August 8, 2014
Mr. Keith Higgins, Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Rule 14a-8 Stakeholder Meeting

Dear Mr. Higgins,
We write to follow-up on the 14a-8 stakeholder meeting of June 23, 2014. We deeply appreciate the opportunity to meet with you, representatives of the corporate community and the Staff to discuss the evolution of the no action letter process. Based on that conversation, we have a few suggestions we would like to offer.

Proof of ownership documentation
Staff Legal Bulletin 14G ("SLB 14G") states that issuers are obligated to notify proponents of any specific deficiencies in proof of ownership letters, and to provide the proponent a 14 day period to cure any identified defects by submitting a supplemental ownership letter. SLB 14G was published to ensure that legitimate proposals could not be excluded based on technicalities or typographical errors and to foster a common sense approach to these questions consistent with the "plain English" language philosophy of the rule. Staff does not appear to have contemplated its application to the absence of a proof of ownership letter, however, and, this omission has unfortunately, enabled issuers to employ tactics designed to deny proponents the opportunity to correct their ownership letters. Fortunately, we believe this can be easily corrected.

It is not always possible for a proponent to provide a proof of ownership letter on the day the proposal is submitted. Mutual funds, for example, strike their NAV at the end of the day. Some proponents are unable to direct a large custodian to produce a letter within a few hours. It is therefore common practice for many proponents to notify the company at the time of the proposal submission that proof of ownership is forthcoming under separate cover. Although SLB 14G explicitly states that a company must identify "specific deficiencies that the company has identified," in practice some companies respond to such submissions by submitting lengthy boilerplate letters to notify proponents that they have failed to provide proof of ownership. This effectively denies the proponent the opportunity to correct any deficiencies when the proof of ownership letter is actually provided. If that letter then contains a typographical error, for example, Staff will not allow the proponent to correct this defect, nor will Staff require the issuer to notify the proponent of this defect and provide an opportunity to correct.

In one instance, a proponent notified the Corporate Secretary that proof of ownership would be provided within five days of submission of the proposal. The Company responded by rushing its deficiency notice out to ensure that it was received before that date, ensuring that it would not be required to notify the proponent of any specific deficiencies that might be found when that letter was actually received. Such tactics

frustrate the intention of SLB 14G, creating a race to the mailbox that proponents cannot win and is not consistent with the policy underlying the rule.

We would request that Staff clarify in a future SLB that companies are encouraged to wait a few days before sending a deficiency notice when notified that proof of ownership is forthcoming. In any case, Staff should deny no-action requests based on proof of ownership issues where the proponent provided proof of ownership on a timely basis and was not given the benefit of a notice from the company that identified the defect with specificity.

Proof of Authorization to file a proposal

We are not aware of any evidence that there is any abuse in this area. Although it is true that in many cases, including *all* instances where a shareholder proposal is filed on behalf of an institution, an agent is needed in order to effectuate a filing, there is no indication that proposals are being filed without the prior agreement of the actual shareholder.

Whether an agent has authority is a matter of state law. That authority may be either given specifically in a given instance (such as when an individual shareholder authorizes someone to act on her/his behalf) or it may be inherent, as when the advisor to a mutual fund files on behalf of the fund. Such state law authority can be either general (e.g. as with the fund advisor) or specific to a certain company or issue. Furthermore, it can be limited in time or it can be indefinite.

With these agency principles in mind, it is apparent that there is nothing inherently wrong with a shareholder proposal being submitted *on behalf of* a beneficial holder. The question under 14a-8 is therefore under what circumstances an issuer can reasonably request proof of authority and in what form. In common practice, when authority is inherent, as with the manager of a mutual fund, separate written proof of authorization to file a proposal is never issued or included with a shareholder proposal. In contrast, when proposals are filed on behalf of an individual shareholder, the agent may provide, on request, some form of written documentation of the agency relationship. We don't believe it would be appropriate for the Staff to impose any specific requirements to document agency authority.

Absent a showing by the issuer of some special facts that are documented in a no-action request, it would seem inappropriate to permit the issuer to challenge these grants of authority. This is analogous to the proponent raising such an issue when a no-action request is sent by a law firm on behalf of the issuer. Absent some specific factual grounds for suspicion, no one would question the law firm's agency authority to send such a letter.

The possibility of abuse, even in the case of general, indefinite grants of agency authority, is negated by the requirement of Rule 14a-8(b) that the proponent document proof of ownership. Thus the filing letter itself should have a presumption of authenticity, particularly when read in conjunction with the proof of ownership. The proof of ownership demonstrates the proponent's ability to obtain what would otherwise

be confidential and unavailable information from the beneficial owner. There is no need to go beyond this, and issuers have not presented persuasive evidence of any such need.

Finally, a fact pattern was raised where an issuer contacted a shareholder directly and the shareholder purportedly was unaware of the submission made on his/her behalf. That is of course possible if the shareholder has given broad authority to the agent and, as discussed above, such broad authority is perfectly legitimate as a matter of law. However, it would seem an inappropriate action by the issuer (and potentially a violation of professional ethics if the shareholder is represented by counsel.) What would one think of the issuer contacting a shareholder directly to ask if he/she had actually voted a certain way after the shareholder had delegated voting authority to a money manager? The risk of intimidation seems quite high.

Substantial implementation

We request clarification of the Staff's process for analysis of substantial implementation. In particular, we would like clarification as to how Staff determines the "essential purpose" of a proposal, and whether the Staff always considers both the essential purpose and the guidelines of a proposal in determining whether substantial implementation has occurred. We believe that if the guidelines of the proposal have not been met or nearly met, the proposal cannot have been favorably acted upon. Relying on "essential purpose" alone to determine substantial implementation would seem to invite inconsistent or arbitrary interpretations, particularly without the articulation of any clear standards of analysis.

In our experience, Staff has frequently been persuaded to grant no-action relief for bare bones actions that fall far short of "substantial" implementation. We believe that it has become common practice for companies to publish what they consider to be the bare minimum that will be allowed by the Staff under 14a-8(i)(10), rather than to truly "substantially" implement the proposal. This is a particular problem for proposals that request a public report.

Additionally, the 1976 release states that the exclusion "is designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon…" The focus on whether a matter *warrants shareholder attention* raises the question of how the Staff considers whether unaddressed matters warrant shareholder consideration. For instance, since the 1976 release seems most concerned with the policy goal of avoiding wasting shareholder time, the question may be whether the proposal still clearly raises a question for shareholders to consider. In our view, this analysis does not invite Staff's personal views on whether the matter is important *per se* – we must stipulate to the importance of the proposal at the outset -- but whether the matters left unaddressed are material to the proposal. In the absence of these additional elements, can the proposal be said to have been "favorably" acted upon? This would seem to require a qualitative assessment of whether the issuer's actions were aligned with the actual ask of the proposal. A report or a policy that simply touches on the same subject matter should not meet this test. Issuers seeking no-action relief under 14a-8(i)(10) should carry the burden of proving that any missing elements outlined in the proposal are immaterial and

that their addition would not materially alter the substance of the action taken. In practice, we do not believe that issuers are generally held to this standard of proof.

In addition, we would like clarification from the staff regarding whether a materially misleading disclosure by a company can be considered substantial implementation of a proposal that seeks disclosures. We would hope that the Staff would agree with the viewpoint that a proposal seeking disclosure cannot be deemed to be substantially implemented by a report containing materially misleading disclosures or omissions.

False or misleading statements

We strongly agree that proponents should exercise caution to avoid including false or misleading statements in their proposals, and we are working as a community and as counsel to proponents to ensure that such caution is widely practiced. Moreover, we believe that the current process deployed by the Staff in addressing false or misleading statements is the correct approach, and that the Staff should not become entangled in adjudicating matters of opinion between proponents and companies. If anything, the Staff could be more flexible in allowing a proponent to delete any objectively false statements from a proposal. The draconian solution that one participant in our meeting suggested of allowing deletion of the entire supporting statement is inappropriate and unnecessary.

Staff handling of opposition statements

The issue of opposition statements was also discussed in the stakeholder meeting. It would be helpful for the Staff to clarify the process by which misleading statements in an opposition statement can be addressed with the Staff by proponents. Although we know that the Staff invites proponents to notify the Division if misleading statements are included in a proposed opposition statement, the logistics of securing staff comment on such matters are generally unclear, and in some instances, it has been unclear whether and how the staff responds to such comments. Indeed, we understand that, due to the absence of any feedback from the Staff to the objecting proponent, some proponents have the erroneous belief that the Staff routinely ignores all proponent objections to the opposing statement.

Thank you again for the opportunity to meet. We hope these further comments are helpful.

Sincerely,

Patrick Doherty, New York State Common Retirement Fund
Bruce Herbert, Investor Voice, SPC
Adam Kanzer, Domini Social Investments
Jonas D. Kron, Trillium Asset Management
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cc: SEC Investor Advisory Committee