July 6, 2015

Keith Higgins, Director  
David Fredrickson, Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Re: Staff Review of Rule 14a-8(i)(9)

Dear Mr. Higgins and Mr. Fredrickson:

The undersigned write as shareowners and institutions with a significant stake in the Rule 14a-8 shareholder resolution process that represent individual institutions with $280.8 billion in assets under management (“AUM”), and associations that represent $2.16 trillion in AUM. We wish to provide brief comments and register specific concerns regarding the interpretation of Rule 14a-8(i)(9) (the “Rule”) which allows exclusion of a shareholder proposal that “directly conflicts” with a management proposal. Each of the organizations, funds, and institutions listed is actively engaged as shareowners, either directly or indirectly, in filing proposals and engaging with companies pursuant to Rule 14a-8.

**Analysis**

We appreciate that Staff has initiated a review process and is seeking input in regard to interpretation of the Rule. Although correspondence from the corporate community has implied that the positions taken by Staff rulings in recent years are acceptable and appropriate, we believe that interpretations of the Rule have strayed from its original, narrow purpose. In particular, we are concerned that interpretations advanced by the corporate bar and registrant community could negatively impact the shareholder resolution process as a whole, which currently allows shareholders to submit and vote upon proposals on a diverse range of topics. Recent years have seen companies target for exclusion proxy access and special meeting proposals, especially, through use of an overly broad interpretation of Rule 14a-8(i)(9). We are concerned that this process of preemptive action will expand if the corporate bar’s approach is accepted.

---

1 See, inter alia, June 10, 2015 correspondence from Gibson Dunn & Crutcher LLP and four other law firms headed Application of Rule 14a-8(i)(9) to Conflicting Shareholder Proposals.
Our approach to this issue is informed by our understanding that a vote on a duly submitted shareholder proposal provides materially important information to both shareholders and the Board in regard to available policy alternatives and shareholder preferences. In line with this, an examination of the origins of Rule 14a-8(i)(9) demonstrates that the Rule was intended to address exceptional circumstances, where a shareholder knew of a pre-existing management proposal (such as a merger) and attempted to use the shareholder resolution process to circumvent proxy solicitation rules.

In contrast to this narrow construction, positions taken recently by the corporate community\(^2\) suggest that the mere assertion that a future company proposal is possible could cause exclusion of a shareholder-sponsored proposal even though the company proposal: (a) did not exist at the time the shareholder’s proposal was filed, (b) may state the negative or opposite of a duly submitted shareholder proposal, or (c) might address the subject matter of the shareholder proposal, but in terms that undermine or even negate the proponent’s intent.

Affording companies such broad opportunity to exclude shareholder proposals under Rule 14a-8(i)(9) would invite registrants to circumvent rules the SEC has carefully administered over many years to ensure fairness and balance between registrants and shareholders. A broad interpretation encourages gamesmanship by registrants that wish to exclude proposals, and could immerse registrants, shareholders, and the Staff in a quagmire of debate over motivation, timing, good faith, and proper interpretation of the Rule.

**2015 Case Study**

It has been amply demonstrated how the Rule has been used in recent years to obstruct proxy access proposals.\(^3\) The SEC’s wise decision to suspend comment on applicability of the Rule during the 2015 proxy season, following its reconsideration of the no-action decision in Whole Foods Market, January 16, 2015, set the stage for a real-time case study as to how the companies that submitted Rule 14a-8(i)(9) no-action letters on proxy access proposals subsequently dealt with purportedly conflicting shareholder proposals on proxy access that appeared in the same proxy.\(^4\)

\(^2\) See, e.g., June 10, 2015 letter from Gibson Dunn & Crutcher LLP and four other law firms.

\(^3\) See Michael Garland, Office of NYC Comptroller, June 17, 2015 letter to Keith Higgins on behalf of New York City pension systems (hereafter, “NYC Pension Systems letter”).

\(^4\) Data derived from NYC Pension Systems letter.
Seven companies included in their proxy both the management and the allegedly conflicting shareholder proposal. Of these, at least three companies provided a clear explanation of the difference between the two proposals. The outcomes were not confusing. Instead, they provided a valuable additional source of information to the Board regarding shareholder preferences.\(^5\)

However, viewed in retrospect, at a number of other companies the facts demonstrate a clear pattern of gamesmanship.\(^6\) For instance, a number of companies filed no-action requests that expressly indicated the company’s intent to publish its own proxy access proposal; however, they subsequently failed to place a company proposal on the proxy. Some of these companies, while failing to publish their own proposal, also opposed the concept of proxy access in opposition statements to the respective shareholder proposals. Taken together, these facts suggest that for these companies the true intent was to distort the use and purpose of Rule 14a-8(i)(9) so as to exclude shareholder proposals and to thwart opportunities for shareholders to vote on proxy access.

The Rule’s purpose is not to provide an avenue for management to develop after-the-fact “counterproposals” for the purpose of excluding properly submitted shareholder proposals.\(^7\) A broad interpretation of the type put forward by the corporate bar would reverse the Rule’s original intent, and permit this sort of gamesmanship.

\(\text{continued on next page...}\)

\(^5\) Positive models of AES Corporation, Exelon and Visteon are cited in the NYC Pension Systems letter.

\(^6\) The NYC Pension Systems letter notes: “Despite those public promises to the SEC and to investors that each company would be presenting a proxy access proposal, 13 of the 25 companies failed to present any company-sponsored proposal on proxy access. Indeed, in their opposition statements to shareholder proxy access resolutions, 11 of those 13 companies opposed and argued against the entire concept of proxy access in any form.”

\(^7\) Cypress Semiconductor Corp. (March 11, 1998) denying exclusion under 14a-8(c)(9): “[S]taff notes that it appears that the Company prepared its proposal on the same subject matter significant part in response to the Mercy Health Services proposal.” Genzyme Corporation (March 20, 2007) denying exclusion under 14a-8(i)(9). “[W]e note your representation that you decided to submit the company proposal on the same subject matter to shareholders, in part, in response to your receipt of the AFL-CIO Reserve Fund proposal.”
RECOMMENDATIONS

Accordingly, the undersigned recommend that Staff adopt the following approach to interpretation of Rule 14a-8(i)(9), which would reflect and restore the Rule’s original intent and would also preclude the kind of gamesmanship that has been evident in recent years:

1. A “direct conflict” could be found if a company’s and a shareholder’s proposals are both legally binding and there is a direct conflict between the terms of each proposal.

2. The potential for exclusion under Rule 14a-8(i)(9) should not apply to shareholder proposals that were submitted prior to the public announcement of an allegedly conflicting management proposal.

3. In the event that a binding shareholder proposal is found to directly conflict with a binding management proposal, the shareholder should be granted an opportunity to resolve the conflict by revising the proposal so as to make it advisory.\(^8\)

4. In conjunction with a Rule 14a-8(i)(9) no-action request, a company should be required to provide the text of its proposal, and demonstrate in what manner specific elements “directly conflict” with the shareholder proposal.

\(^8\) This is consistent with the approach taken in Staff Legal Bulletin 14, in which Staff stated it would allow Proposals to be modified to make them nonbinding so that they are not excludable on that basis.
IN CLOSING

In response to recent events surrounding the Rule, we welcome the Staff’s careful consideration of its approach to Rule 14a-8(i)(9), and would also welcome further dialogue with Staff to expand on our concerns regarding this matter.

Sincerely:

Lura Mack
Director
Portfolio Advisory Board,
Adrian Dominican Sisters

Kevin Jennings
Executive Director
The Arcus Foundation

Danielle Fugere
President and Chief Counsel
As You Sow Foundation

Bashar Qasem
CEO & President
Azzad Asset Management

Stu Dalheim
Vice President, Shareholder Advocacy
Calvert Investments

Daniel Nielsen
Director, Catholic Responsible Investing
CBIS, Inc.

Sister Ruth Rosenbaum, TC, PhD
Executive Director
Center for Reflection, Education and Action (CREA)

Sister Barbara Aires
Coordinator of Corporate Responsibility
Sisters of Charity of Saint Elizabeth

Shelley Alpern
Director of Social Research & Advocacy
Clean Yield Asset Management

Steven L. Ellis, CFA
President
Colorado Capital Management

Ken Jacobs
President
Colorado Sustainable Financial Planning

Stephen Viederman
Chair, Finance Committee
Cristopher Reynolds Foundation

Sister Louise Gallahue, D.C.
Provincial
Daughters of Charity,
Province of St. Louise

Susan Vickers, RSM
VP Corporate Responsibility
Dignity Health

Adam Kanzer, Esq.
Managing Director
Domini Social Investments, LLC

Eileen Gannon, OP
Executive Team Member
Dominican Sisters
<table>
<thead>
<tr>
<th>Name</th>
<th>Title and Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valerie Heinonen, O.S.U.</td>
<td>Director, Shareholder Advocacy, Dominican Sisters of Hope</td>
</tr>
<tr>
<td>Lincoln Pain, CFP, AIF</td>
<td>Effective Assets</td>
</tr>
<tr>
<td>Justin Martello, CFP</td>
<td></td>
</tr>
<tr>
<td>Steven J. Schueth</td>
<td>President, First Affirmative Financial Network, LLC</td>
</tr>
<tr>
<td>Sr. Gloria Oehl</td>
<td>Congregational Delegate for Corporate Responsibility, Franciscan Sisters of Allegany, NY</td>
</tr>
<tr>
<td>Sister Margaret Sikora</td>
<td>Dir. Justice, Peace and Integrity of Creation, Franciscan Sisters of the Atonement</td>
</tr>
<tr>
<td>Jeffery W. Perkins</td>
<td>Executive Director, Friends Fiduciary Corporation</td>
</tr>
<tr>
<td>Toni Palamar</td>
<td>Province Business Administrator, Sisters of the Good Shepherd</td>
</tr>
<tr>
<td>Lucia von Reusner</td>
<td>Shareholder Advocate, Green Century, Capital Management, Inc.</td>
</tr>
<tr>
<td>Patricia Hathaway</td>
<td>President, Hathaway Financial Services</td>
</tr>
<tr>
<td>R. Paul Herman</td>
<td>CEO, HIP Investor, Inc.</td>
</tr>
<tr>
<td>Shane Yonston</td>
<td>Principal Advisor, Impact Investors</td>
</tr>
<tr>
<td>Laura Berry</td>
<td>Executive Director, Interfaith Center on Corporate Responsibility (ICCR)</td>
</tr>
<tr>
<td>Richard A. Liroff, Ph.D.</td>
<td>Executive Director, Investor Environmental Health Network</td>
</tr>
<tr>
<td>Bruce T. Herbert, AIF</td>
<td>Chief Executive, Investor Voice, SPC</td>
</tr>
<tr>
<td>Christine Jantz</td>
<td>President, Jantz Management LLC</td>
</tr>
<tr>
<td>Joyce K. Moore, ChFC, LUTCF</td>
<td>President, Joyce Moore Financial Services / Whole Earth Investments</td>
</tr>
<tr>
<td>Larisa Ruoff</td>
<td>Director of Shareholder Advocacy and Corporate Engagement, The Sustainability Group of Loring, Wolcott &amp; Coolidge</td>
</tr>
<tr>
<td>Rev. Joseph P. La Mar, M.M.</td>
<td>Assistant CFO, Corporate Social Responsibility, Maryknoll Fathers and Brothers</td>
</tr>
</tbody>
</table>
Molly Murphy  
Chief Investment Officer  
Mercy Health

Valerie Heinonen, O.S.U.  
Director, Shareholder Advocacy  
Mercy Investment Services, Inc.

Barbara Jennings, CSJ  
Coordinator  
Midwest Coalition for Responsible Investment

Luan Steinhilber  
Director of Shareholder Advocacy  
Miller/Howard Investments, Inc.

Michael Kramer  
Managing Partner &  
Director of Social Research  
Natural Investments

Robert Walker  
Vice President Ethical Funds & ESG Services  
NEI Investments

Patrick Doherty  
Director - Corporate Governance  
Office of the New York State Comptroller

Bruce T. Herbert, AIF  
Chief Executive  
Newground Social Investment, SPC

Julie N.W. Goodridge  
CEO  
NorthStar Asset Management, Inc.

Sr. Veronica Mendez, RCD  
President  
Sisters of Our Lady of Christian Doctrine

Rev. William Somplatsky-Jarman  
Coordinator for Mission Responsibility Through Investment  
Presbyterian Church (U.S.A.)

Sr. Barbara King  
Councilor  
Sisters of the Presentation of the Blessed Virgin Mary

Ruth Geraets, PBVM  
Congregational Treasurer  
Sisters of the Presentation of the BVM

Marcie Smith  
Executive Director  
Responsible Endowments Coalition

Tim Little  
Executive Director  
Rose Foundation for Communities and the Environment

Ethel Howley, SSND  
Social Responsibility Resource Person  
School Sisters of Notre Dame Cooperative Investment Fund

Danielle Ginach  
Impact Manager  
Sonen Capital

Nora M. Nash, OSF  
Director Corporate Social Responsibility  
Sisters of St. Francis of Philadelphia
<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lisa Laird</td>
<td>VP, Investments and Cash Management St. Joseph Health</td>
</tr>
<tr>
<td>G. Benjamin Bingham</td>
<td>CEO/Founder 3Sisters Sustainable Management, LLC</td>
</tr>
<tr>
<td>Jonas Kron, Esq.</td>
<td>Senior Vice President, Director of Shareholder Advocacy Trillium Asset Management, LLC</td>
</tr>
<tr>
<td>Cathy Rowan</td>
<td>Director, Socially Responsible Investments Trinity Health</td>
</tr>
<tr>
<td>Mary Beth Gallagher</td>
<td>Acting Director Tri-State Coalition for Responsible Investment</td>
</tr>
<tr>
<td>Richard E. Walters</td>
<td>Director, Corporate Social Responsibility The Pension Boards – UCC, Inc.</td>
</tr>
<tr>
<td>Kathryn McCloskey</td>
<td>Director, Social Responsibility United Church Funds</td>
</tr>
<tr>
<td>Valerie Heinonen, O.S.U.</td>
<td>Director, Shareholder Advocacy Ursuline Sisters of Tildonk, U.S. Province</td>
</tr>
<tr>
<td>Lisa N. Woll</td>
<td>CEO US SIF: The Forum for Sustainable and Responsible Investment</td>
</tr>
<tr>
<td>Patricia Farrar-Rivas</td>
<td>CEO Veris Wealth Partners</td>
</tr>
<tr>
<td>Matthew Considine, CFA</td>
<td>Director of Investments Vermont Office of the State Treasurer</td>
</tr>
<tr>
<td>Timothy H. Smith</td>
<td>Senior VP, Director Socially Responsive Investment Walden Asset Management</td>
</tr>
<tr>
<td>Kirsty Jenkinson</td>
<td>Managing Director and Sustainable Investment Strategist Wespath Investment Management</td>
</tr>
<tr>
<td>Sonia Kowal</td>
<td>President Zevin Asset Management, LLC</td>
</tr>
</tbody>
</table>