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

DIVISION OF
CORPORATION FINANCE

October 24, 2012

Christy Lillquist
Visa Inc.
clillqui@visa.com

Re: Visa Inc.
Incoming letter dated September 25, 2012

Dear Ms. Lillquist:

This is in response to your letter dated September 25, 2012 concerning the shareholder proposal submitted to Visa by Rob Roy Phillips and Ora Ruth Phillips. Copies of all of the correspondence related to this matter will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Ted Yu
Senior Special Counsel

cc: Rob Roy Phillips

*** FISMA & OMB Memorandum M-07-16 ***

October 24, 2012

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Visa Inc.
Incoming letter dated September 25, 2012

The proposal relates to compensation.

There appears to be some basis for your view that Visa may exclude the proposal under rule 14a-8(f). We note that the proponents appear to have failed to supply, within 14 days of receipt of Visa's request, documentary support sufficiently evidencing that they satisfy 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 Visa omits the proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which Visa relies.

Sincerely,

Ted Yu
Senior Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

September 25, 2012

Christy Lillquist
Senior Governance Counsel &
Assistant Secretary
clillqui@visa.com

Via email: shareholderproposals@sec.gov

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

Re: Visa Inc.
Stockholder Proposals of Mr. Rob Roy Phillips and Ms. Ora Ruth Phillips
Securities Exchange Act of 1934 Rule 14a-8

Dear Ladies and Gentlemen:

The purpose of this letter is to request confirmation that the staff of the Division of Corporation Finance (the "Staff') of the U.S. Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission if the Company omits, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the enclosed submission of stockholder proposals (the "Submission") provided by Mr. Rob Roy Phillips and Ms. Ora Ruth Phillips (the "Proponents") from the Company's proxy statement and form of proxy (collectively, the "2013 Proxy Materials") for its 2013 Annual Meeting of Stockholders (the "2013 Annual Meeting").

We believe that the Submission may be excluded from the 2013 Proxy Materials on the grounds that: (i) the Proponents failed to provide the requisite proof of continuous stock ownership in response to the Company's proper and timely request for that information, and therefore the Submission is excludable in reliance on the provisions of Rule 14a-8(b) and Rule 14a-8(f)(1); and (ii) the Proponents submitted two proposals as part of the Submission and did not remedy this deficiency after timely notice by the Company, therefore the Submission is excludable in reliance on the provisions of Rule 14a-8(c).

In accordance with Section C of *Staff Legal Bulletin No. 14D* (November 7, 2008), we are emailing this letter and its attachments to the Commission at shareholderproposals@sec.gov no later than eighty (80) calendar days before the Company intends to file its definitive 2013 Proxy Materials. Because this request is being submitted electronically pursuant to the guidance provided in *Staff Legal Bulletin No. 14D*, the Company is not enclosing the additional six copies ordinarily required by Rule 14a-8(j).

As required by Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponents. Pursuant to Rule 14a-8(k) and Section E of *Staff Legal Bulletin No. 14D*, the Company requests that the Proponents copy the undersigned on any correspondence that they elect to submit to the Staff in response to this letter.

Visa Inc.
P.O. Box 8999
San Francisco, CA 94128-8999
U.S.A.

THE PROPONENTS' SUBMISSION

On April 2, 2012, the Company received the Submission from the Proponents. The Submission states as follows:

> "I recommend that the following proposal be submitted in our proxy annual material for the 2013 annual meeting.
>
> Recommend that the granting of stock awards to our directors & C.F.O. be eliminated, & that the directors total compensation be limited to $200,000. per year."

A copy of the Submission is attached to this letter as Appendix A.

BACKGROUND

The Proponents provided the Submission to the Company in a letter dated March 24, 2012, which the Company received on April 2, 2012. See Appendix A. The Submission did not include any supporting statement with regard to the proposals. Further, the Submission did not include any information with regard to the Proponents' ownership of the Company's securities.

Upon receiving the Submission, the Company reviewed the records of its stock transfer agent, Wells Fargo Shareowner Services, and determined that neither of the names of the Proponents appeared in those records as a registered stockholder. The Company thereafter sought verification from the Proponents of their eligibility with regard to the Submission. On April 10, 2012, which was within fourteen (14) calendar days of the Company's receipt of the Submission, the Company sent a letter via overnight delivery notifying the Proponents of the requirements of Rule 14a-8, and how each of the Proponents could remedy the deficiencies associated with the Submission; specifically, that they provide the required information necessary to prove the Proponents' eligibility to submit a stockholder proposal in accordance with Rule 14a-8(b), and that the Submission be revised to include only one proposal in accordance with Rule 14a-8(c) (the "Deficiency Notice"). A copy of the Deficiency Notice is attached to this letter as Appendix B.

The Deficiency Notice stated that each of the Proponents must prove eligibility to submit a proposal by submitting either:

- a written statement from the "record" holder of the Proponents' securities (usually a broker or bank that is a participant in the Depository Trust Company ("DTC")) verifying that, at the time the proposal was submitted, the Proponents continuously held at least $2,000 in market value or 1 percent of the Company's securities entitled to vote on the proposal at the meeting for at least one year by the date that the Proponents submitted the proposal; or

- a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the Proponents' ownership of the shares as of or before the date on which the one-year eligibility period begins.

The Deficiency Notice also requested that the Proponents provide a statement indicating that they would continue to hold the required amount of securities through the date of the 2013 Annual Meeting.

The Deficiency Notice further stated that Rule 14a-8(c) specifies that each stockholder may submit no more than one proposal to a company for a particular stockholders' meeting, and that the Company believed that the matters specified in the Submission constituted two separate proposals, with the first proposal recommending that the granting of stock awards to the Company's directors and CFO be eliminated, and the second proposal recommending that the directors' total compensation be limited to $200,000 per year. The Deficiency Notice requested that the Proponents revise the Submission to present only a single stockholder proposal.

FedEx, the overnight delivery service utilized by the Company to deliver the Deficiency Notice, confirmed the delivery of the Deficiency Notice to the Proponents at 9:16 a.m. Pacific time on April 11, 2012. As of the date of this letter, the Proponents have not responded to the Deficiency Notice by providing the requisite proof of ownership, or by revising the Submission to present only a single stockholder proposal.

BASIS FOR EXCLUSION

As discussed in more detail below, the Company believes that the Submission may be excluded from the 2013 Proxy Materials on the grounds that: (i) the Proponents failed to provide the requisite proof of continuous stock ownership in response to the Company's proper and timely request for that information, in reliance on Rule 14a-8(b) and Rule 14a-8(f)(1); and (ii) the Proponents included two proposals as part of the Submission, contrary to the limitation specified in Rule 14a-8(c), which states that each stockholder may submit no more than one proposal to a company for a particular stockholders' meeting.

ANALYSIS

I. The Submission may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponents failed to provide the information necessary to determine their eligibility to submit a stockholder proposal.

The Company may exclude the Submission under Rule 14a-8(f)(1), because the Proponents failed to provide any information regarding their eligibility with regard to the Submission in accordance with Rule 14a-8(b). Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, [a stockholder] 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 stockholder] submit[s] the proposal." The Staff has stated in *Staff Legal Bulletin No. 14* (July 13, 2001) that when a stockholder is not the registered holder of the company's securities, the stockholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the stockholder may do by one of the two ways provided in Rule 14a-8(b)(2). Further, the Staff recently clarified in *Staff Legal Bulletin No. 14F* that the proof of ownership must come from the "record" holder of the a stockholder's shares, and that with respect to securities that are held in "street name" and deposited with DTC, only brokers or banks that are DTC participants will be viewed as "record" holders of the securities for the purposes of Rule 14a-8(b)(2)(i). In the Deficiency Notice, the Company specifically requested from the Proponents the required information necessary to satisfy the proof of ownership requirement, including ownership information from a DTC participant (and a statement from a broker or bank that is not a DTC participant, if applicable), as well as a statement that the Proponents would continue to hold the required amount of securities through the date of the 2013 Annual Meeting.

Rule 14a-8(f)(1) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the proof of beneficial ownership requirements specified in Rule 14a-8(b), provided that the company timely notifies the proponent of the deficiency in the proponent's submission and the proponent fails to correct the deficiency within the required time. The Deficiency Notice

provided detailed information regarding the requirements to prove the requisite ownership of the Company's securities, as recently clarified by *Staff Legal Bulletin 14F*. Specifically, the Deficiency Notice stated:

- the stockholder ownership requirements specified in Rule 14a-8(b);
- that, according to the records of the Company's stock transfer agent, the names of Proponents did not appear as registered stockholders of the Company;
- the type of statement or documentation necessary to demonstrate ownership of the Company's securities in accordance with Rule 14a-8(b) and the Staff's current guidance;
- that the Proponents' response had to be postmarked or transmitted electronically no later than fourteen (14) calendar days from the date the Proponents received the Deficiency Notice; and
- that a copy of the requirements regarding stockholder proposals as set forth in Rule 14a-8 was enclosed, along with a copy of the Staff's recent guidance in *Staff Legal Bulletin No. 14F*.

The Staff has consistently concurred that a stockholder proposal may be excluded from a company's proxy materials when the proponent has failed to provide satisfactory evidence of eligibility to submit the stockholder proposal in accordance with Rule 14a-8(b) and Rule 14a-8(f)(1). *See, e.g., Yahoo! Inc.* (March 24, 2011) (concurring with the exclusion of a stockholder proposal under Rule 14a-8(b) and Rule 14a-8(f), noting that "the proponent appears to have failed to supply, within 14 days of receipt of Yahoo!'s request, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period as of the date that he submitted the proposal as required by rule 14a-8(b)"). *See also, Cisco Systems, Inc.* (July 11, 2011); *I.D. Systems, Inc.* (March 31, 2011); *Amazon.com, Inc.* (March 29, 2011) and *Time Warner Inc.* (February 19, 2009). In this regard, the Staff has concurred with the exclusion of a stockholder proposal based upon a proponent's failure to provide *any* evidence of eligibility to submit the stockholder proposal following the receipt of a company's timely notice of deficiency. *See e.g., Amazon.com, Inc.* (March 29, 2011) (concurring with the exclusion of a proposal where the proponent failed to provide any response to a deficiency notice sent by the company) and *General Motors Corp.* (February 19, 2008) (same).

With regard to the Submission, just as in the circumstances addressed in *Amazon.com, Inc.* and *General Motors Corp.*, the Proponents failed to provide *any* documentary evidence of ownership of the Company's securities, either in their original Submission or in response to the Company's proper and timely Deficiency Notice. As a result, the Proponents have not demonstrated their eligibility to submit a stockholder proposal in accordance with Rule 14a-8. Accordingly, we ask that the Staff concur that the Company may exclude the Submission from its 2013 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1), and therefore not recommend any enforcement action to the Commission if the Company excludes the Submission for the reasons stated in this letter.

II. The Submission may be excluded under Rule 14a-8(c) because it includes more than one proposal.

The Company may exclude the Submission from the 2013 Proxy Materials because the Proponents have attempted to combine two separate proposals in the Submission, contrary to the limitation specified in Rule 14a-8(c). Rule 14a-8(c) states that "[e]ach shareholder may submit no more than one proposal to a company for a particular shareholders' meeting." The Submission consists of at least two separate and distinct proposals, with one proposal specifically recommending that the granting of stock awards to the Company's directors and CFO be eliminated, and the second proposal recommending that the Company's directors' total compensation be limited to $200,000 per year.

Rule 14a-8(f)(1) provides that a company may exclude a stockholder proposal if a proponent fails to satisfy the "one proposal" requirement of Rule 14a-8(c), but only if the company timely notifies the proponent of the deficiency, and the proponent fails to correct the deficiency within the required time. As noted above, the Deficiency Notice timely informed the Proponents of the deficiency with regard to the two separate proposals included in the Submission, and requested that the Proponents revise the submission to present only a single proposal. As of the date of this letter, the Company has not received a revised submission from the Proponents in response to the Deficiency Notice, and the time period under Rule 14a-8(f)(1) to respond to the Company's Deficiency Notice has elapsed.

The Staff has consistently concluded that distinct proposals may be excluded under Rule 14a-8(c) and the predecessor rule to Rule 14a-8(c), even if the distinct proposals are combined into one submission. In applying the "one-proposal" limitation of Rule 14a-8(c), the Staff has considered whether each part of a proposal that contains multiple parts relates to a single concept. *See, e.g., Computer Horizons Corp.* (April 1, 1993). A single submission that contains multiple proposals on distinct topics may be excluded, even if the topics relate to the same general subject matter. For example, the Staff has permitted the exclusion of multiple proposals that appear to relate to the general subject matter of making directors more accountable to shareholders. *See, e.g., Morgan Stanley* (February 4, 2009) (concurring that a submission could be excluded when it included distinct elements regarding director candidates' stock ownership, disclosure of conflicts of interest for director candidates and limiting director compensation to only stock); *Electronic Data Systems* (March 10, 1998) (concurring that a submission could be excluded under the predecessor rule to Rule 14a-8(c) when it included distinct proposals that requested annual director elections and the appointment of an independent lead director, where one of the purported single concepts was increasing the accountability of directors excluded) and *Fotoball, Inc.* (May 6, 1997) (concurring that a submission could be excluded under the predecessor rule to Rule 14a-8(c) when it included distinct proposals that recommended establishing minimum stock ownership requirements for directors, limiting the form of director compensation to common stock or options and prohibiting non-employee directors from performing other services for the company for compensation).

Further, under circumstances similar to those evident in the Submission, the Staff has concurred in the exclusion of a submission that contained multiple unrelated proposals without a unifying concept specifically in the context of compensation matters. For example, in *Downey Financial Corp.* (December 27, 2004), the proponent's submission included a proposal to eliminate the directors' retirement plan, and require that a portion of the directors' compensation be paid in restricted stock. In *Downey Financial Corp.*, the Staff concurred in exclusion of the submission "because the proponent exceeded the one-proposal limitation in Rule 14a-8(c)," even though both elements of the submission generally dealt with compensation matters. Further, in *USLIFE Corp.* (January 28, 1993), the Staff concurred in the exclusion of a submission under the predecessor to Rule 14a-8(c) on the basis that the submission contained a proposal to cap the salary and bonuses of the company's chief executive officer, a proposal to condition payment of bonuses for officers on certain performance metrics, and a proposal to allow stockholders to nominate director candidates.

The Company recognizes that, in certain limited circumstances that include when proposals have related to certain compensation matters, the Staff has not concurred with the exclusion of a submission under Rule 14a-8(c) when that submission included disparate components that are closely related and essential to a single well-defined unifying concept. For example, in *NaPro BioTherapeutics, Inc.* (April 17, 2003), the Staff did not concur that a submission could be excluded under Rule 14a-8(c) when the submission requested that the company's board of directors "significantly reduce executive compensation by eliminating bonuses and

granting of new options" and "reduce salaries by 30% for the Chief Executive Officer and the other four most highly compensated officers." Further, in *Exxon-Mobil Corp.* (March 10, 2003), the Staff did not concur that a submission could be excluded pursuant to Rule 14a-8(c) when the submission requested limits on non-employee director compensation, stockholder approval of increases in non-employee director compensation and disclosure of stock-based compensation of non-employee directors.

The Company believes that the submissions considered by the Staff in, for example, *Downey Financial Corp.* and *USLIFE Corp.* are more analogous to the Submission than those considered in *NaPro BioTherapeutics, Inc.* and *Exxon-Mobil Corp*. For example, in *USLIFE Corp.*, the Staff concurred with arguments that the proposals included in the submission were separate and distinct when they related to *both* senior executive and director matters. By contrast, the Staff was unable to concur that submissions could be excluded under Rule 14a-8(c) in the submissions considered in *NaPro BioTherapeutics, Inc.* and *Exxon-Mobil Corp.,* where the elements of those submissions were closely related and essential to a single well-defined unifying concept, specifically executive compensation in the case of *NaPro BioTherapeutics, Inc.* and director compensation in the case of *Exxon-Mobil Corp.*

The Submission specifically includes matters with regard to both executive and director compensation, which represent distinct matters even though they both relate to the Company's overall policies and practices with regard to compensation. As described annually in the Company's proxy statement, there are significant differences in the way in which the Company compensates it directors and executive officers, given the significantly different roles for directors and executive officers at the Company. For this reason, the Proponents' separate requests with regard to the CFO's compensation and director compensation should not be considered as tied together by any single unifying concept. If the Company were to present the Submission at its 2013 Annual Meeting, it would require the stockholders to vote "for" or "against" all of the elements of the Submission, even though the Company's stockholders may view the Company's policies and practices with regard to executive compensation (and, in particular, the compensation of the Company's CFO) as divergent from those policies and practices relating specifically to director compensation. In this regard, the first proposal in the Submission attempts to specify who among the Company's executive officers and directors is eligible to receive awards under the Company's stock incentive plans, while the second proposal in the Submission deals with the separate question of whether directors should receive total compensation in excess of $200,000.

Furthermore, the Company would not be able to determine with certainty what a "for" or "against" vote on the proposals included in the Submission means, because the Company would be unable to determine which elements of the Submission the stockholders approved or disapproved. Moreover, the Commission's "anti-bundling" rules create a competing obligation for the Company, which must provide a form of proxy that "shall identify clearly and impartially each *separate* matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters" (emphasis added) pursuant to Rule 14a-4(a)(3). If the Company is forced to bundle the Proponents' disparate proposals together as a single proposal, the Company's stockholders could potentially be misled as to the effect of their vote if they support some, but not all, of the elements of the Submission.

For the reasons discussed above, we ask that the Staff concur with the Company's view that it may exclude the Submission from the 2013 Proxy Materials pursuant to Rule 14a-8(c), and therefore not recommend any enforcement action to the Commission if the Company excludes the Submission for the reasons stated in this letter.

CONCLUSION

Based upon the foregoing analysis, we respectively request that the Staff concur that the Submission is properly excludable under Rule 14a-8(b), Rule 14a-8(c) and Rule 14a-8(f)(1). The Company requests confirmation that the Staff will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8(b), Rule 14a-8(c) and Rule 14a-8(f)(1), the Company omits the Submission from the 2013 Proxy Materials.

If I can be of any further assistance in this matter, please do not hesitate to contact me at (650) 432-8688 or David Lynn of Morrison & Foerster LLP at (202) 887-1563.

Sincerely,

Christy Hillquist

cc: Roy Rob Phillips
Ora Ruth Phillips

Appendix A

The Proponents' Submission

March 24 2013

FISMA & OMB Memorandum M-07-16

Visa Inc.
P.O. Box 8999
S.F. Cal. 94128-8999

Aricka St. Pierre Corp. Secretary,

I recommend that the following proposal be submitted in our proxy, annual material for the 2013 annual meeting.

Recommend that the granting of stock awards to our directors & C.F.O. be eliminated, & that the directors total compensation be limited to $200.000. per year

Sincerely,
Robroy P Phillips
Ora Ruth Phillips

Phone:
FISMA & OMB Memorandum M-07-16

Appendix B

Deficiency Notice

VISA

April 10, 2012

Ariela St. Pierre
Head of Global Governance &
Corporate Secretary

Rob Roy Phillips
Ora Ruth Phillips

FISMA & OMB Memorandum M-07-16

Re: Stockholder Proposal

Dear Mr. Phillips and Ms. Phillips:

On April 2, 2012, we received your letter recommending that a proposal be submitted in the proxy materials for Visa's 2013 Annual Meeting of Stockholders (the "2013 Annual Meeting"). Your submission is governed by the Securities and Exchange Commission's Rule 14a-8 ("Rule 14a-8"), which sets forth the eligibility and procedural requirements for submitting stockholder proposals to Visa, as well as thirteen substantive bases under which companies may exclude stockholder proposals. We have included a complete copy of Rule 14a-8 with this letter for your reference.

Based on our review of the information provided by you in your letter, our records, and regulatory materials, we are unable to conclude that your submission meets the requirements of Rule 14a-8 for inclusion in Visa's proxy materials. Unless you can remedy the deficiencies described below in the proper time frame, Visa will be entitled to exclude your submission from the proxy materials for the 2013 Annual Meeting.

Rule 14a-8 provides that to be eligible to submit a stockholder proposal, each stockholder submitting a proposal must have continuously held at least $2,000 in market value, or 1 percent, of Visa's securities entitled to be voted on the proposal at the meeting for at least one year as of the date the stockholder submits the proposal. The stockholder must also continue to hold the required amount of securities through the date of the meeting, and must provide the company with a written statement of his or her intent to do so.

According to the records of our transfer agent, Wells Fargo Shareowner Services, neither of your names appears in our records as a registered stockholder. Therefore, under Rule 14a-8(b) to remedy this defect, each of you must prove your eligibility to submit a proposal by submitting either:

- a written statement from the "record" holder of your securities (usually a broker or bank that is a participant in the Depository Trust Company, which we refer to as the "DTC") verifying that, at the time you submitted the proposal, you continuously held at least $2,000 in market value or 1 percent of Visa's securities entitled to vote on the proposal at the meeting for at least one year by the date that you submitted the proposal; or

- a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins.

You also must provide a statement indicating that you will continue to hold the required amount of securities through the date of the 2013 Annual Meeting.

Visa Inc.
P.O. Box 8999
San Francisco, CA 94128-8999
U.S.A.

In order to help stockholders comply with Rule 14a-8's requirement to prove ownership by providing a written statement from the "record" holder of the shares, the SEC's Division of Corporation Finance published Staff Legal Bulletin 14F in October 2011. In Staff Legal Bulletin No. 14F, the SEC Staff clarified that, for purposes of SEC Rule 14a-8(b)(2)(i), only brokers or banks that are DTC participants will be viewed as "record" holders of securities that are deposited at DTC. Thus, both of you will need to obtain the required written statement from the DTC participant through which your shares are held. For the purposes of determining if a broker or bank is a DTC participant, you may check the list posted at: http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf. If the DTC participant knows the holdings of your broker or bank, but does not know your holdings, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities was continuously held by each of you for at least one year – with one statement from your broker or bank confirming your ownership, and the other statement from the DTC participant confirming the broker's or bank's ownership. We have included a complete copy of Staff Legal Bulletin 14F with this letter for your reference.

We also note that Rule 14a-8(c) states that each stockholder may submit no more than one proposal to a company for a particular stockholders' meeting. We believe that the matters specified in your letter constitute two separate proposals, with one proposal recommending that the granting of stock awards to Visa's directors and CFO be eliminated, and the second proposal recommending that the directors' total compensation be limited to $200,000 per year. As such, to comply with Rule 14a-8, you must revise your submission to present only a single proposal.

For your proposal to be eligible for inclusion in Visa's proxy materials for the 2013 Annual Meeting, Rule 14a-8(f) requires that your response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me. Alternatively, you may transmit any response by e-mail to astpierr@visa.com.

Once we receive your response, we will be in a position to determine whether your proposal is eligible for inclusion in the proxy materials for Visa's 2013 Annual Meeting of Stockholders. Visa reserves the right to submit a no-action request to the Staff of the SEC, as appropriate, to seek to exclude the proposal from our proxy materials.

If you have any questions with respect to the foregoing, please contact me at astpierr@visa.com or Christy Lillquist at clillqui@visa.com.

Sincerely,

Ariela St. Pierre
Corporate Secretary

Encs: Rule 14a-8
Staff Legal Bulletin 14F

cc: Christy Lillquist

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8 (b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB

No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder 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 shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "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 you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any

reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8 (c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and

submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and

proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any

shareholder proposal that is not withdrawn by the proponent or its authorized representative.

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Rule 14a-8 — Proposals of Security Holders

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) **Question 1: What is a proposal?**

A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) **Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?**

(1) In order to be eligible to submit a proposal, you 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 you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) Question 3: How many proposals may I submit?

Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) Question 4: How long can my proposal be?

The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) Question 5: What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q, or in shareholder reports of investment companies under Rule 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under Rule 14a-8 and provide you with a copy under Question 10 below, Rule 14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?

Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) Question 8: Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds it shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

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

(1) *Improper under state law*: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law*: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law could result in a violation of any state or federal law.

(3) *Violation of proxy rules*: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest*: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance*: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earning sand gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority*: If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Relates to election*: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by Rule 240.14a-21(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by rule 240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) Question 10: What procedures must the company follow if it intends to exclude my proposal?

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) Question 11: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, Rule 14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under Rule 14a-6.