



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

DIVISION OF  
CORPORATION FINANCE

February 14, 2014

Carol J. Ward  
Mondelez International, Inc.  
carol.ward@mdlz.com

Re: Mondelez International, Inc.  
Incoming letter dated January 2, 2014

Dear Ms. Ward:

This is in response to your letters dated January 2, 2014 and January 14, 2014 concerning the shareholder proposal submitted to Mondelez by The Firefighters' Pension System of the City of Kansas City, Missouri, Trust. We also have received a letter on the proponent's behalf dated January 20, 2014. 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,

Matt S. McNair  
Special Counsel

Enclosure

cc: Greg A. Kinczewski  
The Marco Consulting Group  
kinczewski@marcoconsulting.com

February 14, 2014

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

Re: Mondelez International, Inc.  
Incoming letter dated January 2, 2014

The proposal relates to compensation.

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

Sincerely,

Raymond A. Be  
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.



January 20, 2014

VIA EMAIL

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

Re: Shareholder proposal submitted to Mondelez International by The Firefighters' Pension System of the City of Kansas City, Missouri, Trust

Ladies and Gentlemen:

This letter is submitted on behalf of The Firefighters' Pension System of the City of Kansas City, Missouri, Trust ("the Proponent") in response to a January 2, 2014, letter from Mondelez International ("the Company") and a January 14, 2014 supplemental letter which seek to exclude from its proxy materials for its 2014 annual meeting of shareholders the Proponent's shareholder proposal requesting the Company to seek shareholder approval of future severance agreements with senior executives that provide benefits in an amount exceeding 2.99 times the sum of the executives' base salary plus bonus ("the Proposal").

In accordance with Securities and Exchange Commission ("SEC") Staff Legal Bulletin No. 14D (Nov. 7, 2008), this response is being e-mailed to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). A copy of this response is also being e-mailed to the Company.

The Company's two letters argue that the Company should be allowed to exclude the Proposal because the Proponent did not respond in a timely fashion to the Company's December 2, 2013, letter requesting proof of continuous ownership ("the Deficiency Notice").

The Proponent respectfully submits that the Deficiency Notice sent by the Company was premature, unnecessary and deprived the Proponent of having the benefit of notice of any specific defect. The practical impact of the Deficiency Notice was to confuse the Proponent's custodian as to the proper dates to use in its proof of continuous ownership. The Proponent was a bystander to this and should not be penalized by having the Proposal excluded.

The facts are simple, straightforward and uncontested.

The Proponent submitted the proposal with a cover letter on November 26, 2013, just before the Thanksgiving holiday weekend. See Exhibit A of the Company's January 2, 2014 letter. The cover letter specifically states: "A letter from the Fund's custodian documenting the Fund's continuous ownership of the requisite amount of the Company's stock for at least one year prior to the date of this letter is being sent under separate cover." (Emphasis supplied.)

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January 20, 2014  
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Before the custodian could send its letter, the Company sent its Deficiency Notice on December 2, 2013, immediately following the Thanksgiving holiday weekend. See Exhibit B of the Company's January 2, 2014 letter. The Company's Deficiency Notice was sent eight calendar days in advance of the 14 calendar day after filing deadline in Rule 14a-8 for notifying proponents of procedural or eligibility deficiencies. The only deficiency alleged was the lack of proof of continuous ownership for the one year period preceding the filing of the Proposal. The Company, however, had already been specifically advised by the Proponent's letter of November 26, 2013 that the Proponent's custodian would be providing proof of continuous ownership under a separate cover. Thus the Company's Deficiency Notice was unnecessary and premature.

The Proponent's custodian sent its continuous ownership letter as an attachment to an email on Dec. 4, 2013, See Exhibit C to the Company's January 2, 2014 letter. The custodian's letter, unfortunately, provided proof of continuous ownership for one year from December 2, 2013, the date of the Company's letter, instead of November 26, 2013, the date of the Proponent submitting the Proposal. The custodian's email specifically states: "Feel free to contact me if you have questions." (Emphasis supplied.)

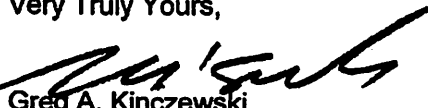
The Company did not contact the custodian or the Proponent to notify them that the custodian had used the wrong date for reporting continuous ownership until the Company filed its no action letter on January 2, 2014.

The custodian sent a letter to the Company on January 13, 2014, revising its December 4, 2013 letter to provide proof of continuous ownership for the one-year period preceding the filing of the Proposal on November 26, 2013. See Exhibit A to the Company's January 14, 2014 letter.

The Proponent respectfully submits that the only reason this controversy is before the Commission is that the Company's premature and unnecessary letter of December 2, 2013, interrupted its custodian's normal processing of the proof of continuous ownership. Once the Proponent was notified by the Company on January 2, 2014, that its custodian's December 4, 2013 letter providing proof of continuous ownership was deficient, the Proponent had its custodian cure the deficiency.

For the foregoing reasons, the Proponent believes that the relief sought in the Company's no action letter should not be granted. If you have any questions, please feel free to contact the undersigned at 312-612-8452 or at [kinczewski@marcoconsulting.com](mailto:kinczewski@marcoconsulting.com)

Very Truly Yours,



Greg A. Kinczewski  
Vice President/General Counsel

cc: Carol J. Ward



Carol J. Ward  
Vice President and Corporate Secretary  
Three Parkway North  
Suite 300, 3S407  
Deerfield, IL 60015

T: 847.943.4373  
F: 570.235.3005  
[Carol.Ward@mdlz.com](mailto:Carol.Ward@mdlz.com)

January 14, 2014

**VIA E-MAIL ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))**

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: *Mondelēz International, Inc.*  
*Supplemental Letter Regarding Shareholder Proposal of The Firefighters' Pension*  
*System of the City of Kansas City, Missouri, Trust*  
*Securities Exchange Act of 1934—Rule 14a-8***

Ladies and Gentlemen:

This letter relates to the no-action request (the "No-Action Request") that Mondelēz International, Inc. (the "Company") submitted to the staff of the Division of Corporation Finance (the "Staff") on January 2, 2014 in response to the shareholder proposal (the "Proposal") and statements in support thereof received from The Firefighters' Pension System of the City of Kansas City, Missouri, Trust (the "Proponent"). The Proposal relates to seeking shareholder approval of certain future severance agreements.

In the No-Action Request, the Company argued that the Proposal could be excluded from the Company's proxy statement and form of proxy for its 2014 Annual Meeting of Shareholders (collectively, the "2014 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 ownership of Company shares for the one-year period preceding and including the date the Proposal was submitted to the Company (November 26, 2013), despite the Company's timely and proper deficiency notice requesting that information.

This letter is to inform you that on January 13, 2014, the Company received from The Northern Trust Company a letter (the "NTC Letter") stating that "[t]he Fund has held in excess of \$2,000 worth of shares in your Company continuously since November 25, 2012." See Exhibit A.

Even assuming that the referenced "Fund" is the Proponent, the NTC Letter does not alter the basis for exclusion that was set forth in the No-Action Request. As stated in the No-Action Request, the Company, after receiving the Proposal and noting that it did not include proof of ownership, sent to the Proponent a deficiency notice (the "Deficiency Notice") describing the proof of ownership requirements of Rule 14a-8(b). The Deficiency Notice was delivered to the Proponent and the Proponent's representative via e-mail on December 2, 2013 and to the Proponent via FedEx on December 4, 2013. Thus, pursuant to Rule 14a-8(f), the Proponent's response was required to be postmarked or transmitted electronically no later than December 16, 2013, which is 14 days from the date the Proponent received the Deficiency

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
January 14, 2014  
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Notice. The Deficiency Notice alerted the Proponent to this deadline, stating that "[t]he SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter." Even so, the NTC Letter was transmitted via e-mail to the Company on January 13, 2014, which is nearly one month after the December 16, 2013 deadline.<sup>1</sup>

The Staff consistently has concurred that a proposal may be excluded when the proponent provides proof of ownership after the applicable 14-day deadline. See, e.g., *Mondelēz International, Inc.* (avail. Jan. 15, 2013) (concurring in the exclusion of a proposal under Rule 14a-8(b) and 14a-8(f) when the proponent submitted proof of ownership in response to the Company's no-action request approximately 15 days after the applicable 14-day deadline); *Entergy Corp.* (avail. Jan. 9, 2013) (concurring in the exclusion of a proposal under Rule 14a-8(b) and 14a-8(f) when the proponent's proof of ownership was submitted two days after the applicable 14-day deadline); *General Motors Co.* (avail. Mar. 27, 2012) (concurring in the exclusion of a proposal under Rule 14a-8(b) and 14a-8(f) when the proponent's proof of ownership was submitted four days after the applicable 14-day deadline).

Based upon the foregoing precedent and the analysis in the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2014 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to carol.ward@mdlz.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (847) 943-4373 or Amy Goodman of Gibson, Dunn & Crutcher LLP at (202) 955-8653.

Sincerely,



Carol J. Ward  
Vice President and Corporate Secretary

CJW/ea

cc: Amy Goodman, Gibson, Dunn & Crutcher LLP  
Richard G. Boersma, The Firefighters' Pension System of the City of Kansas City,  
Missouri, Trust  
Greg Kinczewski, The Marco Consulting Group

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<sup>1</sup> The Proponent also provided proof of ownership on December 4, 2013, which was deficient for the reasons explained in the No-Action Request.

**EXHIBIT A**



**From:** Claudiu Besoaga [mailto:cb73@ntrs.com]  
**Sent:** Monday, January 13, 2014 12:08 PM  
**To:** Ward, Carol J  
**Cc:** Greg Kinczewski; Rick.Boersma@kcmo.org  
**Subject:** Re: KCERS - Shareholder Proposal to file at Mondelez

Hi Carol,

Here is a revised letter of direction showing that The Firefighters' Pension System of the City of Kansas City, Missouri had for a year, more then \$2,000.00 worth of shares of Mondelez International Inc. as of closing date for 11/26/2013.

The previous letter had stated different dates than the date of the filing.

Apologies for the confusion.

Let us know if you have nay questions.

I sent the original in the mail and it will be delivered tomorrow.

Thanks, Claudiu.

---

**Claudiu Besoaga – Account Manager | Public Funds/Taft-Hartley | The Northern Trust Company**  
☎ (312) 557-4049 | fax (312) 557-2710 | ✉: cb73@ntrs.com

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**IRS CIRCULAR 230 NOTICE:** To the extent that this message or any attachment concerns tax matters, it is not intended to be used and cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law. For more information about this notice, see <http://www.northerntrust.com/circular230>.



**Northern Trust**

January 13, 2014

BY OVERNIGHT DELIVERY AND EMAIL  
CAROL.WARD@MDLZ.COM

Carol J. Ward  
Corporate Secretary  
Mondelez International Inc.  
Three Parkway North  
Deerfield, Illinois 60015

Re: The Firefighters' Pension System of the City of Kansas City, Missouri, Trust

Dear Ms. Ward:

As custodian of The Firefighters' Pension System of the City of Kansas City, Missouri, Trust, we are writing to revise our letter of December 4, 2013 regarding the continuous share ownership of the Trust in Mondelez International Inc. ("Company").

In response to your December 2, 2013 letter to the Trust we inadvertently verified the Trust's continuous ownership in the Company as of the close of business on December 2, 2013, and for the preceding one year period. We now understand that you were requesting proof of the Trust's ownership for the one-year period preceding the Trust's filing of a shareholder proposal on November 26, 2013.

We are now writing to report that as of the close of business November 26, 2013 the Fund held 27,150.00 shares of Company stock in our account at The Northern Trust Company and registered in its nominee name of Cede & Co. The Fund has held in excess of \$2,000 worth of shares in your Company continuously since November 25, 2012.

We apologize for the confusion.

If there are any other questions or concerns regarding this matter, please feel free to contact me at 312-557-4049.

Sincerely,

  
Claudiu Besoaga  
Account Manager  
The Northern Trust Company



Carol J. Ward  
Vice President and Corporate Secretary  
Three Parkway North  
Suite 300, 3S407  
Deerfield, IL 60015

T: 847.943.4373  
F: 570.235.3005  
[Carol.Ward@mdlz.com](mailto:Carol.Ward@mdlz.com)

January 2, 2014

**VIA E-MAIL ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))**

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: *Mondelēz International, Inc.*  
*Shareholder Proposal of The Firefighters' Pension System*  
*of the City of Kansas City, Missouri, Trust*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that Mondelēz International, Inc. (the "Company") intends to omit from its proxy statement and form of proxy for its 2014 Annual Meeting of Shareholders (collectively, the "2014 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from The Firefighters' Pension System of the City of Kansas City, Missouri, Trust (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2014 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a 8(k) and SLB 14D.

## THE PROPOSAL

The Proposal relates to seeking shareholder approval of certain future severance agreements. A copy of the Proposal, as well as related correspondence from the Proponent, is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2014 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 ownership in response to the Company's proper request for that information.

## BACKGROUND

The Proponent submitted the Proposal to the Company via e-mail on November 26, 2013. See Exhibit A. The Proponent's submission failed to provide verification of the Proponent's ownership of the requisite number of Company shares for at least one year as of the date the Proponent submitted the Proposal. In addition, the Company reviewed its stock records, which did not indicate that the Proponent was the record owner of any shares of Company securities.

Accordingly, on December 2, 2013, which was within 14 days of the date that the Company received the Proposal, the Company sent the Proponent a letter notifying it of the Proposal's procedural deficiencies as required by Rule 14a-8(f) (the "Deficiency Notice"). In the Deficiency Notice, attached hereto as Exhibit B, the Company informed the Proponent of the requirements of Rule 14a-8 and how it could cure the procedural deficiencies. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including the requirement that the proof of ownership "verify[] that the Proponent continuously held the requisite number of Company shares for the one-year period preceding and including the date the Proposal was submitted (November 26, 2013)"; and
- that the Proponent's response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

The Deficiency Notice also included a copy of Rule 14a-8 and SEC Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F"). The Deficiency Notice was delivered to the Proponent and the Proponent's representative via e-mail on December 2, 2013 and to the Proponent via FedEx on December 4, 2013. See Exhibit B.

By e-mail sent on December 4, 2013, the Proponent responded to the Deficiency Notice and provided a letter from The Northern Trust Company dated December 4, 2013 (the "NTC Letter").

The NTC Letter stated, in pertinent part:

As custodian of The Firefighters' Pension System of the City of Kansas City, Missouri, Trust, we are writing to report that as of the close of business December 2, 2013 the Fund held 21,750.00 shares of Mondelez International Inc. ("Company") stock in our account at The Northern Trust Company and registered in its nominee name of Cede & Co. The Fund has held in excess of \$2,000 worth of shares in your Company continuously since December 1, 2012].

See Exhibit C (emphasis added).

The Company has received no further correspondence from the Proponent regarding either the Proposal or proof of the Proponent's ownership of Company shares.

### ANALYSIS

#### **The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish The Requisite Eligibility To Submit The Proposal.**

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent did not substantiate its eligibility to submit the Proposal under Rule 14a-8(b) by providing the information described in the Deficiency Notice. Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a 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 meeting for at least one year by the date [the shareholder] submit[s] the proposal." Staff Legal Bulletin No. 14 ("SLB 14") specifies that when the shareholder is not the registered holder, the shareholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the shareholder may do by one of the two ways provided in Rule 14a-8(b)(2). See Section C.1.c, Staff Legal Bulletin No. 14 (July 13, 2001).

Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. The Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponent in a timely manner the Deficiency Notice, which specifically set forth the information listed above and attached a copy of both Rule 14a-8 and SLB 14F. See Exhibit B.

In addition, Staff Legal Bulletin No. 14G (Oct. 16, 2012) ("SLB 14G") provides specific guidance on the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1). SLB 14G expresses "concern[] that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters." It then states that, going forward, the Staff

will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year

period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically.

The Staff consistently has granted no-action relief to registrants where proponents have failed, following a timely and proper request by a registrant, to furnish the full and proper evidence of continuous share ownership for the full one-year period preceding and including the submission date of the proposal. For example, in *PepsiCo, Inc. (Albert)* (avail. Jan. 10, 2013), the proponent submitted the proposal on November 20, 2012 and provided a broker letter that established ownership of company securities for one year as of November 19, 2012. The company properly sent a deficiency notice to the proponent on December 4, 2012 that specifically identified the date as of which beneficial ownership had to be substantiated and how the proponent could substantiate such ownership, and the proponent did not respond to the deficiency notice. The Staff concurred in the exclusion of the proposal because the broker letter was insufficient to prove continuous share ownership for one year as of November 20, 2012, the date the proposal was submitted. See also *Comcast Corp.* (avail. Mar. 26, 2012) (letter from broker stating ownership for one year as of November 23, 2011 was insufficient to prove continuous ownership for one year as of November 30, 2011, the date the proposal was submitted); *International Business Machines Corp.* (avail. Dec. 7, 2007) (letter from broker stating ownership as of October 15, 2007 was insufficient to prove continuous ownership for one year as of October 22, 2007, the date the proposal was submitted); *The Home Depot, Inc.* (avail. Feb. 5, 2007) (letter from broker stating ownership for one year as of November 7, 2005 to November 7, 2006 was insufficient to prove continuous ownership for one year as of October 19, 2006, the date the proposal was submitted); *Sempra Energy* (avail. Jan. 3, 2006) (letter from broker stating ownership from October 24, 2004 to October 24, 2005 was insufficient to prove continuous ownership for one year as of October 31, 2005, the date the proposal was submitted); *International Business Machines Corp.* (avail. Jan. 7, 2002) (letter from broker stating ownership on August 15, 2001 was insufficient to prove continuous ownership for one year as of October 30, 2001, the date the proposal was submitted).

Here, the Proponent submitted the Proposal on November 26, 2013. Therefore, the Proponent had to verify continuous ownership for the one-year period preceding and including this date, i.e., November 26, 2012 through November 26, 2013. The Deficiency Notice clearly stated the necessity to prove continuous ownership for one year as of November 26, 2013. In doing so, the Company complied with the Staff's guidance in SLB 14G for providing the Proponent with specific instruction as to Rule 14a-8's proof of ownership requirements. The NTC Letter supplied by the Proponent in response to the Deficiency Notice, however, merely stated that the Proponent has "held in excess of \$2,000 worth of shares in your Company continuously since December 1, 2012." See Exhibit C (emphasis added). Despite the Deficiency Notice's instructions to show proof of continuous ownership for "the one-year period preceding and including the date the Proposal was submitted (November 26, 2013)," the Proponent failed to do so.

Accordingly, consistent with the precedent cited above, the Proposal is excludable because, despite receiving timely and proper notice pursuant to Rule 14a-8(f)(1), the Proponent has not sufficiently demonstrated that it continuously owned the requisite number of Company shares for the requisite one-year period prior to the date the Proposal was submitted to the Company, as required by Rule 14a-8(b).

### **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 from its 2014 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to carol.ward@mdlz.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (847) 943-4373, or Amy Goodman of Gibson, Dunn & Crutcher LLP at (202) 955-8653.

Sincerely,

/s/ Carol J. Ward

Carol J. Ward  
Vice President and Corporate Secretary

CJW/eea  
Enclosures

cc: Amy Goodman, Gibson, Dunn & Crutcher LLP  
Richard G. Boersma, The Firefighters' Pension System of the City of Kansas City,  
Missouri, Trust  
Greg Kinczewski, The Marco Consulting Group

**EXHIBIT A**



**From:** Rick Boersma [mailto:Rick.Boersma@kcmo.org]

**Sent:** Tuesday, November 26, 2013 9:35 AM

**To:** Ward, Carol J

**Cc:** Greg Kinczewski "Greg Kinczewski" "Greg Kinczewski" <kinczewski@marcoconsulting.com>  
(kinczewski@marcoconsulting.com); Claudiu Besoaga

**Subject:** Shareholder Proposal

Dear Ms. Ward:

Attached please find a shareholder proposal, and related transmittal letter, submitted by the Kansas City Firefighters' Pension System. Please contact Greg Kinczewski of The Marco Consulting Group at 312-612-8452 if you have any questions.

Richard G. Boersma  
Retirement Systems Executive Officer  
816/513-1904

CITY OF FOUNTAINS  
HEART OF THE NATION



KANSAS CITY  
MISSOURI

## Human Resources Department

### The Firefighters' Pension System

10th Floor, City Hall  
414 East 12th Street  
Kansas City, Missouri 64106

(816) 513-1928  
Fax: (816) 513-1280

November 26, 2013

BY OVERNIGHT DELIVERY AND EMAIL  
[CAROL.WARD@MDLZ.COM](mailto:CAROL.WARD@MDLZ.COM)

Carol J. Ward  
Corporate Secretary  
Mondelez International Inc.  
Three Parkway North  
Deerfield, Illinois 60015

Re: The Firefighters' Pension System of the City of Kansas City, Missouri, Trust

Dear Ms. Ward:

In my capacity as Secretary of the Board of The Firefighters' Pension System of the City of Kansas City, Missouri, Trust (the "Fund"), I write to give notice that pursuant to the 2013 proxy statement of Mondelez International Inc. (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2014 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting.

A letter from the Fund's custodian documenting the Fund's continuous ownership of the requisite amount of the Company's stock for at least one year prior to the date of this letter is being sent under separate cover. The Fund also intends to continue its ownership of at least the minimum number of shares required by the SEC regulations through the date of the Annual Meeting.

I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the attached Proposal. I declare the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally.

Sincerely,

Richard G. Boersma  
Secretary

RESOLVED: that the shareholders of Mondelez International ("the Company") urge the Board of Directors to seek shareholder approval of future severance agreements with senior executives that provide benefits in an amount exceeding 2.99 times the sum of the executives' base salary plus bonus.

"Future severance agreements" include employment agreements containing severance provisions, special retirement provisions and agreements renewing, modifying or extending existing such agreements.

"Benefits" include lump-sum cash payments (including payments in lieu of medical and other benefits); the payment of any "gross-up" tax liability; the estimated present value of special retirement provisions; any stock or option awards that are awarded under any severance agreement; any prior stock or option awards as to which the executive's access is accelerated under the severance agreement; fringe benefits; and consulting fees (including reimbursable expenses) to be paid to the executive.

#### SUPPORTING STATEMENT

We believe that requiring shareholder ratification of "golden parachute" severance packages with a total cost exceeding 2.99 times an executive's base salary plus target annual incentive will provide valuable feedback, encourage restraint, and strengthen the hand of the Board's compensation committee.

According to the 2013 Proxy (page 92), the potential payout to CEO Irene Rosenfeld under an involuntary termination due to a change in control at fiscal year-end 2012 was approximately \$39 million, more than *nine* times the average of her base salary plus annual incentive award in the past three years.

Similarly, under the same termination and change in control scenario, four additional named executive officers could have received an estimated total of \$27 million, which represents between three and five times the average of their base salary plus annual incentive for the past three years (or fewer for those executives who have been with the Company less than three years).

Although the separation payment to the CEO in connection with an involuntary termination due to a change in control is three times base salary plus target annual incentive and two times base salary plus target annual incentive for the other named executive officers, the proxy reveals that total payments are much higher when accelerated vesting of equity and other perquisites are included.

We believe that the Company's policy on shareholder ratification of executive severance should include the full cost of termination payments.

Please VOTE FOR this proposal.

**EXHIBIT B**

**From:** elizabeth.ahlenius@mdlz.com [mailto:elizabeth.ahlenius@mdlz.com] **On Behalf Of** carol.ward@mdlz.com  
**Sent:** Monday, December 02, 2013 4:54 PM  
**To:** Rick.Boersma@kcmo.org  
**Cc:** kinczewski@marcoconsulting.com; carol.ward@mdlz.com; Belliston, Gregory S.; elizabeth.ahlenius@mdlz.com  
**Subject:** Mondelez International - Firefighters' Pension System - Response to Shareholder Proposal  
**Importance:** High

Attached please find Mondelēz International's response to the Shareholder Proposal received from The Firefighters' Pension System of the City of Kansas City, Missouri, Trust, the original of which is being sent to your attention via FedEx Priority Overnight.

Sincerely,

Carol J. Ward  
Vice President and Corporate Secretary  
Mondelēz International, Inc.





Carol J. Ward  
Vice President and Corporate Secretary  
Three Parkway North  
Suite 300, 3S407  
Deerfield, IL 60015

T: 847.943.4373  
F: 570.235.3005  
[Carol.Ward@mdlz.com](mailto:Carol.Ward@mdlz.com)

December 2, 2013

**VIA OVERNIGHT MAIL AND E-MAIL ([Rick.Boersma@kcmo.org](mailto:Rick.Boersma@kcmo.org))**

Mr. Richard G. Boersma, Secretary  
Human Resources Department  
The Firefighters' Pension System  
10th Floor, City Hall  
414 East 12th Street  
Kansas City, Missouri 64106

Dear Mr. Boersma:

I am writing on behalf of Mondelēz International, Inc. (the "Company"), which received on November 26, 2013 the shareholder proposal you submitted on behalf of The Firefighters' Pension System of the City of Kansas City, Missouri, Trust (the "Proponent") pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2014 Annual Meeting of Shareholders (the "Proposal").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), provides that shareholder proponents must 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. The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this defect, the Proponent must submit sufficient proof of its continuous ownership of the requisite number of Company shares for the one-year period preceding and including the date the Proposal was submitted to the Company (November 26, 2013). As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the requisite number of Company shares for the one-year period preceding and including the date the Proposal was submitted (November 26, 2013); or

- (2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting its ownership of the requisite number of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite number of Company shares for the one-year period.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of its shares as set forth in (1) above, please note that 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 that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. The Proponent can confirm whether its broker or bank is a DTC participant by asking its broker or bank or by checking DTC's participant list, which is available at <http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from its broker or bank verifying that the Proponent continuously held the requisite number of Company shares for the one-year period preceding and including the date the Proposal was submitted (November 26, 2013).
- (2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite number of Company shares for the one-year period preceding and including the date the Proposal was submitted (November 26, 2013). The Proponent should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, the Proponent may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the Proponent's account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including the date the Proposal was submitted (November 26, 2013), the requisite number of Company shares were continuously held: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

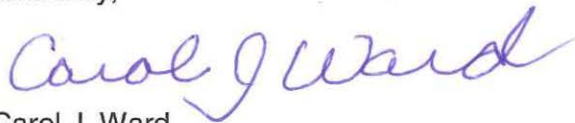


Mr. Richard G. Boersma  
The Firefighters' Pension System  
December 2, 2013  
Page 3

The SEC's rules require that any 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 my attention, Carol J. Ward, Vice President and Corporate Secretary, Mondelēz International, Inc., Three Parkway North, Deerfield, IL 60015. Alternatively, you may transmit any response by facsimile to me at (570) 235-3005.

If you have any questions with respect to the foregoing, please contact me at (847) 943-4373. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,



Carol J. Ward  
Vice President & Corporate Secretary

CJW/eea  
Enclosures

cc: Greg Kinczewski, The Marco Consulting Group  
(via e-mail w/enclosures [kinczewski@marcoconsulting.com](mailto:kinczewski@marcoconsulting.com))



## Rule 14a-8 – Shareholder Proposals

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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 its files definitive copies of its proxy statement and form of proxy under §240.14a-6.



**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](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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

**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.<sup>4</sup> 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.<sup>5</sup>

**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.<sup>6</sup> 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<sup>7</sup> 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,<sup>8</sup> 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.<sup>9</sup>

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).<sup>10</sup> 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]." <sup>11</sup>

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). <sup>12</sup> 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. <sup>13</sup>

##### **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,<sup>14</sup> 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.<sup>15</sup>

**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.<sup>16</sup>

**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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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> 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.").

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> See Exchange Act Rule 17Ad-8.



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

<sup>7</sup> 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.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> 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.

<sup>10</sup> 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.

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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

<sup>15</sup> 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.

<sup>16</sup> 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.

<http://www.sec.gov/interp/leg/cfslb14f.htm>

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Modified: 10/18/2011

**EXHIBIT C**



**From:** Claudiu Besoaga <cb73@ntrs.com>

**Date:** December 4, 2013 14:15:47 EST

**To:** <CAROL.WARD@MDLZ.COM>

**Cc:** Greg Kinczewski <kinczewski@marcoconsulting.com>, <Rick.Boersma@kcmo.org>

**Subject:** KCERS - Shareholder Proposal to file at Mondelez

Hi Carol,

Here is the letter showing that The Firefighters' Pension System of the City of Kansas City, Missouri had for a year, more then \$2,000.00 worth of shares of Mondelez International Inc.

Fell free to contact me if you have questions.

The original will be delivered to you tomorrow.

Thanks, Claudiu.

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**Claudiu Besoaga – Account Manager | Public Funds/Taft-Hartley | The Northern Trust Company**

☎ (312) 557-4049 | fax (312) 557-2710 | ✉: cb73@ntrs.com

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Northern Trust

December 4, 2013

BY OVERNIGHT DELIVERY AND EMAIL

CAROL.WARD@MDLZ.COM

Carol J. Ward  
Corporate Secretary  
Mondelez International Inc.  
Three Parkway North  
Deerfield, Illinois 60015

Re: The Firefighters' Pension System of the City of Kansas City, Missouri, Trust

Dear Ms. Ward:

As custodian of The Firefighters' Pension System of the City of Kansas City, Missouri, Trust, we are writing to report that as of the close of business December 2, 2013 the Fund held 21,750.00 shares of Mondelez International Inc. ("Company") stock in our account at The Northern Trust Company and registered in its nominee name of Cede & Co. The Fund has held in excess of \$2,000 worth of shares in your Company continuously since December 1, 2012

If there are any other questions or concerns regarding this matter, please feel free to contact me at 312-557-4049.

Sincerely,

Claudiu Besoaga  
Account Manager  
The Northern Trust Company