), available at <https://www.forbes.com/sites/bernardmarr/2017/08/24/disney-uses-big-data-iot-and-machine-learning-to-boost-customer-experience/?sh=7a76c90f3387>; Lucasfilm Ltd., "A Brief History of Lucasfilm Innovations and Achievements", available at: <https://www.lucasfilm.com/who-we-are/our-story/>. See also, Peter Stone, et al., "Artificial Intelligence and Life in 2030," One Hundred Year Study on Artificial Intelligence: Report of the 2015-2016 Study Panel, Stanford University, Stanford, CA (Sept. 2016), available at: https://ai100.stanford.edu/sites/g/files/sbiybj18871/files/media/file/ai100report10032016fml_singles.pdf.

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specific novel technology, but rather a report on how the Company uses AI (conceivably broadly defined) across the entirety of its business operations.

The Staff has consistently concurred that “[p]roposals that concern a company’s choice of technologies for use in its operations” are excludable under rule 14a-8(i)(7) as related to ordinary business matters. *FirstEnergy Corp.* (March 8, 2013). *See also AT&T Inc.* (January 4, 2017) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company’s progress toward providing Internet service and products for low-income customers); *PG&E Corp.* (March 10, 2014) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal advocating that the company make analog electrical meters available instead of “smart” meters); *AT&T Inc.* (February 13, 2012) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on financial and reputational risks posed by continuing to use technology that inefficiently consumed electricity); and *CSX Corp.* (January 24, 2011) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company develop a kit to convert its fleet to fuel cell power, noting that “[p]roposals that concern a company’s choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)”). Consistent with these letters, as new technologies have emerged and evolved over time, the Staff has repeatedly concurred that whether or how a company embeds such technological advances in its operations is a matter going directly to the core of the company’s business systems and operations that must be left to management to direct. Therefore, a report on whether and how the Company uses AI in its business operations is yet another proposal seeking to address the ordinary business matter of whether and how to utilize new technologies in a long line of excludable proposals addressing companies’ choice of technologies in managing their business operations.

Stated differently, the Company’s choices around the use of AI across its business operations cannot, “as a practical matter, be subject to direct shareholder oversight.” 1998 Release. This is particularly significant here where the Proposal refers to a broad category of technology and its application across the Company’s entire business operations. For instance, were the Company to report on its use of AI (as broadly construed in certain respects in the Proposal) across its business operations, the report conceivably would need to consider routine operations, including those with respect to content development and distribution, supply chain management, contract management, financial management and planning, and management of aspects of the Company’s use of applications and algorithms throughout its daily processes, among others.⁴ Whether and how to use AI in a company’s operations requires an understanding of that company’s particular complex and confidential business needs, including applicable legal and regulatory considerations, competitive conditions, budget constraints, quality parameters, resource availability, and appropriateness of a given technology to the complexity of tasks, among many others. These considerations involve the type of day-to-day management functions that fall

⁴ This list is provided as an example only and should not be read to indicate that the Company is using AI in any particular aspect of its business operations.

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squarely within the purview and expertise of the Company's management and do not lend themselves to shareholder evaluation. As a result, the requests within the Proposal concerning the Company's choice of technologies are inherently and undeniably related to the ordinary business operations of the Company.

The Proposal may be excluded because reporting on ethical guidelines is an ordinary business matter as it relates to the Company's general adherence to ethical business practices.

The Proposal's request for disclosure of any ethical guidelines related to the Company's use of AI in its business operations also relates directly to the Company's ordinary business operations. The Staff consistently has concurred in exclusion of shareholder proposals seeking a review and report on ethical standards applicable to a company's general business operations. For example, in *PayPal Holdings, Inc.* (April 7, 2022), the Staff concurred in exclusion under Rule 14a-8(i)(7) of a proposal that requested that the company's board of directors compare the company's code of business conduct and ethics with the actual operations of the company, noting that "the [p]roposal relates to, and does not transcend, ordinary business matters." *See also The Walt Disney Co.* (December 12, 2011) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting the board to report on board compliance with Disney's Code of Business Conduct and Ethics for directors because "[p]roposals that concern general adherence to ethical business practices and policies are generally excludable under [R]ule 14a-8(i)(7)"); *Verizon Communications, Inc.* (January 10, 2011) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board form a Corporate Responsibility Committee charged with monitoring the company's commitment to integrity, trustworthiness, and reliability and the extent to which it lived up to its Code of Business Conduct because "[p]roposals that concern general adherence to ethical business practices are generally excludable under [R]ule 14a-8(i)(7)"); and *International Business Machines Corp.* (January 7, 2010, *recon. denied* February 22, 2010) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting officers restate and enforce certain standards of ethical behavior because it related to general adherence to ethical business practices). Here, since the Proposal asks the Company to report on ethical guidelines (in other words, its general adherence to ethical standards), which relate to the Company's ordinary business practices, this aspect of the Proposal further supports exclusion under Rule 14a-8(i)(7).

The Proposal may be excluded because references to workforce management considerations in the supporting statement relate to the Company's ordinary business.

The concerns raised in the Proposal's supporting statement regarding management of the Company's workforce relate directly to the Company's ordinary business operations. The Commission and Staff have long held that a shareholder proposal may be excluded under Rule

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14a-8(i)(7) if it relates generally to the company’s management of its workforce, as is the case here. The Commission specifically recognized in the 1998 Release that “management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.” Similarly, in *United Technologies Corp.* (February 19, 1993), the Staff provided the following examples of topics that involve a company’s ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): “employee health benefits, general compensation issues not focused on senior executives, *management of the workplace*, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation” (emphasis added).

Since *United Technologies Corp.*, the Staff has recognized a wide variety of proposals as pertaining to the management of a company’s workforce and thus, as excludable under Rule 14a-8(i)(7). For example, in *Apple Inc.* (January 3, 2023), the Staff concurred that proposals addressing return to office policies could be excluded as ordinary business. *See also Amazon.com, Inc.* (April 7, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on risks and other considerations associated with staffing, because the proposal did not “transcend[] ordinary business matters”); *Yum! Brands, Inc.* (March 6, 2019) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal relating to adopting a policy not to “engage in any Inequitable Employment Practice” because it related “generally to the [c]ompany’s policies concerning its employees and does not focus on an issue that transcends ordinary business matters”); and *Starwood Hotels & Resorts Worldwide, Inc.* (February 14, 2012) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting verification and documentation of U.S. citizenship for the company’s U.S. workforce and requiring training for foreign workers in the U.S. to be minimized because it “relates to procedures for hiring and training employees” and “[p]roposals concerning a company’s management of its workforce are generally excludable under [R]ule 14a-8(i)(7)”); and *Intel Corp.* (March 18, 1999) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting adoption of an “Employee Bill of Rights,” including limited work-hour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect, because it “relat[ed], in part, to Intel’s ordinary business operations (i.e., management of the workforce)”).

Workforce management considerations, like those at issue in the above-cited precedent, are not unique to AI. Long before recent AI developments, companies and workers have navigated workforce management issues, such as those concerning discrimination or bias against employees or decisions to automate jobs or replace workers. As such, the Company already has robust policies and procedures in place to address these issues, regardless of whether they arise in the context of AI or another technology. For example, the Company has adopted Standards of Business Conduct that set forth the core principles of integrity, trust, teamwork, honesty, playing

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by the rules and respect, which guide the Company's business practices.⁵ In addition, the Company maintains a Human Rights Policy that aims to foster safe, inclusive and respectful workplaces wherever Company products and their components and raw materials are made.⁶ Similarly, the Company strives to conduct its business in accordance with the highest standards of business ethics and comply with applicable laws, rules, and regulations, including with respect to copyright laws in the creation of artistic works. The Standards of Business Conduct highlight the Company's commitment to lawful business practices with respect to honoring the trade secrets, trademarks, patents and copyrights of others, and mandates that any questions about what is permissible be directed to the Company's legal department for assessment, establishing a clear internal business procedure for compliance with applicable copyright law by the Company's workforce in the production of artistic works.⁷

The Proposal itself tacitly acknowledges that companies are increasingly integrating AI technology into various aspects of workforce management. As reflected in the above-cited precedent, the Proposal's references to various workforce management concerns do not cause the Proposal to transcend ordinary business matters; instead, these concerns address the Company's general management of its workforce. Decisions involving the use of various technologies, applications, and services in workforce management and the procedures for ensuring compliance with applicable law (any of which may incorporate AI technology) are multifaceted, complex, and based on a range of considerations that are integral to managing the day-to-day operations of the Company. As such, and consistent with the above-cited precedent, the Company may exclude the Proposal under Rule 14a-8(i)(7) as related to the ordinary business of the Company, including as relating to the management of the Company's workforce.

The Proposal does not focus on a significant social policy issue that transcends the Company's ordinary business operations.

The Commission has distinguished proposals pertaining to ordinary business matters from those involving "significant social policy issues." 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). While "proposals...focusing on sufficiently significant social policy issues...generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if the significant social policy issues do not cause the proposal to "transcend the day-to-day business matters." *See* 1998 Release. Staff no-action responses have followed this approach over the years, establishing clear precedent that proposals that refer to topics that might raise

⁵ *See* <https://impact.disney.com/app/uploads/Current/TWDC-Standards-of-Business-Conduct.pdf>.

⁶ *See* <https://impact.disney.com/app/uploads/Current/TWDCHumanRightsPolicy-FINAL.pdf>.

⁷ *See* <https://impact.disney.com/app/uploads/Current/TWDC-Standards-of-Business-Conduct.pdf>.

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significant social policy issues, but which do not focus on or have only tangential implications for such issues, are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business. Such proposals remain excludable under Rule 14a-8(i)(7).

The Proposal relates to whether and how the Company uses AI in its business operations and therefore does not raise an issue with a “broad societal impact.” We recognize that certain aspects of AI or the application of certain novel types of AI in specific contexts may raise significant social policy issues with a broad societal impact, but that is not the case with respect to the Proposal’s broad focus on the Company’s use of AI across its business operations. Proposals with passing references touching upon topics that might raise significant social policy issues—but which do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business and, as such, remain excludable under Rule 14a-8(i)(7). *See, e.g., Amazon.com, Inc.* (April 8, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting an annual report on the distribution of stock-based incentives throughout the workforce despite the proposal referring to wealth inequality in the United States as a significant social policy issue).

The use of AI technology in ordinary business operations reflects further progress in the historical development of workplace technological trends that include the automation of manufacturing, innovations in the production of artistic works, augmentation of theme park experiences, including automated transportation within our parks, and the introduction of technologies to automate access to rides. Indeed, one of the most fundamental aspects of any company’s ordinary business operations is the adaptation of new techniques and technologies to optimize operations, including potentially workforce management, increase productivity, and seek innovation across its operations. The use of AI technology, broadly defined, across the Company’s business operations does not present any significant policy issues distinct from these historical patterns. Such ordinary business matters are the crux of the Proposal’s focus. Thus, the Proposal does not raise a significant policy issue and may be excluded under Rule 14a-8(i)(7).

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it seeks to micromanage the Company.

The Proposal may also be excluded in reliance on Rule 14a-8(i)(7) on the basis that it seeks to micromanage the Company with regard to the extent of disclosure of the Company’s use of AI. In SLB 14L, the Staff clarified that in evaluating companies’ micromanagement arguments, it will “focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” The Staff further noted that this approach is “consistent with the Commission’s views on the ordinary business exclusion, which is designed to preserve management’s discretion on ordinary business matters but not prevent

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shareholders from providing *high-level direction on large strategic corporate matters*” (emphasis added).

Since publication of SLB 14L, the Staff has concurred that proposals that probe too deeply into matters of a complex nature by seeking disclosure of intricate details around internal company policies and practices micromanage the company and therefore may be excluded in reliance on Rule 14a-8(i)(7). *See, e.g., Verizon Communications Inc.* (March 17, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish annually the written and oral content of diversity, inclusion, equity or related employee-training materials offered to the company’s employees on the basis that the proposal “micromanages the [c]ompany by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany’s employment and training practices”); *American Express Company* (March 11, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish annually the written and oral content of employee-training materials offered to the company’s employees on the basis that the proposal “micromanages the [c]ompany by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany’s employment and training practices”); and *Deere & Co.* (January 3, 2022) (same). The Proposal here attempts to probe too deeply into the judgment of management by seeking information on all the ways in which the Company uses AI across its business operations. Decisions to use or not to use a particular technology or application in aspects of a company’s business operations and on how to communicate with investors regarding the conduct of a company’s business operations are a multi-faceted endeavor guided by numerous factors, including but not limited to legal and regulatory requirements, business and competitive considerations, and budgetary considerations, among others. All of these considerations are complicated and outside the ability of shareholders to assess in the absence of detailed working knowledge of the Company’s operations, and require that management have discretion to exercise its judgment in making determinations appropriate for the Company.

Further, the Proposal’s supporting statement specifically highlights, among other applications, the use of AI in creating artistic works, noting that “lawsuits related to the improper use of AI” could prove costly to the Company. As with other companies in the entertainment industry, the creation of artistic works is a fundamental aspect of the Company’s business. Expert judgments, including legal analysis, are directly involved in management’s business and legal determinations with respect to the creation of artistic works to assess compliance with copyright and other intellectual property laws. As described above, and in accordance with the Company’s Standards of Business Conduct, the Company undertakes such assessment in part through engagement of its legal department on an ongoing basis. At its core, the Proposal’s request for a report on the Company’s use of AI with respect to its creation of artistic works, for which the

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Company already engages a robust internal legal process, seeks to involve the Company's shareholders in decisions against a backdrop of highly complex intellectual property laws.

Accordingly, in requesting that the Company report on the use of AI across all of the Company's business operations, the Proposal is seeking precisely the level of granularity that the Staff highlighted in SLB 14L, and thus the Proposal may be excluded under Rule 14a-8(i)(7) on the basis that it seeks to micromanage the Company.

Conclusion

For the foregoing reasons, and consistent with the Staff's prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the Proposal relates to the Company's ordinary business operations.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at lillian.brown@wilmerhale.com or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,



Lillian Brown

Enclosures

cc: Jolene Negre, Associate General Counsel and Secretary
The Walt Disney Company

Maureen O'Brien, SVP of Corporate Governance, Engagement and Proxy Voting
Segal Marco Advisors

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New York City Employees' Retirement System
New York City Fire Pension Fund
New York City Police Pension Fund
New York City Board of Education Retirement System

EXHIBIT A

October 11, 2023

Via UPS Air and E-Mail

Jolene E. Negre
Secretary
The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521
[REDACTED]

Re: Shareholder proposal for 2024 Annual Shareholder Meeting

Dear Ms. Negre:

Segal Marco Advisors is filing a shareholder proposal on behalf of the AFL-CIO Equity Index Funds (the "Proponent"), a shareholder of The Walt Disney Company (the "Company"), for action at the next annual meeting of the Company. The Proponent submits the enclosed shareholder proposal for inclusion in the Company's 2024 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, for at least one year as of the date hereof, at least \$25,000 worth of the Company's common stock. The Proponent intends to continue to hold the requisite amount of securities through the date of the 2024 shareholders' meeting. A letter from the Proponent's trustee and custodian bank verifying the Proponent's share ownership is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

Segal Marco Advisors and the Proponent is available to meet with the Company virtually on **October 23 or October 27 between 11am and 1pm PDT**. We are also available to discuss this issue at a mutually agreeable day and time. We appreciate the opportunity to engage and seek to resolve the Proponent's concerns. I can be contacted [REDACTED] to schedule a meeting and to address any questions. Please address any future correspondence regarding the proposal to me at this address.

Sincerely,



Maureen O'Brien
SVP of Corporate Governance, Engagement and Proxy Voting

RESOLVED: Shareholders request that The Walt Disney Company (the “Company”) prepare and publicly disclose on the Company’s website a transparency report that explains the Company’s use of Artificial Intelligence (“AI”) in its business operations and the Board’s role in overseeing AI usage, and sets forth any ethical guidelines that the company has adopted regarding its use of AI. This report shall be prepared at a reasonable cost and omit information that is proprietary, privileged, or violative of contractual obligations.

Supporting Statement

The use of AI by large corporations raises significant social policy concerns. These concerns include potential discrimination or bias in employment decisions, mass layoffs due to job automation, facility closures, the misuse and disclosure of private data, and the creation of “deep fake” media content that may result disseminate false information. These concerns pose a risk to the public and the Company’s reputation and financial position.

Transparency regarding the Company’s use of AI, and any ethical guidelines governing that use, will strengthen the Company. Transparency would address the public’s growing concerns and distrust about the indiscriminate use of AI, strengthening the Company’s position and reputation as a responsible, trustworthy, and sustainable leader in its industry. With a transparency report, the Company could establish that it uses AI in a safe, responsible, and ethical manner that complements the work of its employees and values the public.

The White House Office of Science and Technology Policy has developed ethical guidelines to help guide the design, use, and deployment of AI. These five principles for an AI Bill of Rights are 1) safe and effective systems, 2) algorithmic discrimination protections, 3) data privacy, 4) notice and explanation, and 5) human alternatives, consideration, and fallback. (White House Office of Science and Technology Policy, “Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People,” October 2022, available at <https://www.whitehouse.gov/ostp/ai-bill-of-rights>).

If the Company does not already have ethical guidelines for the use of AI, the adoption of ethical guidelines for the use of AI may improve the Company’s performance by avoiding costly labor disruptions and lawsuits related to the improper use of AI. The entertainment industry writer and performer strikes, sparked in part by AI concerns, and lawsuits related to the use of copyrighted works by AI engines have been prominent new stories throughout 2023 and may prove costly for companies that make use of AI.

We believe that issuing an AI transparency report is particularly important for companies such as ours in the entertainment industry that create artistic works that are the basis for our shared culture. In our view, AI systems should not be trained on copyrighted works, or the voices, likenesses and performances of professional performers, without transparency, consent and compensation to creators and rights holders. AI should also not be used to create literary material, to replace or supplant the creative work of professional writers.

For these reasons, we urge you to vote FOR this proposal.

October 11, 2023

Jolene E. Negre
Secretary
The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521

Re: Shareholder proposal submitted by the AFL-CIO Equity Index Funds

Dear Ms. Negre:

I write concerning a shareholder proposal (the “Proposal”) submitted to The Walt Disney Company (the “Company”) by the AFL-CIO Equity Index Funds as the proponent of the Proposal. The Bank of New York Mellon acts as trustee and discretionary investment manager for the AFL-CIO Equity Index Funds, and has appointed Segal Marco Advisors as its agent to act on behalf of the AFL-CIO Equity Index Funds for all matters related to the submission of the Proposal in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

The Bank of New York Mellon, as trustee and discretionary investment manager for the AFL-CIO Equity Index Funds, hereby confirms that the AFL-CIO Equity Index Funds supports the Proposal that Segal Marco Advisors is submitting on behalf of the AFL-CIO Equity Index Funds for the Company’s 2024 annual meeting of shareholders. The Proposal urges the Company to prepare a transparency report on the Company’s use of Artificial Intelligence (“AI”) in its business operations and disclose any ethical guidelines that the company has adopted regarding the company’s use of AI technology.

As of the date of this letter, the AFL-CIO Equity Index Funds beneficially own **597,692** of the Company’s common stock. The AFL-CIO Equity Index Funds have beneficially owned continuously for at least one year, shares of the Company’s common stock worth at least \$25,000 and intend to continue to hold the requisite amount of shares through the date of the 2024 shareholders’ meeting. The Bank of New York Mellon has acted as record holder of the shares and is a DTC participant.

While we request that you send all future correspondence regarding the Proposal to Segal Marco Advisors, the address of the AFL-CIO Equity Index Funds is c/o The Bank of New York Mellon, 240 Greenwich Street, New York, NY 10286. If you require any additional information, please do not hesitate to contact me at sarah.reed@bnymellon.com or 617.382.1292.

Very truly yours,



Sarah Reed
Senior Vice President





CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

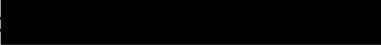
MUNICIPAL BUILDING
ONE CENTRE STREET, 8TH FLOOR NORTH
NEW YORK, N.Y. 10007-2341

Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT



October 13, 2023

Jolene E. Negre
Secretary
The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521

Via email: 

Dear Ms. Negre:

I write to you on behalf of the Comptroller of the City of New York, Brad Lander. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System, the New York City Police Pension Fund, and the New York City Fire Pension Fund (individually a "System," collectively the "Systems"). The Systems' boards of trustees have authorized the Comptroller to submit and otherwise act on the Systems' behalf with respect to the enclosed shareholder proposal, and to inform you of the Systems' intention to present the shareholder proposal, for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in full compliance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

The Systems are co-filing this proposal with AFL-CIO Equity Index Funds, on whose behalf Segal Marco Advisors previously submitted it. Please recognize the Systems as co-filer of this proposal. If you require more information or have any further questions on this matter, please contact the parties.

Each System is the beneficial owner of at least \$25,000 in market value of the Company's securities entitled to vote on the shareholder proposal and have held such stock continuously for at least one year. Furthermore, each System intends to continue to hold at least \$25,000 worth of these securities through the date of the Company's next annual meeting. Proof of continuous ownership for the requisite time period will be sent by the Systems' custodian bank, State Street Bank and Trust Company, under separate cover.

We welcome the opportunity to discuss the shareholder proposal with you, and are available to meet with the Company, jointly with AFL-CIO Equity Index Funds, via teleconference on October 23 or October 27 between 11am and 1pm PDT.

Please note that if the Company believes that the Systems or the enclosed shareholder proposal has failed to meet one or more of the eligibility or procedural requirements set forth in answers to Questions 1 through 4 of Rule 14a-8, the Company must notify us in writing of any alleged deficiency within 14 calendar days of receiving the proposal and provide us with an opportunity to respond to any alleged deficiency within 14 days of receiving the Company's written notification.

I can be contacted at the phone number or email address set forth above to schedule a meeting with the Company or to address any questions the Company may have about the enclosed proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Garland", with a stylized flourish at the end.

Michael Garland
Enclosure

RESOLVED: Shareholders request that The Walt Disney Company (the “Company”) prepare and publicly disclose on the Company’s website a transparency report that explains the Company’s use of Artificial Intelligence (“AI”) in its business operations and the Board’s role in overseeing AI usage, and sets forth any ethical guidelines that the company has adopted regarding its use of AI. This report shall be prepared at a reasonable cost and omit information that is proprietary, privileged, or violative of contractual obligations.

Supporting Statement

The use of AI by large corporations raises significant social policy concerns. These concerns include potential discrimination or bias in employment decisions, mass layoffs due to job automation, facility closures, the misuse and disclosure of private data, and the creation of “deep fake” media content that may result disseminate false information. These concerns pose a risk to the public and the Company’s reputation and financial position.

Transparency regarding the Company’s use of AI, and any ethical guidelines governing that use, will strengthen the Company. Transparency would address the public’s growing concerns and distrust about the indiscriminate use of AI, strengthening the Company’s position and reputation as a responsible, trustworthy, and sustainable leader in its industry. With a transparency report, the Company could establish that it uses AI in a safe, responsible, and ethical manner that complements the work of its employees and values the public.

The White House Office of Science and Technology Policy has developed ethical guidelines to help guide the design, use, and deployment of AI. These five principles for an AI Bill of Rights are 1) safe and effective systems, 2) algorithmic discrimination protections, 3) data privacy, 4) notice and explanation, and 5) human alternatives, consideration, and fallback. (White House Office of Science and Technology Policy, “Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People,” October 2022, available at <https://www.whitehouse.gov/ostp/ai-bill-of-rights>).

If the Company does not already have ethical guidelines for the use of AI, the adoption of ethical guidelines for the use of AI may improve the Company’s performance by avoiding costly labor disruptions and lawsuits related to the improper use of AI. The entertainment industry writer and performer strikes, sparked in part by AI concerns, and lawsuits related to the use of copyrighted works by AI engines have been prominent new stories throughout 2023 and may prove costly for companies that make use of AI.

We believe that issuing an AI transparency report is particularly important for companies such as ours in the entertainment industry that create artistic works that are the basis for our shared culture. In our view, AI systems should not be trained on copyrighted works, or the voices, likenesses and performances of professional performers, without transparency, consent and compensation to creators and rights holders. AI should also not be used to create literary material, to replace or supplant the creative work of professional writers.

For these reasons, we urge you to vote FOR this proposal.



Kimberly A MacDonald
Officer, Client Services
State Street Bank and Trust Company
One Heritage Drive, 3rd floor
Quincy, MA 02171
Telephone: 617 985 3709
KAMacDonald2@statestreet.com

Jolene E. Negre
Associate General Counsel and
Secretary

The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521

October 13, 2023

Re: New York City Retirement Systems

To whom it may concern,

Enclosed please find Ownership Letters attesting to the minimum share positions held by each of the NYC Retirement Systems for at least the past twelve months.

These letters are to support the Shareholder Proposal resolution sent to you directly by the NYC Office of the Comptroller.

Sincerely,

A handwritten signature in blue ink that reads "Kimberly MacDonald".

Kimberly MacDonald
Officer



Kimberly A. MacDonald
Officer, Client Services

State Street Bank and Trust
1776 Heritage Drive
JAB 3rd Floor
Quincy, MA 02171
Telephone: 617-985-3709
Kamaedonald2@StateStreet

October 13, 2023

Re: New York City Employee's Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Employee's Retirement System, the below position from September 30, 2022 through today as noted below:

<u>Security:</u>	WALT DISNEY CO/THE
<u>Cusip:</u>	[REDACTED]
<u>Shares:</u>	756,812

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Kimberly MacDonald".

Kimberly A. MacDonald
Officer



Kimberly A. MacDonald
Officer, Client Services

State Street Bank and Tru
1776 Heritage Drive
JAB 3rd Floor
Quincy, MA 02171
Telephone: 617 985-3709
Kmacdonald2@StateStr

October 13, 2023

Re: New York City Board of Education Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Board of Education Retirement System, the below position from September 30, 2022 through today as noted below:

<u>Security:</u>	WALT DISNEY CO/THE
<u>Cusip:</u>	[REDACTED]
<u>Shares:</u>	12,609

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Kimberly MacDonald".

Kimberly A. MacDonald
Officer



Kimberly A. MacDonald
Officer, Client Services

State Street Bank and Trust Company
1776 Heritage Drive
JAB 3rd Floor
Quincy, MA 02171
Telephone: 617-985-3709
Kamcdonald2@StateStreet.com

October 13, 2023

Re: New York City Fire Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Fire Pension Fund, the below position from September 30, 2022 through today as noted below:

Security: WALT DISNEY CO/THE

Cusip:



Shares: 209,115

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Kimberly MacDonald".

Kimberly A. MacDonald
Officer



Kimberly A. MacDonald
Officer, Client Services


State Street Bank and Trust Company
1776 Heritage Drive
JAB 3rd Floor
Quincy, MA 02171
Telephone: 617 985-3709
Kamacdonald2@StateStreet.com

October 13, 2023

Re: New York City Police Pension Fund

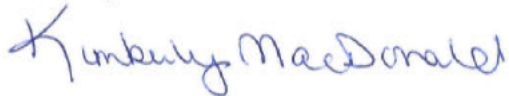
To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Police Pension Fund, the below position from September 30, 2022 through today as noted below:

<u>Security:</u>	WALT DISNEY CO/THE
<u>Cusip:</u>	
<u>Shares:</u>	472,638

Please don't hesitate to contact me if you have any questions.

Sincerely,



Kimberly A. MacDonald
Officer



550 W. Washington Blvd., Suite 900 Chicago, 60661
T 312.575.9000 F 312.575.9840 www.segalmarco.com

Via E-Mail to shareholderproposals@sec.gov

December 18, 2023

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

Re: The Walt Disney Company's Request to Exclude a Shareholder Proposal
Submitted by the AFL-CIO Equity Index Funds

Dear Sir or Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the AFL-CIO Equity Index Funds (the "Proponent") submitted a shareholder proposal (the "Proposal") with co-filers the New York City Employees' Retirement System, the New York City Fire Pension Fund, and the New York City Police Pension Fund (the "Co-Filers") to The Walt Disney Company (the "Company") for a vote at the Company's 2024 annual meeting of shareholders.¹ In a letter to the staff of the Division of Corporation Finance (the "Division Staff") dated November 22, 2023 (the "No Action Request"), the Company's representative from Wilmer Cutler Pickering Hale and Dorr LLP stated that the Company intends to omit the Proposal from its proxy materials to be distributed to shareholders.

The resolved clause of the Proposal states:

RESOLVED: Shareholders request that The Walt Disney Company (the "Company") prepare and publicly disclose on the Company's website a transparency report that explains the Company's use of Artificial Intelligence ("AI") in its business operations and the Board's role in overseeing AI usage, and sets forth any ethical guidelines that the company has adopted regarding its use of AI. This report shall be prepared at a reasonable cost and omit information that is proprietary, privileged, or violative of contractual obligations.

¹ The Comptroller of the City of New York, which co-filed the Proposal on behalf of the Co-Filers, has reviewed and joins with the AFL-CIO in its response to the Company's No Action Request.

The No Action Request asks the Division Staff to concur that it will not recommend enforcement action if the Company excludes the Proposal in reliance on Rule 14a-8(i)(7), on the basis that the Proposal purportedly deals with matters related to the Company's ordinary business operations and seeks to micromanage the Company. For the reasons set forth below, the Proposal may not be excluded under Rule 14a-8(i)(7) because the Proposal addresses a social policy issue that transcends the Company's day-to-day business matters and does not otherwise micromanage the Company.

The No Action Request argues that the Proposal may be excluded under Rule 14a-8(i)(7) because it involves matters related to the Company's ordinary business operations, specifically workforce management, technology choice, and adherence to ethical business practices. As explained below, this argument does not have merit because the Proposal addresses a significant social policy issue. Specifically, the Proposal addresses the ethical use of Artificial Intelligence ("AI"), a significant social policy issue that has generated significant controversy and substantial attention from the public, lawmakers, the media and business leaders. AI is a significant social policy issue because it has the potential to affect many aspects of human life, such as health, education, employment, security, privacy, and justice.

As the Division Staff stated in Exchange Act Release No. 34-40018 (May 21, 1998), the Division Staff's definition of significant social policy issues adjusts over time to reflect changing societal views. Issues once considered "ordinary business" can become significant social policy issues, and recognized as such, in a matter of months.² In recent years, the social impact of AI technology has attained a level of notoriety to be recognized as a significant social policy issue. Indeed, AI has been subject to extraordinary media attention in 2023 and has now become part of the English lexicon. For example, the word "AI" was selected as the Collins Dictionary's 2023 word of the year, and the Cambridge Dictionary selected the word "hallucinate" for 2023 with the addition of an alternative definition referring to when AI produces false information.³

Ethical concerns regarding the responsible use of AI also reached a crescendo in recent years. According to the AI, Algorithmic, and Automation Incidents and Controversies Repository (an open source database of AI related controversies) there have been over 1,200 incidents and controversies regarding the use of AI since 2009 including 224 separate incidents in 2023 alone.⁴ Various governmental, business, and nonprofit entities have published ethical guidelines for AI including the United Nations Educational, Scientific and Cultural Organization,⁵ the

² See Staff Legal Bulletin 14A (July 12, 2022) ("We believe that the public debate regarding shareholder approval of equity compensation plans has become significant in recent months. Consequently, in view of the widespread public debate regarding shareholder approval of equity compensation plans and consistent with our historical analysis of the "ordinary business" exclusion, we are modifying our treatment of proposals relating to this topic.").

³ Kiersten Hickman, "These Are the 2023 Words of the Year, According to Dictionaries," Reader's Digest, November 15, 2023, <https://www.rd.com/article/word-of-the-year/>.

⁴ AIAAIC Repository, accessed on November 17, 2023, <https://www.aiaaic.org/aiaaic-repository>.

⁵ UNESCO, "Recommendation on the Ethics of Artificial Intelligence," 2022, <https://unesdoc.unesco.org/ark:/48223/pf0000381137>.

Organisation for Economic Co-operation and Development,⁶ the U.S. Department of Defense,⁷ the European Commission,⁸ the Business Roundtable,⁹ and the White House.¹⁰

Recent international regulatory developments emphasize the widespread significant social policy concerns associated with the ethical implementation of AI. On December 8, 2023, European Union officials signed a tentative political agreement for the Artificial Intelligence Act, the first EU regulatory framework for AI.¹¹ This act sets regulatory obligations for firms and users based on the level of risk associated with certain AI systems.¹² The Company has previously implemented AI systems mentioned in the European Union provisional agreement, including AI-powered facial recognition systems¹³ and generative AI systems.¹⁴

Similar legislative efforts are underway in the United States at the federal and state level. In 2023, the U.S. Congress held multiple hearings on AI and the need for legislation to protect against AI harms.¹⁵ Senate Majority Leader Charles Schumer and members of a bipartisan AI working group has announced their intent to pass AI regulation prior to the 2024 elections.¹⁶ On September 8, 2023, U.S. Senators Richard Blumenthal and Josh Hawley released a bipartisan legislative framework to guide future regulations of AI systems.¹⁷ At the state level, New York State Senator Lea Webb introduced Senate Bill S7422A in May 2023.¹⁸ If passed, this bill would bar a film production from claiming the Empire State Film Production

⁶ Organisation for Economic Co-operation and Development, “Recommendation of the Council on OECD Legal Instruments Artificial Intelligence,” 2019, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>.

⁷ U.S. Department of Defense, “DOD Adopts Ethical Principles for Artificial Intelligence,” February 24, 2020, <https://www.defense.gov/News/Releases/Release/Article/2091996/dod-adopts-ethical-principles-for-artificial-intelligence/>.

⁸ European Commission, “Ethics Guidelines for Trustworthy AI - High-Level Expert Group on Artificial Intelligence,” 2019, <https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai>.

⁹ Business Roundtable, “Business Roundtable Roadmap for Responsible Artificial Intelligence,” January 2022, https://s3.amazonaws.com/brt.org/Business_Roundtable_Artificial_Intelligence_Roadmap_Jan2022_1.pdf.

¹⁰ White House Office of Science and Technology Policy, “Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People,” October 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>.

¹¹ Kelvin Chan, “Europe Reaches a Deal on The World’s First Comprehensive AI Rules,” Associated Press, December 8, 2023, <https://apnews.com/article/ai-act-europe-regulation-59466a4d8fd3597b04542ef25831322c>

¹² Foo Yun Chee, Martin Coulter and Supantha Mukherjee, “Europe Agrees Landmark AI Regulation Deal,” Reuters, December 11, 2023, <https://www.reuters.com/technology/stalled-eu-ai-act-talks-set-resume-2023-12-08/>

¹³ Landon McReynolds, “Walt Disney World Begins Testing Facial Recognition Technology,” WKMG Click Orlando, March 23, 2021, <https://www.clickorlando.com/theme-parks/2021/03/23/walt-disney-world-begins-testing-facial-recognition-technology>.

¹⁴ Dawn Chmielewski and Krystal Hu, “Disney Creates Task Force To Explore AI and Cut Costs – Sources,” Reuters, August 10, 2023, <https://www.reuters.com/technology/disney-creates-task-force-explore-ai-cut-costs-sources-2023-08-08>.

¹⁵ David Shepardson, “Congress to Hold New AI Hearings as it Works to Craft Safeguards,” Reuters, September 8, 2023, <https://www.reuters.com/technology/us-senate-panel-hold-ai-hearing-with-microsoft-nvidia-2023-09-08/>.

¹⁶ “Senators Expect AI Committee Work to Ramp Up in 2024,” Washington Post, December 7, 2023, <https://www.washingtonpost.com/politics/2023/12/07/senators-expect-ai-committee-work-ramp-up-2024/>.

¹⁷ Richard Blumenthal and Josh Hawley, “Blumenthal & Hawley Announce Bipartisan Framework on Artificial Intelligence Legislation,” September 8, 2023, <https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-and-hawley-announce-bipartisan-framework-on-artificial-intelligence-legislation>.

¹⁸ NY State Senate Bill 2023-S7422A, <https://www.nysenate.gov/legislation/bills/2023/S7422/amendment/A>.

Credit if the production's use of AI results in the displacement of employees. The Company has hired Albany-based lobbyists to monitor the progress of this New York state legislation.¹⁹

In recognition of AI's significant social policy concerns, leading technology companies have taken steps to disclose their ethical guidelines for the use of AI. For example, Microsoft has published a Responsible AI Standard to ensure that AI systems are developed responsibly and in ways that warrant people's trust.²⁰ Adobe,²¹ Amazon,²² Dell,²³ Facebook/Meta²⁴, Google/Alphabet,²⁵ Hewlett Packard,²⁶ and IBM²⁷ have published similar ethical guidelines. A total of fifteen AI technology companies – but not the Company – have endorsed the White House's Voluntary AI Commitments to promote the safe, secure, and transparent development and use of AI technology.²⁸ The Company has failed to adequately discuss the ethical concerns with its use of AI despite the importance of AI to a "wide variety of applications within the business."²⁹

In recent years, the Division Staff have recognized that shareholder proposals addressing concerns with the use of AI transcend ordinary business matters and therefore may not be excluded under Rule 14a-8(i)(7). For example, in *Amazon.com, Inc.* (March 28, 2019, *reconsideration denied* on April 3, 2019), the Division Staff declined to concur with the exclusion of two shareholder proposals on the company's AI facial recognition technology. Similarly, Division Staff declined to concur with the exclusion of a shareholder proposal in

¹⁹ Zach Williams, "Disney and NBC Eyeing New York's AI Tax Break Ban Proposal," Bloomberg Law, July 31, 2023, <https://news.bloomberglaw.com/in-house-counsel/disney-and-nbc-watch-new-yorks-ai-tax-break-ban-proposal>.

²⁰ Microsoft, "Microsoft Responsible AI Standard, v2," June 2022, <https://www.microsoft.com/en-us/ai/principles-and-approach/>.

²¹ Adobe, "Adobe Unveils New AI Ethics Principles as Part of Commitment to Responsible Digital Citizenship," February 17, 2021, <https://blog.adobe.com/en/publish/2021/02/17/adobe-unveils-new-ai-ethics-principles-commitment-responsible-digital-citizenship>.

²² Amazon, "Our Commitment to the Responsible Use of AI," July 21, 2023, <https://www.aboutamazon.com/news/company-news/amazon-responsible-ai>.

²³ Dell, "Dell Technologies Principles for Ethical Artificial Intelligence," 2022, <https://www.delltechnologies.com/asset/en-us/solutions/business-solutions/briefs-summaries/principles-for-ethical-ai.pdf>.

²⁴ Meta, "Facebook's Five Pillars of Responsible AI," June 22, 2021, <https://ai.meta.com/blog/facebooks-five-pillars-of-responsible-ai/>.

²⁵ Google, "2022 AI Principles Progress Update," 2022, <https://ai.google/static/documents/ai-principles-2022-progress-update.pdf>.

²⁶ Hewlett Packard Enterprise, "Innovation in the Ethics of AI at HPE," April 27, 2021, <https://www.hpe.com/us/en/newsroom/blog-post/2021/04/innovation-in-the-ethics-of-ai-at-hpe.html>.

²⁷ IBM, "IBM's Principles for Trust and Transparency," 2018, https://www.ibm.com/policy/wp-content/uploads/2018/06/IBM_Principles_SHORT.V4.3.pdf.

²⁸ The White House, "Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial Intelligence Companies to Manage the Risks Posed by AI," July 21, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/21/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-leading-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/>; The White House, "Biden-Harris Administration Secures Voluntary Commitments from Eight Additional Artificial Intelligence Companies to Manage the Risks Posed by AI," September 12, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/12/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-eight-additional-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/>.

²⁹ No Action Request at p. 3.

Alphabet Inc. (April 15, 2022) on the discriminatory effects of the company’s algorithmic systems and in *Alphabet Inc.* (April 12, 2022) regarding the use of the company’s AI technology for military and policing applications.

In addition to the fact the Division Staff have previously recognized AI as a significant social policy issue, the Proposal’s supporting statement specifically identifies various ethical concerns with the use of AI that have a nexus to a variety of longstanding significant social policy issues. These include that the use of AI in human resources decisions may raise concerns about discrimination or bias against employees, the use of AI to automate jobs may result in mass layoffs and the closing of entire facilities, the use of AI in ways that violate the privacy of customers and members of the public, and the use AI technology may be used to generate “deep fake” media content that may result in the dissemination of false information in political elections.

The Division Staff have long recognized that shareholder proposals on employment discrimination are significant social policy issues since Exchange Act Release No. 34-40018 (May 21, 1998) reversed *Cracker Barrel Old Country Stores, Inc.* (October 13, 1992). For example, in *CBRE Group, Inc.* (March 6, 2019) the Division Staff did not concur with the exclusion of a shareholder proposal that requested a report on the effects of the company’s mandatory arbitration policies on claims of sexual harassment. In this case, the use of AI technology in human resource decisions can reflect and amplify human biases and prejudices, which can lead to unlawful discrimination against protected employee groups.³⁰

The Division Staff have also recognized that concerns about mass layoffs can be a significant social policy issue. For example, in *E.I. du Pont de Nemours and Company* (March 6, 2000), the Division Staff did not concur with the exclusion of a shareholder proposal on plant closures. Similarly, in *Sprint Corporation* (February 5, 2004), the Division Staff did not concur that a proposal on offshoring jobs overseas could be excluded. Goldman Sachs recently estimated that 300 million jobs globally could be subject to automation by AI.³¹ The Organisation for Economic Co-operation and Development has estimated that 27 percent of the workforce in developed countries is at risk of AI automation.³² The consulting firm McKinsey estimates that 30 percent of the hours worked in the U.S. economy could be automated by AI.³³ While we do not know whether these forecasts will prove accurate, we do know that the potential impact of AI on the domestic and global workforce is projected to be seismic.

³⁰ Anya E.R. Prince and Daniel Schwarcz, “Proxy Discrimination in the Age of Artificial Intelligence and Big Data,” 105 Iowa L. Rev. 1257, March 15, 2020, <https://ilr.law.uiowa.edu/print/volume-105-issue-3/proxy-discrimination-in-the-age-of-artificial-intelligence-and-big-data>.

³¹ Joseph Briggs and Devesh Kodnani, “The Potentially Large Effects of Artificial Intelligence on Economic Growth,” Goldman Sachs, March 26, 2023, <https://www.gspublishing.com/content/research/en/reports/2023/03/27/d64e052b-0f6e-45d7-967b-d7be35fabd16.html>.

³² “27% of Jobs at High Risk From AI Revolution, Says OECD,” Reuters, July 11, 2023, <https://www.reuters.com/technology/27-jobs-high-risk-ai-revolution-says-oecd-2023-07-11/>.

³³ Kweilin Ellingrud et. al., “Generative AI and the Future of Work in America,” McKinsey Global Institute, July 26, 2023, <https://www.mckinsey.com/mgi/our-research/generative-ai-and-the-future-of-work-in-america>.

Privacy concerns have also been recognized by the Division Staff as a significant social policy issue. In *Alphabet Inc.* (April 15, 2022), the Division Staff did not concur that a proposal requesting an annual report on managing risks associated with user data collection, privacy, and security could be excluded under Rule 14a-8(i)(7). AI risk includes privacy risks, as AI is expected to accelerate the analysis of personal information in ways that can intrude on privacy interests.³⁴ Companies are expanding the responsibilities of their privacy teams to address these risks.³⁵ And for those companies such as the Company whose products and services are marketed to and consumed by children, the use of AI to analyze personal data raises particular privacy concerns.

The Division Staff have also recognized that the dissemination of false media information can be a significant social policy issue that transcends ordinary business. For example, in *Alphabet Inc.* (April 12, 2022) the Division Staff declined to concur with the exclusion of a proposal seeking a human rights report on the company's content management policies to address misinformation and disinformation across its platforms. According to Freedom House, AI has been used in at least 16 countries to generate disinformation and sow doubt, smear opponents, or influence public debate.³⁶ Here in the United States, AI-generated "deep fake" media content has been used in the Republican presidential primary election campaign.³⁷

The Company's claim that the Proposal relates to its choice of technology is a red herring. The Proposal does not request that the Company refrain from using AI technology or require that the Company use specific types of AI technology in its business operations. Rather, the plain language of the Proposal's resolved clause simply requests that the Company prepare and disclose a transparency report that explains the Company's use of AI in its business operations, the Board's role in overseeing AI usage, and sets forth any ethical guidelines that the Company has adopted regarding its use of AI. And by not providing a specific definition of AI, the Proposal gives maximum flexibility to the Company to determine what technologies should be subject to disclosure in the requested AI transparency report.

Nor does the Proposal relate to the Company's adherence to its existing ethical guidelines. The No Action Request argues that the Company's Standards of Business Conduct³⁸ and Human Rights Policy³⁹ implicitly set guidelines for the ethical implementation of AI. However, these policies guide business practices undertaken by natural persons employed by or acting on behalf

³⁴ Cameron F. Kerry, "Protecting Privacy in an AI-driven World," Brookings Institution, February 10, 2020, <https://www.brookings.edu/articles/protecting-privacy-in-an-ai-driven-world/>;

³⁵ Catherine Stupp, "AI Risks Force Corporate Privacy Officers to Expand Oversight," Wall Street Journal, November 16, 2023, <https://www.wsj.com/articles/ai-risks-force-corporate-privacy-officers-to-expand-oversight-1ee23fa>.

³⁶ Allie Funk, Adrian Shahbaz, and Kian Vesteinsson, "The Repressive Power of Artificial Intelligence," Freedom House, 2023, <https://freedomhouse.org/sites/default/files/2023-10/Freedom-on-the-net-2023-Digital-Booklet.pdf>.

³⁷ Shannon Bond, "DeSantis Campaign Shares Apparent AI-generated Fake Images of Trump and Fauci," NPR, June 8, 2023, <https://www.npr.org/2023/06/08/1181097435/desantis-campaign-shares-apparent-ai-generated-fake-images-of-trump-and-fauci>; Alex Isenstadt, "DeSantis PAC Uses AI-Generated Trump Voice in Ad Attacking Ex-president," Politico, July 17, 2023, <https://www.politico.com/news/2023/07/17/desantis-pac-ai-generated-trump-in-ad-00106695>.

³⁸ The Walt Disney Company, "Standards of Business Conduct," 2017, <https://impact.disney.com/app/uploads/Current/TWDC-Standards-of-Business-Conduct.pdf>.

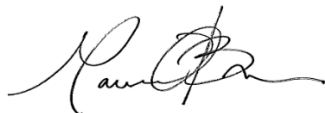
³⁹ The Walt Disney Company, "Human Rights Policy," 2022, <https://impact.disney.com/app/uploads/Current/TWDCHumanRightsPolicy-FINAL.pdf>.

of the Company. Because AI is not a natural person, as written the Standards of Business Conduct and the Human Rights Policy do not specifically apply to AI technology. The No Action Request tacitly acknowledges this fact as it does not argue that the Proposal may be excluded as substantially implemented under Rule 14a-8(i)(10). Moreover, AI decision-making is not necessarily subject to human oversight depending on how it is implemented and its decisions may not even be intelligible to humans.⁴⁰

Finally, the plain language of the Proposal does not micromanage the Company by seeking to impose specific methods for implementing complex policies. The Proposal's resolved clause simply requests that the Company publish a transparency report on its use of AI, the Board of Director's role in overseeing AI, and any ethical AI guidelines that the Company may have adopted. The Proposal does not seek to define the term AI or the scope of the requested report in order to give the Company full discretion to determine what information should be made publicly available. Nor does the Proposal request that the Company adopt any specific AI ethical guidelines or Board processes, but rather simply requests disclosure of the Board's existing oversight of AI and any ethical guidelines that the Company may have adopted for its use.

In conclusion, the Division Staff should not concur with the Company's No Action Request that the Proposal may be excluded. The Proposal may not be excluded under Rule 14a-8(i)(7) because the Proposal addresses significant social policy issues that transcend the Company's day-to-day business matters and does not otherwise seek to micromanage the Company. If you have any questions, please contact me at 312-612-8446 or mobrien@segalmarco.com.

Sincerely,



Maureen O'Brien
SVP of Corporate Governance, Engagement and Proxy Voting

cc: Lilian Brown, Wilmer Hale
lillian.brown@wilmerhale.com

⁴⁰ See United Nations Educational, Scientific and Cultural Organization, "Artificial Intelligence: Examples of Ethical Dilemmas," April 21, 2023, <https://www.unesco.org/en/artificial-intelligence/recommendation-ethics/cases>.