



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-0402

DC



04007255

January 29, 2004

G. Penn Holsenbeck
Vice President, Associate General Counsel
and Corporate Secretary
Altria Group, Inc.
120 Park Avenue
New York, NY 10017

Act: 1934
Section: _____
Rule: 14A-8
Public _____
Availability: 1-29-2004

Re: Altria Group, Inc.
Incoming letter dated December 23, 2003

Dear Mr. Holsenbeck:

This is in response to your letters dated December 23, 2003 and January 29, 2004 concerning the shareholder proposal submitted to Altria by Nick Rossi. We also have received letters on the proponent's behalf dated December 27, 2003 and January 16, 2004. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Martin P. Dunn

Martin P. Dunn
Deputy Director

PROCESSED

FEB 11 2004

**THOMSON
FINANCIAL**

Enclosures

cc: John Chevedden
2215 Nelson Avenue, No. 205
Redondo Beach, CA 90278

764180



Altria

G. Penn Holsenbeck
Vice President, Associate General
Counsel and Corporate Secretary

Altria Group, Inc.
120 Park Avenue, New York, NY 10017

917 663-4000
917 663-2256 direct
917 663-5372 fax

December 23, 2003

Paula Dubberly
Chief Counsel
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

RECEIVED
2003 DEC 23 PM 2:34
OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

Re: Shareholder Proposal Submitted by Nick Rossi

Dear Ms. Dubberly:

Altria Group, Inc. (the "Company") has received a shareholder proposal (the "Proposal"), submitted by Nick Rossi, the beneficial owner of 500 shares of the Company's common stock (the "Proponent"). The cover letter states that John Chevedden is representing the Proponent with respect to the Proposal and is the Proponent's proxy for all purposes in connection with the Proposal. A copy of the Proposal is attached as Exhibit A.

By copy of this letter, the Company notifies the Proponent of its intention to omit the Proposal from the Company's proxy statement and form of proxy for the 2004 annual meeting of shareholders. This letter constitutes the Company's statement of the reasons it deems the omission to be proper.

On behalf of the Company and in accordance with Securities Exchange Act Rule 14a-8, we respectfully request that the Staff of Division of Corporation Finance (the "Staff") not recommend any enforcement action if the Proposal is omitted for the reasons set forth below. We have been advised by the Company as to the factual matters in this letter. The annual meeting is scheduled for April 29, 2004. Pursuant to paragraph (j) of Rule 14a-8, enclosed are six copies of this letter, the Proposal and the supporting statement.

The Proposal

The resolution portion of the Proposal reads as follows: "Resolved: Shareholders request that our directors increase shareholder voting rights and submit the adoption, maintenance or extension of any poison pill to a shareholder vote. Also once this proposal is adopted, dilution or removal of this proposal is requested to be submitted to a shareholder vote as a separate ballot-

Ms. Paula Dubberly
December 23, 2003
Page 2

item at the earliest possible shareholder election. Directors have discretion to set the earliest election date and in responding to shareholder votes.”

Grounds for Omission

The Proposal may be omitted from the Company’s 2004 proxy materials pursuant to Rule 14a-8(i)(10) because it has been substantially implemented and is therefore moot.

The Proponent submitted a similar proposal last year regarding “poison pills” (stockholder rights plans) despite the fact that the Board had already voted to redeem the Company’s rights plan in 1995. The resolution portion of last year’s proposal was as follows: “This is to recommend that the Board of Directors redeem any poison pill previously issued (if applicable) and not adopt or extend any poison pill unless such adoption or extension has been submitted to a shareholder vote” (“2003 Proposal”). The Board of Directors of the Company, upon a recommendation by the Board’s Nominating and Corporate Governance Committee, voted unanimously to support the 2003 Proposal and included it in the 2003 proxy along with a statement by the Company recommending a vote in favor of the 2003 Proposal. The Company’s stockholders approved the 2003 Proposal at the 2003 Annual Meeting of Stockholders, a result the Company reported in its quarterly report on Form 10-Q for the quarter ended March 31, 2003.

The only remaining step the Company can take to address the Proposal is for the Board of Directors to adopt a formal policy stating the Company’s position with respect to poison pills. As the Company’s Corporate Secretary, I have had several discussions on this issue with the Board of Directors and fully anticipate that on January 28, 2004, prior to this year’s Annual Meeting, upon a recommendation by the Company’s Nominating and Corporate Governance Committee, the Board of Directors will adopt the following resolution: “The Board of Directors will not adopt, maintain or extend a stockholder rights plan (“poison pill”) without submitting such adoption, maintenance or extension to a stockholder vote.” A certified copy of the Board resolution will be provided to the Staff immediately following its adoption.

Rule 14a-8(i)(10) permits the exclusion of a proposal that has already been substantially implemented. A company has substantially implemented a stockholder proposal if the company’s relevant policies, practices and procedures “compare favorably with the guidelines of the proposal.” Texaco, Inc. (March 28, 1991). The Staff has permitted the exclusion of similar poison pill proposals under Rule 14a-8(i)(10) where the registrant represented that it did not have a current rights plan in place and its board adopted a resolution or policy similar to the Board resolution proposed above. See AutoNation, Inc. (March 5, 2003); Bank of America Corporation (February 18, 2003); CitiGroup Inc. (February 6, 2003). The steps taken by the Company -- the redemption in 1995 of its stockholder rights plan, the Board’s decision to include the 2003 Proposal in its proxy that year and its recommendation to stockholders to vote in favor of the 2003 Proposal, the approval of the 2003 Proposal by the stockholders and the representation by the Company that the Board will adopt the above resolution is entirely responsive to the action requested by the Proposal -- rendering the Proposal moot.

Ms. Paula Dubberly
December 23, 2003
Page 3

Conclusion

Based on the foregoing, the Proposal may be omitted from the Company's proxy materials. Should the Division have any questions or comments regarding this filing, please contact the undersigned at (917) 663-2256.

Thank you for your consideration in these matters.

Sincerely yours,

A handwritten signature in black ink, appearing to read "G. Penn Holsenbeck". The signature is written in a cursive style with a large initial "G" and a long horizontal stroke.

Enclosures

cc: Jerry Whitson
John Chevedden, on behalf of Nick Rossi

MO

Nick Ross,

P.O. Box 249
Boonville, CA 95415

Mr. Louis Camilleri
Chairman
Altria Group Inc. (MO)
120 Park Avenue
New York, NY 10017
Phone: (917) 663-5000
Fax: (917) 878-2167

Dear Mr. Camilleri,

This Rule 14a-8 proposal is respectfully submitted for the next annual shareholder meeting. This proposal is submitted in support of the long-term performance of our company. Rule 14a-8 requirements are intended to be met including ownership of the required stock value until after the date of the applicable shareholder meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is the proxy for Mr. John Chevedden and/or his designee to act on my behalf in shareholder matters, including this shareholder proposal for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communication to Mr. Chevedden at:

2215 Nelson Ave., No. 205
Redondo Beach, CA 90278
PH: 310-371-7872

Your consideration and the consideration of the Board of Directors is appreciated.

Sincerely,

Nick Ross

Oct. 7-23

cc: G. Penn Holsenbeck
Corporate Secretary
PH: 917-663-2256
FX: 917/663-5372

3 – Shareholder Input on a Poison Pill

RESOLVED: Shareholders request that our Directors increase shareholder voting rights and submit the adoption, maintenance or extension of any poison pill to a shareholder vote. Also once this proposal is adopted, dilution or removal of this proposal is requested to be submitted to a shareholder vote as a separate ballot-item at the earliest possible shareholder election. Directors have discretion to set the earliest election date and in responding to shareholder votes.

This same essential topic won an impressive 98% shareholder approval at our 2003 annual meeting. Therefore this is to request that the Chairman of our Nominating Committee or designee initiate and complete action to make this complete proposal a formal policy or bylaw at our company.

I do not see how our Directors could object to this proposal because it gives our Directors the flexibility to overrule our shareholder vote if they have a serious reason.

Nick Rossi, P.O. Box 249, Boonville, Calif. 95415 submitted this proposal.

Poison Pill Negative

The key negative of poison pills is that pills can preserve management deadwood instead of protecting investors.

Source: *Morningstar.com*

The Potential of a Tender Offer Can Motivate Our Directors

Hectoring directors to act more independently is a poor substitute for the bracing possibility that shareholders could sell the company out from under its present management.

Source: *Wall Street Journal*, Feb. 24, 2003

Diluted Stock

An anti-democratic management scheme to flood the market with diluted stock is not a reason that a tender offer for our stock should fail.

Source: *The Motley Fool*

Like a Dictator

Poison pills are like a dictator who says, "Give up more of your freedom and I'll take care of you.

"Performance is the greatest defense against getting taken over. Ultimately if you perform well you remain independent, because your stock price stays up."

T.J. Dermot Dunphy, CEO of Sealed Air (NYSE) for 25 years

I believe our Directors could make a less than complete response to this proposal – hoping to gain points in the new corporate governance rating systems. A reversible response, which could still allow our directors to give us a poison pill with not even a subsequent vote, would not substitute for this proposal.

Council of Institutional Investors Recommendation

The Council of Institutional Investors www.cii.org, whose members have \$2 trillion invested, called for shareholder approval of poison pills.

Shareholder Input on a Poison Pill
Yes on 3

Notes:

The above format is the format submitted and intended for publication.

Please advise if there is any typographical question.

The company is requested to assign a proposal number (represented by "3" above) based on the chronological order in which proposals are submitted. The requested designation of "3" or higher number allows for ratification of auditors to be item 2.

References:

The Motley Fool, June 13, 1997

Moringstar.com, Aug. 15, 2003

Mr. Dunphy's statements are from The Wall Street Journal, April 28, 1999.

Council of Institutional Investors, Corporate Governance Policies, March 25, 2002

Please advise within 14 days if the company requests help to locate these or other references.

JOHN CHEVEDDEN

2215 Nelson Avenue, No. 205
Redondo Beach, CA 90278

310-371-7872

6 Copies
7th copy for date-stamp return

December 27, 2003
Via Airbill

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Mail Stop 0402
450 Fifth Street, NW
Washington, DC 20549

2003 DEC 29 PM 5:09
CORPORATION FINANCE
FREDERICK

Altria Group Inc. (MO)
Response to No Action Request
Nick Rossi

Ladies and Gentlemen:

The number preceding the brackets below correspond to the pages of the company letter.

2] The yet-to-be company policy omits the key sentence of the shareholder proposal:
“Also once this proposal is adopted, dilution or removal of this proposal is requested to be submitted to a shareholder vote as a separate ballot-item at the earliest possible shareholder election.”

The company failed to note that the AutoNation proposal did not have the text “Also once this proposal is adopted, dilution or removal of this proposal is requested to be submitted to a shareholder vote as a separate ballot-item at the earliest possible shareholder election.”

Without this key sentence the proposal is subject to manipulation at the expense of shareholders. The policy can be removed at any time and removed without a shareholder vote at any time. The Board could simply remove the policy at any time the board felt uncomfortable without a poison pill.

The yet-to-be company policy is purported to state: “The Board of Directors will not adopt, maintain or extend a stockholder rights plan (“poison pill”) without submitting such adoption, maintenance or extension to a stockholder vote.” However the company is not clear on whether this will be the entire proposal or whether exceptions and conditions will be added. The burden of proof is on the company.

I do not believe the company has met its burden of proof according to rule 14a-8.

For the above reasons this is to respectfully request non-concurrence with the company no action request on each point.

Sincerely,


John Chevedden

cc: Nick Rossi
Louis Camilleri

3 – Shareholder Input on a Poison Pill

RESOLVED: Shareholders request that our Directors increase shareholder voting rights and submit the adoption, maintenance or extension of any poison pill to a shareholder vote. Also once this proposal is adopted, dilution or removal of this proposal is requested to be submitted to a shareholder vote as a separate ballot-item at the earliest possible shareholder election. Directors have discretion to set the earliest election date and in responding to shareholder votes.

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I do not see how our Directors could object to this proposal because it gives our Directors the flexibility to ~~override~~^{overrule} our shareholder vote if they have a serious reason.

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The Council of Institutional Investors www.cii.org, whose members have \$2 trillion invested, called for shareholder approval of poison pills.

Shareholder Input on a Poison Pill Yes on 3

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Council of Institutional Investors, Corporate Governance Policies, March 25, 2002

Please advise within 14 days if the company requests help to locate these or other references.

JOHN CHEVEDDEN

2215 Nelson Avenue, No. 205
Redondo Beach, CA 90278

310-371-7872

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December 27, 2003
Via Airbill

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Mail Stop 0402
450 Fifth Street, NW
Washington, DC 20549

Altria Group Inc. (MO)
Response to No Action Request
Nick Rossi

RECEIVED
2004 JAN 21 AM 10:36
CORPORATION FINANCE
SECURITIES AND EXCHANGE COMMISSION

Ladies and Gentlemen:

This attachment to the above letterhead is forwarded on **January 16, 2004**.

Sincerely,


John Chevedden

cc: Nick Rossi
Louis Camilleri

JOHN CHEVEDDEN

2215 Nelson Avenue, No. 205
Redondo Beach, CA 90278

310-371-7872

6 Copies
7th copy for date-stamp return

January 16, 2004
Via Airbill

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Mail Stop 0402
450 Fifth Street, NW
Washington, DC 20549

**Poison Pill Proposals and
Substantially Implemented Criteria
Separate Ballot Item Supplement**

Ladies and Gentlemen:

Separate Ballot Item

The company has made no claim that its policy calls for a vote as a separate ballot item. The company has cited no precedent where a called-for vote was determined substantially implemented by a policy allowing a vote as only a small part of a larger bundle of provisions.

The 2003 company policy can also make the "voice" meaningless by bundling the vote on the pill with 5 other items as an all-or-nothing vote proposition. And one of the 5 items could be a big-carrot item.

There is no point-by-point analysis particularly focused on the separate ballot item provision.

Sincerely,


John Chevedden

JOHN CHEVEDDEN

2215 Nelson Avenue, No. 205
Redondo Beach, CA 90278

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January 16, 2004
Via Airbill

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Mail Stop 0402
450 Fifth Street, NW
Washington, DC 20549

**Poison Pill Proposals and
Substantially Implemented Criteria**

Ladies and Gentlemen:

The following is additional material which applies to a poison pill proposal for a two-point single-concept policy calling for:

- 1-A shareholder vote policy regarding a poison pill
- Plus
- 2-A shareholder vote if the policy is repealed after adoption.

This letter addresses the substantially implemented issue.

The two-point policy calls for a vote at each of the two points. There is no substantial implementation if the company sets up a condition:

- 1-Where the company has complete control
- 2-And the company can avoid a vote at both point-one and point-two

SEC Release No. 34-20091 (attached) said "The Commission proposed an interpretative change to permit the omission of proposals that have been 'substantially implemented by the issuer.'" The key phrase is "substantially implemented by the issuer."

The company is in the inscrutable position of claiming that the first half of the two-point policy compares favorably with the whole policy. It is like half the baby is as good as the whole baby. Nordstrom Inc., claimed a favorable 12-for-12 match in Nordstrom Inc., 1995 SEC No-Act. LEXIS 226 (Feb. 8, 1995). Yet the company now claims that one-for-two is as favorable 12-for-12 when addressing the poison pill topic.

In Nordstrom Inc., the staff allowed a company to exclude a proposal where the company demonstrated that it already had adopted policies or taken actions to address *each* of 12 points of the proposal.

In Nordstrom a 12-for-12 match at a detail level of the company was apparently established in order to obtain concurrence.

At the highest level of the company the company claims a one-for-two match compares favorably. A key principle of rule 14a-8 and corporate governance is that shareholder voices are intended to be heard more at the macro level of the company because the managers are responsible for the details. Thus if 12-for-12 is the standard for detailed items in Nordstrom, the standard should at least approach 100% at a much **higher** level of a company – not 50%.

For shareholders the greater importance of macro issues is supported by text in rule 14a-8:

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

7. Management functions: If the proposal deals with a matter relating to the company's ordinary business operations.

In Nordstrom Inc., the company argued:

A comparison of the Proponent's "code of conduct" and the Guidelines reveals that the Guidelines include each form of prohibited supplier conduct listed in the Proposal and include the means to verify compliance as requested in the Proposal. The Proponent, for example, requests that under the code of conduct the Company will not do business with suppliers which:

- (1) utilize forced or prison labor;
- (2) employ children under compulsory school age or legal working age;
- (3) fail to follow prevailing practice and local laws regarding wages and hours;
- (4) fail to maintain a safe and healthy working environment; or
- (5) contribute to local environmental degradation.

In addition, the Proponent requests that the Company verify its suppliers' compliance through certification, regular inspections and/or other monitoring processes.

Under the Guidelines, the Company's vendors are expected to refrain from:

- (1) utilizing prison or forced labor;
- (2) utilizing child labor;
- (3) failing to offer wages, hours and overtime consistent with prevailing local industry standards;
- (4) failing to provide safe and healthy work environments for their workers;
- (5) failing to demonstrate a commitment to the environment;
- (6) failing to comply with all applicable legal requirements; or
- (7) discriminating.

In Texaco Inc., 2001 SEC No-Act. LEXIS 136 (Jan. 30, 2001) a shareholder proposal, which urged this company's board of directors to adopt, implement and enforce a workplace code of conduct based upon the International Labor Organization's conventions on workplace human rights, including the five principles set forth in the proposal, may not be omitted from the company's proxy material under rule 14a-8(i)(10).

The company argued that the proposal had been substantially implemented because the company already had endorsed the Sullivan Principles. The proponent noted that the Sullivan Principles did not cover all of the subjects addressed by the International Labor Organization's Principles nor were the Sullivan Principles co-extensive with them.

In PPG Industries, Inc., 2001 SEC No-Act. LEXIS 124 (Jan. 22, 2001) the company was required to include a proposal asking the board to adopt the International Labor Organization's conventions on workplace human rights, including the five principles set forth in the proposal. The company argued that it had substantially implemented the proposal because it had adopted various policies, such as its EEO and Global Code of Ethics policies, or was subject to certain laws, including the National Labor Relations Act and the ILO's Convention 105 regarding forced labor which had been ratified by the U.S., relating to concerns raised in the proposal. The proponent countered by pointing out precisely how the measures cited by the company fell short of substantial implementation. The proponent also argued that the heart of the proposal was to create a single document that explicitly and in one place committed the company to the enumerated principles.

The second part of this poison pill proposal emphasizes the importance of shareholder opportunity to vote. This is reinforced by company response statements to shareholder proposals which repeatedly state that companies carefully evaluate precatory shareholder votes.

A vote is consistent with fiduciary duty

A vote gives the board greater incentive to meet its fiduciary duty

For instance The Boeing Company 2003 response statement to the poison pill shareholder proposal specifically noted the 50% vote the proposal topic received at the company 2003 annual meeting and added, "... the Board of Directors and its Governance and Nominating Committee have carefully considered and evaluated the proposal, after being briefed on the proposals' historical, policy, economic and legal implications." The Boeing Company seems to have arranged a special briefing for the Board as a result of the shareholder vote.

It appears from The Boeing Company 2003 response statement that the non-binding shareholder vote gave the board added incentive to consider its position on the proposal topic. Giving the board added incentive to consider the merits of a key governance topic gives the board greater incentive to meet its fiduciary duty to shareholders under state law.

The two-point policy calls for a vote at each of the two points. If the company sets up a condition where it can avoid a vote at either point then there is no substantial implementation.

The board can take a false sense of security in knowing it can remove the policy at any time without any shareholder vote at any time. This false sense of security can impact shareholder value. It can also lead to management complacency and to the board marginally meeting fiduciary duty or less.

The company has not provided a precedent where a proposal which called for a shareholder vote under two circumstances was substantially implemented by a policy that enabled the company to avoid both such votes.

Hewlett Packard (December 24, 2003) essentially said that half the baby was as good as the whole baby on poison pills and shareholder votes. One possible interpretation of Hewlett Packard is that it gives a company the power to repeal a poison pill policy as soon as it receives a no action letter based on adopting that very policy.

The company has not claimed that the company would lack the power in this instance to take the Office of Chief Council Response letter, issued on the substantially implemented issue, on day-one and on day-two repeal the policy which was the linchpin to obtaining the day-one Response letter.

The key point of this poison pill proposal is a shareholder vote. It does not seem credible that a policy is substantially implemented when the company has the power to take a December 24, 2003 Response letter and on December 26, 2003 repeal the policy that was the linchpin to the December 24, 2003 Response. Furthermore there would be no shareholder vote before or after.

The company has not provided a precedent where a Staff Response of substantial implementation allowed the repeal of the policy critical to the staff Response. Thus the repeal could be timed to the very minute after the fax arrival of the Staff Response letter. The company has provided no argument rebutting the ability of the board to pass a resolution now that repeals the policy once the Response letter comes through on the company fax machine.

Pfizer Inc. (PFE) in 2003 had the transparency to adopt this same half-baby policy with more detail to reveal the limitations (from a shareholder viewpoint) of such a policy:

“This policy may be revised or repealed without prior public notice and the Board may thereafter determine to act on its own to adopt a poison pill”

The enclosed Dow Chemical Company Adoption of Stockholder Rights (Poison Pill) Policy, adopted February 13, 2003, prior to the company policy, added two key provisions beyond what one company called its “as far as it can go” company policy:

- 1) Any stockholder rights plan so adopted by the Board without prior stockholder approval will be submitted to a non-binding vote of stockholders as a separate ballot item at the next subsequent meeting of Dow stockholders.
- 2) The Board shall not repeal this Policy without first submitting it to a non-binding vote of Dow shareholders.

The company has not argued that the Dow Policy is contrary to state law.

The company has not submitted an argument stating that item 1) and 2) above are inconsistent with a fiduciary out.

CII Alerts, Council Research Service, November 13, 2003 establishes concern regarding meaningless poison pill policies. It stated:

SO FAR, WE’VE TRACKED 62 majority votes on poison pill proposals submitted in 2003. Only seven have adopted policies terminating their pills or amending their policies.

3M, Hewlett-Packard and JP Morgan Chase, which also don’t have poison pills, responded to the majority votes by approving policies to get shareholder approval before adopting any poison pills. But their policies include a huge loophole giving

their boards the right to adopt pills without prior shareholder approval if, as fiduciaries, they decide a pill would be in the best interests of shareholders.
These clauses effectively render the policies meaningless.

The following are precedents where substantially implement was not concurred with.

Alaska Air Group, Inc. (March 31, 2003)

A shareholder proposal, which recommends that this company's board of directors redeem any poison pill previously issued and not adopt or extend any poison pill unless such adoption or extension has been submitted to a shareholder vote, may not be omitted under rule 14a-8(i)(10).

AMR Corp. (April 4, 2003)

A shareholder proposal, which requests that this company annually submit to a shareholder vote any poison pill adopted since the company's previous annual meeting and/or currently in place, may not be omitted from the company's proxy material under rule 14a-8(i)(10).

3M Co. (Jan. 28, 2003)

A shareholder proposal, which requests that this company's board of directors "redeem any poison pill previously issued (if applicable) and not adopt or extend any poison pill unless such adoption or extension has been submitted to a shareholder vote," may not be omitted from the company's proxy material under rule 14a-8(i)(10).

Sabre Holdings Corp. (March 20, 2003)

A shareholder proposal, which requests that this company's board of directors redeem any poison pill previously issued and not adopt or extend any poison pill unless such adoption or extension has been submitted to a shareholder vote, may not be omitted from the company's proxy material under rule 14a-8(i)(10).

UST Inc. (Dec. 26, 2003)

A shareholder proposal, which requests that this company's board of directors "redeem any poison pill previously issued (if applicable) and not adopt or extend any poison pill unless such adoption or extension has been submitted to a shareholder vote," may not be omitted from the company's proxy material under rule 14a-8(i)(10).

Fiduciary Out

A non-binding vote on the second part of this two-part proposal regarding the removal of the proposal once adopted is consistent with a fiduciary out.

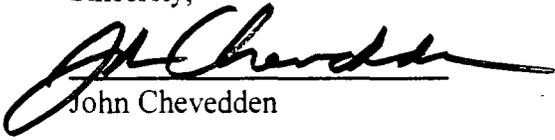
Not all proposals with a fiduciary out are substantially identical

Not all poison pill proposals with a fiduciary out are substantially identical. Both a two-point policy and a one-point policy can have a fiduciary out. The fiduciary out of the two-point policy does not force it to be substantially implemented by a one-point policy.

I do not believe that the company has met its burden of proof obligation according to rule 14a-8 on substantially implement in regard to a half-baby poison pill policy.

For the above reasons this is to respectfully request non-concurrence with the company no action requests on this issue in particular.

Sincerely,

A handwritten signature in black ink, appearing to read "John Chevedden". The signature is fluid and cursive, with a long horizontal stroke extending to the right. It is positioned above the printed name.

John Chevedden

D. Rule 14a-8(b)(2)—*Identification of Proponent*

The Commission is adopting Rule 14a-8(b)(2) as proposed. Under the rule, the Commission will no longer provide the name and address of a proponent who is not identified in the proxy statement. Such information will have to be obtained from the issuer.

In response to a request made by a number of commentators, the Commission wishes to make it clear that an issuer is not required under the rule to include the name and address of the proponent in its proxy materials, but may do so at its sole discretion. Where the issuer chooses to exclude such information, it is required only to indicate that it will provide such information on request.

E. *Substantive Grounds for Omission of Security Holder Proposals*

1. Rule 14a-8(c)(1) [17 CFR 240.14a-8(c)(1)]—*Not a Proper Subject for Action by Security Holders Under State Law*

While no change was proposed to Rule 14a-8(c)(1), a number of commentators argued that the Note to paragraph (c)(1) should be deleted, since the Note elevated form over substance in considering whether a proposal would be a proper subject for action by security holders applicable state law. The Note was first added to Rule 14a-8 in 1976⁶ to explain the staff's interpretive approach in considering the application of paragraph (c)(1). The interpretation was based on the experience of the staff that generally under state corporation law a request for the board of directors to consider certain actions was deemed proper for shareholder action as it did not infringe upon the directors' statutory authority to manage the corporation.

To reiterate what the Commission said in 1976:

"[I]t is the Commission's understanding that the laws of most states do not, for the most part, explicitly indicate those matters which are proper for security holders to act upon but instead provide only that 'the business and affairs of every corporation organized under this law shall be managed by its board of directors,' or words to that effect. Under such a statute, the board may be considered to have exclusive discretion in corporate matters.

⁶ Release 34-12999. (Nov. 22, 1976) [41 FR

absent a specific provision to the contrary in the statute itself, or the corporation's charter or by-laws. Accordingly, proposals by security holders that mandate or direct the board to take certain action may constitute an unlawful intrusion on the board's discretionary authority under the typical statute. On the other hand, however, proposals that merely recommend or request that the board take certain action would not appear to be contrary to the typical state statute, since such proposals are merely advisory in nature and would not be binding on the board even if adopted by a majority of the security holders.⁷

The Commission believes, on the basis of opinions submitted to it by issuers and proponent, that this view continues to reflect general state corporate law. The Note, however, has been revised to make it clear that whether the nature of the proposal, mandatory or precatory, affects its includability is solely a matter of state law, and to dispel any mistaken impression that the Commission's application of paragraph (c)(1) is based on the form of the proposal.

2. Rule 14a-8(c)(3) [17 CFR 240.14a-8(c)(3)]—*Proposals that Are Contrary to the Commission's Proxy Rules, Including Rule 14a-9*

Although the Commission did not propose any changes to Rule 14a-8(c)(3), the Proposing Release discussed certain staff practices in administering this provision. The Commission indicated that it believed it appropriate for the staff to give proponents the opportunity to amend portions of proposals or supporting statements which might be violative of Rule 14a-9 at the time they were submitted, since issuers are accorded the same opportunities with respect to their soliciting materials. While some commentators were critical of the latitude given to proponents to make such modifications, the Commission has determined not to change its administration of paragraph (c)(3).

3. Rule 14a-8(c)(4) [17 CFR 240.14a-8(c)(4)]—*Personal Claim or Grievance*

The proposed change to Rule 14a-8(c)(4) was intended to clarify the scope of the exclusionary paragraph and to ensure that the security holder proposal process would not be abused by proponents attempting to achieve personal ends that are not necessary.

⁷ *Id.* at p.16.

posals has been fully effected. The Commission proposed an interpretative change to permit the omission of proposals that have been "substantially implemented by the issuer." While the new interpretative position will add more subjectivity to the application of the provision, the Commission has determined that the previous formalistic application of this provision defeated its purpose. Accordingly, the Commission is adopting the proposed interpretative change.

The Commission also requested comment on the adoption of a new interpretation of Rule 14a-8(c)(10) which would have permitted the omission of precatory proposals where the board of directors has considered the request in good faith and determined not to act. The Commission has determined that because of the administrative difficulties in administering the "good faith" test, it will not undertake the proposed interpretation at this time.

7. Rule 14a-8(c)(12) [17 CFR 240.14a-8(c)(12)]—*Repeat Proposals*

Existing Rule 14a-8(c)(12) permits the exclusion of a proposal if substantially the same proposal has been included in the issuer's proxy statement in prior years and the proposal failed to obtain a specified percentage of the votes cast. The Commission proposed a change which would permit the exclusion of proposals dealing with substantially the same subject matter as proposals submitted in prior years, but which failed to receive the requisite percentage of votes.

The commentators supporting the proposed amendment felt that it was an appropriate response to counter the abuse of the security holder proposal process by certain proponents who make minor changes in proposals each year so that they can keep raising the same issue despite the fact that other shareholders have indicated by their votes that they are not interested in that issue.

Commentators who opposed the change argued that the revision was too broad and that it could be used to exclude proposals that had only a vague relation to an earlier proposal. Many of those commentators suggested that such a broad change was not necessary if the staff changed its interpretation of the existing provision.

The Commission has determined to adopt the proposed change to Rule 14a-8(c)(12). The Commission believes that this change is necessary to signal a clean break from the

in the common interest of the issuer's shareholders generally. Some commentators expressed concern that, as proposed, the "personal interest" grounds for exclusion could be applied to exclude a proposal relating to an issue in which a proponent was personally committed or intellectually and emotionally interested. This is not the Commission's intent. In order to allay such concerns and clarify the intended scope of revised paragraph (c)(4), the Commission has incorporated such commentators' suggested revision. As so revised the rule now refers to a "proposal . . . designed to result in a benefit to the proponent or to further a personal interest, which benefit or interest is not shared with the other security holders at large."

4. Rule 14a-8(c)(5) [17 CFR 240.14a-8(c)(5)]—*Not Significantly Related to the Issuer's Business*

The Commission is adopting Rule 14a-8(c)(5) as proposed. Paragraph (c)(5) relates to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting.

5. Rule 14a-8(c)(7) [17 CFR 240.14a-8(c)(7)]—*Ordinary Business*

The Commission did not propose any change to existing Rule 14a-8(c)(7), but did propose a significant change in the staff's interpretation of that rule. In the past, the staff has taken the position that proposals requesting issuers to prepare reports on specific aspects of their business or to form special committees to study a segment of their business would not be excludable under Rule 14a-8(c)(7). Because this interpretation raises form over substance and renders the provisions of paragraph (c)(7) largely a nullity, the Commission has determined to adopt the interpretative change set forth in the Proposing Release. Henceforth, the staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7).

6. Rule 14a-8(c)(10) [17 CFR 240.14a-8(c)(10)]—*Moot*

As with Rule 14a-8(c)(7), the Commission did not propose to change Rule 14a-8(c)(10), but did propose a change in the staff interpretation of the provision. In the past, the staff has permitted the exclusion of proposals under Rule 14a-8(c)(10) only in those cases where the action requested by the pro-



CERTIFIED RESOLUTION

Adoption of Stockholder Rights Policy

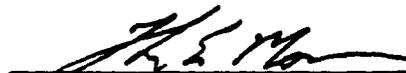
RESOLVED, upon the recommendation of the Committee on Directors and Governance that the Board of Directors adopt the following Stockholder Rights Policy for the Company:

The Board of Directors shall obtain stockholder approval prior to adopting any stockholder rights plan; *provided, however*, that the Board may act on its own to adopt a stockholder rights plan if, under the then current circumstances, the Board in the exercise of its fiduciary responsibilities, deems it to be in the best interest of Dow's stockholders to adopt a stockholder rights plan without the delay in adoption that would come from the time reasonably anticipated for stockholder approval. Any stockholder rights plan so adopted by the Board without prior stockholder approval will be submitted to a non-binding vote of stockholders as a separate ballot item at the next subsequent meeting of Dow stockholders. The Board shall not repeal this Policy without first submitting it to a non-binding vote of Dow stockholders.

Certification

I, Thomas E. Moran, Assistant Secretary of The Dow Chemical Company (the "Company"), do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted at a meeting of the Board of Directors of the Company, held at the offices of the Company in Midland, Michigan, on the 13th day of February, 2003, at which meeting a quorum of the Board of Directors was present, and that, as of the date below, such resolution has not been revoked, annulled or modified in any manner whatsoever, and is in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Company this 13th day of February, 2003.


Thomas E. Moran, Assistant Secretary



Altria

G. Penn Holsenbeck
Vice President, Associate General
Counsel and Corporate Secretary

Altria Group, Inc.
120 Park Avenue, New York, NY 10017

917 663-4000
917 663-2256 direct
917 663-5372 fax

VIA FACSIMILE

January 29, 2004

Ms. Paula Dubberly
Chief Counsel
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Shareholder Proposal Submitted by Nick Rossi

Dear Ms. Dubberly:

Pursuant to my letter of December 23, 2003, I am writing to advise you that on Wednesday, January 28, 2004 the Board of Directors of Altria Group, Inc., following the recommendation of the Nominating and Corporate Governance Committee, adopted the following resolution:

RESOLVED, that the Board of Directors will not adopt, maintain or extend a stockholder rights plan ("poison pill") without submitting such adoption, maintenance or extension to a stockholder vote.

I hereby certify that the above resolution is in full force and effect.

Please call me if you have any questions.

Sincerely,

GPH:rs

cc: Grace Lee
Jerry E. Whitson, Esq.
John Chevedden, on behalf of Nick Rossi

**Altria**

Altria Group, Inc.
120 Park Avenue, New York, NY 10017
917 663-4000

January 29, 2004

Attention: Grace Lee
Company: Securities and Exchange Commission
Telephone #: 202-942-2825
Fax #: 202-942-9525

Sender: G. Penn Holsenbeck
Sender Telephone #: 917-663-2256
Sender Fax #: 917-663-5372

You should receive 2 pages, *including this cover sheet*. If you do not receive all of the pages, please call Roxanne Schwartz at 917-663-3530.

COMMENTS:

THIS FACSIMILE TRANSMISSION (AND/OR THE DOCUMENTS ACCOMPANYING IT) MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION BELONGING TO THE SENDER. The information is intended only for use by the addressee or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance of the contents of this information is strictly prohibited by law. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of the documents.

**DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

January 29, 2004

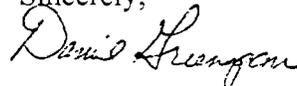
Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Altria Group, Inc.
Incoming letter dated December 23, 2003

The proposal requests that the board submit the adoption, maintenance or extension of any poison pill to a shareholder vote and further requests that once adopted, dilution or removal of this proposal be submitted to a shareholder vote at the earliest possible shareholder election. The proposal gives directors the "discretion to set the earliest election date and in responding to shareholder votes."

There appears to be some basis for your view that Altria may exclude the proposal under rule 14a-8(i)(10). We note Altria's representation that the board adopted a resolution that requires a shareholder vote to adopt, maintain or extend a rights plan. Accordingly, we will not recommend enforcement action to the Commission if Altria omits the proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,



Daniel Greenspan
Attorney-Advisor