



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-3010

January 28, 2008

Elliott V. Stein  
Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019-6150

Re: The McGraw Hill Companies, Inc.  
Incoming letter dated December 18, 2007

Dear Mr. Stein:

This is in response to your letters dated December 18, 2007 and January 17, 2008 concerning the shareholder proposal submitted to McGraw Hill by Scott McDonald. We also have received letters on the proponent's behalf dated January 10, 2008 and January 23, 2008. 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,

Jonathan A. Ingram  
Deputy Chief Counsel

Enclosures

cc: Conrad B. MacKerron  
Director, Corporate Social Responsibility Program  
As You Sow  
311 California Street, Suite 510  
San Francisco, CA 94104

January 28, 2008

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: The McGraw Hill Companies, Inc.  
Incoming letter dated December 18, 2007

The proposal relates to paper.

There appears to be some basis for your view that McGraw Hill may exclude the proposal under rule 14a-8(f). We note that the proponent appears to have failed to supply, within 14 days of receipt of McGraw Hill's request, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if McGraw Hill omits the proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

Sincerely,

Heather L. Maples  
Special Counsel

WACHTELL, LIPTON, ROSEN & KATZ

51 WEST 52ND STREET  
NEW YORK, N.Y. 10019-6150  
TELEPHONE: (212) 403-1000  
FACSIMILE: (212) 403-2000

GEORGE A. KATZ (1965-1989)  
JAMES H. FOGELSON (1967-1991)

OF COUNSEL

WILLIAM T. ALLEN  
PETER C. CANELLOS  
THEODORE GEWERTZ  
KAREN G. KRUEGER  
THEODORE A. LEVINE  
LEONARD M. ROSEN  
MICHAEL W. SCHWARTZ  
ELLIOTT V. STEIN  
J. BRYAN WHITWORTH  
AMY R. WOLF

COUNSEL

MICHELE J. ALEXANDER  
DAVID B. ANDERS  
ADRIENNE ATKINSON  
ANDREW J.H. CHEUNG  
DAMIAN G. DIDDEN  
PAMELA EHRENKRANZ  
ROBERT A. FRIEDMAN  
PAULA N. GORDON  
NANCY B. GREENBAUM  
MAURA R. GROSSMAN  
IAN L. LEVIN  
ADAM J. SHAPIRO  
HOLLY M. STRUTT

J. AUSTIN LYONS  
LORI S. SHERMAN  
JONATHAN E. PICKHARDT  
NELSON O. FITTS  
JEFFREY C. FOURMAUX  
JEREMY L. GOLDSTEIN  
JOSHUA M. HOLMES  
DAVID E. SHAPIRO  
ANTE VUCIC  
IAN BOCCZO  
LAURYN P. GOULDIN  
MATTHEW M. GUEST  
DAVID E. KAHAN  
MARK A. KOENIG  
DAVID K. LAM  
MICHAEL S. WINOGRAD  
KATHRYN GETTLES-ATWA  
DANIELLE L. ROSE  
BENJAMIN M. ROTH  
ANDREW A. SCHWARTZ  
DAVID M. ADLERSTEIN  
SHIRI BEN-YISHAI  
JOSHUA A. FELTMAN  
STEPHEN M. FRANCIS  
JONATHAN H. GORDON  
MARGARET ISA BUTLER  
EMIL A. KLEINHAUS  
WILLIAM E. SCHEFFER  
ADIR G. WALDMAN  
AREF H. AMANAT  
RONALD C. CHEN  
B. UMUT ERGUN  
EVAN K. FARBER  
MICHAEL KRASNOSKY  
SARAH A. LEWIS  
YELENA ZAMACONA  
GARRETT B. MORITZ  
JOSHUA A. NAFTALIS

VINAY SHANDAL  
MEREDITH L. TURNER  
KARESSA L. CAIN  
WILLIAM EDWARDS  
JAMES R. GILMARTIN  
ADAM M. GOGOLAK  
JONATHAN GOLDIN  
ROGER J. GRIESMEYER  
DANIEL E. HEMLI  
GAVIN W. HOLMES  
MATTHEW S. LEVINE  
GORDON S. MOODIE  
JOHN A. NEUMARK  
DONGJU SONG  
LINDSAY R. SMITH  
AMANDA L. STRAUB  
BRADLEY R. WILSON  
FRANCO CASTELLI  
ROSS A. FIELDSTON  
SCOTT W. GOLENBOCK  
MOEZ M. KABA  
CAITH KUSHNER  
J. ALEJANDRO LONGORIA  
GRAHAM W. MELI  
JOSHUA M. MILLER  
OPHIR NAVE  
GREGORY E. PESSIN  
CARRIE M. REILLY  
WON S. SHIN  
JEFFREY UNGER  
MARK F. VEBLEN  
CARMEN WOO  
IGOR FUKS  
BETTY W. GEE  
JONATHAN R. LA CHAPELLE  
BRANDON C. PRICE  
ALISON M. ZIESKE

MARTIN LIPTON  
HERBERT M. WACHTELL  
BERNARD W. NUSSBAUM  
RICHARD D. KATCHER  
ALLAN A. MARTIN  
LAWRENCE B. PEDOWITZ  
ROBERT B. MAZUR  
PAUL VIZCARRONDO, JR.  
PETER C. HEIN  
HAROLD S. NOVIKOFF  
DAVID M. EINHORN  
KENNETH B. FORREST  
MEYER G. KOPLAW  
THEODORE N. MIRVIS  
EDWARD D. HERLIHY  
DANIEL A. NEFF  
ERIC M. ROTH  
WARREN R. STERN  
ANDREW R. BROWNSTEIN  
MICHAEL H. BYOWITZ  
PAUL K. ROWE  
MARC WOLINSKY  
DAVID GRUENSTEIN  
PATRICIA A. VLAHAKIS  
STEPHEN G. GELLMAN  
STEVEN A. ROSENBLUM  
PAMELA S. SEYMON  
STEPHANIE J. BELIGMAN  
ERIC S. ROBINSON  
JOHN F. SAVARESE  
SCOTT K. CHARLES  
ANDREW C. HOUSTON  
PHILIP MINDLIN  
DAVID S. NEILL  
JODI J. SCHWARTZ  
ADAM O. EMMERICH  
CRAIG M. WASSERMAN  
GEORGE T. CONWAY III  
RALPH M. LEVENE

RICHARD G. MASON  
DOUGLAS K. MAYER  
MICHAEL J. SEGAL  
DAVID M. SILK  
ROBIN PANOVKA  
DAVID A. KATZ  
ILENE KNABLE GOTTS  
DAVID M. MURPHY  
JEFFREY M. WINTNER  
TREVOR S. NORWITZ  
BEN M. GERMANA  
ANDREW J. NUSSBAUM  
RACHELLE SILVERBERG  
DAVID C. BRYAN  
STEVEN A. COHEN  
GAVIN D. SOLOTAR  
DEBORAH L. PAUL  
DAVID C. KARP  
RICHARD K. KIM  
JOSHUA R. CAMMAKER  
MARK GORDON  
JOSEPH D. LARSON  
LAWRENCE S. MAKOW  
JARED M. RUSMAN  
JEANNEMARIE O'BRIEN  
WAYNE M. CARLIN  
JAMES COLE, JR.  
STEPHEN R. DIPRIMA  
NICHOLAS G. DEMMO  
IGOR KIRMAN  
JONATHAN M. MOSES  
T. EIKO STANGE  
DAVID A. SCHWARTZ  
JOHN F. LYNCH  
WILLIAM SAVITT  
ERIC M. ROSOF  
MARTIN J.E. ARMS  
GREGORY E. OSTLING

December 18, 2007

**BY EMAIL TO [cfletters@sec.gov](mailto:cfletters@sec.gov)  
WITH COPIES BY COURIER**

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: The McGraw Hill Companies, Inc.  
Securities Exchange Act of 1934; Rule 14a-8**

Ladies and Gentlemen:

This letter is submitted on behalf of The McGraw Hill Companies, Inc. (the "Company"), a New York corporation, pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). On November 20, 2007, the Company received a letter, dated November 19, 2007, from Mr. Conrad MacKerron, Director of the Corporate Social Responsibility Program of the As You Sow Foundation, on behalf of a Mr. Scott McDonald (the "Proponent") requesting that the Company include a shareholder proposal (the "Proposal") in the Company's 2008 proxy statement. A copy of the Proponent's letter and the Proposal is attached hereto as Exhibit A.

The resolution contained in the Proposal provides:

BE IT RESOLVED that the board of directors prepare a report, at reasonable cost, studying ways to take leadership on the environ-

RECEIVED  
2007 DEC 20 PM 3:43  
OFFICE OF CHIEF COUNSEL  
DIVISION OF CORPORATION FINANCE

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
December 18, 2007  
Page 2

mental aspects of paper procurement through actions such as promoting stronger national paper recovery goals, setting goals for recycled content in its magazines and books, and goals for a majority of its supply chain to adopt strong forest management certification procedures.

This letter sets forth the reasons for the Company's belief that it may omit the Proposal from the proxy statement and form of proxy (collectively, the "Proxy Materials") relating to the Company's 2008 annual meeting of shareholders pursuant to Exchange Act Rules 14a-8(b) and 14a-8(f). Pursuant to Exchange Act Rule 14a-8(j)(2), enclosed are six (6) copies of this letter, including exhibits. By copy of this letter, the Company is notifying the Proponent of its intention to omit the Proposal from the Proxy Materials.

The Company intends to file its definitive 2008 Proxy Materials with the Securities and Exchange Commission (the "Commission") on or about March 20, 2008 and the annual meeting of the Company's shareholders is expected to occur on or about April 30, 2008. Printing of the definitive proxy statement is expected to begin on March 12, 2007. Pursuant to Rule 14a-8(j), this letter is being submitted not less than 80 calendar days before the Company files its definitive Proxy Materials with the Commission.

### **Discussion**

The Proposal may be properly omitted in accordance with Rules 14a-8(b) and 14a-8(f) because the Proponent has failed to provide the Company, within the period set forth in Rule 14a-8(f), adequate verification that the Proponent satisfies the eligibility requirements of Rule 14a-8(b).

Rule 14a-8(b)(1) requires, among other things, that, in order to be eligible to submit the Proposal, the Proponent "must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year" prior to the date on which the Proponent submitted the Proposal. The Proponent's letter stated that it satisfied the eligibility requirements of Rule 14a-8 and enclosed as proof of the requisite ownership a letter (the "Broker Letter"), dated November 16, 2007, from a Mr. Thomas W. Van Dyck, a Senior Vice President-Financial Consultant of the SRI Wealth Management Group of RBC Dain Rauscher ("RBC"). The Broker Letter is attached hereto as Exhibit B.

Following its receipt of the Proposal, the Company searched its shareholder records and could locate neither the Proponent as a record holder of the Company's stock nor RBC as a record holder of stock being held on the Proponent's behalf. Further, the date of the Broker Letter, November 16, 2007, inappropriately predated the date of the Proposal's submission to the Company, November 19, 2007, by three days. Accordingly, the letter could not constitute ade-

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
December 18, 2007  
Page 3

quate evidence of ownership as of the date of the proposal. Therefore, in accordance with Rule 14a-8(f), on November 29, 2007, the Company sent a letter (the "Company Letter") via registered mail to the Proponent requesting proof that the Proponent's stockholdings satisfy the requirements of Rule 14a-8(b). In particular, the Company Letter notified the Proponent that the Broker Letter did not satisfy the requirements of Rule 14a-8 and that it could not locate the Proponent as a record holder of the Company's stock nor RBC as a record holder of Company stock on the Proponent's behalf. If the Proponent disagreed with the Company's determination that he was not a record holder, the Company Letter requested that the Proponent advise precisely how those shares appear in the Company's records. Because the Proponent was not a record holder of the Company's stock, the Company Letter informed the Proponent that he was required to submit a written statement from the record holder of its securities "verifying that, at the time Mr. McDonald's proposal was submitted, Mr. McDonald continuously held the securities for at least one year." The Company Letter further stressed that "a written statement from an . . . investment advisor that is not a record owner of the shares would be insufficient evidence as that would not qualify as documentary support from the record holder of the shares" but that "the Company would accept a letter from a broker or bank that has custody of the securities." The Company Letter also included a copy of Rule 14a-8 and stated that the required documentation was required to be submitted to the Company within 14 calendar days of the date of receipt of the Company Letter. *See* Section C of Staff Legal Bulletin 14B of September 15, 2004. A copy of the Company Letter is attached hereto as Exhibit C.

In response to the Company Letter, on December 3, 2007, the Company received an email from Mr. MacKerron stating that he phoned RBC and "they confirmed that they are the record holder with actual custody of the shares" and asked whether a letter to that effect from RBC would resolve the Company's concerns. A copy of Mr. MacKerron's email is attached hereto as Exhibit D. Even though not required to do so, the Company responded via email that, as indicated in the Company Letter (a copy of which the Company attached thereto) the Company could not locate RBC as being a shareholder of record with respect to the Proponent's shares but that "if you believe RBC is a record holder with respect to such shares, then, in addition to a letter from RBC that complies with the requirements set forth in [the Company Letter], please provide proof that demonstrates precisely how RBC holds those shares so that we can verify such holdings with our records." A copy of the Company's response is attached hereto as Exhibit E. On December 5, 2007, Mr. MacKerron responded that, "[a]fter more research," RBC stated that the account name for the shares in question is the Scott McDonald Charitable Trust (the "Trust"); the Proponent is the beneficiary of the trust; a Mr. Brian Shepard is the trustee; Voyageur Asset Management is the money manager and that the shares are actually held at RBC. A copy of Mr. MacKerron's December 5, 2007, correspondence is attached hereto as Exhibit F. The Company, after conducting an additional search of its shareholder records, responded on December 6, 2007 to Mr. MacKerron that it could not locate the shares in its records under any of the names or entities Mr. MacKerron referenced; that it could take the position that the Proponent did not satisfy the eligibility requirements under Rule 14a-8 unless satisfactory ownership

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
December 18, 2007  
Page 4

were submitted to the Company by the 14-day deadline the Company set forth in the Company Letter; and that it would not assist any further with respect to the demonstration of the Proponent's satisfaction of the Rule 14a-8 eligibility requirements. A copy of the Company's December 6, 2007, correspondence is attached hereto as Exhibit G. On December 12, 2007, the Company received a facsimile letter from Mr. MacKerron enclosing a redacted account statement (the "Account Statement"), dated December 11, 2007, from RBC. The Account Statement appears to indicate that the Trust, with Mr. Shepard as trustee, has an account with RBC holding 118 shares of the Company that were acquired December 1, 2004. The letter also enclosed a letter from Mr. Shepard, as trustee for the Trust, authorizing the submission of the Proposal. A copy of the Account Statement is attached hereto as Exhibit H.

As more fully discussed below, neither the Broker Letter nor the Account Statement satisfy the Proponent's obligation under Rule 14a-8(b)(2).

*Insufficiency of the Broker Letter as Proof of Ownership*

Rule 14a-8(b)(2) provides that a shareholder proponent who is not a registered holder (and who has not filed a Schedule 13G, Form 3, Form 4 and/or Form 5) must prove eligibility by submitting a written statement from the record holder of the securities verifying that, *at the time the shareholder submitted the proposal*, the shareholder continuously held the securities for at least one year. Under Rule 14a-8(f), if a shareholder fails to follow an eligibility requirement, a company may exclude the shareholder's proposal if (i) within 14 calendar days of receiving the proposal, the company provides the shareholder with written notice of the defect, including the time for responding and (ii) the shareholder fails to respond to this notice within 14 calendar days of receiving notice of the defect or the shareholder timely responds but does not cure the defect. *See* Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14").

In the instant situation, the Proponent failed to include with the Proposal proof of ownership that satisfied the requirements of Rule 14a-8. The Broker Letter is dated November 16, 2007 and, therefore, does not verify that the Proponent held the requisite number of securities for at least one year as of the date the Proponent submitted the Proposal as it provides no information about the Proponent's ownership of the Company's stock from November 17, 2007 through November 19, 2007. Indeed, the Staff, in SLB 14, provided an illustration that squarely dealt with a deficiency that was substantially identical to the instant situation:

- (3) If a shareholder submits his or her proposal to the company on June 1, does a statement from the record holder verifying that the shareholder owned the securities continuously for one year as of May 30 of the same year demonstrate sufficiently continuous ownership of the securities as of the time he or she submitted the proposal?

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
December 18, 2007  
Page 5

No. A shareholder must submit proof from the record holder that the shareholder continuously owned the securities for a period of one year as of the time the shareholder submits the proposal.

Thus, the Broker Letter is insufficient evidence of the Proponent's ownership. In addition, the Company sent the Proponent prompt, written notice of the procedural defect and explicitly informed the Proponent what would constitute appropriate proof of ownership: namely, a statement from the record holder "verifying that, at the time Mr. McDonald submitted the proposal, Mr. McDonald continuously held the securities for at least one year." Consequently, the Proponent's failure to provide an appropriately dated letter from the record holder is grounds for exclusion under Rule 14a-8(f). *See, e.g., Exxon Mobil Corp (March 1, 2007) (permitting exclusion where proponent submitted proposal December 7, 2006 and a broker letter verifying ownership dated December 1, 2006); Milacron Inc (December 21, 2004) (permitting exclusion where proponent submitted proposal September 15, 2004 and a broker letter verifying ownership dated July 2, 2004).*

Moreover, it appears that RBC is the Proponent's investment advisor and is not a record holder of shares on Mr. McDonald's behalf. SLB 14 provides, however, that a written statement from a shareholder's investment advisor is insufficient evidence of ownership of a company's shares unless the investment advisor is also the record owner of the shares.<sup>1</sup> Thus, the Broker Letter, even if appropriately dated, would be insufficient because RBC is not a record owner of shares held for the Proponent. *See, e.g., Clear Channel Communications Inc (holding insufficient a letter from Piper Jaffray as investment advisor to the proponent).*

*Insufficiency of the RBC Account Statement as Proof of Ownership*

Further, the Account Statement submitted to the Company (following the Company's repeated indications as to what would constitute appropriate proof ownership) is inadequate under Rule 14a-8(b). As the Staff stated in SLB 14:

(2) Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?

---

<sup>1</sup> In particular, SLB 14 provides:

(1) Does a written statement from the shareholder's investment adviser verifying that the shareholder held the securities continuously for at least one year before submitting the proposal demonstrate sufficiently continuous ownership of the securities?

The written statement must be from the record holder of the shareholder's securities, which is usually a broker or bank. Therefore, unless the investment adviser is also the record holder, the statement would be insufficient under the rule.

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
December 18, 2007  
Page 6

No. A shareholder must submit an affirmative written statement from the record holder of his or securities that specifically verifies that the shareholder owned the securities *continuously* for a period of one year as of the time of submitting the proposal.  
(Emphasis in original.)

The Account Statement speaks only to the acquisition of the Company's common stock or to the Proponent's holdings as of a specified date—it in no way constitutes an *affirmative written statement* by the record holder (even if we assume, *arguendo*, that RBC is a record holder of the relevant shares) that specifically verifies *continuous* ownership of the shares for the one-year period preceding the date on which the Proponent submitted the Proposal. See Yahoo! Inc. (March 29, 2007) (holding trade confirmations, account statements and other account data insufficient evidence of ownership); XM Satellite Radio Holdings, Inc. (March 28, 2006) (same); General Motors Corporation (March 24, 2006) (same); Anthracite Capital Inc. (same).

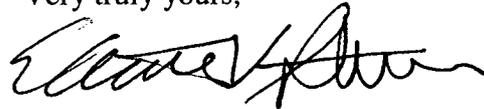
For the foregoing reasons, the Proponent has not provided, within the period set forth in Rule 14a-8(f), adequate verification that the Proponent satisfies the eligibility requirements of Rule 14a-8(b).

### Conclusion

We respectfully submit, for the foregoing reasons, that the Proposal may be omitted in accordance with Rules 14a-8(b) and 14a-8(f). We respectfully request that the Staff confirm that it will not recommend any enforcement action if the Proposal is omitted in its entirety from the Company's 2008 Proxy Materials. Should the Staff disagree with the Company's position or require any additional information, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

If you have any questions regarding this request or require additional information, please contact the undersigned at (212) 403-1228 or fax (212) 403-2228.

Very truly yours,



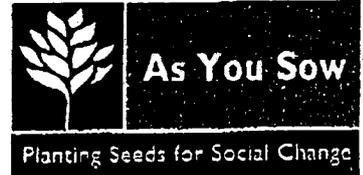
Elliott V. Stein

cc: As You Sow Foundation

REC'D

Exhibit A

CFOCC-00036323



Nov. 19, 2007

Corporate Secretary  
McGraw-Hill Cos.  
1221 Avenue of the Americas  
New York, NY 10020 -1095

311 California Street, Suite 510  
San Francisco, CA 94104  
T 415.391.3212  
F 415.391.3245  
[www.asyousow.org](http://www.asyousow.org)

Dear Corporate Secretary:

As You Sow is a non-profit organization whose mission is to promote corporate accountability. We represent Scott McDonald, a shareholder of McGraw-Hill stock.

As You Sow is involved in discussions with several publishers, asking them to develop leadership strategies on the environmental aspects of paper used in their books and magazines. We believe McGraw-Hill needs to develop a more goal- and results-oriented approach to dealing with the environmental impact of paper production that includes recycled content goals for its magazine and book publishing paper, goals for adoption of certification systems by suppliers equivalent to those developed by the Forest Stewardship Council, and stronger efforts to increase overall levels of recovered fiber. We are aware the company has established a policy on paper procurement, but the policy does not set any specific goals or discuss how it will achieve the environmental stewardship it commits to.

Therefore, we are submitting the enclosed shareholder proposal for inclusion in the 2008 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

Proof of ownership and authority to act on behalf of Mr. McDonald is attached. He will hold the shares through the 2008 stockholder meeting. A representative of the filer will attend the stockholder meeting to move the resolution as required.

I also want to add that several efforts to speak with responsible McGraw-Hill staff have been ignored or rebuffed, complicating efforts to engage in a constructive dialogue on this matter.

Sincerely,

A handwritten signature in black ink, which appears to read 'Conrad B. MacKerron'. The signature is written in a cursive style.

Conrad B. MacKerron  
Director, Corporate Social Responsibility Program

Enclosure



Nov. 15, 2007

Conrad MacKerron  
Director  
Corporate Social Responsibility Program  
As You Sow Foundation  
311 California St.  
San Francisco, CA 94104

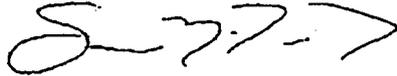
Dear Mr. MacKerron:

I hereby authorize As You Sow to file a shareholder resolution on my behalf relating to recycling and paper sourcing policies at McGraw-Hill Cos.

I am the beneficial owner of at least \$2,000 worth of McGraw-Hill stock that it has been held for more than one year. I intend to hold the aforementioned stock through the date of the company's annual meeting in 2008.

I give As You Sow full authority to deal, on my behalf, with any and all aspects of the aforementioned shareholder resolution. I understand my name may appear on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,



Scott McDonald

## DEVELOP ENVIRONMENTAL PAPER PROCUREMENT GOALS

### WHEREAS:

McGraw-Hill is a major user of paper for *Business Week* and for its educational, reference, medical and other publishing divisions. Paper production has enormous environmental impact, accounting for 42 percent of the global wood harvested for industrial uses except fuelwood (*Paper Cuts*, WorldWatch Institute). The pulp and paper industry is the single largest consumer of water among industrial activities in countries of the Organization for Economic Cooperation and Development and third largest industrial greenhouse gas emitter (OECD *Environmental Outlook*).

Only 6 percent of all printing and writing paper used in U.S. magazines and books contains any recycled content (*State of the Paper Industry*, EPN, 2007). McGraw-Hill needs to develop a comprehensive approach to dealing with the environmental impact of paper production that includes recycled content goals for its magazine and book publishing paper, goals for adoption of supplier forest certification systems, and stronger efforts to increase levels of recovered fiber. We appreciate that the company has established a policy on paper procurement, but it lacks quantifiable implementation goals or ways to verify progress.

Large paper buyers like McGraw-Hill should use their influence to competitively negotiate purchases of recycled content stock. Some magazine and book publishers already use high levels of recycled content. American Media Inc. uses 30 percent post-consumer content in *Shape* and *Natural Health*. Simon & Schuster plans to increase recycled fiber in its book paper to 25 percent by 2012.

With rising awareness of the climate change implications of paper production, we need leadership by the company on sourcing from suppliers who are reducing greenhouse gas emissions. Time Inc. has assessed the greenhouse gas emissions associated with production of two of its magazines and committed to reduce such emissions 20% by 2012. The company also required that 80 percent of its fiber be derived from supplier forests certified as well managed.

Our company and its publishing peers should also be leading efforts to boost recovery of high quality office and coated paper for recycling. Time underwrites the ReMix program to boost curbside recovery of used magazines. In 2005, the national paper recycling rate reached 51.5%, according to the American Forest and Paper Association (AFPA). The AFPA's goal of boosting recovery to 55% by 2012 is weak. Publishers should propose a more aggressive goal and develop a plan to meet the goal.

Considering the magnitude of the impact and the public's growing concern about environmental sustainability, we ask our company to take steps to develop proactive environmental leadership on a range of paper sourcing issues, and to provide periodic updates to shareholders on its progress.

**BE IT RESOLVED** that the board of directors prepare a report, at reasonable cost, studying ways to take leadership on the environmental aspects of paper procurement through actions such as promoting stronger national paper recovery goals, setting goals for recycled content in its magazines and books, and goals for a majority of its supply chain to adopt strong forest management certification procedures.



**Exhibit B**



**RBC**  
**Dain Rauscher**

SRI Wealth Management Group  
345 California Street  
29th Floor  
San Francisco, CA 94104  
(415) 445-8306  
(415) 445-8313 Fax  
(866) 408-2667 Toll Free

November 16, 2007

To Whom It May Concern,

This letter is to confirm that Scott McDonald is the beneficial owner of at least \$2000 worth of McGraw Hill stock, and that these shares have been held continuously for at least one year and will be held through the date of the company's next annual meeting.

Sincerely,

Thomas W. Van Dyck, CIMA  
Senior Vice President-Financial Consultant  
SRI Wealth Management Group  
RBC Dain Rauscher

RECEIVED

Exhibit C

CFOCC-00036329

November 29, 2007

**CERTIFIED MAIL,**

**RETURN RECEIPT REQUESTED**

Mr. Conrad B. MacKerron  
Director, Corporate Social Responsibility Program  
As You Sow  
311 California Street, Suite 510  
San Francisco, CA 94104

Dear Mr. MacKerron:

A letter and stockholder proposal from As You Sow was faxed to our offices on November 20, 2007 submitted on behalf of a Mr. Scott McDonald. Your correspondence included a letter from an investment advisor, RBC Dain Rauscher, dated November 16, 2007, stating that Mr. McDonald is the beneficial owner of at least \$2,000 of McGraw Hill stock.

Pursuant to Rule 14a-8 of Regulation 14A of the United States Securities and Exchange Commission (the "SEC"), in order to be eligible to submit a proposal for consideration at McGraw-Hill's 2008 Annual Meeting, Mr. McDonald must have continuously held at least \$2,000 in market value, or 1% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date the proposal was submitted. In addition, Mr. McDonald must also continue to hold such securities through the date of the meeting. Following receipt of the proposal, we searched our shareholder records, but were unable to find Mr. McDonald listed as a record holder of McGraw-Hill stock. A search of our shareholder records also revealed that RBC Dain Rauscher is not a record holder of stock held on Mr. McDonald's behalf.

We do not believe that the letter from RBC satisfies the requirements of Rule 14a-8 to prove Mr. McDonald's eligibility to submit the proposal for consideration. We are therefore now requesting proof of Mr. McDonald's stockholdings, as required by Rule 14a-8. A copy of the applicable SEC provision is also enclosed with this letter. If Mr. McDonald is a McGraw-Hill stockholder of record, we apologize for not locating it in our own records. In such case, we will need for you to advise us precisely how the McGraw-

Hill shares are listed on our records. If Mr. McDonald is not a registered stockholder, you must prove his eligibility to the company in one of two ways. The first way is to submit to the company a written statement from the "record" holder of the securities (usually a broker or bank) verifying that, at the time Mr. McDonald's proposal was submitted, Mr. McDonald continuously held the securities for at least one year. Please note that a written statement from an introducing broker or investment advisor that is not a record owner of the shares would be insufficient evidence as that would not qualify as documentary support from the record holder of the shares; however, we would accept a letter from a broker or bank that has custody of the securities. The second way to prove ownership applies only if Mr. McDonald has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 with the SEC (or amendments to those documents or updated forms), reflecting Mr. McDonald's ownership of the shares as of or before the date on which the one-year eligibility period begins. If Mr. McDonald has filed one of these documents with the SEC, you may demonstrate his eligibility by submitting to the company (i) a copy of the schedule and/or form, and any subsequent amendments, reporting a change in his ownership level and (ii) his written statement that he continuously held the required number of shares for the one-year period as of the date of the statement.

Please note that all of the required documentation set forth in this letter must be sent directly to my attention within 14 calendar days of the date you receive this request, and that the Company reserves the right to exclude the proposal under the applicable provisions of Regulation 14A.

Very truly yours,



Scott L. Bennett

Enclosure



Exhibit D

---

**Subject:** Follow up to your letter

---

**From:** Conrad Mackerron [mailto:mack@asyousow.org]

**Sent:** Monday, December 03, 2007 1:37 PM

**To:** Bennett, Scott

**Subject:** Follow up to your letter

Dear Mr. Bennett:

I received your letter with questions about Scott McDonald's ownership of McGraw-Hill shares. I placed a call to RBC Dain Rauscher SRI Wealth Management Group and they confirmed they are the record holder with actual custody of these shares. Would a letter to that effect from RBC resolve your concerns?

Sincerely,

Conrad MacKerron

Director, Corporate Social Responsibility Program

As You Sow Foundation

311 California St., San Francisco, CA 94104

Phone: 415-391-3212, ext. 31

---

The information contained in this message is intended only for the recipient, and may be a confidential attorney-client communication or may otherwise be privileged and confidential and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, please be aware that any dissemination or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to the message and deleting it from your computer.

Thank you,

The McGraw-Hill Companies

---

12/18/2007

CFOCC-00036338

RECYCLED

Exhibit E

CFOCC-00036339

---

**From:** Bennett, Scott [scott\_bennett@mcgraw-hill.com]  
**Sent:** Monday, December 03, 2007 3:53 PM  
**To:** Conrad Mackerron  
**Subject:** RE: Follow up to your letter  
**Attachments:** AsYouSowshrhldrtr.DOC

Dear Mr. MacKerron:

As indicated in my letter dated November 29th, 2007, a copy of which is attached hereto, a search of our shareholder records does not reveal RBC Dain Rauscher Wealth Management Group is a shareholder of record with respect to Mr. Scott McDonald's shares. If you believe RBC is a record holder with respect to such shares, then, in addition to a letter from RBC that complies with the requirements set forth in my letter of November 29th, please provide proof that demonstrates precisely how RBC holds those shares so that we can verify such holdings with our records.

Sincerely yours,

Scott L. Bennett

---

**The McGraw-Hill Companies**

*Scott L. Bennett*  
*Senior Vice President*  
*Associate General Counsel and Secretary*  
*Legal Department- 48th Floor*  
*1221 Avenue of the Americas*  
*New York, NY 10020*  
*212.512.3998 Tel*  
*212.512.3997 Fax*

---

**From:** Conrad Mackerron [mailto:mack@asyousow.org]  
**Sent:** Monday, December 03, 2007 1:37 PM  
**To:** Bennett, Scott  
**Subject:** Follow up to your letter

Dear Mr. Bennett:

I received your letter with questions about Scott McDonald's ownership of McGraw-Hill shares. I placed a call to RBC Dain Rauscher SRI Wealth Management Group and they confirmed they are the record holder with actual custody of these shares. Would a letter to that effect from RBC resolve your concerns?

Sincerely,

12/18/2007

Conrad MacKerron  
Director, Corporate Social Responsibility Program  
As You Sow Foundation  
311 California St., San Francisco, CA 94104  
Phone: 415-391-3212, ext. 31

---

The information contained in this message is intended only for the recipient, and may be a confidential attorney-client communication or may otherwise be privileged and confidential and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, please be aware that any dissemination or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to the message and deleting it from your computer.

Thank you,  
The McGraw-Hill Companies

---

12/18/2007

November 29, 2007

**CERTIFIED MAIL,**

**RETURN RECEIPT REQUESTED**

Mr. Conrad B. MacKerron  
Director, Corporate Social Responsibility Program  
As You Sow  
311 California Street, Suite 510  
San Francisco, CA 94104

Dear Mr. MacKerron:

A letter and stockholder proposal from As You Sow was faxed to our offices on November 20, 2007 submitted on behalf of a Mr. Scott McDonald. Your correspondence included a letter from an investment advisor, RBC Dain Rauscher, dated November 16, 2007, stating that Mr. McDonald is the beneficial owner of at least \$2,000 of McGraw Hill stock.

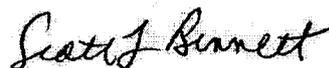
Pursuant to Rule 14a-8 of Regulation 14A of the United States Securities and Exchange Commission (the "SEC"), in order to be eligible to submit a proposal for consideration at McGraw-Hill's 2008 Annual Meeting, Mr. McDonald must have continuously held at least \$2,000 in market value, or 1% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date the proposal was submitted. In addition, Mr. McDonald must also continue to hold such securities through the date of the meeting. Following receipt of the proposal, we searched our shareholder records, but were unable to find Mr. McDonald listed as a record holder of McGraw-Hill stock. A search of our shareholder records also revealed that RBC Dain Rauscher is not a record holder of stock held on Mr. McDonald's behalf.

We do not believe that the letter from RBC satisfies the requirements of Rule 14a-8 to prove Mr. McDonald's eligibility to submit the proposal for consideration. We are therefore now requesting proof of Mr. McDonald's stockholdings, as required by Rule 14a-8. A copy of the applicable SEC provision is also enclosed with this letter. If Mr. McDonald is a McGraw-Hill stockholder of record, we apologize for not locating it in our own records. In such case, we will need for you to advise us precisely how the McGraw-

Hill shares are listed on our records. If Mr. McDonald is not a registered stockholder, you must prove his eligibility to the company in one of two ways. The first way is to submit to the company a written statement from the "record" holder of the securities (usually a broker or bank) verifying that, at the time Mr. McDonald's proposal was submitted, Mr. McDonald continuously held the securities for at least one year. Please note that a written statement from an introducing broker or investment advisor that is not a record owner of the shares would be insufficient evidence as that would not qualify as documentary support from the record holder of the shares; however, we would accept a letter from a broker or bank that has custody of the securities. The second way to prove ownership applies only if Mr. McDonald has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 with the SEC (or amendments to those documents or updated forms), reflecting Mr. McDonald's ownership of the shares as of or before the date on which the one-year eligibility period begins. If Mr. McDonald has filed one of these documents with the SEC, you may demonstrate his eligibility by submitting to the company (i) a copy of the schedule and/or form, and any subsequent amendments, reporting a change in his ownership level and (ii) his written statement that he continuously held the required number of shares for the one-year period as of the date of the statement.

Please note that all of the required documentation set forth in this letter must be sent directly to my attention within 14 calendar days of the date you receive this request, and that the Company reserves the right to exclude the proposal under the applicable provisions of Regulation 14A.

Very truly yours,



Scott L. Bennett

Enclosure

RECYCLED

---

**Subject:** RE: Follow up to your letter

---

**From:** Conrad Mackerron [mailto:mack@asyousow.org]  
**Sent:** Wednesday, December 05, 2007 4:28 PM  
**To:** Bennett, Scott  
**Subject:** RE: Follow up to your letter

Dear Mr. Bennett:

I forwarded your letter about not being able to locate shares for Mr. Scott McDonald to RBC Dain Rauscher. After more research, DR states the account name is the Scott McDonald Charitable Trust. Scott McDonald is the beneficiary. Brian Shepard is the trustee on the account, so it is possible this account may show up in your records under Mr. Shepard's name. Voyager Asset Management (part of RBC Dain Rauscher) is the money manager on the account, but DR says the shares are actually held at RBC Dain Rauscher.

If you have further questions, you may want to contact DR directly. The contact is Rebecca Sampson, SRI Wealth Management Group, RBC Dain Rauscher  
tel: 415.445.8309, or email [rebecca.sampson@rbcdain.com](mailto:rebecca.sampson@rbcdain.com).

Regards,

Conrad MacKerron  
Director, Corporate Social Responsibility Program  
As You Sow Foundation  
311 California St., San Francisco, CA 94104  
Phone: 415-391-3212, ext. 31  
Web: [www.asyousow.org](http://www.asyousow.org)

---

**From:** Bennett, Scott [mailto:scott\_bennett@mcgraw-hill.com]  
**Sent:** Monday, December 03, 2007 12:53 PM  
**To:** Conrad Mackerron  
**Subject:** RE: Follow up to your letter

Dear Mr. MacKerron:

As indicated in my letter dated November 29th, 2007, a copy of which is attached hereto, a search of our shareholder records does not reveal RBC Dain Rauscher Wealth Management Group is a shareholder of record with respect to Mr. Scott McDonald's shares. If you believe RBC is a record holder with respect to such shares, then, in addition to a letter from RBC that complies with the requirements set forth in my letter of November 29th, please provide proof that demonstrates precisely how RBC holds those shares so that we can verify such holdings with our records.

Sincerely yours,

12/18/2007

Scott L. Bennett

---

**The McGraw-Hill Companies**

*Scott L. Bennett*  
*Senior Vice President*  
*Associate General Counsel and Secretary*  
*Legal Department- 48th Floor*  
*1221 Avenue of the Americas*  
*New York, NY 10020*  
*212.512.3998 Tel*  
*212.512.3997 Fax*

---

**From:** Conrad Mackerron [mailto:mack@asyousow.org]  
**Sent:** Monday, December 03, 2007 1:37 PM  
**To:** Bennett, Scott  
**Subject:** Follow up to your letter

Dear Mr. Bennett:

I received your letter with questions about Scott McDonald's ownership of McGraw-Hill shares. I placed a call to RBC Dain Rauscher SRI Wealth Management Group and they confirmed they are the record holder with actual custody of these shares. Would a letter to that effect from RBC resolve your concerns?

Sincerely,

Conrad MacKerron  
Director, Corporate Social Responsibility Program  
As You Sow Foundation  
311 California St., San Francisco, CA 94104  
Phone: 415-391-3212, ext. 31

---

The information contained in this message is intended only for the recipient, and may be a confidential attorney-client communication or may otherwise be privileged and confidential and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, please be aware that any dissemination or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to the message and deleting it from your computer.

Thank you,  
The McGraw-Hill Companies

---

12/18/2007

REC-10

---

**Subject:** Shareholder proposal/ As You Sow

-----Original Message-----

**From:** Bennett, Scott  
**Sent:** Thursday, December 06, 2007 8:01 PM  
**To:** 'Conrad Mackerron'  
**Cc:** Bennett, Scott  
**Subject:** RE: Follow up to your letter

Dear Mr. MacKerron:

Reference is made to your email dated December 5, 2007 set forth below. Unfortunately we have not been able to locate the shares which you refer to under any of the names or entities which you list or refer to in our records. As you know, we sent you a letter on November 29, 2007 outlining the requirements for proving Mr. McDonald's eligibility to submit a shareholder proposal. We further responded on December 3 to your email of the same date as to what would be required to prove eligibility. At this point we believe SEC rules permit us to take the position unless you satisfactorily demonstrate ownership to us by the deadline set forth in my November 29<sup>th</sup> email that Mr. McDonald has not provided adequate proof of ownership. We respectfully decline to assist you any further in demonstrating that Mr. McDonald satisfies the eligibility requirements for submitting a proposal under SEC Rule 14a-8.

Nonetheless we plan to contact you in the near future to discuss with you the substance of the proposal.

Sincerely

Scott L Bennett  
Senior Vice President and  
Secretary  
The McGraw-Hill Companies

-----Original Message-----

**From:** Conrad Mackerron [mailto:mack@asyousow.org]  
**Sent:** Wednesday, December 05, 2007 4:28 PM  
**To:** Bennett, Scott  
**Subject:** RE: Follow up to your letter

Dear Mr. Bennett:

I forwarded your letter about not being able to locate shares for Mr. Scott McDonald to RBC Dain Rauscher. After more research, DR states the account name is the Scott McDonald Charitable Trust. Scott McDonald is the beneficiary. Brian Shepard is the trustee on the account, so it is possible this account may show up in your records under Mr. Shepard's name. Voyageur Asset Management (part of RBC Dain Rauscher) is the money manager on the account, but DR says the shares are actually held at RBC Dain Rauscher.

If you have further questions, you may want to contact DR directly. The contact is Rebecca Sampson, SRI Wealth Management Group, RBC Dain Rauscher  
tel: 415.445.8309, or email [rebecca.sampson@rbcdain.com](mailto:rebecca.sampson@rbcdain.com).

Regards,

Conrad MacKerron

12/18/2007

Director, Corporate Social Responsibility Program  
 As You Sow Foundation  
 311 California St., San Francisco, CA 94104  
 Phone: 415-391-3212, ext. 31  
 Web: [www.asyousow.org](http://www.asyousow.org)

---

**From:** Bennett, Scott [mailto:scott\_bennett@mcgraw-hill.com]  
**Sent:** Monday, December 03, 2007 12:53 PM  
**To:** Conrad Mackerron  
**Subject:** RE: Follow up to your letter

Dear Mr. MacKerron:  
 As indicated in my letter dated November 29th, 2007, a copy of which is attached hereto, a search of our shareholder records does not reveal RBC Dain Rauscher Wealth Management Group is a shareholder of record with respect to Mr. Scott McDonald's shares. If you believe RBC is a record holder with respect to such shares, then, in addition to a letter from RBC that complies with the requirements set forth in my letter of November 29th, please provide proof that demonstrates precisely how RBC holds those shares so that we can verify such holdings with our records.

Sincerely yours,  
 Scott L. Bennett

**The McGraw-Hill Companies**  
 Scott L. Bennett  
 Senior Vice President  
 Associate General Counsel and Secretary  
 Legal Department- 48th Floor  
 1221 Avenue of the Americas  
 New York, NY 10020  
 212.512.3998 Tel  
 212.512.3997 Fax

---

**From:** Conrad Mackerron [mailto:mack@asyousow.org]  
**Sent:** Monday, December 03, 2007 1:37 PM  
**To:** Bennett, Scott  
**Subject:** Follow up to your letter

Dear Mr. Bennett:  
 I received your letter with questions about Scott McDonald's ownership of McGraw-Hill shares. I placed a call to RBC Dain Rauscher SRI Wealth Management Group and they confirmed they are the record holder with actual custody of these shares. Would a letter to that effect from RBC resolve your concerns?  
 Sincerely,  
 Conrad MacKerron  
 Director, Corporate Social Responsibility Program  
 As You Sow Foundation  
 311 California St., San Francisco, CA 94104  
 Phone: 415-391-3212, ext. 31

---

The information contained in this message is intended only for the recipient, and may be a confidential attorney-client communication or may otherwise be privileged and confidential and protected from disclosure. If the reader of this

12/18/2007

CFOCC-00036349

message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, please be aware that any dissemination or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to the message and deleting it from your computer.

Thank you,  
The McGraw-Hill Companies

---

12/18/2007

CFOCC-00036350

REC'D

Exhibit H

CFOCC-00036351



311 California Street, Suite 510  
San Francisco, CA 94104  
T 415.391.3212  
F 415.391.3245  
[www.asyousow.org](http://www.asyousow.org)

Dec. 12, 2007

By fax and overnight mail

Scott L. Bennett  
Senior Vice President  
McGraw-Hill Companies  
1221 Avenue of the America  
New York, N.Y. 10020

Dear Mr. Bennett:

Pursuant to your letter of Nov. 29, 2007 and subsequent communications, I am transmitting additional materials to confirm Mr. Scott McDonald's ownership of McGraw-Hill shares. Enclosed is an account statement from RBC Dain Rauscher showing that Brian Shepard is trustee for the Scott McDonald Charitable Remainder Trust, and that the trust has held 118 shares of McGraw-Hill stock since Dec. 1, 2004.

As requested, also enclosed is a letter from trustee Brian Shepard, authorizing As You Sow to file the proposal, and also confirming that the stock has been held in the trust for more than one year.

Sincerely,

A handwritten signature in black ink, appearing to read 'Conrad MacKerron', with a long horizontal flourish extending to the right.

Conrad MacKerron  
Director, Corporate Social Responsibility Program

Enclosures



DEC-12-2007 11:57

FS HUALALAI

8083258200

P.02/02

December 10, 2007

Conrad MacKerron  
Director  
Corporate Social Responsibility Program  
As You Sow Foundation  
311 California St.  
San Francisco, CA 94104

Dear Mr. MacKerron:

I hereby authorize As You Sow to file a shareholder resolution on my behalf relating to recycling and paper sourcing policies at McGraw-Hill Cos.

I am the beneficial owner of at least \$2,000 worth of McGraw-Hill stock that has been held for more than one year. I intend to hold the aforementioned stock through the date of the company's annual meeting in 2008.

I give As You Sow full authority to deal, on my behalf, with any and all aspects of the aforementioned shareholder resolution. I understand my name may appear on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,



Brian Shepard, *TJ Shea*

TOTAL P.02

CFOCC-00036353

**Jonas D. Kron, Attorney at Law**

2940 SE Woodward Street  
Portland, Oregon 97202  
(971) 222-3366 ~ (801) 642-9522  
jdkron@kronlaw.com

RECEIVED  
2008 JAN 14 AM 11:26  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

January 10, 2008

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Shareholder Proposal Submitted to The McGraw Hill Companies Inc. for 2008 Proxy Statement

Dear Sir/Madam:

I have been asked by Mr. Conrad MacKerron, Director of the Corporate Social Responsibility Program of the As You Sow Foundation on behalf of Mr. Scott McDonald (hereinafter referred to as the "Proponent"), who is the beneficial owner of shares of common stock of The McGraw Hill Companies Inc. (hereinafter referred to as the "Company"), and who has submitted a shareholder proposal (hereinafter referred to as "the Proposal") to the Company, to respond to the letter dated December 18, 2007 sent to the Office of Chief Counsel by the Company, in which the Company contends that the Proposal may be excluded from the Company's 2008 proxy statement by virtue of Rules 14a-8(b) and 14a-8(f).

I have reviewed the Proponents' shareholder proposal, as well as the Company's letter and supporting materials, and based upon the foregoing, as well as upon a review of Rule 14a-8, it is my opinion that the Proponents' shareholder proposal must be included in the Company's 2008 proxy statement, because the Proponent is eligible to submit the Proposal. Therefore, we respectfully request that the Staff not issue the no-action letter sought by the Company.

Pursuant to Rule 14a-8(k), enclosed are six copies of this letter and exhibits. A copy of these materials is being mailed concurrently to the Company's counsel Attorney Elliot V. Stein.

The Proposal seeks a report on recycled content and supply chain management. The Company, however, does not argue that the Proposal should be excluded on subject matter grounds. Rather, the Company claims that the Proponent is not eligible to submit the Proposal because the documentation provided by the Proponent is insufficient proof of ownership. It is our contention that the Company's deficiency letter is inadequate under the Rule 14a-8(b), 14a-8(f) and Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14").

## **Background**

On November 19, 2007 the Proponent sent the Proposal to the Company including a letter from the Proponent and his broker ( RBC Dain Rauscher) stating that he is the beneficial owner of at least \$2,000 worth of Company stock, that it has been held for more than one year and that he intends to hold the stock through the date of the Company's annual meeting in 2008.

On November 29, 2007 the Company set a request for documentation (Company Exhibit C) to the Proponent stating:

Following receipt of the proposal, we searched our shareholder records, but were unable to find Mr. McDonald listed as a record holder of McGraw-Hill Stock. A search of our shareholder records also revealed that RBC Dain Rauscher is not a record holder of stock held on Mr. McDonald's behalf.

\*\*\*

We are therefore now requesting proof of Mr. McDonald's stockholdings ...

The first way to submit to the company a written statement from the "record" holder of the securities (usually a broker or bank) ...

On December 3, 2007 the Proponent sent an email to the Company (Company Exhibit G) confirming that RBC was the record holder and asking if a letter to that effect from RBC would resolve the Company's concerns. Later that day, the Company replied to the Proponent (Company Exhibit G) saying RBC is not a record holder and that if the Proponent believes RBC is the record owner to provide proof of that ownership.

On December 5, 2007 the Proponent sent an email to the Company (Company Exhibit G) with additional details of the Proponents ownership including the precise name of the account ("the Scott McDonald Charitable Trust") and the name of the trustee ("Brian Shepard").

On December 6, 2007 the Company responded to the Proponent (Company Exhibit G) stating that none of these names appeared as a record holder of the shares. The Company went on to claim that the Proponent had failed to comply with the Rule and declared the Company would no longer "assist you any further . . ."

On December 12, 2007 the Proponent sent the Company a letter from the trustee of the account dated December 10, 2007 and an account statement from RBC dated December 11, 2007 to prove ownership of the shares. (Company Exhibit G).

## **Analysis**

The Company's argument and conduct in this case is completely spurious and a very poor use of the Staff's valuable time. The reality of the securities ownership structure in the United States makes it almost certain that the Company would be unable to find the Proponent, RBC, the Trust or the trustee in its records. Consequently, the Company's deficiency letter was at best inadequate and possibly

abusive of the procedures set forth in the Rule.

As is known among securities professionals but not by the typical investor, the ownership structure between the multiple securities intermediaries and beneficial owners is complex. To begin, street name shares are owned by the broker or bank. The broker or bank then deposits the shares in an account at the Depository Trust Corporation. The Depository Trust Corporation, however, is not the record owner. Rather the shares are held of record by Cede & Co., a nominee of the Depository Trust Company. Therefore, in order to determine the identity of the street name owner one must go first through the depository to the brokers and banks depositing shares, then through the broker or bank to the beneficial owner. This also means that the record owner in the case of brokers and banks is almost invariably Cede & Co, or some other nominee and not the broker or the bank itself. Furthermore, Cede & Co has no knowledge as to the ultimate beneficial ownership of the stock that it holds of record for brokerage firms like RBC. Cede & Co. merely knows the gross securities position of each participant in the Depository Trust Company.

This situation is confirmed in footnote 21 of Rel 34-50758A (December 7, 2004) in which the SEC observes:

The relationship between various levels of securities intermediaries and beneficial owners is complex. There may be many layers of beneficial owners (some of which may also be securities intermediaries) with all ultimately holding securities on behalf of a single beneficial owner, who is sometimes referred to as the ultimate beneficial owner. For example, an introducing broker-dealer may hold its customer's securities in its account at a clearing broker-dealer, that in turn holds the introducing broker-dealer's securities in an account at DTC. In this context, DTC or its nominee is the registered owner and DTC's participants (i.e., broker-dealers and banks) are beneficial owners, as are the participants' customers. However, DTC, the clearing broker-dealer (the DTC participant), and the introducing broker-dealer are all securities intermediaries.

As such, the reality is that the name of the beneficial owner will not appear in the company's, DTC's or Cede's records, but only in the records of the broker or the bank even though it is virtually certain that the broker or the bank is not the record owner. Consequently, the broker is in the best (if not only) position to document who the ultimate beneficial owner is.

The Company's response (its Exhibit C) clearly does not meet the standards set forth in the Rule or SLB 14 (July 13, 2001), Section G.3. with respect to adequate notice of alleged procedural defects. Under these standards, the Company must "provide adequate detail about what the shareholder must do to remedy all eligibility or procedural defects." This advice was reaffirmed in Staff Legal Bulletin No. 14B (September 15, 2004), Section C.1.

Mr. MacKerron received a letter from the Company saying that the Company could not find the Proponent in its records nor could it find that RBC was a record holder of stock held on the Proponent's behalf. The Company goes on to say that proof can be provided by "a written statement from the 'record' holder of the securities (usually a **broker or bank**)." (emphasis added). Mr. MacKerron followed that advice and supplied the broker provided information to the Company. However, the Company rejected this information claiming that "we have not been able to locate the shares which you refer to under any of the names or entities which you list or refer to in our records." This is not providing adequate detail about what the shareholder must do to provide proof. This is taking

advantage of the fact that lay persons have no reason to understand the complex relationships between the various levels of securities intermediaries and beneficial owners.

The Company essentially sent Mr. MacKerron on a wild goose chase by impliedly proposing that the Proponent seek a letter from Cede & Co. to document ownership. Of course that would have been a useless exercise because Cede & Co has no knowledge as to the ultimate beneficial ownership of the stock that it holds of record for brokerage firms like RBC. In recognition of the futility of such a request, the Staff has rejected a 14a-8(f) claim when the registrant seemed to demand proof from Cede & Co. See *Equity Office Properties Trust* (March 23, 2003).<sup>1</sup>

We would contend that the Company knew full well that RBC would not appear in its records and was trying to create the illusion of complying with Rule 14a-8(b) while creating confusion in the mind of the Proponent. Consequently, the Company did not provide adequate notice of the defect and it cannot rely on the Rule to exclude the Proponent's shareholder proposal.

Turning to the Company's second argument – that the RBC account statement is insufficient – it is clear that it is an equally spurious argument. Even if the Staff were to conclude the Company's deficiency letter is somehow adequate, it is apparent from the email's sent back and forth between Mr. MacKerron and the Company (Company Exhibit G) that the issue of contention was simply ownership of the shares and not the continuity of that ownership. The Company, by continuously pushing its disingenuous questions of record ownership, only confused matters. It is therefore no surprise that the documentation provided by the Proponent was focused on the simple question of ownership and not the subsidiary question of continuous ownership.

There is no reasonable claim on the part of the Company that the Proponent's ownership is not continuous. RBC's November 16, 2007 letter makes it clear that ownership was continuous for at least the prior year and the December 12, 2007 letter from the Proponent makes it clear that ownership was continuous since December 2004. To suggest otherwise is to intimate the utterly ridiculous notion that RBC has perpetrated a fraud. We respectfully submit that such a charge would be beyond the pale and would illustrate the unreasonableness of the Company's arguments. See also *AT&T Inc.* (January 2, 2008).

As the SEC explained in Exchange Act Release No. 34-20091 (August 16, 1983) when justifying its adoption of the plain-English format, the goal is to “make the rule easier for shareholders and companies to understand and follow.” Furthermore the purpose of Rules 14a-8(b) and 14a-8(f) is to ensure that the proponents “have some measured economic stake or investment interest in the corporation.” Exchange Act Release No. 34-20091 (August 16, 1983). The purpose is to curtail abuse of the shareholder proposal rules, *id.*, not to provide an opportunity for corporations to misuse the Rule by raising spurious arguments in an effort to derail the process. Clearly, the Proponent has, in the words of the SEC, the requisite “economic stake or investment interest in the corporation..” As such, we request the Staff to conclude the Proponent is eligible to file the Proposal.<sup>2</sup>

---

1 See also *Clear Channel Communications* (February 9, 2006) in which the company also argued that neither the proponent or its broker were record holders. In that case, the proponent made the same argument we are making here leading the Staff conclusion in that case was “that Clear Channel failed to inform the proponent of what would constitute appropriate documentation under rule 14a-8(b) in Clear Channel's request for additional information from the proponent.”

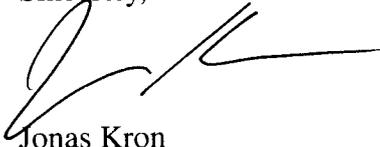
2 We note that the Proponent is fully prepared and able to provide additional proof of ownership as may be appropriately

***Conclusion***

In conclusion, we respectfully request the Staff to inform the Company that Rule 14a-8 requires a denial of the Company's no-action request. As demonstrated above, the Company's letters fail to meet the requirements of Rule 14a-8(b), 14a-8(f) and SLB 14. In the event that the Staff should decide to concur with the Company and issue a no-action letter, we respectfully request the opportunity to speak with the Staff.

Please call me at (971) 222-3366 with any questions in connection with this matter, or if the Staff wishes any further information. Also, pursuant to SLB 14 B, section F.3. we request the Staff fax a copy of its response to the Proponents at (801) 642-9522.

Sincerely,



Jonas Kron  
Attorney for the Proponent

Enclosures

cc: Attorney Elliot V. Stein, Wachtell, Lipton, Rosen & Katz  
Conrad MacKerron, As You Sow  
Scott McDonald  
Rebecca Sampson, RBC Dain Rauscher

---

required by the Staff.

WACHTELL, LIPTON, ROSEN & KATZ

51 WEST 52ND STREET  
NEW YORK, N.Y. 10019-6150  
TELEPHONE: (212) 403-1000  
FACSIMILE: (212) 403-2000

GEORGE A. KATZ (1965-1999)  
JAMES H. FOGELSON (1967-1991)

OF COUNSEL

WILLIAM T. ALLEN  
PETER C. CANELLOS  
THEODORE GEWERTZ  
KAREN G. KRUEGER  
THEODORE A. LEVINE  
ALLAN A. MARTIN  
LEONARD M. ROSEN  
MICHAEL W. SCHWARTZ  
ELLIOTT V. STEIN  
J. BRYAN WHITWORTH  
AMY R. WOLF

COUNSEL

MICHELE J. ALEXANDER  
ADRIENNE ATKINSON  
ANDREW J.H. CHEUNG  
DAMIAN G. DIDDEN  
PAMELA EHRENKRANZ  
ROBERT A. FRIEDMAN  
ELAINE P. GOLIN  
PAULA N. GORDON  
NANCY B. GREENBAUM  
MAURA R. GROSSMAN  
IAN L. LEVIN  
HOLLY M. STRUTT

J. AUSTIN LYONS  
LORI S. SHERMAN  
JEFFREY C. FOURMAUX  
IAN BOCKZO  
LAURYN P. GOULDIN  
MATTHEW M. QUEST  
DAVID E. KAHAN  
MARK A. KOENIG  
DAVID K. LAM  
MICHAEL S. WINOGRAD  
KATHRYN GETTLES-ATWA  
DANIELLE L. ROSE  
BENJAMIN H. ROTH  
ANDREW A. SCHWARTZ  
DAVID M. ADLERSTEIN  
SHIRI BEN-YISHAI  
JOSHUA A. FELTMAN  
STEPHEN M. FRANCIS  
JONATHAN H. GORDON  
EMIL A. KLEINHAUS  
WILLIAM E. SCHEFFER  
ADIR G. WALDMAN  
AREF H. AMANAT  
B. UMUT ERGUN  
EVAN K. FARBER  
MICHAEL KRASNOVSKY  
SARAH A. LEWIS  
GARRETT B. MORITZ  
JOSHUA A. NAFTALIS  
VINAY SHANDAL  
MEREDITH L. TURNER  
YELENA ZAMACONA  
KARESSA L. CAIN  
WILLIAM EDWARDS  
JAMES R. GILMARTIN  
ADAM M. GOGOLAK  
JONATHAN GOLDIN  
ROGER J. GRIESMEYER  
CATHERINE HARDEE  
DANIEL E. HEMLI  
GAVIN W. HOLMES  
GORDON S. MOODIE  
JOHN A. NEUMARK  
MICHAEL ROSENBLAT  
LINDSAY R. SELLERS  
DONGJU SONG  
AMANDA L. STRAUB  
BRADLEY R. WILSON  
NATHANIEL L. ASKER  
FRANCO CASTELLI  
DAVID B. FEIRSTEIN  
ROSS A. FIELDSTON  
DAVID FISCHMAN  
JESSE E. GARY  
MICHAEL GERBER  
SCOTT W. GOLENBOCK  
CAITH KUSHNER  
J. ALEJANDRO LONGORIA  
GRAHAM W. MELI  
JOSHUA M. MILLER  
JABAND MOCK  
OPHIR HAVE  
GREGORY E. PESSIN  
CARRIE M. REILLY  
ERIC ROSENSTOCK  
ANGOLA RUSSELL  
WON S. SHIN  
JEFFREY UNGER  
MARK F. VEBLEN  
CARMEN WOO  
ANDREW M. WOOLF  
STELLA AMAR  
BENJAMIN R. CARALE  
DOUGLAS R. CHARTIER  
LAUREN COOPER  
RODMAN K. FORTER  
IGOR FUKS  
BETTY W. GEE  
VINCENT G. KALAFAT  
JENNIFER R. KAMINSKY  
LAUREN M. KOPFKE  
JONATHAN R. LACHAPPELLE  
BRANDON C. PRICE  
MICHAEL SABBAAH  
JOEY SHABOT  
C. LEE WILSON  
RACHEL A. WILSON  
ALISON M. ZIESKE  
SHLOMIT WAGMAN

MARTIN LIPTON  
HERBERT M. WACHTELL  
BERNARD W. NUSSBAUM  
RICHARD D. KATCHER  
LAWRENCE B. PEDOWITZ  
ROBERT B. MAZUR  
PAUL VIZCARRONDO, JR.  
PETER C. HEIN  
HAROLD S. NOVAKOFF  
DAVID M. EINHORN  
KENNETH B. FORREST  
MEYER G. KOPLOW  
THEODORE N. MIRVIS  
EDWARD D. HERLIHY  
DANIEL A. NEFF  
ERIC M. ROTH  
WARREN R. STERN  
ANDREW R. BROWNSTEIN  
MICHAEL H. BROWITZ  
PAUL K. ROWE  
MARC WOLINSKY  
DAVID GRUENSTEIN  
PATRICIA A. VLAHAKIS  
STEPHEN G. GELLMAN  
STEVEN A. ROSENBLUM  
PAMELA S. SEYMON  
STEPHANIE J. SELIGMAN  
ERIC S. ROBINSON  
JOHN F. SAVARESE  
SCOTT K. CHARLES  
ANDREW C. HOUSTON  
PHILIP MINDLIN  
DAVID S. NEILL  
JODI J. SCHWARTZ  
ADAM O. ENMERICH  
CRAIG M. WASSERMAN  
GEORGE T. CONWAY III  
RALPH M. LEVENE  
RICHARD G. MASON  
DOUGLAS K. MAYER  
MICHAEL J. SEGAL  
DAVID M. SILK  
ROBIN PANOVKA  
DAVID A. KATZ  
ILENE KNABLE GOTTS  
DAVID M. MURPHY  
JEFFREY M. WINTNER  
TREVOR S. NORWITZ  
BEN M. GERMANA  
ANDREW J. NUSSBAUM  
RACHELLE SILVERBERG  
DAVID C. BRYAN  
STEVEN A. COHEN  
GAVIN D. SOLOTAR  
DEBORAH L. PAUL  
DAVID C. KARP  
RICHARD K. KIM  
JOSHUA R. CAMMAKER  
MARK GORDON  
JOSEPH D. LARSON  
LAWRENCE S. MAKOW  
JEANNEMARIE O'BRIEN  
WAYNE M. CARLIN  
JAMES COLE, JR.  
STEPHEN R. DiPRIMA  
NICHOLAS G. DEMMO  
IGOR KIRMAN  
JONATHAN M. MOSES  
T. EIKO STANGE  
DAVID A. SCHWARTZ  
JOHN F. LYNCH  
WILLIAM SAVITT  
ERIC M. ROSOF  
MARTIN J.E. ARMS  
GREGORY E. OSTLING  
DAVID B. ANDERS  
ADAM J. SHAPIRO  
NELSON O. FITTS  
JEREMY L. GOLDSTEIN  
JOSHUA M. HOLMES  
DAVID E. SHAPIRO

January 17, 2008

**BY EMAIL TO [cfletters@sec.gov](mailto:cfletters@sec.gov)  
WITH COPIES BY COURIER**

U.S. Securities and Exchange Commission  
Division of Corporate Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

Re: **The McGraw-Hill Companies, Inc.**  
**Securities Exchange Act of 1934; Rule 14a-8**

Ladies and Gentlemen:

This letter is submitted on behalf of our client, The McGraw-Hill Companies, Inc. (the "Company"), in response to the January 10, 2008 letter from Mr. Jonas D. Kron on behalf of Mr. Conrad MacKerron of the As You Sow Foundation (the "Proponent Representative") and Mr. Scott McDonald (the "Proponent") to the Securities and Exchange Commission (the "Commission") regarding a shareholder proposal and supporting statement (the "Proposal") submitted by the Proponent for inclusion in the Company's proxy materials for its 2008 Annual Meeting of Stockholders.

On December 18, 2007, we submitted a letter (the "Request Letter") on behalf of the Company to request confirmation from the Staff of the Division of Corporation Finance of the Commission (the "Staff") that it would not recommend to the Commission that any enforcement action be taken if the Company excludes the Proposal from its 2008 Proxy Materials pursuant to Exchange Act Rules 14a-8(b) and 14a-8(f). Mr. Kron's letter (the "Proponent Letter") is

2008 JAN 18 PM 5:42  
RECEIVED  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

U.S. Securities and Exchange Commission  
Division of Corporate Finance  
Office of Chief Counsel  
January 17, 2008  
Page 2

apparently the Proponent's response to the Request Letter. We are submitting this letter to respond to the Proponent Letter's accusations that the Company did not provide the Proponent and his representatives with adequate notice of the Proposal's procedural defects. The other points raised in the Proponent Letter, which relate to the sufficiency of the documentary support provided to the Company on behalf of the Proponent, are fully refuted by the analysis we provided in the Request Letter, and we do not repeat those arguments here.

As we noted in the Request Letter, there are at least two deficiencies with the letter from the Proponent's investment advisor (RBC Dain Rauscher SRI Wealth Management) that was enclosed with the Proposal submitted to the Company: (1) the date on the letter inappropriately predated the date of the Proposal's submission to the Company by three days and (2) the letter was from the Proponent's investment advisor and the Company could not locate the investment advisor (or the Proponent) as a record holder of stock being held on the Proponent's behalf. Therefore, in accordance with Rule 14a-8(f) and Staff Legal Bulletins 14 and 14B (July 13, 2001 and September 15, 2004; respectively) (together, "SLB 14"), the Company sent the Proponent a letter that notified the Proponent that the letter from its investment advisor was insufficient and clearly articulated to the Proponent what would constitute adequate proof. In particular, the Company requested that, if the Proponent disagreed with its determination that the Proponent is not a record holder, the Proponent advise the Company precisely how those shares appear in the Company's records. Further, because the Proponent is not a record owner, the Company advised the Proponent that it must "submit to the company a written statement from the 'record' holder of the securities (usually a broker or bank) verifying that, *at the time Mr. McDonald's proposal was submitted*, Mr. McDonald *continuously* held the securities for at least one year" (emphasis added). We further stressed, in accordance with SLB 14, "that a written statement from an introducing broker or *investment advisor that is not a record owner of the shares would be insufficient evidence* as that would not qualify as documentary support from the record holder of the shares; however, we would accept a letter from a broker or bank that has custody of the securities" (emphasis added). Thus, we informed the Proponent that the documentary evidence:

- must verify continuous ownership as of the date of the submission of the Proposal;
- must be from the record owner of the shares but that we would accept a letter from a broker or bank that has custody of the securities; and
- may not come from an investment advisor (*e.g.*, RBC Dain Rauscher SRI Wealth Management Group) unless the investment advisor is the record owner of the Proponent's shares.

In addition, despite having already provided a letter to the Proponent complying with Rule 14a-8(f) and SLB 14 that explicitly stated what would be acceptable, the Company replied to two additional emails from the Proponent Representative regarding the adequacy of

U.S. Securities and Exchange Commission  
Division of Corporate Finance  
Office of Chief Counsel  
January 17, 2008  
Page 3

the Proponent's documentary support:<sup>1</sup>

- on December 3, 2007, the Company emailed the Proponent Representative that, if he believed RBC was indeed a record owner of the shares, he should provide (A) "a letter from RBC that complies with the requirements set forth in [the Company's] letter of November 29th" and (B) "proof that demonstrates precisely how RBC holds those shares so that [the Company] can verify such holdings with [its] records." The Company also attached a copy of its November 29<sup>th</sup> letter to this correspondence.
- On December 6, 2007, in response to an email from the Proponent Representative that proposed record owner candidates of the Proponent's shares and that invited the Company to contact RBC directly, the Company emailed the Proponent Representative that it could not identify in its records any of the persons or entities listed in his email and reiterated that it had informed him in its November 29, 2007 and December 5, 2007 correspondence as to what would be required to prove eligibility.

The written communications exchanged with the Proponent and the Proponent Representative are included as exhibits in the Request Letter. The only communications received from anyone purportedly having custody or record ownership of the Proponent's shares are (i) the November 16, 2007 letter from the Proponent's investment advisor (RBC Dain Rauscher SRI Wealth Management Group), which fails to provide adequate evidence because it predates the Proposal by three days and (ii) the redacted account statement dated December 11, 2007, which, as more fully explained in the Request Letter, is also insufficient. Thus, as more fully set forth in the Request Letter, the Company believes the Proposal may be excluded from its proxy statement in reliance on Rules 14a-8(b) and 14a-8(f).

If the Staff needs additional information, including with respect to the Proponent Letter, please do not hesitate to contact the undersigned at (212) 403-1228 or via fax at (212) 403-2228.

Very truly yours,



Elliott V. Stein

cc: As You Sow Foundation

---

<sup>1</sup> The Company also fielded multiple phone calls from the Proponent Representative as to what would be required.

RECEIVED

Jonas D. Kron, Attorney at Law

2008 JAN 24 PM 12: 21

2940 SE Woodward Street  
Portland, Oregon 97202  
(971) 222-3366 ~ (801) 642-9522  
jdkron@kronlaw.com

OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

January 23, 2008

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

Via email [cfletters@sec.gov](mailto:cfletters@sec.gov) and U.S.P.S.

Re: Shareholder Proposal Submitted to The McGraw Hill Companies Inc. for 2008 Proxy Statement

Dear Sir/Madam:

I have been asked by Mr. Conrad MacKerron, Director of the Corporate Social Responsibility Program of As You Sow on behalf of Mr. Scott McDonald (hereinafter referred to as the "Proponent"), who is the beneficial owner of shares of common stock of The McGraw Hill Companies Inc. (hereinafter referred to as the "Company"), and who has submitted a shareholder proposal (hereinafter referred to as "the Proposal") to the Company, to respond to the Company's letter dated December January 17, 2008, the Company's second letter in this matter.

Pursuant to Rule 14a-8(k), enclosed are six copies of this letter and exhibits. A copy of these materials is being mailed concurrently to the Company's counsel Attorney Elliot V. Stein.

First, we observe that while the Company emailed its second letter to the Staff and the Company has in its possession our email addresses and fax numbers, it chose to notify us of its second letter by U.S. postal mail. That letter was received Tuesday January 22, 2008. In an effort to resolve this matter as quickly as possible we are responding immediately and briefly.

We stand by our arguments presented to the Staff in our letter of January 10<sup>th</sup>. There is nothing in the Company's letter that fundamentally detracts from the strength of our position. Accordingly, our arguments in our January 10<sup>th</sup> letter are incorporated herein and we request the Staff conclude that the Proponent's documentation satisfies the Rule.

In addition, we would like to highlight for the Staff again the following cases which demonstrate that the Company has no basis for excluding the Proposal. *Clear Channel Communications* (February 9, 2006) and *Equity Office Properties Trust* (March 23, 2003) make it abundantly clear that the Staff does not look favorably on these sorts of tactics. The relationship between various levels of securities intermediaries and beneficial owners is complex and disingenuous attempts to use this complexity to

create the illusion of compliance should be rejected outright. Furthermore, *AT&T Inc.* (January 2, 2008) demonstrates that attempts to create confusion about continuity of ownership, as done by the Company here, should be rejected.

We note that the Company has **not refuted our arguments related to these cases, nor have they disputed our factual arguments regarding the complex relationships of securities intermediaries.** The Company instead seeks to bolster its position that it did provide adequate notice of deficiency. As we explained in our previous letter the Company's various correspondence were not providing adequate detail about what the shareholder must do to provide proof. It appears instead that it was taking advantage of the fact that lay persons have no reason to understand the complex relationships between the various levels of securities intermediaries and beneficial owners.

It is clear from our January 10<sup>th</sup> letter and this letter that the Proponent has the requisite economic stake and investment interest in the Company. As such, we request the Staff to conclude the Proponent is eligible to file the Proposal and that Rule 14a-8 requires a denial of the Company's no-action request. Please call me at (971) 222-3366 with any questions in connection with this matter, or if the Staff wishes any further information. Also, pursuant to SLB 14 B, section F.3. we request the Staff fax a copy of its response to the Proponents at (801) 642-9522.

Sincerely,



Jonas Kron  
Attorney for the Proponent

Enclosures

cc: Attorney Elliot V. Stein, Wachtell, Lipton, Rosen & Katz  
Conrad MacKerron, As You Sow  
Scott McDonald  
Rebecca Sampson, RBC Dain Rauscher