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+1 (415) 268-7113  
GGrover@mofo.com

**1934 Act/Rule 14a-8**

March 10, 2020

**VIA E-MAIL ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))**

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

Re: RH  
Stockholder Proposal of People for the Ethical Treatment of Animals

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client RH, a Delaware corporation (the "**Company**"), which requests confirmation that the staff (the "**Staff**") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "**Commission**") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "**Exchange Act**"), the Company omits the enclosed stockholder proposal (the "**Proposal**") and supporting statement (the "**Supporting Statement**") submitted by People for the Ethical Treatment of Animals (the "**Proponent**") from the Company's proxy materials for its 2020 Annual Meeting of Stockholders (the "**2020 Proxy Materials**").

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- submitted this letter to the Staff no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Copies of the Proposal and Supporting Statement, the Proponent's cover letter submitting the Proposal, and other correspondence relating to the Proposal are attached hereto as Exhibit A.

Pursuant to the guidance provided in *Staff Legal Bulletin No. 14F* (Oct. 18, 2011), we ask that the Staff provide its response to this request to Gavin B. Grover, on behalf of the Company, via email at GGrover@mofo.com or via facsimile at (415) 268-7522, and to Jared S. Goodman, the Proponent's authorized representative, via email at jaredg@petaf.org.

## **I. THE PROPOSAL**

On February 25, 2020, the Company received a letter from the Proponent containing the Proposal for inclusion in the Company's 2020 Proxy Materials.<sup>1</sup> The Proposal reads as follows:

***RESOLVED:***

*The use of down feathers is both cruel and unsustainable. Therefore, the shareholders encourage Restoration Hardware to offer inserts for decorative pillows made only from down alternatives.*

The Supporting Statement consists of eight paragraphs, the first six of which focus entirely on the process for producing down products. The seventh paragraph addresses the Company's offering of down alternative products. The final paragraph of the Supporting Statement reads as follows:

*Accordingly, we urge Restoration Hardware to make the compassionate, sustainable, and forward-thinking decision to offer pillow inserts made only from down alternatives. This would be an important first step in eliminating its use of down entirely.*

The Supporting Statement is included in Exhibit A.

## **II. EXCLUSION OF THE PROPOSAL**

### **A. Basis for Excluding the Proposal**

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(i)(7), as the Proposal deals with matters related to the Company's ordinary business operations.

### **B. The Two "Central Considerations" of the Rule 14a-8(i)(7) Exclusion**

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a stockholder proposal that relates to the company's "ordinary business operations." According to the Commission, the underlying policy of the ordinary business exclusion is "to confine the

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<sup>1</sup> The Proposal that is the subject of this no-action request is revised from its original version, which was submitted to the Company by a letter dated February 11, 2020.

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.” *Exchange Act Release No. 40018* (May 21, 1998) (the “**1998 Release**”).

In the 1998 Release, the Commission described the two “central considerations” for the ordinary business exclusion. The first is that certain tasks are “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight” and, as such, may be excluded, unless the proposal raises policy issues that are sufficiently significant to transcend day-to-day business matters. The second consideration of the 1998 Release relates to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” (footnote omitted).

### ***C. The Proposal May be Omitted Because it Seeks to Micromanage the Company***

It is the Company’s view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Staff has repeatedly recognized that a proposal that seeks to micromanage the determinations of a company’s management regarding day-to-day decisions may be excluded under Rule 14a-8(i)(7) as a component of “ordinary business.” In *Staff Legal Bulletin No. 14J* (Oct. 23, 2018) (“**SLB 14J**”), the Staff described its application of the micromanagement analysis under Rule 14a-8(i)(7): “As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it ‘involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.’”

The Proposal and Supporting Statement are clear in their objective for a specific action by the Company. The Proposal requests that the Company “offer inserts for decorative pillows made only from down alternatives” and, while not affecting the specific request of the Proposal, the Supporting Statement states that the Proposal seeks this action as “an important first step in eliminating the [Company’s] use of down entirely.” As the Proposal explicitly seeks to require the Company to undertake the action of ceasing to offer customers the option of inserts for decorative pillows made from down and, instead, offer customers exclusively inserts for decorative pillows made only from down alternatives, the Proposal would micromanage management’s decisions regarding its sales of particular products, which makes it excludable under Rule 14(a)-8(i)(7) in accordance with the Staff’s guidance in SLB 14J.

The Proposal expressly seeks that the Company, in all instances, discontinue its practice of offering customers the option of purchasing decorative pillows with inserts made from either down or down alternatives – as noted above, the Proposal expressly states that the Company should “offer pillow inserts made *only* from down alternatives.” (emphasis added). In considering whether a proposal was “seeking to impose specific methods for implementing complex policies,” the Staff has generally considered the prohibition of a practice (whether it be the sale of a type of product or a specific practice) in all situations to render a proposal excludable under Rule 14a-8(i)(7). For example, *Bristol-Myers Squibb Company* (March 1,

2019) addressed a proposal asking the board to “implement a policy that it will not fund, conduct or commission use of the ‘Forced Swim Test,’” a pre-clinical animal research practice. In its response, the Staff concurred with the company’s view that it could exclude the proposal under Rule 14a-8(i)(7), as relating to the Company’s ordinary business operations, stating: “In our view, the Proposal micromanages the Company by seeking to impose specific methods for implementing complex policies.”

The Company’s view that the Proposal seeks to micromanage its affairs is supported by other recent Staff decisions, including a Staff response regarding a very similar proposal received by the Company from the Proponent in 2018. In *RH* (May 11, 2018), the proposal read:

*RESOLVED, that, given the cruel and inhumane treatment of birds used for down and that Restoration Hardware already sells alternatives that mimic down, the Board is strongly encouraged to enact a policy that will ensure that no down products are sold by Restoration Hardware, Inc.*

The Company argued that the proposal was excludable as micromanagement because it sought a specific outcome – “no down products [to be] sold by Restoration Hardware, Inc.” In response to the Company’s request to exclude the proposal, the Staff agreed with the arguments asserted under Rule 14a-8(i)(7), stating: “In our view, the [p]roposal micromanages the Company by seeking to impose specific methods for implementing complex policies.” As in *RH*, the Proposal specifically seeks that the Company stop selling a specific product; in *RH*, it was all down products, and in the Proposal it is all inserts for decorative pillows made from down. Further, the final paragraph of the Supporting Statement and public statements by the Proponent regarding the Proposal make clear that the long-term goal of the Proposal is the same as specific request of the proposal in *RH* – “eliminating [the Company’s] use of down entirely.”<sup>2</sup>

As discussed in its no-action request in *RH*, the Company is a leading luxury retailer in the home furnishings marketplace, offering furniture, lighting, textiles, bathware, décor, outdoor and garden, tableware, and child and teen furnishing. The Company’s decisions with respect to the mix of products which it sells to its customers are central to its ability to run the business on a day-to-day basis. The Company’s management invests a significant amount of time, energy and effort on a daily basis to determine the type of products the Company will offer to its customers. In fact, decisions regarding which products to offer customers are a foundation of the Company’s

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<sup>2</sup> The Proponent issued a press release on February 11, 2020, which characterizes the Proposal as seeking to eliminate the use of down entirely, as in *RH*, stating:

“This morning, PETA—which owns stock in Restoration Hardware—submitted a shareholder resolution calling on the company to take an important first step toward eliminating its use of down entirely by ending its sale of feather inserts for decorative pillows.” . . . “PETA is calling on Restoration Hardware to save animals and the planet by exclusively selling the warm, luxurious down-free pillows that are already on its shelves.”

business. Decisions with respect to the Company's product mix involve a complex analysis of numerous factors, including the features of a particular product, the product's cohesiveness with the Company's other home furnishing offerings, and competitive factors, among others. The Company has determined that products that include down are an important element of the Company's overall product offering and that certain customers strongly prefer down to synthetic alternatives, while other customers prefer the down alternative inserts for decorative pillows that the Company currently offers. Further, as part of the Company's Corporate Social Responsibility ("CSR") program, vendors provide documentation that their products, such as down, are responsibly and ethically sourced, a fact which may be important to certain customers who prefer the Company's down products over the alternatives.

Company personnel must consider those and other factors in making specific decisions regarding whether to offer a particular product for sale to customers. As the Proposal seeks to have the Company alter its practices by imposing an over-riding policy regarding the sale of a particular product in all instances, the Proposal would micromanage the Company by requiring a specific action regarding a specific product (*i.e.*, determining that the Company may offer customers only decorative pillows with inserts that are made only from down alternatives).

Other recent Staff decisions further support the Company's view that the Proposal seeks to micromanage the Company. For example, in *SeaWorld Entertainment, Inc.* (March 30, 2017), the proposal sought to "retire the current resident orcas to seaside sanctuaries and replace the captive-area exhibits with innovative virtual and augmented reality or other types of non-animal experiences." The company argued, among other things, that the proponent sought to micromanage the company's decisions with respect to the entertainment products it offered to customers because those decisions involved myriad complex factors about which stockholders are not in a position to make an informed judgment. The Staff concurred in the omission of the proposal under Rule 14a-8(i)(7), as the proposal sought to "micromanage 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." In *SeaWorld Entertainment, Inc.* (April 23, 2018), the Staff similarly concurred in exclusion under Rule 14a-8(i)(7) for a proposal seeking for the company's board of directors "to ban *all* captive breeding in SeaWorld parks" (emphasis in original). See also *The Wendy's Company* (March 2, 2017) (concurring with the exclusion of a proposal addressing company practices in the purchase of produce as micromanaging the company) and see *Amazon.com, Inc.* (Jan. 18, 2018, recon. denied Apr. 5, 2018) (concurring with the exclusion of a proposal asking the company to list particular showerheads before the listing of other showerheads, and to provide a related description, as micromanaging the company).

As was the case in *SeaWorld (2017)*, the Proposal seeks to direct the Company's practices regarding particular products it offers for sale to customers. As in *SeaWorld (2017)*, the Company's decisions with respect to the products it offers to customers involve myriad complex factors about which stockholders are not in a position to make an informed judgment. Decisions with respect to the Company's product offerings require deep knowledge of the

Company's business and operations, including knowledge of customer preferences – information to which the Company's shareholders do not have access. Product decisions involve complex, day-to-day operational determinations of management that are dependent on management's underlying expertise. The Proposal, however, asks shareholders to impose their judgment with respect to ceasing all sales of specific products in all instances, a judgment for which they, as a group, are not adequately informed.

As the Proposal would impose a specific, over-riding requirement on day-to-day complex management decisions regarding the products the Company offers for sale to customers, the Company is of the view that the Proposal seeks to micromanage the Company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment and by stripping Company management of the discretion and flexibility required to properly exercise its judgment in making necessary day-to-day determinations regarding the type of products the Company will offer to its customers. As a result, the Proposal may be omitted pursuant to Rule 14a-8(i)(7) as it seeks to micromanage the Company.

***D. The Proposal May be Omitted because it Relates to Ordinary Business Matters***

***1. The Proposal is Focused on Ordinary Business Matters***

The Company is of the view that the Proposal may be excluded under Rule 14a-8(i)(7) as the subject matter of the Proposal concerns the Company's ordinary business matter of deciding which products to offer to its customers. The Proposal requests that the Company offer exclusively inserts for decorative pillows that are made only from down alternatives. The Supporting Statement then confirms that the Company undertakes the broad range of detailed, day-to-day decision-making necessary in determining the range of products to be offered to customers by stating that the Company "already sells products made from down alternatives that are perfectly suitable replacements for the ones made from down." The Proposal's request thus relates specifically to the ordinary business matter of determining the particular products the Company should or should not provide to its customers.

It is well established in Staff precedent that a company's decisions as to whether and how to offer particular products and services to its customers are precisely the kind of fundamental, day-to-day operational matters meant to be covered by the ordinary business operations exception under Rule 14a-8(i)(7). For example, in *McDonald's Corporation* (March 12, 2019), the Staff considered a proposal which it described as "request[ing] that the board create a special board committee on food integrity to restore public confidence in the company's reputation for food quality and integrity," also noting in its response letter that the special board committee was to "assess the recent breaches of safety and security of the company's restaurants' food service as well as long-term concerns and criticism regarding food quality, recommending any necessary improvements in governance, sanitation and safety systems necessary to instill in the company's culture the highest standards of food quality and security." The Staff concurred in the company's view that it could exclude the proposal in reliance on Rule 14a-8(i)(7), stating:

“There appears to be some basis for your view that the Company may exclude the proposal in reliance on Rule 14a-8(i)(7), as it relates to the company’s ordinary business operations. In this regard, we note that the proposal relates to the products offered for sale by the company.” In *Amazon.com, Inc.* (March 11, 2016), the Staff concurred that a proposal requesting that the company “issue a report addressing animal cruelty in the supply chain” was excludable under Rule 14a-8(i)(7) as relating to the “products and services offered for sale by the company.” In *Dillard’s, Inc.* (Feb. 27, 2012), the Staff agreed that a proposal “to develop a plan . . . to phase out the sale of” products containing certain animal fur could be excluded under Rule 14a-8(i)(7). Dillard’s, a retailer of products principally through a chain of several hundred department stores, argued that the proposal could be excluded consistent with prior Staff precedent because “[a]n integral part of [the retail] business is the selection of the products to be sold in its stores.” The Staff concurred with the exclusion of the proposal, noting that the proposal “relates to the products offered for sale by the company [and p]roposals concerning the sale of particular products are generally excludable under [R]ule 14a-8(i)(7).” As in these Staff precedents, the Proposal requests that the Company adopt a policy regarding its product offerings in the aim of adhering to the Proponent’s particular views and, thus, relates to the products offered for sale by the Company.

The Staff’s decisions in *McDonald’s Corporation*, *Amazon.com*, and *Dillard’s* are consistent with the Staff’s longstanding position on a broad range of proposals that address the products and services a company offers to its customers. See, e.g., *Papa John’s International, Inc.* (Feb. 13, 2015) (concurring in the omission under Rule 14a-8(i)(7) of a proposal requesting that the company expand its menu offerings to include vegan cheeses and vegan meats in order to advance animal welfare, reduce the company’s ecological footprint, expand healthier options, and meet growing demand for plant-based foods, noting in particular that “the proposal relates to the products offered for sale by the company and does not focus on a significant policy issue”); *Wal-Mart Stores, Inc.* (March 20, 2014) (concurring in the omission under Rule 14a-8(i)(7) of a proposal requesting board oversight of determinations as to whether selling certain products that endanger public safety and well-being could impair the reputation of the company and/or would be offensive to family and community values, on the basis that the proposal related to “the products and services offered for sale by the company”), *aff’d and cited in Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 327 (3d Cir. 2015); *Pepco Holdings, Inc.* (Feb. 18, 2011) (concurring in the omission under Rule 14a-8(i)(7) of a proposal that urged the company to pursue the market for solar technology and noting that “the proposal relates to the products and services offered for sale by the company”); and *Wal-Mart Stores, Inc. (Albert)* (March 30, 2010) (concurring in the omission under Rule 14a-8(i)(7) of a proposal requiring that all company stores stock certain amounts of locally produced and packaged food as concerning “the sale of particular products”).

The Proposal requests that the Company enact a policy to offer only a particular type of inserts for decorative pillows – those made only from down alternatives – with that action being the “first step” in a hoped-for broad phasing out of the all Company sales of down products. As

such, the Proposal clearly relates to the Company's decisions regarding which products it offers for sale to its customers, an ordinary business matter.

As a leading luxury retailer in the home furnishings marketplace, it is a fundamental responsibility of the Company's merchandise buying organization to select which products to sell and to define the practices related to the sourcing of such products. The process of procuring a wide-range of merchandise to be offered through the Company's online and other customer channels, the Company's merchandise buyers must consider myriad factors when making buying decisions in the marketplace, including, for example, customer tastes and preferences and market opportunities, as well as applicable laws, regulations and industry standards and internal vendor and sourcing compliance practices. Balancing such interests is a complex issue, and is "so fundamental to management's ability to run [the C]ompany on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." See the *1998 Release*.

## ***2. The Proposal Does Not Focus on a Significant Policy Issue***

As discussed above, the Staff has consistently expressed the view that determinations regarding the products to be offered for sale to customers are ordinary business matters and do not focus on significant policy issues that transcend such ordinary business matters. As also shown in the precedents discussed above, where a proposal's focus is the day-to-day decisions made with regard to the specific products to be offered to customers, even if the proposal's supporting statement touches upon a significant policy issue, the Staff has consistently concurred with the exclusion of such a proposal. It is self-evident that the Proposal is focused on the matter of determining which products to offer for sale to customers, as it states that focus specifically – "the shareholders encourage Restoration Hardware to offer inserts for decorative pillows made only from down alternatives." Further, while six paragraphs of the Supporting Statement address poultry industry practices related directly and indirectly to down, the request of the Proposal does not relate to those practices and would not directly affect those practices. Further, the last two paragraphs of the Supporting Statement make clear that the Company already provides significant choices to customers regarding down and down alternatives and that the Proposal seeks to prohibit the offering of those choices to customers.

The express focus of the Proposal, as stated in its "Resolved" clause, is to "encourage Restoration Hardware to offer inserts for decorative pillows made only from down alternatives." As the last paragraph of the Supporting Statement provides, the Proposal "would be an important first step in eliminating [the Company's] use of down entirely." As such, the Proposal states expressly that it has a specific focus on an ordinary business matter – the Company's decisions regarding the products it will offer for sale to its customers – and not a significant policy issue.

The Proposal is focused solely on the Company's ordinary business operations and is not focused on a significant policy issue. Accordingly, the Company is of the view that the Proposal may be omitted pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations because it concerns the offering of particular products for sale to customers.



Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
March 10, 2020  
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**III. CONCLUSION**

For the reasons discussed above, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2020 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal and Supporting Statement from its 2020 Proxy Materials. If we can be of further assistance in this matter, please do not hesitate to contact me at (415) 268-7113.

Sincerely,

A handwritten signature in black ink, appearing to read "Gavin B. Grover". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gavin B. Grover  
of Morrison & Foerster LLP

**Attachments**

cc: Jared Goodman, PETA  
Edward Lee, RH

# **EXHIBIT A**



PEOPLE FOR  
THE ETHICAL  
TREATMENT  
OF ANIMALS

February 11, 2020

Corporate Secretary  
Restoration Hardware, Inc.  
15 Koch Road  
Corte Madera, CA 94925

**Via UPS Next Day Air Saver**

Dear Corporate Secretary:

Attached to this letter is a shareholder proposal (also known as a “resolution”) submitted for inclusion in the proxy statement for the 2020 annual meeting. Also enclosed is a letter from People for the Ethical Treatment of Animals’ (PETA) brokerage firm, RBC Wealth Management, confirming ownership of 27 shares of Restoration Hardware, Inc. common stock, which were acquired at least one year ago. PETA has held at least \$2,000 worth of common stock continuously and intends to hold at least this amount through and including the date of the 2020 shareholders meeting.

If there are any issues with this proposal being included in the proxy statement or if you need any further information, please contact PETA's authorized representative Jared Goodman at 2154 W. Sunset Blvd., Los Angeles, CA 90026, (323) 210-2266, or [JaredG@PetaF.org](mailto:JaredG@PetaF.org).

Sincerely,

Carrie Edwards, Executive Assistant  
PETA Corporate Responsibility

Enclosures: RBC Wealth Management letter  
2020 Shareholder Resolution

Washington, D.C.  
1536 16th St. N.W.  
Washington, DC 20036  
202-483-PETA

Los Angeles  
2154 W. Sunset Blvd.  
Los Angeles, CA 90026  
323-644-PETA

Norfolk  
501 Front St.  
Norfolk, VA 23510  
757-622-PETA

Berkeley  
2855 Telegraph Ave.  
Ste. 301  
Berkeley, CA 94705  
510-763-PETA

[Info@peta.org](mailto:Info@peta.org)  
[PETA.org](http://PETA.org)

Affiliates

- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)



**Wealth  
Management**

99 Almaden Boulevard  
Suite 300  
San Jose, CA 95113-1603

Office: 408.292.2442  
Fax: 408.298.8295

February 11, 2020

Tracy Reiman  
Executive Vice President  
People for the Ethical Treatment of Animals  
501 Front Street  
Norfolk, VA 23510

Re: Verification of Shareholder Ownership in Restoration Hardware, Inc.

Dear Ms. Reiman,

This letter verifies that People for the Ethical Treatment of Animals (PETA) is the beneficial owner of 27 shares of Restoration Hardware, Inc. common stock and that PETA has continuously held at least \$2,000.00 in market value for at least one year prior to and including the date of this letter.

Should you have any questions or require additional information, please contact me at (408) 947-3322.

Sincerely,

Thach Nguyen  
Senior Registered Client Associate to Joshua Levine  
Senior Vice President – Financial Advisor  
RBC Wealth Management

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Investment and insurance products: • Not insured by the FDIC or any other federal government agency  
• Not a deposit of, or guaranteed by, the bank or an affiliate of the bank • May lose value

**RESOLVED:**

The use of down feathers is both cruel and unsustainable. Therefore, the shareholders encourage Restoration Hardware to offer inserts for decorative pillows made only from down alternatives.

**SUPPORTING STATEMENT:**

Down is a coproduct of the meat industry, accounting for as much as 20% of a bird's economic "value," and its use contributes to the production of massive amounts of excrement and slaughter waste and requires intensive amounts of water, feed, and energy.

Additionally, the poultry industry is responsible for the emission of high levels of ammonia, which is toxic<sup>1</sup> to aquatic species and results in the loss of biodiversity, creates dead zones, causes ground acidification, and harms plant and animal life. The industry is also responsible for the emission of carbon dioxide and nitrogen, which supports the growth of toxic algae in waterways,<sup>2</sup> killing aquatic species and rendering water non-potable.

And poultry farmers feed the birds antibiotics, while down processors use toxic chemicals to sanitize and process their feathers. These antibiotics and chemicals then leach into waterways, resulting in eutrophication and additional soil acidification.

In addition to the detrimental impact that the poultry industry has on the environment, it also negatively affects human and animal health by acting as a breeding ground for pathogens like the avian flu virus and *E. coli* bacteria.

While Restoration Hardware claims to comply with the Responsible Down Standard, it's nearly impossible to track feathers back to their original supplier and determine how they were obtained. Farm audits are unreliable, as undercover investigations have shown that some suppliers giving assurances that they treat birds in a responsible manner have actually obtained feathers by violently plucking live birds, causing them to sustain gaping wounds, or they have used birds for foie gras, in which they are force-fed with tubes rammed down their throats until their livers swell to as much as 10 times their normal size.

But even when birds aren't live-plucked or force-fed, they're often subjected to intensive confinement on factory farms. Then they're typically shipped to slaughterhouses on open-air trucks, even in extreme weather conditions. At the slaughterhouse, they may be improperly stunned before their throats are cut and they're run through the scalding-hot water of a defeathering tank while still conscious.

Restoration Hardware already sells products made from down alternatives that are perfectly suitable replacements for the ones made from down. In fact, the company describes these cruelty-free products this way: "As lush, lofty and warm as premium down bedding," "the lightest, loftiest and most insulating down alternative available," "offer[ing] exceptional warmth and luxurious comfort," "emulat[ing] down's softness and appearance," and "offer[ing] easy care, supreme durability and longevity."

Accordingly, we urge Restoration Hardware to make the compassionate, sustainable, and forward-thinking decision to offer pillow inserts made only from down alternatives. This would be an important first step in eliminating its use of down entirely.

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<sup>1</sup>Scottish Environment Protection Agency, "Ammonia"

<<https://apps.sepa.org.uk/spripa/Pages/SubstanceInformation.aspx?pid=1>> (last accessed on Feb. 6, 2020).

<sup>2</sup>U.S. Environmental Protection Agency, "Nutrient Pollution" <<https://www.epa.gov/nutrientpollution/issue>> (last accessed on Feb. 6, 2020).

# RH

February 24, 2020

VIA EMAIL & OVERNIGHT DELIVERY

Jared Goodman  
People for the Ethical Treatment of Animals (PETA)  
2154 W. Sunset Blvd.  
Los Angeles, CA 90026  
[JaredG@PetaF.org](mailto:JaredG@PetaF.org)

Re: RH Shareholder Proposal

Dear Mr. Goodman,

I am writing on behalf of RH ("the Company"), which received from you, on behalf of the People for the Ethical Treatment of Animals (the "Proponent"), dated February 11, 2020, the shareholder proposal regarding down alternatives (the "Proposal") for consideration at the Company's 2020 Annual Meeting of Shareholders.

The Proposal contains a procedural deficiency, as set forth below, which Securities and Exchange Commission ("SEC") regulations require us to bring to your attention.

### Proposal Exceeds 500 Words

Rule 14a-8(d) limits a proposal and any supporting statement to a maximum length of 500 words. Your Proposal, including the supporting statement, appears to exceed this 500-word limitation (this determination of the number of words in the Proposal includes counting each symbol as one word and each set of two hyphenated words as two words). As such, your submission is required by Rule 14a-8 to be reduced to 500 words or fewer to be considered for inclusion in the Company's proxy materials. For your reference, please find enclosed a copy of SEC Rule 14a-8.

For the Proposal to be eligible for inclusion in the Company's proxy materials for its 2020 Annual Meeting of Shareholders, the rules of the SEC require that a response to this letter, correcting the procedural deficiency described in this letter, be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 15 Koch Road, Corte Madera, CA 94925 or via email to [EdwardLee@RH.com](mailto:EdwardLee@RH.com).

If you have any questions with respect to the foregoing, please do not hesitate to contact me.

Sincerely,



Edward T. Lee  
Chief Legal Officer

Enclosures: Rule 14a-8 under the Securities Exchange Act of 1934

## **Rule 14a-8 — Proposals of Security Holders**

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

(a) **Question 1: What is a proposal?**

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

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

(1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

- (ii) The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:
  - (A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;
  - (B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and
  - (C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

**(c) Question 3: How many proposals may I submit?**

Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

**(d) Question 4: How long can my proposal be?**

The proposal, including any accompanying supporting statement, may not exceed 500 words.

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

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q, or in shareholder reports of investment companies under Rule 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

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



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

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

- (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under Rule 14a-8 and provide you with a copy under Question 10 below, Rule 14a-8(j).
- (2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

**(g) Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?**

Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

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

- (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.
- (2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
- (3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

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

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

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

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

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

- (3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

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

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

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

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

- (8) *Relates to election:* If the proposal:

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

- (ii) Would remove a director from office before his or her term expired;
- (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
- (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
- (v) Otherwise could affect the outcome of the upcoming election of directors.

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

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

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

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

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

- (12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

- (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

- (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
  - (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and
- (13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

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

- (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.
- (2) The company must file six paper copies of the following:
- (i) The proposal;
  - (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
  - (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

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

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

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

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

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

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

- (1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.
- (2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, Rule 14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
- (3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
  - (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
  - (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under Rule 14a-6.

February 25, 2020

*Via email*

Edward Lee  
Chief Legal & Compliance Officer  
Restoration Hardware  
edwardlee@restorationhardware.com

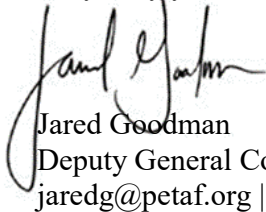
Re: Revised PETA Shareholder Proposal

Dear Mr. Lee:

I am in receipt of your letter of February 24 regarding People for the Ethical Treatment of Animals, Inc.'s shareholder proposal, in which you assert Restoration Hardware's belief that the proposal, as submitted, exceeded 500 words.

Pursuant to Rule 14a-8(f)(1), enclosed please find a revised version of the proposal that addresses the perceived deficiency.

Very truly yours,



Jared Goodman  
Deputy General Counsel for Animal Law  
jaredg@petaf.org | 323-210-2266

Enclosure

PEOPLE FOR  
THE ETHICAL  
TREATMENT  
OF ANIMALS  
FOUNDATION

Washington, D.C.  
1536 16th St. N.W.  
Washington, DC 20036  
202-483-PETA

Los Angeles  
2154 W. Sunset Blvd.  
Los Angeles, CA 90026  
323-644-PETA

Norfolk  
501 Front St.  
Norfolk, VA 23510  
757-622-PETA

Berkeley  
2855 Telegraph Ave.  
Ste. 301  
Berkeley, CA 94705  
510-763-PETA

PETA FOUNDATION IS AN  
OPERATING NAME OF FOUNDATION  
TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

**RESOLVED:**

The use of down feathers is both cruel and unsustainable. Therefore, the shareholders encourage Restoration Hardware to offer inserts for decorative pillows made only from down alternatives.

**SUPPORTING STATEMENT:**

Down is a coproduct of the meat industry, accounting for as much as 20% of a bird's economic "value," and its use contributes to the production of massive amounts of excrement and slaughter waste and requires intensive amounts of water, feed, and energy.

Additionally, the poultry industry is responsible for the emission of high levels of ammonia, which is toxic<sup>1</sup> to aquatic species and results in the loss of biodiversity, creates dead zones, causes ground acidification, and harms plant and animal life. The industry is also responsible for the emission of carbon dioxide and nitrogen, which supports the growth of toxic algae in waterways,<sup>2</sup> killing aquatic species and rendering water non-potable.

And poultry farmers feed the birds antibiotics, while down processors use toxic chemicals to sanitize and process their feathers. These antibiotics and chemicals then leach into waterways, resulting in eutrophication and additional soil acidification.

In addition to the detrimental impact that the poultry industry has on the environment, it also negatively affects human and animal health by acting as a breeding ground for pathogens like the avian flu virus and *E. coli* bacteria.

While Restoration Hardware claims to comply with the Responsible Down Standard, it's nearly impossible to track feathers back to their original supplier and determine how they were obtained. Farm audits are unreliable, as undercover investigations have shown that some suppliers giving assurances that they treat birds in a responsible manner have actually obtained feathers by violently plucking live birds, causing them to sustain gaping wounds, or they have used birds for foie gras, in which they are force-fed with tubes rammed down their throats until their livers swell to as much as 10 times their normal size.

But even when birds aren't live-plucked or force-fed, they're often subjected to intensive confinement on factory farms. Then they're typically shipped to slaughterhouses on open-air trucks, even in extreme weather conditions. At the slaughterhouse, they may be improperly stunned before their throats are cut and they're run through the scalding-hot water of a defeathering tank while still conscious.

Restoration Hardware already sells products made from down alternatives that are perfectly suitable replacements for the ones made from down. In fact, the company describes these cruelty-free products this way: "As lush, lofty and warm as premium down bedding," "the lightest, loftiest and most insulating down alternative available," "offer[ing] exceptional warmth and luxurious comfort," "emulat[ing] down's softness and appearance," and "offer[ing] easy care, supreme durability and longevity."

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<sup>1</sup> Scottish Environment Protection Agency, <https://apps.sepa.org.uk/spripa/Pages/SubstanceInformation.aspx?pid=1>.

<sup>2</sup> U.S. Environmental Protection Agency, <https://www.epa.gov/nutrientpollution/issue>.

Accordingly, we urge Restoration Hardware to make the compassionate, sustainable, and forward-thinking decision to offer pillow inserts made only from down alternatives. This would be an important first step in eliminating its use of down entirely.