



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

DIVISION OF  
CORPORATION FINANCE

February 8, 2013

Melissa K. Caen  
Southern Company Services, Inc.  
mkcaen@southern.com

Re: The Southern Company  
Incoming letter dated January 18, 2013

Dear Ms. Caen:

This is in response to your letter dated January 18, 2013 concerning the shareholder proposal submitted to Southern by the New York State Common Retirement Fund. Copies of all of the correspondence on which this response is based 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

Enclosure

cc: Patrick Doherty  
State of New York  
Office of the State Comptroller  
pdoherty@osc.state.ny.us

February 8, 2013

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

Re: The Southern Company  
Incoming letter dated January 18, 2013

The proposal relates to lobbying contributions and expenditures.

There appears to be some basis for your view that Southern may exclude the proposal under rule 14a-8(f). We note that the proponent appears not to have responded to Southern's request for documentary support indicating that it has 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 Southern omits the proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

Sincerely,

Matt S. McNair  
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.

**Melissa K. Caen**  
Vice President,  
Associate General Counsel  
and Corporate Secretary

**Southern Company Services, Inc.**  
30 Ivan Allen Jr. Boulevard NW  
Atlanta, Georgia 30308  
Tel 404.506.0684  
Fax 404.506.0344



January 18, 2013

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

*Via electronic mail:* [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

RE: The Southern Company – Stockholder Proposal Submitted by the New York State  
Common Retirement Fund

Ladies and Gentlemen:

We are writing to notify the staff of the Division of Corporation Finance (the “Staff”) of our intention to exclude from the 2013 proxy statement and form of proxy for the 2013 Annual Meeting of Stockholders (collectively, the “2013 Proxy Materials”) of The Southern Company (the “Company”) a stockholder proposal (the “Proposal”) and related supporting statement submitted by the Comptroller of the State of New York, The Honorable Thomas P. DiNapoli (the “Comptroller”), as the sole Trustee of the New York State Common Retirement Fund (the “Proponent”) and as the administrative head of the New York State and Local Employees’ Retirement System and the New York State Police and Fire Retirement System. A copy of the Proposal and related supporting statement, as well as related correspondence from Patrick Doherty, on behalf of the Comptroller, is attached hereto as Exhibit A.

In accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we hereby respectfully request that the Staff confirm that no enforcement action will be recommended to the U.S. Securities and Exchange Commission (the “Commission”) against the Company if the Proposal is omitted from the 2013 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the

requisite proof of continuous stock ownership in response to the Company's timely request for that information.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), question C, we have submitted this letter and the related correspondence from Mr. Doherty, on behalf of the Comptroller and the Proponent, to the Commission via email to *shareholderproposals@sec.gov*. Also, in accordance with Rule 14a-8(j), we have filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2013 Proxy Materials with the Commission, and we have concurrently sent copies of this correspondence to the Office of the State Comptroller, as sole Trustee of the Proponent.

### **Background**

The Comptroller submitted the Proposal to the Company on the Proponent's behalf via a letter from Mr. Doherty dated December 10, 2012, which was received by the Company on December 11, 2012. In the letter accompanying the Proposal, Mr. Doherty represented, on behalf of the Proponent, that the Proponent intended to hold at least \$2,000 worth of Company shares through the date of the 2013 Annual Meeting of Stockholders and that a letter from J.P. Morgan Chase, the Proponent's custodial bank, verifying the Proponent's ownership continually for over a year of the Company shares would follow (the "Proof of Ownership"). However, the Company did not receive the Proponent's Proof of Ownership from the Comptroller, Mr. Doherty, the Proponent or J.P. Morgan Chase.

In compliance with Rule 14a-8(f), the Company sent a notice of deficiency, which is attached hereto as Exhibit B (the "Deficiency Notice"), by FedEx Overnight Mail to the Office of the State Comptroller, as the sole Trustee of the Proponent, on December 19, 2012 requesting that the Proponent provide the Proof of Ownership required by the stockholder proposal rules within 14 calendar days of its receipt of the Company's request. The Company received confirmation that FedEx delivered the Deficiency Notice on December 20, 2012. This confirmation is attached hereto as Exhibit C. On January 7, 2013, the Company, as a courtesy to the Proponent, telephoned the Office of the State Comptroller and left a voice message to inform Mr. Doherty that the Proof of Ownership had not been received. On January 9, 2013, the Company spoke with Mr. Doherty who informed the Company that he was looking into the matter and would get back to the Company with additional information. As of the date of this letter, the Company has not received any additional communications from or on behalf of the Proponent.

### **Analysis**

#### **The Proposal may be excluded under Rule 14a-8(b) and Rule 14(a)-8(f)(1) because the Proponent failed to provide the requisite proof of continuous stock ownership**

Rule 14a-8(b)(1) of the Exchange Act requires that, to be eligible to submit a proposal for a company's annual meeting, a stockholder must (i) 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 such stockholder submits the proposal and (ii) continue to hold these securities through the date of the meeting. Under Rule 14a-8(b)(2), if a proponent is not a registered stockholder of a company and has not made a filing with the Commission detailing the proponent's beneficial ownership of shares in the company (as described in Rule

14a-8(b)(2)(ii)), such proponent has the burden to prove that it meets the beneficial ownership requirements of Rule 14a-8(b)(1) by submitting to the company (i) a written statement from the “record” holder of the securities verifying that, at the time the proponent submitted the proposal, the proponent continuously held the requisite amount of such securities for at least one year and (ii) the proponent’s own written statement that it intends to continue to hold such securities through the date of the meeting. If the proponent fails to provide such proof of ownership at the time the proponent submits the proposal, the company must notify the proponent in writing of such deficiency within 14 calendar days of receiving the proposal. A proponent’s response to such notice of deficiency must be postmarked or transmitted electronically to the company no later than 14 days from the date the proponent receives the notice of deficiency. Provided that the company timely notifies the proponent of the deficiency and the proponent fails to correct the deficiency within the required time frame, Rule 14-8(f) provides that a company may exclude the proposal. The Company satisfied its obligation under Rule 14a-8 by transmitting the Deficiency Notice to the Office of the State Comptroller, as the sole Trustee of the Proponent, in a timely manner, which included the information listed above. See Exhibit B.

On numerous occasions the Staff has permitted the exclusion of a stockholder proposal based on a proponent’s failure to provide satisfactory evidence of eligibility (including failure to provide any response to a deficiency notice) under Rule 14a-8(b) and Rule 14a-8(f)(1). See *Amazon.com Inc.* (avail. March 29, 2011) concurring with the exclusion of a stockholder proposal under Rule 14a-8(b) and Rule 14a-8(f) and noting that the “proponent appears to have failed to supply, within 14 days of receipt of Amazon.com’s request, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b)”; *Comcast Corporation* (avail. January 28, 2011); *Union Pacific Corporation* (avail. January 29, 2010); *Time Warner Inc.* (avail. February 19, 2009); *Alcoa Inc.* (avail. February 18, 2009); *General Motors Corporation* (avail. Feb. 19, 2008); *Qwest Communications International, Inc.* (avail. February 28, 2008); and *Occidental Petroleum Corporation* (avail. November 21, 2007).

As in *Amazon.com*, the Proponent failed to provide the Proof of Ownership in response to the Deficiency Notice and has therefore not demonstrated eligibility under Rule 14a-8 to submit the Proposal. Accordingly, we hereby respectfully request that the Staff concur in our opinion that the Proposal may be properly excluded from the 2013 Proxy Materials.

### **Conclusion**

Based upon the foregoing analysis, the Company respectfully requests that the Staff not recommend an enforcement action to the Commission if the Company omits the Proposal from the 2013 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If the Staff does not agree with the Company’s position, we would appreciate an opportunity to discuss this matter with the Staff prior to the issuance of a decision. We also ask the Proponent to copy the undersigned on any response it may choose to send or have sent on its behalf to the Staff.

Please contact me at 404-506-0684 with any questions or if further information is needed.  
Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink that reads "Melissa K. Caen". The signature is written in a cursive style with a long horizontal flourish at the end.

Melissa K. Caen

cc: Mr. Patrick Doherty, Office of State Comptroller of the State of New York (via FedEx)

Attachments

**Exhibit A**

**Stockholder Proposal**

Attached.

THOMAS P. DINAPOLI  
STATE COMPTROLLER



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

PENSION INVESTMENTS  
& CASH MANAGEMENT  
633 Third Avenue-31<sup>st</sup> Floor  
New York, NY 10017  
Tel: (212) 681-4489  
Fax: (212) 681-4468

December 10, 2012

Ms. Melissa K. Caen  
Assistant Corporate Secretary  
Southern Company  
30 Ivan Allen Jr. Boulevard NW  
Atlanta, Georgia 30308

Dear Ms. Caen:

The Comptroller of the State of New York, The Honorable Thomas P. DiNapoli, is the sole Trustee of the New York State Common Retirement Fund (the "Fund") and the administrative head of the New York State and Local Employees' Retirement System and the New York State Police and Fire Retirement System. The Comptroller has authorized me to inform Southern Company of his intention to offer the enclosed shareholder proposal on behalf of the Fund for consideration of stockholders at the next annual meeting.

I submit the enclosed proposal to you in accordance with rule 14a-8 of the Securities Exchange Act of 1934 and ask that it be included in your proxy statement.

A letter from J.P. Morgan Chase, the Fund's custodial bank, verifying the Fund's ownership, continually for over a year, of Southern Company shares, will follow. The Fund intends to continue to hold at least \$2,000 worth of these securities through the date of the annual meeting.

We would be happy to discuss this initiative with you. Should the board decide to endorse its provisions as company policy, we will ask that the proposal be withdrawn from consideration at the annual meeting. Please feel free to contact me at (212) 681-4823 should you have any further questions on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick Doherty", written over a horizontal line.

Patrick Doherty  
pd:jm  
Enclosures

**Whereas**, corporate lobbying exposes our company to risks that could affect the company's stated goals, objectives, and ultimately shareholder value, and

**Whereas**, we rely on the information provided by our company to evaluate goals and objectives, and we, therefore, have a strong interest in full disclosure of our company's lobbying to assess whether our company's lobbying is consistent with its expressed goals and in the best interests of shareholders and long-term value.

**Resolved**, the shareholders of The Southern Company ("Southern") request the Board authorize the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
2. Payments by Southern used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
3. Southern's membership in and payments to any tax-exempt organization that writes and endorses model legislation.
4. Description of the decision making process and oversight by management and the Board for making payments described in section 2 and 3 above.

For purposes of this proposal, a "grassroots lobbying communication" is a communication directed to the general public that (a) refers to specific legislation or regulation, (b) reflects a view on the legislation or regulation and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation. "Indirect lobbying" is lobbying engaged in by a trade association or other organization of which Southern is a member.

Both "direct and indirect lobbying" and "grassroots lobbying communications" include efforts at the local, state and federal levels.

The report shall be presented to the Audit Committee or other relevant oversight committees of the Board and posted on the company's website.

### **Supporting Statement**

As shareholders, we encourage transparency and accountability in the use of staff time and corporate funds to influence legislation and regulation both directly and indirectly. We believe such disclosure is in shareholders' best interests. Absent a system of accountability, company assets could be used for objectives contrary to Southern's long-term interests.

Southern spent approximately \$25.94 million in 2010 and 2011 on direct federal lobbying activities (Senate reports). These figures do not include lobbying expenditures to influence legislation in states. Southern sits on the board of the Chamber of Commerce. The Chamber of Commerce has been characterized as "by far the most muscular business lobby group in Washington" ("Chamber of Secrets," *Economist*, April 21, 2012) and has spent over \$300 million on lobbying since 2010. Southern does not disclose its trade association payments or the portions used for lobbying on its website. Southern does not disclose membership in or payments to tax-exempt organizations that write and endorse model legislation, such as the American Legislative Exchange Council.

We encourage our Board to require comprehensive disclosure related to direct, indirect and grassroots lobbying.

**Exhibit B**  
**Deficiency Notice**

Attached.

**Southern Company Services, Inc.**  
30 Ivan Allen Jr. Boulevard NW  
Atlanta, Georgia 30308



*VIA FEDERAL EXPRESS*

December 19, 2012

State of New York  
Office of the State Comptroller  
Pension Investments & Cash Management  
633 Third Avenue -- 31<sup>st</sup> Floor  
New York, New York 10017  
Attention: Patrick Doherty  
Telephone: (212) 681-4489

Dear Mr. Doherty:

On December 11, 2012, The Southern Company (the "Company") received the Comptroller of the State of New York's (the "Comptroller") shareholder proposal, on behalf of the New York State Common Retirement Fund (the "Fund") for which he serves as sole Trustee, for the Company's 2013 proxy statement (the "Proxy Statement"). This letter notifies you that the proposal contains procedural deficiencies, which we are required to bring to your attention within a specified period of time pursuant to Securities and Exchange Commission ("SEC") regulations.

In the letter, the Comptroller states that a letter from J.P. Morgan Chase verifying the Fund's ownership of the Company shares will follow. We have not yet received the required verification of ownership as indicated in the letter. Rule 14a-8(b) of the Securities Exchange Act of 1934 requires a shareholder proponent to submit sufficient proof of their continuous ownership of at least \$2,000 in market value or 1% of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. A copy of the shareholder proposal rules is enclosed for your information.

In order to cure this defect, please provide:

- A written statement from the record holder of the securities (usually a broker or bank) verifying that, at the time the Comptroller submitted the Fund's proposal, the Fund held at least the number of shares of Company stock valued at \$2,000 for at least one year and verifying the number of shares held; or
- A copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5 or amendments to those documents or updated forms, reflecting the Fund's ownership of shares as of or before the date on which the one-year eligibility period began and a written statement from the Comptroller that the Fund continuously held the required number of shares for the one-year period as of the date of the statement.

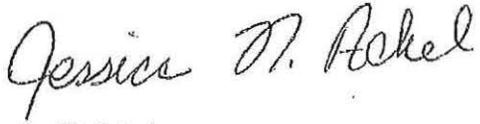
The value of the shares will satisfy the other eligibility requirement of the SEC rules and the actual number of shares held is information that the Company must include in the Proxy Statement if the Fund's proposal is included.

In order to comply with Rule 14a-8(f)(1), within 14 days of your receipt of this notice, please have the record holder's written statement sent to the Company at the following address:

Melissa K. Caen, Assistant Secretary  
Southern Company  
30 Ivan Allen Jr. Boulevard, N.W.  
Bin SC1203  
Atlanta, GA 30308  
Facsimile: (404) 506-0344

We appreciate your cooperation to ensure the Fund's proposal submission is complete and to resolve this matter.  
We look forward to discussing this proposal with you.

Sincerely,

A handwritten signature in cursive script that reads "Jessica N. Ackel". The signature is written in black ink and is positioned above the typed name.

Jessica N. Ackel  
Legal Department – Senior Attorney

cc: Melissa K. Caen

Enclosure

## § 240.14a-8 Shareholder proposals.

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 (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), 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 (§249.308a of this chapter), or in shareholder reports of investment companies under §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 §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-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 its 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 would 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 §240.14a-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 earnings and 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) *Director elections*: 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 (§229.402 of this chapter) 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 §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 §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, §240.14a-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 it files definitive copies of its proxy statement and form of proxy under §240.14a-6.