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

DIVISION OF
CORPORATION FINANCE

May 4, 2016

Tim O'Grady
Sprint Corporation
timothy.ogrady@sprint.com

Re: Sprint Corporation
Incoming letter dated April 8, 2016

Dear Mr. O'Grady:

This is in response to your letter dated April 8, 2016 concerning the shareholder proposal submitted to Sprint by CH Communication SA. 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
Senior Special Counsel

Enclosure

cc: Nicolas Giannakopoulos
CH Communication SA
ch.communication.sa@gmail.com

May 4, 2016

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Sprint Corporation
Incoming letter dated April 8, 2016

The proposal relates to a director nominee.

There appears to be some basis for your view that Sprint 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 Sprint'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 Sprint omits the proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which Sprint relies.

Sincerely,

Adam F. Turk
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 matter 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 shareholders 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.

1934 Act/Rule 14a-8

April 8, 2016

VIA E-MAIL (*shareholderproposals@sec.gov*)

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

Re: Sprint Corporation
Stockholder Submission of CH Communication SA

Dear Ladies and Gentlemen:

Sprint Corporation, a Delaware corporation (the "***Company***"), hereby requests confirmation that the staff (the "***Staff***") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "***Commission***") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "***Exchange Act***"), the Company omits the enclosed purported stockholder proposal (the "***Submission***") and supporting statement (the "***Supporting Statement***") submitted by Nicolas Giannakopoulos on behalf of CH Communication SA (the "***Proponent***") from the Company's proxy materials for its 2016 Annual Meeting of Stockholders (the "***2016 Proxy Materials***").

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2016 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Copies of the Submission and Supporting Statement, the Proponent's cover letter submitting the Submission, and other correspondence relating to the Submission are attached hereto as Exhibit A.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("***SLB 14F***"), we ask that the Staff provide its response to this request to the undersigned via email at the address noted in the last paragraph of this letter, and to Nicholas Giannakopoulos, on behalf of the Proponent, via email at ch.communication.sa@gmail.com.

I. PROCEDURAL HISTORY

February 20, 2016	The Proponent emails the Submission, dated February 19, 2016, to the Company. Included in the Submission is an excerpt of a stock portfolio statement from UPB Holdings of an unidentified stockholder indicating holdings of 10,600 shares of common stock of the Company as of September 12, 2015.
February 29, 2016	After confirming that the Proponent was not a stockholder of record, the Company notifies the Proponent via email and overnight delivery via Federal Express of the requirements of Rule 14a-8(a), (b) and (d), its view that the Submission failed to meet the requirements of these paragraphs of the rule, and the requirement that those deficiencies be cured within 14 days of receipt of the Company's notice. *See* Exhibit B.
March 2, 2016	The notice describing the procedural and eligibility deficiencies of the Submission is received by the Proponent via Federal Express. *See* Exhibit C.
March 9, 2016	The Proponent emails a letter of the same date from Union Bancaire Privée to the Company. *See* Exhibit D.
March 16, 2016	The 14-day deadline for responding to the Company's notice passes without the Proponent submitting any additional proof of ownership or revisions of the Submission to the Company.

II. THE SUBMISSION

The Submission and Supporting Statement read as follows:

"Proposal: Nikesh Arora's background and conflicts of interest make him unsuitable to be a director of Sprint. Shareholders are asked to support this motion of no confidence in Nikesh Arora.

Our Submission:

In January 2006, Mr. Arora was appointed to the board of TIM Hellas, a major Greek telecommunications company. He was hired by Hellas's new private equity owners, Texas Pacific Group and Apax.

With Mr. Arora's assistance, the private equity firms apparently loaded TIM Hellas with burdensome debt and looted its assets before jumping ship, leaving the company in shambles. The private equity firms took nearly €1 billion out of TIM Hellas and left it with about €3 billion of debt.

The payments to Apax and TPG were authorized by the directors of TIM Hellas, who also personally benefited from the arrangement included Mr. Arora.

Crippled with debt, TIM Hellas had no chance of surviving. It declared bankruptcy in 2009 - leaving its creditors and investors empty-handed.

This raid on a once-thriving telecommunications company, perpetuated in part by Mr. Arora, has garnered significant media attention and generated multiple lawsuits. *The Economist* described what happened to Hellas as an "egregious-looking deal." Mr. Arora's involvement at TIM Hellas casts doubt on his ethics and management ability. Perhaps it is unsurprising then that Mr. Arora has attempted to minimize his involvement with Hellas. For example, Mr. Arora's biography on the Sprint website originally boasted of his experience at Hellas, but after the media began to cover the Hellas transactions in 2015, the references to Hellas were removed from the biography.

Sprint shareholders should be concerned that the last time Mr. Arora sat on the board of a telecom company, his actions contributed to its ultimate demise.

Further concerns are the conflicts of interest in Mr. Arora's business activities. Mr. Arora's role as Chief Executive Officer ("CEO") of SB Group, as described in a SoftBank press release, makes him "directly responsible for overseeing our Internet, telecommunications, media and global investment activities."[1] This includes his role as a director of Sprint.

Thus, Mr. Arora oversees the process of identifying and pursuing potential investment opportunities in the technology and telecom sector. Since 2007, though, Mr. Arora has performed a similar function as a senior advisor to Silver Lake Partners, a private equity firm specializing in technology and telecoms. This dual role has the potential to reward Silver Lake to the detriment of Sprint. For example, it may rob Sprint of potential investments in favour of Silver Lake.

As with Mr. Arora's involvement with Hellas, he seems also to have chosen to hide his relationship with Silver Lake by removing reference to it on the Sprint website.

Sprint is a heavily indebted company that needs strong and ethical leadership in these challenging times. Mr. Arora's past actions and his conflicts of interest mean he is an inappropriate director for Sprint and shareholders are asked to support this motion of no confidence."

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[1] "Nikesh Arora to Join SoftBank as Vice Chairman, SoftBank Corp. and CEO of the Newly Formed SoftBank Internet and Media, Inc." SoftBank Corp. http://www.softbank.jp/en/corp/news/press/sb/2014/20140718_01 (published July 18, 2014).

III. EXCLUSION OF THE SUBMISSION

A. Bases for Excluding the Submission

As discussed more fully below, the Company believes it may properly omit the Submission from its 2016 Proxy Materials in reliance on Rule 14a-8(a), as the Submission does not meet the Rule 14a-8(a) definition of a stockholder proposal. In addition, if the Submission is considered to meet the definition of a stockholder proposal for purposes of Rule 14a-8, the Company believes that it may properly omit the Submission from its 2016 Proxy Materials in reliance on Rule 14a-8(f), as the Proponent did not provide sufficient proof of ownership of the Company's common stock as of the date the Submission was submitted, as required by Rule 14a-8(b); Rule 14a-8(d), as the Submission exceeds 500 words; and Rule 14a-8(i)(8), as the Submission questions the competence, business judgment, or character of a director the Company expects to nominate for reelection at the upcoming Annual Meeting of Stockholders.

B. The Submission May Be Omitted in Reliance on Rule 14a-8(a), As It Solely Expresses the Proponent's Views and Does Not Meet the Rule 14a-8(a) Definition of a Stockholder Proposal, and the Proponent Failed to Correct this Deficiency Upon Request

Rule 14a-8(a) defines a stockholder "proposal" for purposes of Rule 14a-8 as a "recommendation or requirement that the company and/or its board of directors take action, which [the stockholder proponent] intend[s] to present at a meeting of the company's shareholders." Rule 14a-8(a) further provides that a stockholder proposal "should state as clearly as possible the course of action that [the stockholder proponent] believe[s] the company should follow." In SEC Release No. 34-39093 (Sept. 18, 1997) ("***Release 34-39093***"), in which the Commission proposed amendments to Rule 14a-8, the Commission stated:

> The answer to Question 1 of the revised rule 14a-8 would define a "proposal" as a request that the company or its board of directors take an action. *The definition reflects our belief that a proposal that seeks no specific action, but merely purports to express shareholders' views, is inconsistent with the purposes of rule 14a-8 and may be excluded from companies' proxy materials.* The Division, for instance, declined to concur in the exclusion of a "proposal" that shareholders express their dissatisfaction with the company's earlier endorsement of a specific legislative initiative. Under the proposed rule, the Division would reach the opposite result, because the proposal did not request that the company take action.

(Emphasis added). The Commission subsequently adopted this definition, as proposed, in SEC Release No. 34-40018 (May 21, 1998) ("***Release 34-40018***" and, together with Release 34-39093, the "***SEC Releases***") ("We are adopting as proposed the answer to Question 1 of the amended rule defining a proposal as a request or requirement that the board of directors take an action.").

Following the adoption of revised Rule 14a-8(a), the Staff has consistently confirmed that a stockholder submission is excludable if it "merely purports to express shareholders' views" on a subject matter. For example, in *Longs Drug Stores Corp.* (Jan. 23, 2008), the Staff concurred that a submission seeking to allow a stockholder vote to express displeasure with respect to the company's general employment and compensation practices, including "hours, benefits, discounts and morale" may be omitted from the company's proxy materials under Rule 14a-8(a) because the submission "does not recommend or require that Longs or its board of directors take any action." *See also Sensar Corp.* (Apr. 23, 2001) (concurring with exclusion under Rule 14a-8(a) where a submission sought to allow a stockholder vote to express stockholder displeasure over the terms of stock options granted to management but did not recommend or require any action by the company or its board of directors); and *CSX Corp.* (Feb. 1, 1999) (concurring that a submission was excludable under Rule 14a-8(a)

where a stockholder submitted three poems for consideration but did not recommend or require any action by the company or its board of directors).

The Submission parallels the submissions in *Longs Drug Stores* and *Sensar*, in that it seeks to enable a stockholder to express its view regarding whether or not Nikesh Arora is an "unsuitable" director of the Company and to express a "motion of no confidence" with respect to one of the Company's expected nominees for its board of directors. The Supporting Statement clearly demonstrates the Proponent's objective, providing background information that serves to promote the Proponent's view. The Supporting Statement also repeats the request found in the Submission, namely that "shareholders . . . support this motion of no confidence."

The Submission is of the type addressed by the SEC Releases and in the Staff responses in *Longs Drug Stores*, *Sensar* and *CSX*. The Submission specifically asks that the Company's stockholders express a motion of no confidence. Contrary to the requirements of Rule 14a-8(a), the Submission neither recommends nor requires that the Company or its board of directors take any specific action with respect to the matters discussed therein, but merely expresses the Proponent's views. The Company is, therefore, of the view that it may properly omit the Submission and Supporting Statement in reliance on Rule 14a-8(a), as it does not meet the Rule 14a-8(a) definition of a stockholder proposal and the Proponent, after receiving proper notice under Rule 14a-8(f)(1), failed to correct this deficiency.[2]

C. The Submission May Be Omitted in Reliance on Rule 14a-8(f), as the Proponent Has Not Sufficiently Demonstrated Its Eligibility to Submit a Stockholder Proposal Under Rule 14a-8(b) and Did Not Provide Sufficient Proof of Ownership Upon Request

Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, [a stockholder] must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the stockholder] submit[s] the proposal." When the stockholder is not the registered holder, the stockholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the stockholder may do pursuant to Rule 14a-8(b)(2)(i) by submitting a written statement from the record holder of the securities verifying that the stockholder has owned the requisite amount of securities continuously for one year as of the

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[2] As discussed in Section III.C., below, the Company timely and properly notified the Proponent of the procedural deficiency of the Submission with respect to Rule 14a-8(a), among other deficiencies. The relevant portion of the Company's notice recited the word limitation of Rule 14a-8(a) and stated, "[t]he Submission does not appear to recommend any action on the part of Sprint and/or its Board of Directors; the Submission requests action on the part of stockholders, specifically, a 'motion of no confidence in Nikesh Arora.' As such, your Submission must be revised to meet the Rule 14a-8(a) definition of a shareholder proposal in order to be considered for inclusion in Sprint's proxy materials."

date the stockholder submits the proposal. *See* Staff Legal Bulletin No. 14 (July 13, 2001) ("***SLB 14***").

Rule 14a-8(f)(1) permits a company to exclude a stockholder proposal from the company's proxy materials if a stockholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, including Rule 14a-8(b), provided that the company has timely notified the proponent of any eligibility or procedural deficiencies and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice. 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). SLB14G 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 Company received the Submission on February 20, 2016 via email, accompanied by an excerpt of a stock portfolio statement from UPB Holdings of an unidentified stockholder indicating holdings of 10,600 shares of common stock of the Company as of September 12, 2015. The Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponent in a timely manner notice that sufficient proof of ownership must accompany the Submission within 14 days of its receipt of the Submission. *See* Exhibit B. The Company's notice included:

- A description of the eligibility requirements of Rule 14a-8(b);

- A statement explaining that sufficient proof of ownership had not been received by the Company – *i.e.*, "Rule 14a-8(b) provides that to be eligible to submit a stockholder proposal, each stockholder proponent must submit sufficient proof that he or she has continuously held at least $2,000 in market value, or 1 percent, of Sprint's securities entitled to vote on the proposal at the meeting for at least one year as of the date the stockholder submits the proposal. According to the records of our transfer agent, Computershare Trust Company, N.A., the Proponent does not appear to be a registered stockholder. 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 Submission was submitted to Sprint;"

- An explanation of what the Proponent should do to comply with the rule – *i.e.*, "[t]o remedy this defect, you must submit sufficient proof of the Proponent's ownership of Sprint's securities" through the submission of a written statement from the record holder or by the submission of a copy of a Schedule 13D/13G or Form 3/4/5 filed with the Commission;

- A description of the required proof of ownership in a manner that was consistent with the guidance contained in SLB14F – *i.e.*, "[i]n Staff Legal Bulletin 14F and Staff Legal Bulletin 14G, the SEC Staff clarified that, for purposes of SEC Rule 14a-8(b)(2)(i), only brokers or banks that are DTC participants or affiliates of DTC participants will be viewed as "record" holders of securities that are deposited at DTC. An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant. As a result, you will need to obtain the required written statement from the DTC participant or an affiliate of the DTC participant through which the Proponent's shares are held. For the purposes of determining if a broker or bank is a DTC participant, you may check the list posted at: http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx;"

- A copy of Rule 14a-8, SLB 14F, and SLB 14G; and

- A description of how the Submission's inclusion of the excerpt of a stock portfolio statement from UPB Holdings of an unidentified stockholder indicating holdings of 10,600 shares of common stock of the Company as of September 12, 2015 was not sufficient to satisfy the rule – *i.e.*, "[t]he statement provided by UBP Holdings does not satisfy the requirements under Rule 14a-8(b) because (i) the statement does not identify the beneficial owner of the shares of Sprint securities listed; and (ii) the statement does not establish continuous ownership of at least $2,000 worth of Sprint's securities for at least one year as of the date the proposal was submitted (*i.e.*, February 20, 2015). In addition, while the Submission states that the Proponent 'intend[s] to remain a shareholder until the annual meeting,' the Proponent must provide the statement that the Proponent will continue to hold at least $2,000 worth of Sprint's securities as of the date of Sprint's 2016 Annual Meeting."

On March 9, 2016, the Proponent provided the Company with a letter of that date from Union Bancaire Privée, which "confirm[ed] that CH-Communication SA . . . is a client of our bank and holds 10,600 shares of Sprint Corporation." As of the date of this letter, the Proponent has not provided the Company with any additional written support from a DTC

participant that demonstrates that it continuously held at least $2,000 in market value, or 1%, of the Company's securities entitled to be voted on the Submission at the 2016 Annual Meeting of Stockholders for at least one year by the date on which the Submission was submitted.

The Staff has consistently permitted companies to omit stockholder proposals pursuant to paragraphs (b) and (f) of Rule 14a-8 when proponents have failed, following a timely and proper request by a registrant, to furnish adequate evidence of continuous share ownership for the precise one-year period preceding and including the submission date of the proposal. *See, e.g.*, *Bank of America Corp.* (Jan. 16, 2013) (letters from broker stating ownership from November 30, 2011 to December 7, 2012 was insufficient to prove continuous ownership for one year as of November 19, 2012, the date the proposal was submitted); *Comcast Corp.* (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.* (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); *Sempra Energy* (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); and *International Business Machines Corp.* (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 Submission via email on February 20, 2016. The Submission was accompanied by an excerpt from UPB Holdings of a stock portfolio statement of an unidentified stockholder indicating holdings of 10,600 shares of common stock of the Company as of September 12, 2015. *See* Exhibit A. Given the February 20, 2016 submission date, Rule 14a-8(b) obligated the Proponent to provide proper proof of continuous ownership of at least $2,000 of the Company's common stock for the one-year period preceding and including this date. The Company properly and timely gave notice to the Proponent that it was not a record holder of the Company and, therefore, must evidence its satisfaction of the stock ownership requirements of Rule 14a-8(b) by providing written proof of ownership from the DTC participant that is the "record" holder of those securities. The notice clearly stated the necessity to prove continuous ownership "for at least one year as of the date the proposal was submitted (*i.e.*, February 20, 2015)." *See* Exhibit B. As such, the Company complied with the Staff's guidance for providing the Proponent with adequate instruction as to Rule 14a-8's proof of ownership requirements.

Notwithstanding the directions provided by the Company in the notice, the statement from Union Bancaire Privée provided by the Proponent does not confirm the Proponent's continuous ownership of Company shares for the year preceding February 20, 2016. Instead, the statement from Union Bancaire Privée dated March 9, 2016 stated that the Proponent

"holds 10,600 shares of Sprint Corporation." *See* Exhibit D. Although the statement was dated, it did not specify the dates of the Proponent's ownership, nor did it indicate that such ownership was continuous. This statement did not comply with the requirements of Rule 14a-8(b) or the Staff's guidance regarding those requirements. First, Union Bancaire Privée is not a DTC participant, and no letter from a DTC participant was provided by the Proponent. Second, the statement from Union Bancaire Privée does not demonstrate that the Proponent has continuously held the requisite number of shares of the Company's common stock for the one year preceding and including February 20, 2016. Therefore, the Proponent has not satisfied the requirement of Rule 14a-8(b)(2) to verify his ownership of the requisite amount of Company shares for at least one year as of the date the Submission was submitted.

Accordingly, if the Submission is considered to be a proposal meeting the requirements of Rule 14a-8(a), the Company believes that it may properly exclude the Submission because, despite receiving timely and proper notice pursuant to Rule 14a-8(f)(1), the Proponent has not sufficiently demonstrated continuous ownership of the requisite amount of Company shares for the required one-year period prior to the date the Submission was submitted to the Company, as required by Rule 14a-8(b).

D. The Submission May Be Omitted in Reliance on Rule 14a-8(f), as the Submission Exceeds the 500-Word Limitation Set Forth by Rule 14a-8(d) and the Proponent Failed to Correct this Deficiency Upon Request

Rule 14a-8(d) provides that a "proposal, including any accompanying supporting statement, may not exceed 500 words." In SLB 14, the Staff explained that "[a]ny statements that are, in effect, arguments in support of the proposal constitute part of the supporting statement" for purposes of the 500-word limitation. Rule 14a-8(f)(1) permits a company to exclude a stockholder proposal from the company's proxy materials if a stockholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8—including Rule 14a-8(d), provided that the company has timely notified the proponent of any eligibility or procedural deficiencies and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice.[3]

The Staff has concurred that a company may exclude a stockholder proposal under Rules 14a-8(d) and Rule 14a-8(f)(1) because the proposal exceeds 500 words. *See, e.g., Amoco Corp.* (Jan. 22, 1997) (permitting the exclusion of a proposal under the predecessors to Rules 14a-8(d) and 14a-8(f)(1) where the company argued that the proposal included 503 words and the proponent stated that it included 501 words); *see also Danaher Corp.* (Jan. 19,

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[3] As discussed in Section III.C., above, the Company timely and properly notified the Proponent of the procedural deficiency of the Submission with respect to Rule 14a-8(d), among other deficiencies. The relevant portion of the Company's notice recited the word limitation of Rule 14a-8(d) and stated, "[y]our Submission, including the supporting statement, appears to exceed this 500-word limitation. As such, your Submission is required by Rule 14a-8(d) to be reduced to 500 words or less to be considered for inclusion in Sprint's proxy materials."

2010); *Pool Corp.* (Feb. 17, 2009); *Procter & Gamble Co.* (July 29, 2008); and *Amgen, Inc.* (Jan. 12, 2004) (in each instance concurring in the exclusion of a proposal under Rules 14a-8(d) and 14a-8(f)(1) where the company indicated that the proposal contained more than 500 words).

If the Submission is considered to be a proposal meeting the requirements of Rule 14a-8(a), the Company may exclude the Submission from the 2016 Proxy materials pursuant to Rule 14a-8(f)(1) because the Submission, including the Supporting Statement, exceeds the 500-word limitation in Rule 14a-8(d). In concluding that that the Submission and Supporting Statement exceed 500 words, the Company has:

- Not counted the words "Proposal" or "Our Submission" because they were used only as a title and heading, respectively.

- Counted each symbol (notably, €) as a separate word, consistent with *Intel Corp.* (Mar. 8, 2010) (stating that, in determining that the proposal appears to exceed the 500-word limitation, "we have counted each percent symbol and dollar sign as a separate word").

- Treated hyphenated terms as multiple words. *See Minnesota Mining & Manufacturing Co.* (Feb. 27, 2000) (concurring with the exclusion of a proposal under Rules 14a-8(d) and 14a-8(f)(1) where the proposal contained 504 words, but would have contained 498 words if hyphenated words and words separated by "/" were counted as one word). Accordingly, we have counted "empty-handed" and "egregious-looking" as multiple words. In addition, we have counted the website address provided in the footnote to the Submission as multiple words. *See Danaher Corp.* (Jan. 19, 2010) (concurring with the exclusion of a proposal under Rules 14a-8(d) and 14a-8(f)(1) where the no-action request argued that the hyphenated words in the proposal—consisting of two website addresses—are multiple words for purposes of establishing the procedural deficiency).

- Counted "TPG" and one of two instances of "CEO" as multiple words.[4] Because each letter in an acronym is simply a substitute for a word, to conclude otherwise would permit proponents to evade the clear limits of Rule 14a-8(d) by using acronyms rather than words. Here, "Texas Pacific Group" and "TPG" are used interchangeably in the Submission and Supporting Statement. In addition, we believe that the familiarity of an acronym is an arbitrary distinction and is irrelevant as to whether it represents one or multiple words. The acronym "CEO," for example, is universally understood as referring to the term "chief

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[4] We have not counted the first instance of "CEO" as multiple words, as it was used to initially define the acronym. However, we have used the second instance of "CEO"—as set forth in the website address found in the Submission—as multiple words in accordance with precedent.

executive officer," a term that is three words. *See General Electric Co.* (Dec. 30, 2014) (concurring with the exclusion of a proposal under Rules 14a-8(d) and 14a-8(f)(1) where the no-action request argued that "CEO and "GE" are multiple words for purposes of establishing the procedural deficiency).

Consistent with the precedent discussed above, if the Submission is considered to meet the definition of a stockholder proposal for purposes of Rule 14a-8, the Company is of the view that the Submission may be excluded because it exceeds the 500-word limitation in Rule 14a-8(d). Specifically, counting only the words identified in our argument above as part of the Submission, the Submission contains 529 words. Accordingly, the Company believes that it may properly exclude the Submission because the Submission violates the 500-word limitation imposed by Rule 14a-8(d), and the Proponent failed to correct this deficiency, despite receiving timely and proper notice pursuant to Rule 14a-8(f)(1).

E. The Submission May Be Omitted in Reliance on Rule 14a-8(i)(8), as the Submission Questions the Competence, Business Judgment, or Character of a Director The Company Expects to Nominate for Re-election at the Upcoming Annual Meeting of Stockholders

Rule 14a-8(i)(8)(iii) permits a company to exclude a stockholder proposal if the proposal "[q]uestions the competence, business judgment, or character of one or more nominees or directors." Such a proposal's effort to influence an election of directors through the 14a-8 stockholder proposal process is precisely the reason for Rule 14a-8(i)(8). In SEC Release No. 34-12598 (July 7, 1976), the Commission articulated that "with respect to corporate elections, . . . Rule 14a-8 is not the proper means for conducting campaigns . . . since other proxy rules, including Rule 14a-11 [the predecessor of Rule 14a-12], are applicable thereto." The Commission reaffirmed this rationale in SEC Release No. 34-62764 (Aug. 25, 2010), stating that a company would be permitted to exclude a proposal pursuant to Rule 14a-8(i)(8) if it "[q]uestions the competence, business judgment, or character of one or more nominees or directors . . . or [o]therwise could affect the outcome of the upcoming election of directors."

The Staff has consistently permitted exclusion of proposals where the proposal or supporting statement questioned the business judgment, competence or service of directors who will stand for re-election at an upcoming annual meeting of stockholders. *See Rite Aid Corp.* (Apr. 1, 2011) (permitting the exclusion of a proposal requesting that no non-executive board member may be nominated who has had any financial or business dealings, either directly or indirectly, with any member of senior management or the company, occurring in the past or during the current term, with the Staff noting that "the proposal appears to question the business judgment of board members whom Rite Aid expects to nominate for re-election at the upcoming annual meeting of shareholders"); *Marriott International, Inc.* (Mar. 12, 2010) (permitting the exclusion of a proposal criticizing suitability of members of the board of directors to serve, and such members were expected to be nominated by the

company for election at the upcoming annual meeting of shareholders); *Communication Systems, Inc.* (Jan. 31, 2007) (permitting the exclusion of a proposal criticizing directors who ignore certain shareholder votes); *Exxon Mobil Corp.* (Mar. 20, 2002) (permitting the exclusion of a proposal condemning the CEO for causing "reputational harm" to the company and for "destroying shareholder value"); *AT&T Corp.* (Feb. 13, 2001) (permitting the exclusion of a proposal criticizing the board chairman, who was also the CEO, for company performance); *Honeywell International Inc.* (Mar. 2, 2000) (permitting the exclusion of a proposal making directors who fail to enact resolutions adopted by shareholders ineligible for election); and *Black & Decker Corp.* (Jan. 21, 1997) (permitting exclusion of a proposal under the predecessor to Rule 14a-8(i)(8) that questioned the independence of board members where contentions in the supporting statement questioned the independence of questioned the business judgment, competence and service of a chief executive officer standing for re-election to the board).

The Submission and the Supporting Statement explicitly criticize the business judgment, competence and service of Mr. Arora, question his suitability to serve on the Company's board of directors, and also ask the Company's stockholders to vote against Mr. Arora's nomination for director in a "motion of no confidence." In particular, the Submission and Supporting Statement state the following:

- "Nikesh Arora's background and conflicts of interest make him unsuitable to be a director of Sprint."
- "Shareholders are asked to support this motion of no confidence in Nikesh Arora."
- "With Mr. Arora's assistance, the private equity firms apparently loaded TIM Hellas with burdensome debt and looted its assets before jumping ship, leaving the company in shambles."
- "Mr. Arora's involvement at TIM Hellas casts doubt on his ethics and management ability."
- "Sprint shareholders should be concerned that the last time Mr. Arora sat on the board of a telecom company, his actions contributed to its ultimate demise."
- "Mr. Arora's past actions and his conflicts of interest mean he is an inappropriate director for Sprint and shareholders are asked to support this motion of no confidence."

The Company expects that Mr. Arora will be nominated for re-election at the 2016 Annual Meeting of Stockholders.

Consistent with the precedent discussed above, if the Submission is considered to meet the definition of a stockholder proposal for purposes of Rule 14a-8, the Company is of the view that it may properly omit the Submission in reliance on Rule 14a-8(i)(8), as the Submission questions the competence, business judgment, and character of a director the Company expects to nominate for re-election at the upcoming Annual Meeting of Stockholders.

IV. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Submission and Supporting Statement from its 2016 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Submission and Supporting Statement from its 2016 Proxy Materials.

If we can be of further assistance in this matter, please do not hesitate to contact me at (913) 794-1513 or by email at Timothy.ogrady@sprint.com.

Sincerely,

Tim O'Grady
Vice President and Corporate Secretary
Sprint Corporation

Attachments

cc: Nicolas Giannakopoulos, Director, CH Communication SA (via email at ch.communication.sa@gmail.com)

Exhibit A

Submission

Fordyce, John [GOV]

From: **Nicolas Giannakopoulos** <ch.communication.sa@gmail.com>
Date: 2016-02-19 18:59 GMT+01:00
Subject: Proxy submission
To: boardenquiries@sprint.com

Dear Sir, Dear Madam,
Please find enclosed our submission to the board of the company and proof of shareholding.
I stay at your disposal.
Best regards
Nicolas Giannakopoulos
Director

CH Communication SA
Worldwide Solutions

Geneva, the 19th of Ferbuary 2016

CONFIDENTIAL

To the attention of
The Company Secretary
Sprint Inc.
6200 Sprint Parkway
Overland Park
KS 66251
boardenquiries@sprint.com

By mail

Dear Sir,

I am a shareholder in Sprint Inc. and I wish to submit a stockholder proposal for inclusion in the proxy statement for 2016. It is my intention to remain a shareholder until the annual meeting.

Proposal: Nikesh Arora's background and conflicts of interest make him unsuitable to be a director of Sprint. Shareholders are asked to support this motion of no confidence in Nikesh Arora.

Our Submission:

In January 2006, Mr Arora was appointed to the board of TIM Hellas, a major Greek telecommunications company. He was hired by Hellas's new private equity owners, Texas Pacific Group and Apax.

With Mr. Arora's assistance, the private equity firms apparently loaded TIM Hellas with burdensome debt and looted its assets before jumping ship, leaving the company in shambles. The private equity firms took nearly €1 billion out of TIM Hellas and left it with about €3 billion of debt.

The payments to Apax and TPG were authorized by the directors of TIM Hellas, who also personally benefited from the arrangement included Mr. Arora.

Crippled with debt, TIM Hellas had no chance of surviving. It declared bankruptcy in 2009 - leaving its creditors and investors empty-handed.

This raid on a once-thriving telecommunications company, perpetuated in part by Mr. Arora, has garnered significant media attention and generated multiple lawsuits. *The Economist* described what happened to Hellas as an "egregious-looking deal."

Mr. Arora's involvement at TIM Hellas casts doubt on his ethics and management ability. Perhaps it is unsurprising then that Mr. Arora has attempted to minimize his involvement with Hellas. For example, Mr. Arora's biography on the Sprint website originally boasted of his experience at Hellas, but after the media began to cover the Hellas transactions in 2015, the references to Hellas were removed from the biography.

Sprint shareholders should be concerned that the last time Mr Arora sat on the board of a telecom company, his actions contributed to its ultimate demise.

Further concerns are the conflicts of interest in Mr Arora's business activities. Mr. Arora's role as Chief Executive Officer ("CEO") of SB Group, as described in a SoftBank press release, makes him "directly responsible for overseeing our Internet, telecommunications, media and global investment activities."[1] This includes his role as a director of Sprint.

Thus, Mr Arora oversees the process of identifying and pursuing potential investment opportunities in the technology and telecom sector. Since 2007, though, Mr. Arora has performed a similar function as a senior advisor to Silver Lake Partners, a private equity firm specializing in technology and telecoms. This dual role has the potential to reward Silver Lake to the detriment of Sprint. For example, it may rob Sprint of potential investments in favour of Silver Lake.

As with Mr Arora's involvement with Hellas, he seems also to have chosen to hide his relationship with Silver Lake by removing reference to it on the Sprint website.

Sprint is a heavily indebted company that needs strong and ethical leadership in these challenging times. Mr Arora's past actions and his conflicts of interest mean he is an inappropriate director for Sprint and shareholders are asked to support this motion of no confidence.

Yours sincerely,

Nicolas Giannakopoulos
Director

[1] "Nikesh Arora to Join SoftBank as Vice Chairman, SoftBank Corp. and CEO of the Newly Formed SoftBank Internet and Media, Inc." SoftBank Corp. http://www.softbank.jp/en/corp/news/press/sb/2014/20140718_01 (published July 18, 2014).

Page 22 redacted for the following reason:
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FISMA & OMB Memorandum M-07-16

Exhibit B

Company's Notice

Stefan K. Schnopp
6200 Sprint Parkway
(913) 794-1427
stefan.schnopp@sprint.com

February 29, 2016

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Nicolas Giannakopoulos
CH Communication SA
Av. des Communes Reunies
1212 Grand Lancy, Switzerland

Re: Stockholder Submission Dated February 19, 2016

Mr. Giannakopoulos,

On February 20, 2016, Sprint Corporation (referred to herein as "we" or "Sprint") received your letter requesting that a submission (the "Submission") by you (the "Proponent") be included in the proxy materials for Sprint's 2016 Annual Meeting of Stockholders (the "2016 Annual Meeting"). This submission is governed by Rule 14a-8 under the Securities Exchange Act of 1934 ("Rule 14a-8"), which sets forth the eligibility and procedural requirements for submitting stockholder proposals to Sprint, as well as thirteen substantive bases under which companies may exclude stockholder proposals. We have included a complete copy of Rule 14a-8 with this letter for your reference.

Based on our review of the information provided in your letter, our records, and regulatory materials, we are unable to conclude that the Submission meets the requirements of Rule 14a-8. The Submission contains certain procedural deficiencies, as set forth below, which Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Unless the deficiencies described below can be remedied in the proper time frame, Sprint will be entitled to exclude the Submission from its proxy materials for the 2016 Annual Meeting.

Proposal for the 2016 Annual Meeting

Rule 14a-8(a) notes that "[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." The Submission does not appear to recommend any action on the part of Sprint and/or its Board of Directors; the Submission requests action on the part of stockholders, specifically, a "motion of no confidence in Nikesh Arora." As such, your Submission must be revised to meet the Rule 14a-8(a) definition of a shareholder proposal in order to be considered for inclusion in Sprint's proxy materials.

Ownership

Rule 14a-8(b) provides that to be eligible to submit a stockholder proposal, each stockholder proponent must submit sufficient proof that he or she has continuously held at least $2,000 in market value, or 1 percent, of Sprint's securities entitled to vote on the proposal at the meeting for at least one year as of the date the stockholder submits the proposal. According to the records of our transfer agent, Computershare Trust Company, N.A., the Proponent does not appear to be a registered stockholder. 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 Submission was submitted to Sprint.

To remedy this defect, you must submit sufficient proof of the Proponent's ownership of Sprint's securities. As explained in Rule 14a-8(b), sufficient proof may be in one of the following forms:

- A written statement from the "record" holder of the shares (usually a broker or a bank) verifying that, as of the date the proposal was submitted, the Proponent continuously held the requisite number of Sprint's securities for at least one year. For this purpose, the SEC Staff considers the date that a proposal was submitted to be the date the proposal was postmarked or transmitted electronically, which, in the case of the Submission, was February 20, 2016.

- If the Proponent has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting ownership of Sprint's securities 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 has continuously held the required number of shares for the one-year period.

In order to help stockholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the shares, the SEC's Division of Corporation Finance published Staff Legal Bulletin 14F in October 2011 and Staff Legal Bulletin 14G in October 2012. We have included a copy of Staff Legal Bulletin 14F and Staff Legal Bulletin 14G with this letter for your reference. In Staff Legal Bulletin 14F and Staff Legal Bulletin 14G, the SEC Staff clarified that, for purposes of SEC Rule 14a-8(b)(2)(i), only brokers or banks that are DTC participants or affiliates of DTC participants will be viewed as "record" holders of securities that are deposited at DTC. An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant. As a result, you will need to obtain the required written statement from the DTC participant or an affiliate of the DTC participant through which the Proponent's shares are held. For the purposes of determining if a broker or bank is a DTC participant, you may check the list posted at: http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. If the DTC participant or an affiliate of the DTC participant

knows the holdings of the Proponent's broker or bank, but does not know the Proponent's individual holdings, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities was held continuously by the Proponent for at least one year – with one statement from the broker or bank confirming the Proponent's ownership, and the other statement from the DTC participant or an affiliate of the DTC participant confirming the broker's or bank's ownership.

In Staff Legal Bulletin 14G, the SEC Staff also clarified that, in situations where a stockholder holds securities through a securities intermediary that is not a broker or bank, a stockholder can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary. If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the stockholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

Furthermore, in addition to the requirement to establish continuous ownership of at least $2,000 worth of Sprint's securities entitled to vote on the proposal at the meeting for a period of at least one year as of the date the proposal was submitted, Rule 14a-8 also requires the Proponent to continue to hold those securities through the date of Sprint's 2016 Annual Meeting. As such, the Proponent is required to provide Sprint with a written statement confirming that the Proponent intends to continue to hold the securities through the date of the 2016 Annual Meeting.

The statement provided by UBP Holdings does not satisfy the requirements under Rule 14a-8(b) because (i) the statement does not identify the beneficial owner of the shares of Sprint securities listed; and (ii) the statement does not establish continuous ownership of at least $2,000 worth of Sprint's securities for at least one year as of the date the proposal was submitted (*i.e.*, February 20, 2015). In addition, while the Submission states that the Proponent "intend[s] to remain a shareholder until the annual meeting," the Proponent must provide the statement that the Proponent will continue to hold at least $2,000 worth of Sprint's securities as of the date of Sprint's 2016 Annual Meeting. The Proponent must provide the information requested above in the response to this letter.

Proposal Exceeds 500 Words

Rule 14a-8(d) limits a proposal and any supporting statement to a maximum length of 500 words. Your Submission, including the supporting statement, appears to exceed this 500-word limitation. As such, your Submission is required by Rule 14a-8(d) to be reduced to 500 words or less to be considered for inclusion in Sprint's proxy materials.

In order for the Proponent to be eligible as a proponent of this submission, Rule 14a-8(f) requires that your response to this letter, correcting all procedural deficiencies described in this letter, be postmarked or transmitted electronically no

later than 14 calendar days from the date you receive this letter. Please address any response to me at (913) 794-1427 or by e-mail to stefan.schnopp@sprint.com.

Once we receive your response, we will be in a position to determine whether the Submission is eligible for inclusion in the proxy materials for the 2016 Annual Meeting. Sprint reserves the right to submit a no-action request to the Staff of the SEC, as appropriate, with respect to this Submission.

If you have any questions with respect to the foregoing, please contact me at stefan.schnopp@sprint.com.

Sincerely,

Stefan K. Schnopp
Senior Counsel & Assistant Corporate Secretary, Securities & Finance

Enclosures: Rule 14a-8
Staff Legal Bulletin 14F
Staff Legal Bulletin 14G

Rule 14a-8 –– Proposals of Security Holders

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements.

Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

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

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

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

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx.

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

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

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

other from the DTC participant confirming the broker or bank's ownership.

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

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

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

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

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

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

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

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

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

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

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

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

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

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

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

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as

compared to “beneficial owner” and “beneficial ownership” in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 (“The term ‘beneficial owner’ when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.”).

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

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

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

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

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

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

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

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

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

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

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

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

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

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

- the parties that can provide proof of ownership 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;
- 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); and
- the use of website references in proposals and supporting statements.

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, SLB No. 14E and SLB No. 14F.

B. Parties that can provide proof of ownership 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. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder 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 shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)…."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.[1] By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.[2] If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. 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)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was 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 proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned 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. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we 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. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.[4]

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal

requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

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[1] An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

[2] Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is “usually,” but not always, a broker or bank.

[3] Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

[4] A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

Pages 48 through 49 redacted for the following reasons:
- -
FISMA & OMB Memorandum M-07-16

Exhibit D

Proponent's Response

Fordyce, John [GOV]

From: Nicolas Giannakopoulos <ch.communication.sa@gmail.com>
Sent: Wednesday, March 09, 2016 10:05 AM
To: Fordyce, John [GOV]
Subject: Re: Proxy Submission
Attachments: Confirmation letter.pdf

Dear Sir,
Many thanks for your kind letters and documentation regarding the rights associated with proxy submission. We will revert to you with a suitable 500 words text. However, we will not be able to fulfill one of your requirement about the shareholding duration of one year. If we may find indeed this provision quite severe and discrimitatory among shareholders, we are please to send you the proof from our bank that we hold more than USD 2'000 of share of your company (in attachement).
With our very best regards

Nicolas Giannakopoulos
Administrator

2016-03-03 21:07 GMT+01:00 Fordyce, John [GOV] <John.Fordyce@sprint.com>:

Dear Mr. Giannakopoulos,

Please find attached our response to your recent submission.

Regards,

John

John Fordyce

Counsel – Securities and Governance

O: (913) 315-3081 / M: ***FISMA & OMB Memorandum M-07-16***

John.fordyce@Sprint.com

UNION BANCAIRE PRIVÉE

CH-Communication SA
Avenue Des Communes-Réunies 51
1212 Grand-Lancy
Switzerland

Zurich, 09.03.2016

Subject: Confirmation letter for CH-Communication SA

Dear Sirs

We hereby confirm that CH-Communication SA registered in Avenue Des Communes-Réunies 51, 1212 Grand-Lancy, Switzerland, is a client of our bank and holds 10'600 shares of Sprint Corporation.

This confidential information is released at the request of the above mentioned client and is given without any commitment or responsibility of Union Bancaire Privée.

Yours sincerely

Union Bancaire Privée

Elena Meyer
Director

Hannes Florian Raeth
Senior Managing Director