



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

DIVISION OF
CORPORATION FINANCE

December 18, 2015

Michael McGawn
Chipotle Mexican Grill, Inc.
mmcgawn@chipotle.com

Re: Chipotle Mexican Grill, Inc.

Dear Mr. McGawn:

This is in regard to your letter dated December 18, 2015 concerning the shareholder proposal submitted by the AFL-CIO Equity Index Fund for inclusion in Chipotle's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the proponent has withdrawn the proposal and that Chipotle therefore withdraws its December 15, 2015 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

cc: Maureen O'Brien
Marco Consulting Group
obrien@marcoconsulting.com



1401 WYNKOOP STREET, SUITE 500
DENVER, CO 80202

December 18, 2015

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

Via e-mail to shareholderproposals@sec.gov

Re: Chipotle Mexican Grill, Inc. - Withdrawal of No-Action Request Letter
Shareholder Proposal of Chevy Chase Trust Investment Advisors as Trustee of the AFL -
CIO Equity Index Fund

Ladies and Gentlemen:

By letter dated December 15, 2015, Chipotle Mexican Grill, Inc. (the "Company"), submitted to the staff of the Division of Corporation Finance (the "Staff") a no-action request (the "No-Action Request Letter") relating to the Company's intention to exclude from the proxy materials for its 2016 Annual Meeting of Shareholders (the "2016 Proxy Materials") a shareholder proposal and statement in support thereof (the "Shareholder Proposal") received from Chevy Chase Trust Investment Advisors as trustee of the AFL-CIO Equity Index Fund (the "Fund").

Enclosed as Exhibit A is a copy of correspondence submitted to the Company by the Fund dated December 17, 2015, withdrawing the Shareholder Proposal. In reliance on the correspondence received from the Fund, the Company respectfully advises the Staff that it hereby withdraws the No-Action Request Letter.

If the Staff has any questions with respect to the foregoing, please do not hesitate to call the undersigned at (303) 222-5978.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael McGaw".

CHIPOTLE MEXICAN GRILL, INC.

Michael McGaw
Corporate Compliance Counsel
(303) 222-5978

Cc: Maureen O'Brien, Marco Consulting Group (via e-mail to Obrien@marcoconsulting.com)

Exhibit A



7501 Wisconsin Avenue, Suite 1500W
Bethesda, Maryland 20814

Lynn M. Panagos

SENIOR VICE PRESIDENT

TEL 240.497.5048 FAX 240.497.5013
lpanagos@chevychasetrust.com

ChevyChaseTrust.com

December 17, 2015

Mr. Monty Moran
Co-Chief Executive Officer, Secretary and Director
Chipotle Mexican Grill, Inc.
1401 Wynkoop Street
Suite 500
Denver, CO 80202

RE: AFL-CIO Equity Index Fund

Dear Mr. Moran:

In our capacity as Trustee of the AFL-CIO Equity Index Fund (the "Fund"), I write to give notice that the Fund withdraws the shareholder proposal submitted for the 2016 annual meeting of shareholders (the "Annual Meeting"). Due to an administrative error, the custodial verification letter was not submitted before the deadline. Please withdraw your request for no action relief submitted to the Securities and Exchange Commission.

Please direct all questions or correspondence regarding the Proposal to the attention of:

Maureen O'Brien
Director of Corporate Governance
Marco Consulting Group
550 W. Washington Boulevard, 9th Floor
Chicago, IL 60661
312-612-8446
obrien@marcoconsulting.com

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn M. Panagos".



1401 WYNKOOP STREET, SUITE 500
DENVER, CO 80202

December 15, 2015

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

Via e-mail to shareholderproposals@sec.gov

Re: Chipotle Mexican Grill, Inc.
Shareholder Proposal of Chevy Chase Trust Investment Advisors as Trustee of the AFL -
CIO Equity Index Fund

Ladies and Gentlemen:

This letter is to inform you that Chipotle Mexican Grill, Inc. (the "Company") intends to omit from its proxy statement and form of proxy for its 2016 Annual Meeting of Shareholders (collectively, its "2016 Proxy Materials") a shareholder proposal and statement in support thereof (the "Shareholder Proposal") received from Chevy Chase Trust Investment Advisors as trustee of the AFL-CIO Equity Index Fund (the "Fund").

Pursuant to Rule 14a-8(j), we have filed this letter with the Securities and Exchange Commission (the "Commission") no later than 80 calendar days before the date the Company plans to file its definitive 2016 Proxy Materials with the Commission, and have concurrently sent copies of this correspondence to the Fund. Also included herewith are copies of the Shareholder Proposal (Exhibit A).

THE SHAREHOLDER PROPOSAL

The Shareholder Proposal states:

RESOLVED: The Shareholders ask the board of directors of Chipotle Mexican Grill, Inc. to adopt a policy that in the event of a change in control (as defined under any applicable employment agreement, equity incentive plan or other plan), there shall be no acceleration of vesting of any equity award granted to any senior executives, provided, however, that the board's Compensation Committee may provide in an applicable grant or purchase agreement that any unvested award will vest on a partial, *pro rata* basis up to the time of the senior executive's termination, with such qualifications for an award as the Committee may determine.

For purposes of this Policy, "equity award" means an award granted under an equity incentive plan as defined in Item 402 of the SEC's Regulation S-K, which addresses elements of executive compensation to be disclosed to shareholders. This resolution shall be implemented so as not affect any contractual rights in existence on the date this proposal is adopted, and it shall apply only to equity awards made under equity incentive plans or plan amendments that shareholders approve after the date of the 2016 annual meeting.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our views that the Shareholder Proposal may be excluded from the 2016 Proxy Materials pursuant to Rule 14a-8(f) because the Fund has

failed to comply with the requirements of Rule 14a-8(b)(1) concerning proof of eligibility to submit a proposal, and that the Fund is therefore not eligible to submit the Shareholder Proposal or any other proposal.

DISCUSSION

The Fund submitted the Shareholder Proposal to the Company via UPS on November 23, 2015. The Company received the Shareholder Proposal on November 24, 2015.

The Company determined that the Fund's submission did not satisfy the requirement of Rule 14a-8(b)(1) regarding proof of ownership of the Company's stock for the requisite time period to establish eligibility to submit a shareholder proposal for inclusion in the Company's proxy materials under Rule 14a-8(b)(1). Correspondence from the Fund indicated that all correspondence regarding the Shareholder Proposal should be directed to the attention of Maureen O'Brien at Marco Consulting Group (along with the Fund, the "Proponents") and therefore, on November 25, 2015, which was within 14 days of the date the Company received the Shareholder Proposal, the Company sent a letter notifying the Proponents of this procedural deficiency as required by Rule 14a-8(f) (the "Deficiency Notice", attached hereto as Exhibit B). The Deficiency Notice was delivered on November 27, 2015.

The Deficiency Notice informed the Proponents that they had failed to comply with the requirements of Rule 14a-8(b)(1) concerning proof of ownership of shares of the Company's stock for the requisite time period to establish eligibility to submit a shareholder proposal for inclusion in the Company's 2016 Proxy Materials. The Deficiency Notice also stated that the Proponents' response must be postmarked, or transmitted electronically, no later than fourteen calendar days from the date it was received. No such proof of ownership of shares, nor any other response to the Deficiency Notice, was received by the Company.

CONCLUSION

For the foregoing reason, we believe that the Shareholder Proposal may be excluded from the Company's 2016 Proxy Materials under Rule 14a-8(f)(1). Accordingly, we respectfully request that the Staff confirm that it would not recommend enforcement action if the Company omits the Shareholder Proposal from its 2016 Proxy Materials.

If the Staff has any questions with respect to the foregoing, please do not hesitate to call the undersigned at (303) 222-5978.

Sincerely,



CHIPOTLE MEXICAN GRILL, INC.

Michael McGaw
Corporate Compliance Counsel
(303) 222-5978

Cc: Maureen O'Brien, Marco Consulting Group (via e-mail to Obrien@marcoconsulting.com)

Exhibit A

7501 Wisconsin Avenue, Suite 1500W
Bethesda, Maryland 20814

Lynn M. Panagos

SENIOR VICE PRESIDENT

202 240 497 5048 • fax 240 497 5013
lpangagos@chevychasetrust.com

ChevyChaseTrust.com

November 23, 2015

Mr. Monty Moran
Co-Chief Executive Officer, Secretary and Director
Chipotle Mexican Grill, Inc.
1401 Wynkoop Street
Suite 500
Denver, CO 80202

RE: AFL-CIO Equity Index Fund

Dear Mr. Moran:

In our capacity as Trustee of the AFL-CIO Equity Index Fund (the "Fund"), I write to give notice that pursuant to the 2015 proxy statement of Chipotle Mexican Grill, Inc. (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2016 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.

Please direct all questions or correspondence regarding the Proposal to the attention of:

Maureen O'Brien
Director of Corporate Governance
Marco Consulting Group
550 W. Washington Boulevard, 9th Floor
Chicago, IL 60661
312 612 8446
obrien@marcoconsulting.com

Sincerely,



AFL-CIO Equity Fund – Chipotle Mexican Grill, Inc.

RESOLVED: The shareholders ask the board of directors of Chipotle Mexican Grill, Inc. to adopt a policy that in the event of a change in control (as defined under any applicable employment agreement, equity incentive plan or other plan), there shall be no acceleration of vesting of any equity award granted to any senior executives, provided, however, that the board's Compensation Committee may provide in an applicable grant or purchase agreement that any unvested award will vest on a partial, *pro rata* basis up to the time of the senior executive's termination, with such qualifications for an award as the Committee may determine.

For purposes of this Policy, "equity award" means an award granted under an equity incentive plan as defined in Item 402 of the SEC's Regulation S-K, which addresses elements of executive compensation to be disclosed to shareholders. This resolution shall be implemented so as not affect any contractual rights in existence on the date this proposal is adopted, and it shall apply only to equity awards made under equity incentive plans or plan amendments that shareholders approve after the date of the 2016 annual meeting.

SUPPORTING STATEMENT

Chipotle Mexican Grill, Inc. ("Company") allows executives to receive an accelerated award of unearned equity under certain conditions after a change of control of the Company. We do not question that some form of severance payments may be appropriate in that situation. We are concerned, however, that current practices at the Company may permit windfall awards that have nothing to do with an executive's performance.

According to last year's proxy statement, a change in control as of Dec. 31, 2014 could have accelerated the vesting of approximately \$2.5 million worth of long-term equity to Company's four senior executives, with approximately \$220 million going to the co-CEOs, Steve Ells and Monty Moran.

We are unpersuaded by the argument that executives somehow "deserve" to receive unvested awards. To accelerate the vesting of unearned equity on the theory that an executive was denied the opportunity to earn those shares seems inconsistent with a "pay for performance" philosophy worthy of the name.

We do believe, however, that an affected executive should be eligible to receive an accelerated vesting of equity awards on a *pro rata* basis as of his or her termination date, with the details of any *pro rata* award to be determined by the Compensation Committee.

Other major corporations, including Apple, Chevron, ExxonMobil, IBM, Intel, Microsoft, and Occidental Petroleum, have limitations on accelerated vesting of unearned equity, such as providing *pro rata* awards or simply forfeiting unearned awards. Research from James Reda & Associates found that over one third of the largest 200 companies now *pro rata*, forfeit, or only partially vest performance shares upon a change of control.

We urge you to vote FOR this proposal.

Exhibit B



1401 WYNKOOP STREET, SUITE 500
DENVER, CO 80202

November 25, 2015

Marco Consulting Group
Attn: Maureen O'Brien
550 W. Washington Boulevard
9th Floor
Chicago, IL 60661

Via FedEx overnight delivery

Re: Shareholder proposal received on November 24, 2015

Dear Ms. O'Brien:

Pursuant to Rule 14a-8(f)(1) under the Securities Exchange Act of 1934 (the "Exchange Act"), Chipotle Mexican Grill, Inc. (the "Company") hereby notifies you of eligibility deficiencies related to the purported shareholder proposal (the "Shareholder Proposal") submitted by Chevy Chase Trust Investment Advisors as Trustee of the AFL-CIO Equity Index Fund (the "Fund") for inclusion in the Company's proxy statement for its 2016 annual meeting of shareholders (the "Annual Meeting"), which Shareholder Proposal was received by the Company on November 24, 2015. Specifically, the proponent has failed to comply with the requirements of Rule 14a-8(b)(1) concerning proof of eligibility to submit a proposal.

As you know, Rule 14a-8(b)(1) requires the proponent of a shareholder proposal to have continuously held at least \$2,000 in market value, or 1%, of a company's securities for at least one year preceding the date the proposal is submitted in order to be eligible to submit the proposal for inclusion in a company's proxy materials. The materials submitted by the Fund did not include proof of ownership of shares of the Company's stock for the requisite time period to establish eligibility to submit a shareholder proposal for inclusion in the Company's proxy materials under Rule 14a-8(b)(1).

In light of the foregoing, the Company has determined that the Fund has failed to comply with the requirements of Rule 14a-8(b)(1) concerning proof of eligibility to submit a proposal, and that the Fund is therefore not eligible to submit the Shareholder Proposal or any other proposal. In order to satisfy the requirements of Rule 14a-8(b)(1), the Fund must provide proof of ownership verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including November 24, 2015, the date the Shareholder Proposal is deemed to have been submitted under SEC Staff Legal Bulletin No. 14G, to cure the defect. The Fund may substantiate proof of ownership in any manner provided in Rule 14a-8(b), which permits you to provide the following:

- a written statement from the "record" holder of the Fund's shares of common stock of the Company (usually a broker or bank) verifying that, at the time the Fund submitted the proposal, the Fund continuously held such shares for at least one year; or
- a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the Fund's ownership of shares of common stock of the Company as of or before November 24, 2014 and the Fund's written statement that the Fund continuously held the required number of shares for the one-year period as of the date of the statement.

Maureen O'Brien
Marco Consulting Group
Page 2

Any response to this notification must be postmarked, or transmitted electronically, no later than fourteen calendar days from the date you receive this notification. Any such response should address the issues set forth in this letter so as to prove that the Fund holds the requisite amount of Company securities sufficient to make the Fund eligible to submit a proposal. If within the required fourteen calendar day period, the Fund does not respond to the Company in writing as to the foregoing, we believe the Company will be entitled to exclude the Shareholder Proposal from the Company's proxy statement for the Annual Meeting.

This letter does not waive or nullify any rights the Company may have to (1) exclude the Shareholder Proposal from the Company's proxy statement for the Annual Meeting on any basis other than as stated herein, or (2) object in any other appropriate manner to the Shareholder Proposal.

CHIPOTLE MEXICAN GRILL, INC.



Michael McGawn
Corporate Compliance Counsel
(303) 222-5978

Encl.: Rule 14a-8

§ 240.14a-8 Shareholder proposals.

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

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

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

(1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

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

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

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter) and/or Form 5 (§ 249.105 of this chapter), or amendments to those

documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

- (A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;
- (B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and
- (C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

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

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

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

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

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

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of

the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).

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

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

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

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

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

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

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

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

Note to paragraph (i)(1):

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

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

Note to paragraph (i)(2):

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

(3) *Violation of proxy rules*: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

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

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

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

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

(8) *Director elections*: If the proposal:

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

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

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

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

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

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

Note to paragraph (i)(9):

A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

Note to paragraph (i)(10):

A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a “say-on-pay vote”) or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

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

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

- (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;
- (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
- (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

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

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

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

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

- (i) The proposal;

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

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

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

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

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

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

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

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

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

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

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

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

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]