



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
COMPTROLLER

December 15, 2020

Ms. Shelley Parratt, Acting Director
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Mr. Marc P. Berger, Acting Director
Division of Enforcement
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Acting Director Parratt and Acting Director Berger:

I write with respect to the recent annual report (Form 10-K) filed by Tyson Foods, Inc. (“Tyson” or the “Company”), which my office believes contains materially false or misleading information regarding Tyson’s response to the global COVID-19 pandemic (“COVID-19” or “pandemic”) and the resulting risk factors.

As Comptroller of the City of New York, I am the investment advisor to, and custodian and a trustee of, the five New York City Retirement Systems (“NYCRS”). Collectively, the NYCRS have \$229 billion in assets under management, and are substantial long-term Tyson shareholders.

There is some urgency to this request. The filing of Tyson’s annual report suggests that the Company will soon be filing definitive proxy materials in anticipation of the Tyson annual meeting, which is often held in February. Moreover, investors have a compelling need for full and accurate disclosure of the facts and risks regarding Tyson’s COVID-19 exposure because infections are expected to spike in the coming winter months and it is expected that the incoming Biden Administration will quickly follow through on its announced commitment to enforce occupational health and safety regulations.

We applaud the Commission’s Enforcement Division’s December 4, 2020 announcement that, “The Enforcement Division, including the Coronavirus Steering Committee, will continue to scrutinize COVID-related disclosures to ensure that investors receive accurate, timely information, while also giving appropriate credit for prompt and substantial cooperation in investigations.”¹ We agree that all investors are entitled to full, complete, and accurate disclosure regarding each’s company’s pandemic response. We, therefore, call upon your Divisions to investigate Tyson and to take appropriate action to protect investors.

¹ SEC Charges The Cheesecake Factory For Misleading COVID-19 Disclosures, available at <https://www.sec.gov/news/press-release/2020-306>.

The Statements at Issue

Tyson is one of the world's largest food companies with four major business segments: beef, pork, chicken, and prepared foods. It is the top meat and poultry processor in the United States ("US") (based on sales), and it is a "Fortune 100" company, with 139,000 employees, 120,000 of whom are in the United States, according to the Form 10-K cited above.

The materially false or materially misleading statements in the form 10-K are the following:

1. In Part I ("Business") at p. 6, Tyson states:

We maintain a safety culture grounded on the premise of eliminating workplace incidents, risks and hazards. *We* have created and implemented processes to help eliminate safety events by reducing their frequency and severity. We also review and monitor our performance closely. Our goal is to reduce Occupational Safety and Health Administration ("OSHA") recordable incidents by 10% year over year. During fiscal 2020, our recordable incident rate declined 17% compared to fiscal 2019. In response to the global novel coronavirus pandemic ("COVID-19" or "pandemic"), we have implemented and continue to implement safety measures in all our facilities. As an expansion of our We Care workplace safety program and continued efforts to boost the overall health and wellness of our workforce, we are piloting health clinics near our production facilities, giving team members and their families easier access to high-quality healthcare.

2. In Part III ("Management Discussion and Analysis"), at p. 27, Tyson states:

To protect our team members, we have implemented and will continue to implement safety measures recommended by the Centers for Disease Control and Prevention ("CDC") and the Occupational Safety and Health Administration ("OSHA") in our facilities and coordinate with other health officials as appropriate, including, but not limited to, checking the temperature of team members as they enter company facilities, restricting visitor access, increasing efforts to deep clean and sanitize facilities, requiring the use of protective face coverings and making protective face coverings and other protective equipment available to team members and encouraging team members who feel sick to stay at home through relaxed attendance policies and enhanced benefits. We implemented additional ways to promote social distancing in our production facilities by creating additional breakroom space and allowing extra time between shifts to reduce interaction of team members, as well as erecting dividers between workstations or increasing the space between workers on the production floor. For office-based team members, we have encouraged team members capable of working from home to do so, and are prioritizing team member safety as we begin to reintegrate into our offices over time. We paid \$1,000 bonuses to approximately 106,000 domestic frontline team members who support the Company's operations during the pandemic. Additionally, we experienced positive COVID-19 cases and worker absenteeism throughout our production network during the back half of fiscal 2020, which led to some temporary idling of production facilities. We are currently compensating our team members for sick time and COVID-19 related idling or shift cancellations.

These statements paint an inaccurate picture of Tyson's actions. Tyson's representations of what it has "implemented" or "will continue to implement," as well as more specific statements about efforts to

promote social distancing and the use of protective coverings, the most important measures recommended by CDC since almost the beginning of the pandemic to mitigate the spread of COVID 19 among Tysons employees are particularly misleading.

Meatpacking and poultry processing are labor-intensive activities that require close contact among front-line workers. This is not an industry where front-line workers can do their jobs remotely, typing on their laptops and taking part in virtual conference calls. Since the beginning of the year Tyson stock has lagged not only the S&P 500 index plus 13 of the 14 peer companies identified in Tyson's most recent proxy statement. Accordingly, there is a critical need for full and accurate reporting to investors on Tyson's labor, occupational health, and safety practices.

3. In ITEM 1A. ("Risk Factors"), at p.8, Tyson states:

Governmental authorities at the federal, state and local levels may increase or impose new or stricter social distancing directives, stay-at-home restrictions, travel bans, quarantines, workforce and workplace restrictions or other measures related to COVID-19. Such actions could cause us to continue to incur additional costs.

This statement in the Form 10K filed on November 16, 2020, 11 days after the Associated Press named Joe Biden as the winner of the Presidential Election, fails to acknowledge the risks posed by the outcome of the election and the resulting likelihood of stricter enforcement of occupational health and safety laws under the incoming Biden Administration. President-elect Biden has established responding to Covid-19 as his top priority. As part of the "Biden Plan to Combat Coronavirus (Covid-19) and Prepare for Future Global Health Threats," he plans to

Direct the Occupational Safety and Health Administration (OSHA) to keep frontline workers safe by issuing an Emergency Temporary Standard that requires health care facilities to implement comprehensive infectious disease exposure control plans; increasing the number of OSHA investigators to improve oversight; and working closely with state occupational safety and health agencies and state and local governments, and the unions that represent their employees, to ensure comprehensive protections for frontline workers."²

President-elect Biden has previously expressed concerns regarding the dangerous health and safety practices in the meatpacking industry in particular. Speaking at a Yahoo News town hall in May 2020, then candidate Biden said:

Whether it's cattle, whether it's beef, whether it's pigs, whether it's chicken, they're moving down that line faster and faster and faster to increase the profit rate." People are getting sicker. People are getting hurt. The very thing we should be doing now is making sure these people are protected. That they have space 6 feet apart, that they have shields around them, slow the process up. Make sure they have the protective gear, make sure they are being taken care of.³

² <https://joebiden.com/covid-plan/>

³ Wilson, Christopher Biden on meatpacking safety: 'No worker's life is worth me getting a cheaper hamburger' (May 19, 2020), available at <https://www.yahoo.com/lifestyle/joe-biden-meatpacking-worker-safety-chef-jose-andres-001856627.html>

He further emphasized that “no worker’s life is worth me getting a cheaper hamburger. No workers life is worth that. That’s what the hell’s happened here.” Continuing to operate in an unsafe manner similar to Tyson’s conduct in 2020 is unsustainable and could be subject to increased regulatory oversight and fines.

Investors are rightly concerned about the truthfulness of Tyson’s employee health and safety representations given Tyson’s historical track record, as well as during the pandemic.”

Tyson’s Health and Safety Record Pre-COVID-19

Tyson’s health and safety record was extremely problematic even before the pandemic began.

In April 2017 the National Employment Law Project published a report showing that during a 21-month period from 2015-2016, 14,000 companies reported severe injuries to OSHA (*i.e.*, amputations or injuries requiring an overnight hospital stay). Of these, Tyson had the fourth highest number of reports, and in 2016 alone, OSHA fined Tyson more than \$700,000 for health and safety violations.⁴

A 2019 report by Human Rights Watch examined the record in meat and poultry plants over a 44-month period from 2015 to 2018 and found that among the tens of thousands of companies that reported severe injuries to OSHA, Tyson ranked fifth, even though Tyson has a much smaller workforce than the U.S. Postal Service, UPS and Walmart, each of which employs more workers in the United States than all production workers in the animal slaughtering and processing industry combined and more than three times Tyson’s entire workforce, on the low end.⁵

Tyson’s poor record is significant, given that work-related injuries must be recorded on OSHA logs only if a doctor’s visit is required.⁶ It is astonishing that even with company policies that seek to reduce the number of records on OSHA injury logs, Tyson ranks as high as it does on the level of severe injuries. At the February 2020 Tyson annual meeting, a shareholder resolution urging greater transparency on Tyson’s human rights record was supported by 37% of the non-insider, Class A shares voted at that meeting.

The Pandemic Begins

In March and early April 2020, Tyson did nothing while every industry in the US was making changes to keep workers safe and while cities and states were closing businesses to keep the public six feet apart. Tyson took action only after employee advocates alerted the public and the media how COVID-19 was

⁴ OSHA Severe Injury Data from 29 States, available at <https://www.nelp.org/publication/osha-severe-injury-data-from-29-states/>.

⁵ Human Rights Watch, “When We’re Dead and Buried, Our Bones Will Keep Hurting,” Workers’ Rights Under Threat in US Meat and Poultry Plants, available at <https://www.hrw.org/report/2019/09/04/when-were-dead-and-buried-our-bones-will-keep-hurting/workers-rights-under-threat>.

⁶ <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.7>

spreading through the industry like wildfire,⁷ and after Tyson had to close several plants because it no longer had available workers.⁸

Unfortunately, the steps Tyson eventually took to protect employees were grudging and minimal, such as letting workers use bandanas or sleep masks, which function poorly as protective devices.⁹ Tyson never moved workers six feet apart throughout the plant, nor did it slow the assembly line so that workers could be socially distanced.¹⁰ The Company did hang plastic sheeting between workers as they continued to work elbow to elbow, even though the Centers for Disease Control and Prevention (“CDC”) told the industry that plastic sheeting does not work unless workers are at least six feet apart.¹¹

As COVID-19 was infecting its employees, Tyson reportedly misled its workforce in its largest pork plant by telling them that “everything is fine.” Eventually over 1000 workers in that plant tested positive, leading to worker deaths, hospitalizations, and plant closure.¹²

Tyson’s sick leave policy was similarly limited. As COVID-19 swept through its plants, in a nod to the CDC guidance that sick workers must stay home, Tyson paused its policy of penalizing workers who

⁷ E.g., Retail, Wholesale and Department Store Union, Poultry Industry’s Delayed COVID-19 Response is Killing America’s Essential Workers – Protect Them Now (Apr. 7, 2020), available at https://www.rwdsu.info/poultry_industry_s_delayed_covid_19_response_is_killing_america_s_essential_workers_protect_them_now

⁸ E.g., CNN, Workers, officials say too little too late after Tyson closes Waterloo pork plant: 'All they talked about was production' (Apr. 22, 2020), available at <https://www.cnn.com/2020/04/22/us/tyson-waterloo-iowa-plant-employees-coronavirus/index.html>; Food Manufacturing, Outbreak at Iowa Tyson Plant Was Far Worse Than State Reported (July 22, 2020), available at <https://www.foodmanufacturing.com/safety/news/21140949/outbreak-at-iowa-tyson-plant-was-far-worse-than-state-reported>;

⁹ These were reported in a number of media stories, e.g., The Washington Post, As they rushed to increase the U.S. meat supply, big processors saw plants become COVID-19 hot spots (Apr. 25, 2020), available at <https://www.washingtonpost.com/business/2020/04/25/meat-workers-safety-jbs-smithfield-tyson/> and Arkansas Times, Arkansas poultry workers amid the coronavirus: ‘We’re not essential, we’re expendable’ (May 11, 2020), available at <https://arktimes.com/arkansas-blog/2020/05/11/arkansas-poultry-workers-amid-the-coronavirus-were-not-essential-were-expendable>

¹⁰ The New York Times, We’re feeding America, but we’re sacrificing ourselves (June 5, 2020), available at <https://www.nytimes.com/2020/06/15/opinion/coronavirus-tyson-poultry.html>; Arkansas Times, Arkansas poultry workers amid the coronavirus: ‘We’re not essential, we’re expendable’ (May 11, 2020), available at <https://arktimes.com/arkansas-blog/2020/05/11/arkansas-poultry-workers-amid-the-coronavirus-were-not-essential-were-expendable>; KATV, Tyson Foods plant worker speaks out about work conditions, health concerns during COVID-19 (July 25, 2020) available at <https://katv.com/news/local/tyson-foods-plant-worker-speaks-out-about-work-condition-health-concerns-during-covid-19>

¹¹ CDC Memorandum to Christopher Gaddis, JBS on April 20, 2020: *Strategies to Reduce COVID 19 Transmission at the JBS Greeley Beef Plant*; see also https://covid.sd.gov/docs/smithfield_recs.pdf

¹² Bloomberg, *Tyson Accused of Misleading Interpreters at Virus-Hit Plant* (Nov...30, 2020), available at <https://www.bloomberg.com/news/articles/2020-11-30/tyson-accused-of-misleading-interpreters-at-virus-hit-iowa-plant>

called in sick for a few months. However, it appears that Tyson then proceeded to undermine that policy. In April, employees were incentivized to continue working via a \$500 "thank you" bonus promised to workers who showed up for every scheduled shift over a three month period.¹³ Then in June, Tyson reinstated its policy penalizing workers who take sick leave to avoid contact with any exposed workers.¹⁴

Other steps were similarly limited. Tyson only reluctantly built some outdoor break rooms in a few plants to prevent workers from crowding into break rooms. Workers had to continue crowding into bathrooms, and many never got time to even visit a bathroom once a day.¹⁵

Tyson's tardy and limited reaction took a serious human toll. A report by the non-profit Food Environment Reporting Network has tracked COVID-19 outbreak in the meatpacking industry (as well as the food processing and farm sectors) and reports that as of December 3, 2020 Tyson has the highest number of COVID-19 cases of any company in the meatpacking industry, more than three times as many cases as the next company (11,087 vs. 3,026 cases at JBS, the nation's largest meatpacking company). Tyson reported twice as many deaths as any other meatpacking company.¹⁶ Recent research data demonstrate that Tyson and other companies in the meatpacking industry are uniquely vulnerable to COVID-19 outbreaks. A November 2020 article published under the aegis of the National Academy of Sciences estimated that livestock plants were associated with 236,000 to 310,000 COVID-19 cases (6 to 8% of total) and 4,300 to 5,200 deaths (3 to 4% of total) as of July 21, 2020.¹⁷

¹³ The Counter, *Families of three workers who died of Covid-19 sue Tyson for allegedly lying about outbreak*, (June 29, 2020), available at <https://thecounter.org/tyson-meatpacking-workers-covid-19-lawsuit-waterloo/>; *Tyson Foods Doubles Bonuses; Increases Health Benefits and Protections for Frontline Workers*, Tyson Foods (April 29, 2020), available at <https://www.tysonfoods.com/news/news-releases/2020/4/tyson-foods-doubles-bonuses-increases-health-benefits-and-protections>

¹⁴ Detroit News, *Tyson reinstates policy that penalizes absentee workers* (June 25, 2020), available at <https://www.detroitnews.com/story/business/2020/06/03/tyson-reinstates-policy-penalizes-absentee-workers/111902502/>

¹⁵ Op-ed: *As Tyson Claims the Food Supply is Breaking, Its Workers Continue to Suffer*, Civil Eats (Apr. 30, 2020), available at <https://civileats.com/2020/04/30/as-tyson-claims-the-food-supply-is-breaking-its-workers-continue-to-suffer/>; *Arkansas poultry plants hit hard by COVID-19. Hispanic workers are facing the worst of it*, USA Today (Sep. 3, 2020), available at <https://www.usatoday.com/story/news/investigations/2020/08/31/arkansas-poultry-plants-hit-hard-covid-hispanics-bear-brunt/3433543001/>

¹⁶ Food and Environment Reporting Network, *Mapping Covid-19 outbreaks in the food system*, available at <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/> (accessed and up to date as of December 3, 2020).

¹⁷ Taylor et al., *Livestock plants and COVID-19 transmission*, available at <https://www.pnas.org/content/early/2020/11/25/2010115117>.

Tyson's seeming inability to get a handle on this situation has materially impacted its business operations and could have further economic repercussions going forward. In June 2020, China suspended imports from a Tyson chicken plant in Springdale, based on viral outbreaks at the plant.¹⁸

Tyson's Disclosures Fail to Detail Employee Health and Safety Information

Tyson's filed reports acknowledge the problems discussed here in only a cursory fashion. Although the Form 10-K mentions the pandemic at various points, on employee health and safety, Tyson says only:

The major challenge we face is the availability of team members to operate our production facilities as our production facilities are experiencing varying levels of absenteeism.

This sentence – identifying “*the* major challenge” facing Tyson – appears at p. 31 of the second quarter Form 10-Q (filed May 4, 2020), is repeated at p. 30 of the third quarter Form 10-Q (filed Aug. 3, 2020), and is again repeated at p. 28 of the Form 10-K (filed Nov. 16, 2020) (emphasis added).

This repetition is troubling because it undercuts any notion that perhaps the problems identified in Tyson's response to the pandemic were short-term or quickly remedied. To be sure, Tyson and many other companies had to struggle to deal with changed circumstances in the first few weeks of lockdowns. It is inconceivable that it has now been nine months since the first round of such lockdowns, yet worker absenteeism remains “the” major challenge facing the Company. Public health officials have warned about significant risks in the coming winter months. If there is, in fact, another spike in COVID-19 outbreaks, will Tyson's be equipped to handle the situation? Investors have not been appropriately apprised of Tyson's response to these potential issues.

Tyson's health and safety practices have had a significant dollars-and-cents impact. Tyson's Form 10-K describes the cost of COVID-19 as follows (at p. 29):

During fiscal 2020, we incurred direct incremental expenses related to COVID-19 totaling approximately \$540 million, of which approximately \$500 million and \$40 million were recorded in Cost of Sales and Selling, General and Administrative, respectively, in our Consolidated Statements of Income. These COVID-19 direct incremental expenses primarily included team member costs associated with worker health and availability and production facility downtime, including direct costs for personal protection equipment, production facility sanitization, COVID-19 testing, donations, product downgrades, rendered product, certain professional fees and \$114 million of thank you bonuses to frontline team members, which was partially offset by the CARES Act credits. Due to the nature of these direct incremental COVID-19 expenses, our segments were primarily impacted based on their relative number of team members, absenteeism and the degree of production disruptions they have experienced,

¹⁸ Arkansas Democrat-Gazette, State plant's poultry halted by China (Sept. 17, 2020), available at <https://www.arkansasonline.com/news/2020/sep/17/state-plants-poultry-halted-by-china/>

and thus, our Beef and Chicken segments incurred a greater proportion of the total costs. These direct incremental COVID-19 related costs exclude market related impacts that may have been driven in part by COVID-19, including such items as derivatives, deferred compensation investments and other market driven impacts to margin and demand. Other indirect costs associated with COVID-19 are not reflected in these amounts, including costs associated with raw materials, distribution and transportation, plant underutilization and reconfiguration, premiums paid to cattle producers, and pricing discounts.

Significantly, the first direct cost listed in this \$540 million item is “team member costs associated with worker health and availability and production facility downtime.” This is a significant amount, but it is difficult to determine from this bare description how effective the Company’s current program may be in preventing additional costs.

Conclusion

There are serious questions about the sustainability of Tyson’s operations. As detailed above, Tyson had a problematic occupational health and safety record long before the COVID-19 pandemic. That poor record and weak safety practices caught Tyson unable to respond quickly and effectively as the virus spread through its plants. Put differently, Tyson’s economic success and sustainability are dependent on a healthy workforce.

Given Tyson’s history, investors require more than bland assurances that the Company “has implemented” and “will continue to implement” measures to improve workplace safety. Tyson’s Form 10-K is misleading and inaccurate to the extent that it fails to provide more details information to assure investors that the problems reported earlier this year are a thing of the past

In light of the above, we strongly urge your Divisions to investigate Tyson and to take appropriate action to protect investors. Thank you for your prompt consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer". The signature is fluid and cursive, with the first name "Scott" being the most prominent.

Scott M. Stringer
New York City Comptroller