



Action Report

Social (Human Rights)

Tyson Foods

January 10, 2020

Ticker	Exchange	Meeting Date	Record Date	Annual Meeting Location
TSN	NYSE	2/6/2020	12/9/2019	Springdale, Arkansas

Agenda

Item	Proposal
1	MGT: Elect directors
2	MGT: Ratify selection of auditors
3	MGT: Advisory vote on executive compensation
4	SH: Adopt supply chain deforestation policy
5	SH: Report on lobbying
6	SH: Report on human rights risk assessment
7	SH: Adopt policy on senior executive share retention

Si2 Briefing [Human Rights](#)

Report Author [Robin Young](#)

Links [2020 Proxy Statement](#); [2019 Form 10-K](#); [Code of Conduct](#); [Supplier Code of Conduct](#); [2018 Sustainability Report](#)

Resolved Clause Resolved: Shareholders request the Board of Directors prepare a report, at reasonable cost and omitting proprietary information, on Tyson's human rights due diligence process to assess, identify, prevent mitigate, and remedy actual and potential human rights impacts.

Lead Proponent Investor Advocates for Social Justice (formerly the Tri-State Coalition for Responsible Investment)

Vote History This is second year in a row that this proposal has appeared on the Tyson Foods proxy statement. In 2019, the proposal received 5.5 percent support. The 2019 proposal was also the first time that such a proposal went to a vote at a company in the Consumer Staples sector; a similar proposal at Walmart was omitted on technical grounds in 2013.

Summary The company currently has a Code of Conduct and a Supplier Code of Conduct that address certain human rights issues. In addition, the Tyson Foods discloses some information on its Social Compliance Program and associated third-party audits of company facilities, as well as information on its environmental management and performance in its latest Sustainability Report. The proponent feels that the company's current policies and level of disclosure do not provide adequate information on human-rights related

risks at the company, some of which have short circuited its expansion plans over environmental concerns.

New developments: In 2018, Tyson Foods became a signatory to the United Nations Global Compact, which requires it to produce an annual report on its progress and commitment to ten voluntary principles for responsible business in the areas of human rights, labor, environment and anti-corruption. However, the company missed its first annual reporting deadline and has requested an extension until January 17, 2020 for production of the report.

I. Tyson Foods and Human Rights

Tyson Foods is one of the largest food companies in the world with a major presence in the chicken, pork and beef markets as well as frozen and refrigerated food products.

Financials			
(\$ millions)	2017	2018	% Change
Total Revenue	\$38,260	\$40,052	4.7%
Net Income	\$1,778	\$3,027	70.2%

Its chicken operations include breeding stock, contract growers, feed production, processing, further-processing, marketing and transportation of chicken and related allied products, including animal and pet food ingredients. Tyson Foods also processes live fed cattle and live market hogs and fabricates dressed beef and pork carcasses into primal and sub-primal meat cuts, as well as case-ready beef and pork, and fully-cooked meats. The frozen and refrigerated food products segment produces ready-to-eat sandwiches, sandwich components such as flame-grilled hamburgers and Philly steaks, pepperoni, bacon, breakfast sausage, turkey, lunchmeat, hot dogs, flour and corn tortilla products, appetizers, snacks, prepared meals, ethnic foods, side dishes, meat dishes, breadsticks and processed meats.

Tyson Foods offers its products primarily under the Tyson, Jimmy Dean, Hillshire Farm, Ball Park, Wright, State Fair, Aidells, ibp, Gallo Salame and Golden Island brands. The company sells its products through its sales staff to grocery retailers, grocery wholesalers, meat distributors, warehouse club stores, military commissaries, industrial food processing companies, chain restaurants or their distributors, live markets, international export companies and domestic distributors, as well as through independent brokers and trading companies.

Wal-Mart Stores accounted for 16.9 percent of Tyson Foods' 2019 sales. According to the company, "[a]ny extended discontinuance of sales to this customer could, if not replaced, have a material impact on our operations. No other single customer or customer group represented more than 10% of fiscal 2019 consolidated sales."

During fiscal 2018 Tyson Foods completed the sale of its four non-protein brands from the Prepared Foods segment, including Sara Lee Frozen Bakery, Kettle, Vans and TNT Crust brands. The Sara Lee Frozen Bakery and Van's business transaction was completed for \$623 million while the Kettle and TNT Crust sales saw the company receive \$125 million and \$57 million, respectively. During the same time period, the company also acquired three operations for \$1.5 billion, including American Proteins, Tecumseh Poultry and Original Philly Holdings.

During 2019, Tyson Foods acquired the Thai and European operations of BRF S.A. for \$326 million as part of its strategy to grow and expand its value-added protein capabilities in domestic and global markets. In November 2018, the company acquired Keystone Foods, a supplier in the global foodservice industry, for \$2.3 billion in cash.

Human Rights Policies at Tyson Foods

Tyson Foods discusses the subject of human rights in relation to employees in its [Code of Conduct](#) and [2018 Sustainability Report](#), which also contains information on pollution and environmental management. Additional information on employment rights is relayed in the company's [Team Member Promise](#) brochure. The company also provides a [Supplier Code of Conduct](#) that specifically addresses labor and human rights as well as the environment, health and safety, and ethical behavior.

Code of Conduct: The Code of Conduct includes a stand-alone section on human rights that states that company policies and programs “support the principles contained within the United Nation’s Universal Declaration of Human Rights and the International Labor Organization Labor Standards.” It individually, if briefly, addresses Child Labor & Forced Labor, Wage & Hour Practices and Freedom of Association.

2018 Sustainability Report: While echoing some of the language of the Code of Conduct, the 2018 Sustainability Report includes more detailed information on the company’s Social Compliance Program, third-party audits of social compliance issues, annual compliance training and the Tyson Ethics Help Line.

Social compliance—Begun in 2015, the company’s Social Compliance Program contains four Key Elements:

- Maintain a Social Compliance Committee (SCC) to provide oversight
- Respond to all self-assessment questionnaires
- Maintain memberships in Sedex, SAFESUPPLY, and EcoVadis which are external customer-supplier data exchanges dedicated to empowering responsible supply chains
- Use a reputable third-party firm to provide audit services

Third-party audits—Tyson Foods uses a third-party firm to conduct audits on approximately 25 percent of its production facilities every year. Auditors use set Workplace Conditions Assessment criteria for verification of social compliance standards for labor, health and safety, the environment and business integrity. The 2018 Sustainability Report notes the average score for the 31 audits conducted in 2018 was 96 percent. Of the remaining 5 percent, health and safety accounted for 51 percent of issues, while labor accounted for an additional 43 percent and environmental matters 6 percent.

Tyson Foods reports that health and safety findings concerned emergency egress and fire extinguisher locations and numbers. The company says it remediated all problems found and took steps to prevent problems in the future. The report also states that labor issues were for employees voluntarily working greater than 60 hours per week. As was the case last year, while all employees were paid for all hours worked, Tyson Foods says that it is working to reduce the amount of overtime and consecutive work-days for employees.

The [Certifications and Programs](#) webpage provides copies of Workplace Conditions Assessment certificates for all facilities that have scored a minimum of 85 percent on their latest Social Compliance audit.

Ethics Help Line—The company provides a toll-free number and a web-based reporting mechanism for suspected violations of the Code of Conduct. The Ethics Help Line is operated by an independent third party and allows for anonymous reporting, 24 hours per day, seven days per week, in multiple languages.

Tyson Foods reports that during fiscal 2018, 5,379 contacts were made to the Ethics Help Line, with 76.8 percent of reports categorized as “unsubstantiated following investigation.” “Employee Matters” (including concerns about attendance points, discipline, or fellow team members) made up 53 percent of Ethics Help Line complaints, while “Management Style” accounted for 26 and “Harassment & Discrimination” accounted for 17 percent.

Water management—Tyson Foods reports that during 2018 it performed a water risk assessment in cooperation with the World Resources Institute. The assessment measured the company’s water footprint as well as its exposure to current and future water-related business risks. Tyson is developing a water accountability methodology and is beginning to develop a company-specific water stewardship position statement, setting leadership-level enterprise-wide water goals and establishing context-based water targets.

The 2018 Sustainability Report includes compliance metrics for pollution issues over the last three fiscal years. During fiscal 2018, it received 40 Notices of Violation, down from 75 in fiscal 2017 but higher than the 19 in fiscal 2016. It also paid \$2 million in penalties – almost 10 times the amount paid in 2017.

The \$2 million penalty paid in fiscal 2018 was related to a 2014 wastewater incident that disrupted the Monett, Missouri’s wastewater treatment system and resulted in an impact to a nearby stream. While the issue was resolved with the state of Missouri in 2015, the company accepted two misdemeanor violations of the Clean Water Act and paid the fine to the federal government. It also agreed to ongoing system reviews to “support continuous improvement of operations.”

Supplier Code of Conduct: Labor and Human Rights have a separate section in the Supplier Code of Conduct. The policy says the company expects supply partners to have controls in place that:

- Verify the employment eligibility of their employees;
- Ensure no forced labor or child labor is being used or human trafficking is occurring;
- Respect the right of employees to freely associate, organize and bargain collectively;
- Ensure compliance with applicable wage and hour laws; and
- Prohibit discrimination, harassment and workplace violence; and
- Provide options for employees to report concerns without fear of retaliation.

Each supplier is expected to have in place controls to “prevent and detect misconduct, such as the misuse of company assets, conflict of interest, fraud, embezzlement, corruption, bribery, and extortion.”

Tyson Foods reserves the right to terminate existing relationships or decline future agreements for suppliers who do not comply with the law.

United Nations Global Compact: On October 8, 2018, Tyson Foods officially became a [signatory](#) to the United Nations Global Compact, a set of ten voluntary principles for responsible business in the areas of human rights, labor, environment and anti-corruption. The Compact includes two human rights principles:

- **Principle 1:** Businesses should support and respect the protection of internationally proclaimed human rights; and
- **Principle 2:** make sure that they are not complicit in human rights abuses.

As a signatory, the company is required to make an annual submission of a Communication on Progress (COP) that describes its efforts to implement the ten principles, including the two listed above. Tyson Foods was required to produce its initial COP by October 8, 2019. But the company missed the deadline. In its [Grace Letter](#) to the UNGC, the company states that it “did not realize that our first COP was due within the first twelve months of joining” and that it will “establish a process” to ensure compliance in the future. Tyson Foods asserts that the required COP will be made available on the UNGC website by January 17, 2020.

10-K Risks

Among the risks Tysons lists in its [2019 Form 10-K](#) related to human rights are:

- We have approximately 141,000 employees, approximately 39,000 of whom are covered by collective bargaining agreements or are members of labor unions. Our operations depend on the availability and relative costs of labor and maintaining good relations with employees and the labor unions. If we fail to maintain good relations with our employees or with the labor unions, we may experience labor strikes or work stoppages, which could adversely affect our financial results.
- Our products may be subject to contamination by foreign materials or disease-producing organisms or pathogens, such as *Listeria monocytogenes*, *Salmonella* and *E. coli*. These organisms and pathogens are found generally in the environment and there is a risk that one or more, as a result of food processing, could be present in our products. These organisms and pathogens also can be introduced to our products as a result of improper handling at the further-processing, foodservice or consumer level. These risks may be controlled, but may not be eliminated, by adherence to good manufacturing practices and finished product testing.
- We are subject to lawsuits, investigations and other claims related to wage and hour/labor, environmental, product, taxing authorities and other matters
- Our facilities for processing beef, pork, chicken, turkey and prepared foods, milling feed and housing live chickens and swine are subject to a variety of international, federal, state and local environmental laws and regulations, which include provisions relating to the discharge of materials into the environment and generally provide for protection of the environment.

The company is currently involved in three environmental legal proceedings. They include:

- A June 6, 2019 release of partially treated wastewater from a poultry rendering facility into a river near Hanceville, Alabama. The release resulted in a fish kill. Remediation efforts have been taken, but the company expects to pay a civil penalty and related lawsuits have been filed.
- Failure to complete certain environmental protection examinations and obtain approval of an environmental impact assessment at the Tyson Nantong poultry complex in Jiangsu Province, China; for which the company is subject to a \$316,000 fine; and
- A 2005 lawsuit filed by the Attorney General and the Secretary of the Environment of the State of Oklahoma that alleges that the company polluted the surface waters, groundwater and associated drinking water supplies of the Illinois River Watershed through the land application of poultry litter.

Additionally, the company's McKey Korea subsidiary, acquired in the Keystone Foods transaction, and three of its managers are under criminal indictment for alleged violations of the Livestock Products Sanitary Control Act with respect to the method of testing for Enterohemorrhagic *E. Coli* employed by McKey Korea for beef patties produced in 2016 and 2017 at McKey's Sejong City facility. The trial is expected to be completed in 2020 and the company faces a potential fine of \$100,000.

II. Proponent Position

The proponent, Investor Advocates for Social Justice (formerly the Tri-State Coalition for Responsible Investment), says that to meet their responsibilities under the UN Guiding Principles on Business and Human Rights, companies must exert due diligence in assessing, identifying, preventing and mitigating adverse human rights impacts.

The proponent believes that as an industrial meat producer, Tyson Foods faces "significant human rights risks" including the rights to health, water and safe environment for workers and farmers. As a result, a human rights impact assessment could "help prevent harm, reduce fines for violations, and preserve the company's social license to operate and future business opportunities."

Specific issues cited by the proponent include the effects of market consolidation on contract growers such as mistreatment, racial discrimination and retaliation and increasing productivity demands at processing facilities that result in faster line speeds which may lead to "serious labor rights violations,

including risk and amputations or chemical exposure resulting from inadequate safety gear or training.” Sexual harassment and discrimination at facilities are also mentioned.

The proponent notes the Alabama leak discussed above as an example of a failure in the company’s management of water quality risks, as well as an “inadequate provision of remedy to impacted communities interfere with the right to water.”

The acquisition of facilities in Thailand is also a concern, given reports of forced labor, wage and hour violations and poor worker health and safety in that country.

The proponent acknowledges that the company does reference respect for human rights in both its Code of Conduct and Supplier Code of Conducts and that it committed to improving working conditions in 2017. However, it does not comprehensively report on progress toward implantation of its management of human rights risks, the proponent says.

The proposal asks the company to prepare a report on its human rights due diligence efforts, addressing the factors discussed above. In addition, the proponent requests that the report:

- Identify and assess the human rights impacts of Tyson’s business activities, including company-owned operations, suppliers, and contractors, and plans to prevent and mitigate harm;
- Explain the types and extent of stakeholder consultation; and
- Discuss how Tyson tracks effectiveness of its human rights due diligence.

III. Management Position

Tyson Foods opposes the proposal, stating that it “greatly values the health and safety of its employees, or Team Members, and is focused on maintaining a safety culture with the goal of eliminating workplace incidents, risks and hazards.” In addition, the company says it supports the principles of the United Nation’s Universal Declaration of Human Rights and the International Labor Organization Labor Standards.

While agreeing that conducting human rights due diligence throughout its operations is important, Tyson Foods believes that it already has policies and practices in place that adequately address the issues raised in the proposal. To that end, the company directs interested shareholders to its Code of Conduct and Team Member Promise, available on the company website. The company also points out that its Code of Conduct specifically addresses its zero-tolerance of child and forced labor, that it complies with all applicable wage and hour laws and that it respects employee rights to freely assemble and collectively bargain in accordance with local laws.

Tyson Foods also highlights its social compliance audit program, which verifies facility adherence to standards regarding labor, health and safety, environment, and business integrity. In addition, the Ethics Help Line, run by an independent third party allows anonymous reporting of suspected violations of the Code of Conduct and the law, Tyson asserts. Further Tyson recently signed on to the UN Global Compact, which will require it to produce an annual report that addresses certain human rights issues.

As for its supply chain, Tyson Foods says that it strives to “support farmers in their efforts to run their businesses wisely and to be independent and sustainable enterprises” but that it does not have a say in the daily management of their operations. However, it does require them to comply with all applicable laws and regulations. All suppliers are expected to work toward abiding by the company’s Supplier Code of Conduct, implemented in 2010, that requires them to show “a dedication to observing fair labor practices and having controls in place that: verify the employment eligibility of their employees; respect the right of employees to freely associate; ensure compliance with applicable wage and hour laws; and prohibit discrimination, forced labor, and child labor.”

Finally, the company states that it has committed to support improved environments practices on two million acres of corn production by the end of 2020 and has set of goal of reducing its greenhouse gas emissions by 30 percent by 2030, which is expected to lower amount of fertilizer applied per acre of corn production and reduce total nitrous oxide emissions.

Because of its existing policies and efforts, Tyson Foods believes that the preparation of the requested report is unnecessary and recommends that shareholders vote against the proposal.

IV. Analysis

Key Point at Issue

- Is there evidence that Tyson Foods' human rights policy needs improvement?

The company's Code of Conduct addresses key human rights issues, including child and forced labor issues, wage and hour compliance and freedom of association, while the 2018 Sustainability Report provides information on the company's Social Compliance Program, which includes third-party audits of company facilities and an Ethics Help Line, and some information on water and pollution management and performance. Both documents refer to core standards in the UN Universal Declaration of Human Rights, which many firms do not, as well as the ILO Labor Standards.

The 2018 Sustainability Report includes the aggregate results of its third-party audits, breaking down facility violations by type and providing examples of some violations and remediation. The company also supplies three-year compliance metrics for its Environmental Management System, including the number of violations, aggregate monetary fines and individual violations where fines exceeded \$5,000.

The company also has a Supplier Code of Conduct that specifically addresses human rights issues. The language in the Code states only that it "expects" supply partners to conduct their business in compliance with the law, but the company reserves the right to sever existing or future partnerships for legal non-compliance.

In October 2018, Tyson Foods became a signatory of the UN Global Compact and is required to report on human rights diligence annually. However, the company missed its first annual reporting deadline and requested an extension until mid-January 2020. It should be noted that the UNGC report is not required to address all the issues raised by the proponent. Certain shareholders may be content to wait for the delayed UNGC report, while others may feel that the production of the report requested by the proponent would be provide a more thorough picture of human rights issues and risks faced by Tyson Foods as well as inform the reports required under the UNGC.

While both the proponent and the company state their case on the importance of human rights diligence, the crux of their disagreement seems to be not on which are the appropriate international protocols that are important to ensure human rights are respected. Rather, it is in the extent to which the company *conveys* information about how it analyzes risks and corrects any problems it finds. While the company has recently produced more information on this process some investors may feel the issues raised by the proponent need more direct analysis and disclosure.

Voting Considerations

Voting in favor: Shareholders who want to see more information on how the company finds and rectifies any human rights problems are likely to vote in favor of the proposal. They may find the company's current policies and disclosures insufficient. Some investors also may want to use the resolution as a way of expressing their concern for the plight of migrant workers and their exposure to exploitation or for environmental issues that can affect everyone in the supply chain as well as the surrounding

communities. All these investors may reason that because the company has a highly visible consumer brand, it must do more to protect it.

Voting against: Investors who believe the company's human rights policies for its operations and those in its supply chain are sufficient are likely to vote against the resolution. They may be satisfied with the extent of reporting the company currently does and pleased with the level of engagement with employees that the company describes. Others may be content to wait for the company's UNGC report that must address certain human right diligence issues and feel that the requested report is not warranted at this time.

Resources

- 2020 Proxy Statement
<https://www.sec.gov/Archives/edgar/data/100493/000010049319000170/proxystatement-2019.htm>
- 2019 10-K
<https://www.sec.gov/Archives/edgar/data/100493/000010049319000170/proxystatement-2019.htm>
- Code of Conduct
<https://www.tysoncodeofconduct.com/team-members/human-rights>
- Team Member Promise
<https://www.tysonfoods.com/sites/default/files/2018-06/Team%20Member%20Promise.pdf>
- Supplier Code of Conduct
https://s22.q4cdn.com/104708849/files/doc_downloads/2019/11/supplier-code-of-conduct.pdf
- 2018 Sustainability Report
https://www.tysonsustainability.com/sites/default/files/2019-06/TSN-002_06_20_2019_LOW.pdf
- United Nations Global Compact
<https://www.unglobalcompact.org/>