

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

155 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606-1720

TEL: (312) 407-0700

FAX: (312) 407-0411

www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
WASHINGTON, D.C.
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO

DIRECT DIAL
(312) 407-0982
DIRECT FAX
(312) 407-8576
EMAIL ADDRESS
KIMBERLY.DEBEERS@SKADDEN.COM

December 26, 2013

BY EMAIL (shareholderproposals@sec.gov)

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

RE: O'Reilly Automotive, Inc.
Securities Exchange Act of 1934 – Rule 14a-8
Exclusion of Shareholder Proposal of John Chevedden

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, O’Reilly Automotive, Inc., a Missouri corporation (the “Company”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by John Chevedden (the “Proponent”) from the proxy materials to be distributed by the Company in connection with its 2014 annual meeting of shareholders (the “2014 proxy materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal from the 2014 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect

to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the Company.

I. The Proposal

The resolution of the Proposal is copied below:

Resolved: Shareholders urge that our executive pay committee adopt a policy requiring senior executives to retain a significant percentage of shares acquired through equity pay programs until reaching normal retirement age and to report to shareholders regarding the policy before our Company's next annual meeting. For the purpose of this policy, normal retirement age would be an age of at least 60 and determined by our executive pay committee. Shareholders recommend that the committee adopt a share retention percentage requirement of 50% of net after-tax shares.

This single unified policy shall prohibit hedging transactions for shares subject to this policy which are not sales but reduce the risk of loss to the executive. Otherwise our directors would be able to avoid the impact of this proposal. This policy shall supplement any other share ownership requirements that have been established for senior executives and should be implemented so as not to violate our Company's existing contractual obligations or the terms of any pay or benefit plan currently in effect.

The text of the supporting statement contained in the Proposal is copied below:

Requiring senior executives to hold a significant portion of stock obtained through executive pay plans would focus our executives on our company's long-term success. A Conference Board Task Force report stated that hold-to-retirement requirements give executives "an ever-growing incentive to focus on long-term stock price performance."

This proposal should also be more favorably evaluated due to our Company's clearly improvable environmental, social and corporate governance performance as reported in 2013:

GMI Ratings, an independent investment research firm, rated our board F. There were 4 inside directors on our board. Paul Lederer, our Lead Director and also on our audit committee, was potentially over-committed with seats on 3 other company boards. Three directors received more than 14% in negative votes: Charles O'Reilly Jr., Lawrence O'Reilly and Rosalie O'Reilly-Wooten. Four directors had 33 to 44 years tenure each, which negatively impacts director

independence: Rosalie O'Reilly-Wooten, David O'Reilly, Lawrence O'Reilly and Charles O'Reilly Jr.

GMI rated ORLY accounting D. GMI said there were forensic accounting ratios related to revenue recognition that had extreme values either relative to industry peers or to our company's own history. There were forensic accounting ratios related to asset-liability valuation that had extreme values either relative to industry peers or to our company's own history.

GMI said its global Environmental, Social and Governance rating for O'Reilly Automotive was F. O'Reilly had not incorporated links to environmental or social performance in its incentive pay policies. Our board had not assumed formal responsibility for strategic oversight of O'Reilly's environmental practices.

Returning to the core topic of this proposal from the context of our clearly improvable corporate performance, please vote to protect shareholder value[.]

II. Basis for Exclusion

We hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the 2014 proxy materials pursuant to Rule 14a-8(i)(3) because substantial portions of the supporting statement are irrelevant to the subject matter of the Proposal.

III. Background

The Company received the Proposal, accompanied by a cover letter from the Proponent, on November 13, 2013, and received a letter from Fidelity Investments, dated November 19, 2013, verifying the Proponent's stock ownership as of such date. On November 22, 2013, the Company sent a letter to the Proponent acknowledging receipt of the Proposal and requesting a copy of the GMI Ratings report referenced in the Proposal. On November 26, 2013, the Company received an email response from the Proponent indicating that the Company could request a complimentary overview copy of certain GMI Ratings reports. A copy of the Proposal, cover letter, broker letter and related correspondence is attached hereto as Exhibit A.

IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(3) Because Substantial Portions of the Supporting Statement Are Irrelevant to the Subject Matter of the Proposal.

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded from a company's proxy materials if the proposal or supporting statement is contrary to any of the Commission's rules, including Rule 14a-9, which prohibits materially false or misleading statements in a company's proxy materials. In Staff Legal Bulletin No. 14B (Sept. 15, 2004), the Staff recognized that exclusion or modification of a proposal may be appropriate under Rule 14a-8(i)(3) where "substantial portions of the supporting statement are irrelevant to a consideration of the subject

matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which she is being asked to vote.”

The Staff has permitted exclusion under Rule 14a-8(i)(3) when substantial portions of a supporting statement were irrelevant to the proposal’s subject matter. *See Entergy Corp.* (Feb. 14, 2007) (permitting exclusion of a proposal when the supporting statement’s reference to various perceived deficiencies intended to demonstrate that the company’s “governance standards were not impeccable” were irrelevant to the subject matter of the proposal, which called for a vote on an advisory resolution to approve the compensation committee report); *Energy East Corp.* (Feb. 12, 2007) (same). *See also, Bob Evans Farms, Inc.* (June 26, 2006) (permitting exclusion of a portion of the supporting statement when such portion’s reference to the share ownership of the company’s five largest shareholders was irrelevant to the subject matter of the proposal, which sought board declassification); *Burlington Northern Santa Fe Corp.* (Jan. 31, 2001) (permitting exclusion of portions of the supporting statement when such portions’ focus on social and environmental concerns was irrelevant to the subject matter of the proposal, which requested approval of a rights plan); *Boise Cascade Corp.* (Jan. 23, 2001) (permitting exclusion of portions of the supporting statement when such portions’ focus on environmental, human rights and other concerns was irrelevant to the subject matter of the proposal, which requested the separation of the chairman and CEO positions).

Here, substantial portions of the supporting statement are irrelevant to the Proposal’s subject matter. Based on the resolution, the Proposal’s subject matter is stock retention. Only the first paragraph of the supporting statement, however, relates to stock retention. The other five paragraphs concern perceived deficiencies related to environmental, social and corporate governance matters, which have no relation whatsoever to stock retention. Even the supporting statement acknowledges its distraction from the matter at hand, attempting to, in its one-sentence summation, “[r]eturn[] to the core topic of this proposal from the context of our clearly improvable corporate governance.” (Emphasis added.) In addition, despite the supporting statement’s plea that the Proposal should “be more favorably evaluated due to our Company’s clearly improvable environmental, social and corporate governance performance,” the perceived deficiencies in such performance will not be addressed by the Proposal’s implementation. The supporting statement’s references to such perceived deficiencies are, therefore, irrelevant and create a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote. Accordingly, consistent with *Entergy* and *Energy East*, the Proposal is excludable in its entirety under Rule 14a-8(i)(3). Alternatively, if the Staff does not permit exclusion of the entire Proposal, we respectfully request that, consistent with the other precedent cited above, the Proponent be required to remove the last five paragraphs of the supporting statement as irrelevant to the Proposal’s subject matter.

V. Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal or, in the alternative, excludes the referenced portions of the Proposal from its 2014 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in

Office of Chief Counsel

December 26, 2013

Page 5

support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact me at the telephone number or email address appearing on the first page of this letter.

Very truly yours,

A handwritten signature in black ink that reads "Kim deBeers". The signature is written in a cursive, slightly slanted style.

Kimberly A. deBeers

Enclosures

cc: John Chevedden

EXHIBIT A

(see attached)

From: " *** FISMA & OMB Memorandum M-07-16 ***"
Date: November 12, 2013 at 10:26:09 PM PST
To: "Jeffrey L. Groves" <jgroves@oreillyauto.com>
Subject: Rule 14a-8 Proposal (ORLY)`

Mr. Groves,

Please see the attached Rule 14a-8 Proposal.

Sincerely,

John Chevedden-- This message has been scanned for viruses and dangerous content, and is believed to be clean. Message id: 21857601349.AE0DB

JOHN CHEVEDDEN

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

Mr. David E. O'Reilly
Chairman of the Board
O'Reilly Automotive, Inc. (ORLY)
233 S. Patterson Ave.
Springfield, MO 65802
Phone: 417 862-6708

Dear Mr. O'Reilly,

I purchased stock and hold stock in our company because I believed our company has unrealized potential. I believe some of this unrealized potential can be unlocked by making our corporate governance more competitive. And this will be virtually cost-free and not require lay-offs.

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company. This proposal is submitted for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

In the interest of company cost savings and improving the efficiency of the rule 14a-8 process please communicate via email to ~~the~~ ^{FISMA & OMB Memorandum M-07-16} ~~your~~ ^{Your} consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal promptly by email to ~~me~~ ^{FISMA & OMB Memorandum M-07-16}

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

Sincerely,


John Chevedden

November 13, 2013
Date

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

cc: Tricia Headley
Corporate Secretary
Fax: 417-874-7242
Jeffrey L. Groves <jgroves@oreillyauto.com>
General Counsel

[ORLY: Rule 14a-8 Proposal, November 12, 2013]

Proposal 4* – Executives To Retain Significant Stock

Resolved: Shareholders urge that our executive pay committee adopt a policy requiring senior executives to retain a significant percentage of shares acquired through equity pay programs until reaching normal retirement age and to report to shareholders regarding the policy before our Company's next annual meeting. For the purpose of this policy, normal retirement age would be an age of at least 60 and determined by our executive pay committee. Shareholders recommend that the committee adopt a share retention percentage requirement of 50% of net after-tax shares.

This single unified policy shall prohibit hedging transactions for shares subject to this policy which are not sales but reduce the risk of loss to the executive. Otherwise our directors would be able to avoid the impact of this proposal. This policy shall supplement any other share ownership requirements that have been established for senior executives, and should be implemented so as not to violate our Company's existing contractual obligations or the terms of any pay or benefit plan currently in effect.

Requiring senior executives to hold a significant portion of stock obtained through executive pay plans would focus our executives on our company's long-term success. A Conference Board Task Force report stated that hold-to-retirement requirements give executives "an ever-growing incentive to focus on long-term stock price performance."

This proposal should also be more favorably evaluated due to our Company's clearly improvable environmental, social and corporate governance performance as reported in 2013:

GMI Ratings, an independent investment research firm, rated our board F. There were 4 inside directors on our board. Paul Lederer, our Lead Director and also on our audit committee, was potentially over-committed with seats on 3 other company boards. Three directors received more than 14% in negative votes: Charles O'Reilly Jr., Lawrence O'Reilly and Rosalie O'Reilly-Wooten. Four directors had 33 to 44 years tenure each, which negatively impacts director independence: Rosalie O'Reilly-Wooten, David O'Reilly, Lawrence O'Reilly and Charles O'Reilly Jr.

GMI rated ORLY accounting D. GMI said there were forensic accounting ratios related to revenue recognition that had extreme values either relative to industry peers or to our company's own history. There were forensic accounting ratios related to asset-liability valuation that had extreme values either relative to industry peers or to our company's own history.

GMI said its global Environmental, Social and Governance rating for O'Reilly Automotive was F. O'Reilly had not incorporated links to environmental or social performance in its incentive pay policies. Our board had not assumed formal responsibility for strategic oversight of O'Reilly's environmental practices.

Returning to the core topic of this proposal from the context of our clearly improvable corporate performance, please vote to protect shareholder value:

Executives To Retain Significant Stock – Proposal 4*

Notes:

John Chevedden,
proposal.

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

sponsored this

Please note that the title of the proposal is part of the proposal.

If the company thinks that any part of the above proposal, other than the first line in brackets, can be omitted from proxy publication based on its own discretion, please obtain a written agreement from the proponent.

*Number to be assigned by the company.

Asterisk to be removed for publication.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email [FISMA & OMB Memorandum M-07-16 ***](#)

From: *** FISMA & OMB Memorandum M-07-16 ***
Date: November 19, 2013 at 10:06:58 PM CST
To: "Jeffrey L. Groves" <jgroves@oreillyauto.com>
Cc: "Mandy Spigle" <aspigle@oreillyauto.com>
Subject: Rule 14a-8 Proposal (ORLY) nfn

Mr. Groves,
Attached is the rule 14a-8 proposal stock ownership letter. Please acknowledge receipt.
Sincerely,
John Chevedden

-- This message has been scanned for viruses and dangerous content, and is believed to be clean.
Message id: 6F8FD601349.A08F4



Post-it® Fax Note	7671	Date	11-19-13	# of pages	▶
To	Jeffrey Grivas	From	John Chevedden		
Co./Dept.		Co.			
Phone #		*** F.S.M.A & OMB Memorandum M-07-16 ***			
Fax #	419-874-7242	Fax #			

November 19, 2013

John R. Chevedden

Via Facsimile to F.S.M.A & OMB Memorandum M-07-16 ***

To Whom It May Concern:

This letter is provided at the request of Mr. John R. Chevedden, a customer of Fidelity Investments.

Please accept this letter as confirmation that according to our records Mr. Chevedden has continuously owned no fewer than 66 shares of Direct TV (CUSIP: 25490A309, trading symbol: DTV), no fewer than 66 shares of Duke Energy Corp. (CUSIP: 26441C204, trading symbol: DUK), no fewer than 80 shares of Expeditors International of Washington Corp. (CUSIP: 302130109, trading symbol: EXPD), no fewer than 100 shares of Tinkon Co. (CUSIP: 887389104, trading symbol: TKR) and no fewer than 60 shares of O'Reilly Automotive, Inc. (CUSIP: 67103H107, trading symbol: ORLY) since September 1, 2012.

The shares referenced above are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and a Fidelity Investments affiliate.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-800-6890 between the hours of 9:00 a.m. and 5:30 p.m. Eastern Time (Monday through Friday). Press 1 when asked if this call is a response to a letter or phone call; press *2 to reach an individual, then enter my 5 digit extension 27937 when prompted.

Sincerely,

George Stasinopoulos
Client Services Specialist

Our File: W409378-19NOV13



P.O. Box 1156 ♦ 233 S. Patterson
Springfield, MO 65801
Phone (417)-862-3333
www.oreillyauto.com

November 22, 2013

John Chevedden

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

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

RE: Notice of Deficiency

Dear Mr. Chevedden:

I am writing to acknowledge receipt on November 13, 2013 of your shareholder proposal (the "Proposal") submitted to O'Reilly Automotive, Inc. ("O'Reilly") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, for inclusion in O'Reilly's proxy materials for the 2014 Annual Meeting of Shareholders (the "Annual Meeting") and to request certain additional information from you.

The supporting statement accompanying the Proposal purports to summarize statements from a GMI Ratings report that is not publicly available. In order for us to verify that the referenced statements are attributable to GMI Ratings and are not being presented in the supporting statement in a false and misleading manner, please provide us with a copy of this report no later than 14 calendar days from the date you receive this letter.

Once we receive the GMI Ratings report, we will be in a position to determine whether the Proposal is eligible for inclusion in the proxy materials for the Annual Meeting. O'Reilly reserves the right to seek relief from the SEC, as appropriate.

Very truly yours,

O'REILLY AUTOMOTIVE, INC.

Jeffrey L. Groves
General Counsel
Vice President of Legal
Direct Line: (417) 829-5763
Fax No.: (417) 874-7102

Enclosures

cc: Kimberly A. deBeers
Skadden, Arps, Slate, Meagher & Flom LLP

From: '*** FISMA & OMB Memorandum M-07-16 ***'
Date: November 26, 2013 at 11:40:51 AM EST
To: "Jeffrey L. Groves" <jgroves@oreillyauto.com>
Cc: "Becky Piland" <bpiland@oreillyauto.com>
Subject: Rule 14a-8 Proposal (ORLY)gmi`

Mr. Groves,
I hope this is useful in regard to GMI.
Sincerely,
John Chevedden

With regard to complimentary reports, we provide corporate issuers with 1 complimentary overview copy of our ESG and AGR reports for their company every 12-months upon request. The request must come directly from the corporation and we will only provide complimentary copies directly to corporate issuers, not their outside counsel. Corporate issuers interested in requesting a complimentary copy should be directed here: <http://www3.gmiratings.com/home/contact-us/company-rating/> <<http://www3.gmiratings.com/home/contact-us/company-rating/>>

We always encourage corporate issuers and law firms to utilize one of our subscription options to GMI Analyst so they can efficiently monitor ESG and AGR data, events, ratings (the ratings are subject to change monthly and quarterly, respectively), and Key Metrics throughout the year. We have approximately 100 corporate issuers who subscribe to GMI Analyst and we work with many law firms (either within the law libraries or at the associate level) who utilize GMI Analyst as a ESG and forensic-accounting risk research product.

-- This message has been scanned for viruses and dangerous content, and is believed to be clean.
Message id: 15D166013FD.ADEC3