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

DIVISION OF
CORPORATION FINANCE

December 27, 2017

Marc. O Williams
Davis Polk & Wardwell LLP
marc.williams@davispolk.com

Re: Morgan Stanley

Dear Mr. Williams:

This letter is in regard to your correspondence dated December 26, 2017 concerning the shareholder proposal (the "Proposal") submitted to Morgan Stanley (the "Company") by Ann Testa (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its December 20, 2017 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

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

Sincerely,

Evan S. Jacobson
Special Counsel

cc: Holly A. Testa
First Affirmative Financial Network, LLC
hollytesta@firstaffirmative.com

New York
Menlo Park
Washington DC
São Paulo
London
Paris
Madrid
Tokyo
Beijing
Hong Kong

Davis Polk

Marc O. Williams

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017

212 450 6145 tel
212 701 5843 fax
marc.williams@davispolk.com

December 26, 2017

Re: Morgan Stanley Withdrawal of No-Action Request Dated December 20, 2017
Regarding the Shareholder Proposal of First Affirmative Financial Network, LLC
on behalf of Ann Testa

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N .E.
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

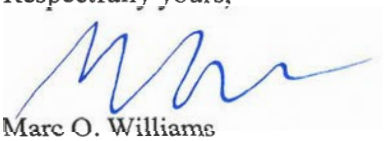
Ladies and Gentlemen:

We refer to our letter, dated December 20, 2017 (the "**No-Action Request**"), pursuant to which we requested that the Staff of the Division of Corporation Finance of the Securities and Exchange Commission concur with our view that Morgan Stanley (the "**Company**") may exclude the shareholder proposal and supporting statement (the "**Proposal**") submitted by First Affirmative Financial Network, LLC ("**First Affirmative**") on behalf of Ann Testa from the proxy materials it intends to distribute in connection with its 2018 Annual Meeting of Shareholders.

Attached hereto as Exhibit A is a communication, dated December 21, 2017 (the "**Withdrawal Communication**"), from First Affirmative to the Company in which First Affirmative agrees to withdraw the Proposal. In reliance on the Withdrawal Communication, we hereby withdraw the No-Action Request.

Please contact the undersigned at (212) 450-6145 or marc.williams@davispolk.com if you should have any questions or need additional information. Thank you for your attention to this matter.

Respectfully yours,



Marc O. Williams

Attachment

cc w/ att: Martin Cohen, Corporate Secretary, Morgan Stanley

Holly A. Testa, Director, Shareholder Engagement, First Affirmative Financial Network, LLC

Exhibit A

Withdrawal Communication

From: Holly Testa [mailto:htesta@firstaffirmative.com]
Sent: Thursday, December 21, 2017 4:55 PM
To: marty.cohen@morganstanley.com
Cc: Williams, Marc O.
Subject: Withdrawal of First Affirmative resolution

Dear Mister Cohen and Mister Williams,

Please see attached letter regarding your submission to the SEC.

Holly A. Testa

Director, Shareowner Engagement
First Affirmative Financial Network

350 Ward Ave., Suite 106-18
Honolulu, HI 96814 – 4004

303-641-5190

hollytesta@firstaffirmative.com

*Please plan to join us for **The SRI Conference** – on Sustainable, Responsible, Impact Investing **November 1–3, 2018**. This 29th annual SRI Conference will be at The Broadmoor in Colorado Springs, Colorado. Hoping to see you there!*

www.SRIconference.com

www.firstaffirmative.com

First Affirmative
Financial Network, LLC

Investing for a Sustainable Future

December 21, 2017

Martin M. Cohen
Corporate Secretary
Morgan Stanley
1585 Broadway, Suite C
New York, New York 10036
VIA EMAIL: marty.cohen@morganstanley.com

RE: Shareholder proposal addressing lobbying spending, policies and practices

Dear Mr. Cohen,

We have reviewed your request to the SEC to omit our shareholder proposal because of our failure to establish continuous ownership of at least $2000 in market value for at least one year as of the date of submission. The filing letter was dated, but as this proposal was not mailed on November 27 (or any subsequent date), the only submission received by your firm was a copy that I sent via email on November 28.

While it is quite clear from the paperwork submitted that our client is in good standing, we are aware that technically we do not have a case. We therefore withdraw this proposal.

The intention of this resolution was to invite a productive dialogue on the policies disclosure practices, particularly with regard to third-party lobbying expenditures. Although we have filed this resolution on behalf of a single client, Morgan Stanley is widely held in our client portfolios and this issue is of concern to many of them. I will be in touch after the first of the year to pursue dialogue on this issue.

Please let me know if there is any further information you need from us to close this action.

Regards,

Holly A. Testa

Holly A. Testa
Director, Shareowner Engagement

Cc: Mark O. Williams, marc.williams@davispolk.com

New York
Menlo Park
Washington DC
London
Paris
Madrid
Tokyo
Beijing
Hong Kong

Davis Polk

Marc O. Williams

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December 20, 2017

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
via e-mail: shareholderproposals@sec.gov

Ladies and Gentlemen:

On behalf of Morgan Stanley, a Delaware corporation (the "**Company**"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), we are filing this letter with respect to the shareholder proposal (the "**Proposal**") submitted by First Affirmative Financial Network, LLC ("**First Affirmative**"), on behalf of Ann Testa ("**Shareholder**") to the Company on November 28, 2017, for inclusion in the proxy materials the Company intends to distribute in connection with its 2018 Annual Meeting of Shareholders (the "**2018 Proxy Materials**"). The Proposal and all correspondence provided by First Affirmative on November 28, 2017 are attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the "**Staff**") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2018 Proxy Materials. In accordance with Rule 14a-8(j), this letter is being filed with the Securities and Exchange Commission (the "**Commission**") not less than 80 days before the Company plans to file its definitive proxy statement.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), question C, we have submitted this letter and any related correspondence via e-mail to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to First Affirmative as notification of the Company's intention to omit the Proposal from the 2018 Proxy Materials. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal to be proper.

REASON FOR EXCLUSION OF PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2018 Proxy Materials pursuant to Rules 14a-8(b) and 14a-8(f)(1) because First Affirmative has failed to establish in a timely manner that Shareholder had 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 Company's 2018 Annual Meeting of Shareholders for at least one year by the date on which First Affirmative submitted the Proposal.

First Affirmative submitted the Proposal on behalf of Shareholder via e-mail on November 28, 2017 (the "**Submission Date**"). See Exhibit A, which includes the e-mail. Although the Proposal was dated as of November 27, 2017, the Proposal was received by the Company via e-mail on November 28, 2017. Therefore, the Proposal's Submission Date for Rule 14a-8 purposes is November 28, 2017. *See* Staff Legal Bulletin No. 14G (CF), Shareholder Proposals (October 16, 2012) (noting "[w]e view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically."). The Company did not receive a postmarked copy of the Proposal. The First Affirmative submission included a statement that "Ms. Testa holds more than $2,000 of Morgan Stanley common stock". The Company reviewed its stock records, which did not indicate that Shareholder is the registered holder of any shares of Company securities. The First Affirmative submission did not include any other statement from the record holder of Company securities or any filing of a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 by Shareholder reflecting her ownership of Company securities, as required under Rule 14(a)-8(b)(2). Hence, the First Affirmative submission did not provide adequate proof of Shareholder's continuous ownership of the requisite number or amount of Company securities for at least one year as of the Submission Date.

Accordingly, on December 4, 2017, which was within 14 days of the date that the Company received the Proposal, the Company sent to First Affirmative a letter notifying it of the deficiency as required by Rule 14a-8(f) (the "**Deficiency Notice**," a copy of which is attached hereto as Exhibit B) by e-mail and overnight delivery. Among other things, the Deficiency Notice stated that pursuant to Rule 14a-8(b), First Affirmative must provide the Company with a written statement from the record holder of Shareholder's shares "verifying that on the date of submission of the Proposal, November 28, 2017, Ms. Testa had continuously held at least $2,000 in market value, or 1%, of Company common stock for at least the one year period prior to and including the date of submission of the Proposal (i.e., November 28, 2017)." The Deficiency Notice also explained that "[p]ursuant to Staff Legal Bulletin No. 14G (CF), Shareholder Proposals (October 16, 2012) (copy enclosed), a proposal's date of submission is the date the proposal is postmarked or transmitted electronically." The Deficiency Notice concluded by stating that First Affirmative must provide the requested information no later than 14 calendar days from the date it received the Deficiency Notice. The Deficiency Notice included a copy of Rule 14a-8, Staff Legal Bulletin No. 14F (CF) Shareholder Proposals (October 18, 2011) and Staff Legal Bulletin No. 14G (CF) Shareholder Proposals (October 16, 2012).

On December 6, 2017, First Affirmative sent the Company an e-mail attaching a letter dated December 4, 2017, from Folio*fn* Investments, Inc. (the "**Folio Letter**," a copy of which is attached hereto as Exhibit C). The Folio Letter indicated that Shareholder's client account "has continuously held at least $2,000 in market value of Morgan Stanley common stock for at least one year prior to November 27, 2017."

More than 14 days have elapsed since the Deficiency Notice was sent to First Affirmative, and the Company has received no further correspondence from First Affirmative regarding the verification of Shareholder's continuous ownership of Company shares.

ANALYSIS

Rule 14a-8(b)(1) requires that, to be eligible to submit a proposal for a company's annual meeting, a shareholder must (i) have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date such shareholder submits the proposal and (ii) continue to hold those securities through the date of the meeting. Under Rule 14a-8(b)(2), if a proponent is not a registered holder of shares of the company and has not made a filing with the Securities and Exchange Commission detailing the proponent's beneficial ownership of shares in the company (as described in Rule 14a-8(b)(2)(ii)),

such proponent has the burden to prove that it meets the beneficial ownership requirements of Rule 14a-8(b)(1) by submitting to the company (i) a written statement from the "record" holder of the securities verifying that, at the time the proponent submitted the proposal, the proponent continuously held the requisite amount of such securities for at least one year and (ii) the proponent's own written statement that it intends to continue to hold such securities through the date of the meeting. For the purposes of Rule 14a-8(b)(2)(i), when the securities are held through the Depository Trust Company ("**DTC**"), the Staff has determined that only securities intermediaries that are participants in DTC should be viewed as record holders of securities. Staff Legal Bulletin No. 14F (CF) Shareholder Proposals (October 18, 2011).

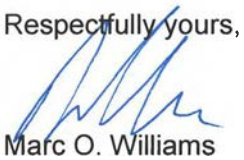
Rule 14a-8(f) allows a Company to exclude a shareholder proposal on procedural grounds if (i) the proponent fails to provide evidence of eligibility under Rule 14a-8(b), (ii) the company notifies the proponent of the deficiency within 14 calendar days of receiving the shareholder proposal and (iii) the proponent fails to remedy the deficiency within 14 days from the date the proponent received the notice of deficiency. Here, as detailed above, First Affirmative failed to satisfy the beneficial ownership requirements of Rule 14a-8(b) with the materials provided on the Submission Date. The Company satisfied its obligation under Rule 14a-8(f) by sending First Affirmative the Deficiency Notice within 14 calendar days of the Submission Date. While First Affirmative responded to the Company within 14 days of receiving the Deficiency Notice, the Folio Letter failed to satisfy the Rule 14a-8 requirements described above (and as detailed in the Deficiency Notice). Specifically, the Folio Letter fails to state that Shareholder owned the requisite amount of Company shares "for more than a year" as of and including the Submission Date (i.e., November 28, 2017) since it only states that Shareholder continuously held Company shares "for at least one year prior to November 27, 2017," creating an ownership verification gap of two days, namely, on November 27, 2017 and November 28, 2017. Although the Folio Letter states that "this account owns 115.9 shares of Morgan Stanley common stock," i.e., as of December 4, 2017, it does not establish that Shareholder owned the requisite amount of Company shares on November 27, 2017 and November 28, 2017 as required by Rule 14a-b(1).

The Staff has strictly applied the date of submission requirement in its no-action responses. *See, e.g.*, Mondelēz International, Inc. (avail. Jan. 5, 2017) (concurring with the exclusion of a shareholder proposal where the proposal was submitted on November 23, 2016, and the record holder's one year verification was since November 24, 2015 -- a gap of one day); JPMorgan Chase & Co. (avail. Feb. 2, 2017) (concurring with the exclusion of a shareholder proposal where the proposal was submitted on November 18, 2016, and the record holder's one year verification was as of November 16, 2016 -- a gap of two days); and Bank of America Corporation (avail. Feb. 11, 2015) (concurring with the exclusion of a shareholder proposal where the proposal was submitted on November 22, 2014, and the record holder's one year verification was as of November 18, 2014 -- a gap of four days).

CONCLUSION

The Company requests confirmation that the Staff will not recommend any enforcement action if, in reliance on the foregoing, the Company omits the Proposal from its 2018 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at (212) 450-6145 or marc.williams@davispolk.com.

Respectfully yours,



Marc O. Williams

Attachments

cc w/ att: Martin Cohen, Corporate Secretary, Morgan Stanley

Holly A. Testa, Director, Shareholder Engagement, First Affirmative Financial Network, LLC

Exhibit A

Proposal and Correspondence Submitted on November 28, 2017

From: Holly Testa [mailto:htesta@firstaffirmative.com]
Sent: Tuesday, November 28, 2017 10:30 AM
To: Cohen, Martin (LEGAL)
Subject: Shareholder resolution addressing lobbying policies and practices

Dear Mr. Cohen,

Please find attached documentation necessary to file a shareholder proposal at Morgan Stanley that requests enhanced disclosures on lobbying spending.

Please contact me with any questions, and we would welcome dialogue with the company with regard to these issues.

Thank you.

Regards,

Holly A. Testa
Director, Shareowner Engagement
First Affirmative Financial Network

350 Ward Ave., Suite 106-18
Honolulu, HI 96814 – 4004

303-641-5190

hollytesta@firstaffirmative.com

*Please plan to join us for **The SRI Conference** – on Sustainable, Responsible, Impact Investing **November 1–3, 2018**. This 29th annual SRI Conference will be at The Broadmoor in Colorado Springs, Colorado. Hoping to see you there!*

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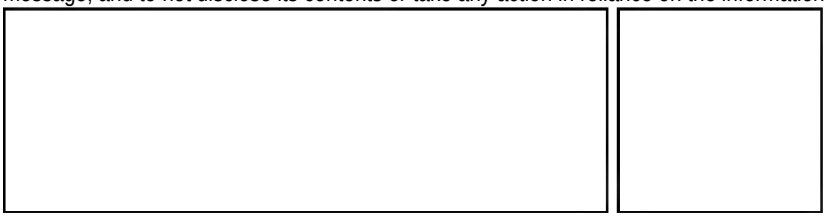
intended recipient of this message, please notify the sender immediately and delete the material from any computer. Do not deliver, distribute, or copy this message, and to not disclose its contents or take any action in reliance on the information it contains. Thank you.



Whereas, we believe in full disclosure of Morgan Stanley's direct and indirect lobbying activities and expenditures to assess whether it's lobbying is consistent with its expressed goals and in the best interests of shareholders.

Resolved, the shareholders of Morgan Stanley request the preparation of a report, updated annually, disclosing:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.

2. Payments by Morgan Stanley used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.

3. Morgan Stanley's membership in and payments to any tax-exempt organization that writes and endorses model legislation.

4. Description of management's and the Board's decision making process and oversight for making payments described in sections 2 and 3 above.

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

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

The report shall be presented to the Nominating and Governance Committee and posted on Morgan Stanley's website.

Supporting Statement

As shareholders, we encourage transparency and accountability in our company's use of corporate funds to influence legislation and regulation. Morgan Stanley spent $22.96 million from 2010 – 2016 on federal lobbying (opensecrets.org). This figure does not include lobbying expenditures to influence legislation in states where Morgan Stanley lobbies but disclosure is uneven or absent. For example, Morgan Stanley spent $450,057 on lobbying in California from 2010 – 2016. Morgan Stanley's lobbying on the fiduciary rule has attracted media scrutiny ("These Five Retirement Issues Brought out the Lobbyists," *Bloomberg BNA*, August 8, 2017).

Morgan Stanley is a member of the Chamber of Commerce, which has spent over $1.3 billion on lobbying since 1998, and also the Business Roundtable, which spent $34.95 million on lobbying in 2015 and 2016 and is lobbying against the right of shareholders to file resolutions. Morgan Stanley prohibits its payments to trade associations from being used for political contributions, but this policy does not apply to lobbying. This leaves a serious disclosure gap, as trade associations generally spend far more on lobbying than on political contributions. Morgan Stanley does not disclose its trade association payments or the portions used for lobbying on its website.

We are concerned that Morgan Stanley's lack of trade association lobbying disclosure presents reputational risks. For example, Morgan Stanley is committed to a strong climate policy globally, yet the Chamber has consistently opposed legislation and regulation to address climate change. We urge our company to expand its public disclosure of lobbying.

First Affirmative
Financial Network, LLC

Investing for a Sustainable Future

November 27, 2017

Martin M. Cohen
Corporate Secretary
Morgan Stanley
1585 Broadway, Suite C
New York, New York 10036
VIA EMAIL: marty.cohen@morganstanley.com

RE: Shareholder proposal addressing lobbying spending, policies and practices

Dear Mr. Cohen,

First Affirmative Financial Network, LLC is a United States based investment management firm with more than $1 billion in assets under management and administration. We hold shares of Morgan Stanley common stock on behalf of clients who ask us to integrate their values with their investment portfolios. First Affirmative is filing the enclosed shareholder resolution on behalf of Ann Testa. We support the inclusion of this proposal in the 2018 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

Per Rule 14a-8, Ms. Testa holds more than $2,000 of Morgan Stanley common stock, acquired more than one year prior to date of this filing and held continuously for that time. She intends to remain invested in this position continuously through the date of the 2018 annual meeting. Verification of ownership can be forwarded under separate cover by DTC participant custodian Folio Institutional (FOLIO*fn* Investments, Inc.)

Please direct all communications to me at hollytesta@firstaffirmative.com, 303-641-5190. We would welcome a constructive dialogue with the company in hopes that the disclosure issues discussed in the proposal could be resolved prior to the 2018 annual meeting.

Sincerely,

Holly A Testa

Holly A. Testa
Director, Shareowner Engagement

Enclosures: Resolution, Client Authorization Letter

SHAREHOLDER ENGAGEMENT AUTHORIZATION

COMPANY NAME: MORGAN STANLEY

SHAREHOLDER PROPOSAL: REPORT ON LOBBYING SPENDING, POLICIES AND PRACTICES

Authorization and Agent Appointment of First Affirmative

I/we do hereby authorize First Affirmative Financial Network, LLC, acting through its officers and employees (collectively "First Affirmative") to represent me/us, as our agent, to file this "shareholder proposal" as defined by the U.S. Securities and Exchange Commission ("SEC") in SEC Rule 14a-8 at the next annual meeting. This authority and agent appointment includes:

- The submission, negotiation and withdrawal of my/our shareholder proposal, including statements in support of such shareholder proposal.
- Requesting Letters of Verification from custodians that I/we hold the requisite number of securities of the company to be eligible to submit the shareholder proposal.
- Issuing a Letter of Intent to the company of my/our intent to hold my/our securities required for eligibility to submit the shareholder proposal through the meeting for such shareholder proposal.
- Attending, speaking, and presenting my/our shareholder proposal at the shareholder meeting.
- Should a meeting be rescheduled and re-solicitation is not required, this authorization will apply to a re-convened meeting as well.

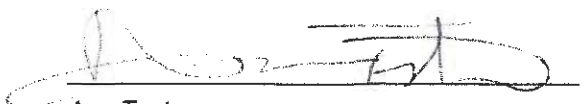
Please dialogue constructively with First Affirmative, promptly act upon their communications and instructions related to the shareholder proposal and direct all correspondence and questions regarding the above to First Affirmative.

Statement of Intent to First Affirmative,

In order for First Affirmative to act as my/our agent in a Letter of Intent, I/we do hereby affirmatively state an intent to First Affirmative to continue to hold a sufficient value of the company's securities, as defined within SEC Rule 14a-8(b)(1), from the time the shareholder proposal is filed at that company through the date of the subsequent related meeting of shareholders.

Should this authorization be rescinded in writing, First Affirmative is not required to take any action with respect to a pending shareholder proposal.

The undersigned hereby represent that I/we (whether individually, jointly, or organizationally) hold all appropriate power and authority to enter into this Shareholder Engagement Authorization.



Ann Testa

11/26/2017

Date

Exhibit B

Deficiency Notice

From: Foley, Patricia (LEGAL) **On Behalf Of** Tyler, Jacob E (LEGAL)
Sent: Monday, December 04, 2017 4:17 PM
To: hollytesta@firstaffirmative.com
Cc: Tyler, Jacob E (LEGAL); Foley, Patricia (LEGAL)
Subject: Morgan Stanley Shareholder Proposal

Please see the attached from Jacob Tyler.

Thank you,

Patricia Foley on behalf of Jacob Tyler
Morgan Stanley | Legal and Compliance
1221 Avenue of the Americas, 35th Floor | New York, NY 10020
Phone: +1 212 762-5639
Patricia.Foley@morganstanley.com

1221 Avenue of the Americas
35th Floor
New York, NY 10020

Morgan Stanley

December 4, 2017

VIA E-MAIL AND OVERNIGHT DELIVERY

First Affirmative Financial Network, LLC
5475 Mark Dabling Boulevard
Suite 108
Colorado Springs, CO 80918

First Affirmative Financial Network, LLC
350 Ward Ave., Suite 106-18
Honolulu, HI 96814 – 4004

Attn: Holly A. Testa, Director, Shareholder Engagement

Re: Morgan Stanley Stockholder Proposal

Dear Ms. Testa:

On November 28, 2017, we received your letter, dated November 27, 2017 and sent via email on November 28, 2017 submitting a proposal (the "**Proposal**") pursuant to Rule 14a-8 for inclusion in Morgan Stanley's (the "**Company**") 2018 proxy statement, on behalf of Ann Testa. As described below, your submission has certain procedural deficiencies.

Rule 14a-8(b) promulgated under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), requires that in order to be eligible to submit a proposal for inclusion in the Company's proxy statement, the proponent must, among other things, have continuously held at least $2,000 in market value, or 1%, of Company common stock for at least one year by the date of submission of the Proposal. Pursuant to Staff Legal Bulletin No. 14G (CF), Shareholder Proposals (October 16, 2012) (copy enclosed), a proposal's date of submission is the date the proposal is postmarked or transmitted electronically. Ann Testa is not currently the registered holder on the Company's books and records of any shares of Company common stock and has not provided adequate proof of ownership. Accordingly, Ms. Testa must submit to us a written statement from the "record" holder of the shares (usually a broker or bank) verifying that on the date of submission of the Proposal, November 28, 2017, Ms. Testa had continuously held at least $2,000 in market value, or 1%, of Company common stock for at least the one year period prior to and including the date of submission of the Proposal (i.e., November 28, 2017).

Most large U.S. brokers, banks and other securities intermediaries deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("**DTC**"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Such brokers, banks and securities intermediaries are often referred to as "participants" in DTC. In Staff Legal Bulletin No. 14F (CF), Shareholder Proposals (October 18, 2011) (copy enclosed), the SEC staff has taken the view that only DTC participants should be viewed as "record" holders of securities that are deposited with DTC.

In Staff Legal Bulletin No. 14G (CF), Shareholder Proposals (October 16, 2012), the SEC staff has taken the view that a proof of ownership letter from an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with (an "**affiliate**"), a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

Ms. Testa can confirm whether her broker, bank or securities intermediary is a DTC participant or an affiliate of a DTC participant by asking her broker, bank or securities intermediary or by checking the listing of current DTC participants, which is available on the internet at: http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.pdf. In these situations, shareholders need to obtain proof of ownership from the DTC participant or affiliate of a DTC participant through which the securities are held, as follows:

- If Ms. Testa's broker, bank or securities intermediary is a DTC participant or an affiliate of a DTC participant, then Ms. Testa needs to submit a written statement from her broker, bank or securities intermediary verifying that Ms. Testa continuously held the required amount of Company common stock for at least the one year period to and including the date of submission of the proposal, November 28, 2017.

- If Ms. Testa's broker, bank or securities intermediary is not a DTC participant or an affiliate of a DTC participant, then Ms. Testa needs to submit proof of ownership from the DTC participant or affiliate of a DTC participant through which the securities are held verifying that Ms. Testa continuously held the required amount of Company common stock for at least the one year period prior to and including the date of submission of the proposal, November 28, 2017. Ms. Testa should be able to find out who this DTC participant or affiliate of a DTC participant is by asking her broker, bank or securities intermediary. If Ms. Testa's broker is an introducing broker, she may also be able to learn the identity and telephone number of the DTC participant or affiliate of a DTC participant through her account statements, because the clearing broker identified on her account statements will generally be a DTC participant.

- If the DTC participant or affiliate of a DTC participant that holds Ms. Testa's shares knows Ms. Testa's broker's, bank's or securities intermediary's holdings, but does not know Ms. Testa's holdings, Ms. Testa needs to submit two proof of ownership statements verifying that the required amount of Company common stock were continuously held for at least the one year period prior to and including the date of submission of the proposal, November 28, 2017: one from Ms. Testa's broker, bank or securities intermediary confirming Ms. Testa's ownership, and the other from the DTC participant or affiliate of a DTC participant confirming the broker, bank or securities intermediary's ownership.

In order to meet the eligibility requirements for submitting a shareholder proposal, you must provide the requested information no later than 14 calendar days from the date you receive this letter. If you provide us with documentation correcting these eligibility deficiencies, postmarked or transmitted electronically no later than 14 calendar days after the date you receive this letter, we will review the Proposal to determine whether it is appropriate for inclusion in our proxy statement.

A copy of Rule 14a-8, which applies to shareholder proposals submitted for inclusion in proxy statements, is enclosed for your reference.

Sincerely,

Jacob E. Tyler
Assistant Secretary

Enclosures

U.S. Securities and Exchange Commission

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://www.sec.gov/forms/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.

http://www.sec.gov/interps/legal/cfslb14f.htm

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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.

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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.

http://www.sec.gov/interps/legal/cfslb14g.htm

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ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of November 30, 2017

Title 17 → Chapter II → Part 240 → §240.14a-8

Title 17: Commodity and Securities Exchanges
PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.14a-8 Shareholder proposals.

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

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

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

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

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

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

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

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

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

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

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

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

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

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

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

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

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

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

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

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

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

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

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

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

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

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

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit C

Folio Letter

From: Holly Testa [mailto:htesta@firstaffirmative.com]
Sent: Wednesday, December 06, 2017 2:56 PM
To: Tyler, Jacob E (LEGAL)
Cc: Foley, Patricia (LEGAL)
Subject: Re: Morgan Stanley Shareholder Proposal

Mr. Tyler,

Please find attached a letter from our DTC custodian confirming share ownership by our client showing that they are in good standing to file this resolution.

Please confirm that this PDF copy is acceptable confirmation. I can also send hardcopy if requested. Please let me know if there are any further deficiencies that require remedy.

Thank you.

Regards,

Holly A. Testa
Director, Shareowner Engagement
First Affirmative Financial Network

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303-641-5190

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*Please plan to join us for **The SRI Conference** – on Sustainable, Responsible, Impact Investing **November 1–3, 2018**. This 29th annual SRI Conference will be at The Broadmoor in Colorado Springs, Colorado. Hoping to see you there!*

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www.firstaffirmative.com

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December 4, 2017

Jacob Tyler, Assistant Secretary
Morgan Stanley
1221 Avenue of the Americas
35th Floor
New York, NY 10020

Dear Mr. Tyler,

This letter serves as documentation that Folio*fn* Investments, Inc. acts as the custodian for First Affirmative Financial Network, LLC (First Affirmative). Further, we verify that First Affirmative is the Investment Advisor for Ann Testa.

First Affirmative Financial Network is a beneficial owner with discretionary authority on the above referenced client account, and the client has delegated proxy voting authority to First Affirmative Financial Network.

We confirm that that this account owns 115.9 shares of Morgan Stanley common stock. This account has continuously held at least $2,000 in market value of Morgan Stanley common stock for at least one year prior to November 27, 2017.

Sincerely,

Joseph F. Gerdes
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