



DIVISION OF  
CORPORATION FINANCE

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

February 2, 2018

Charles W. Mulaney, Jr.  
Skadden, Arps, Slate, Meagher & Flom LLP  
charles.mulaney@skadden.com

Re: Ecolab Inc.  
Incoming letter dated December 18, 2017

Dear Mr. Mulaney:

This letter is in response to your correspondence dated December 18, 2017 concerning the shareholder proposal (the "Proposal") submitted to Ecolab Inc. (the "Company") by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated December 26, 2017, December 31, 2017, January 3, 2018, January 8, 2018, January 18, 2018, January 28, 2018 and February 1, 2018. 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: John Chevedden

\*\*\*

February 2, 2018

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

Re: Ecolab Inc.  
Incoming letter dated December 18, 2017

The Proposal asks the board to take the steps necessary (unilaterally if possible) to amend the bylaws and each appropriate governing document to give holders in the aggregate of 10% of the Company's outstanding common stock the power to call a special shareowner meeting.

We are unable to concur in your view that the Company may exclude the Proposal or portions of the supporting statement under rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the portions of the supporting statement you reference are materially false or misleading. We are also unable to conclude that the portions of the supporting statement you reference are irrelevant to a consideration of the subject matter of the Proposal such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote. Accordingly, we do not believe that the Company may omit the Proposal or portions of the supporting statement from its proxy materials in reliance on rule 14a-8(i)(3).

Sincerely,

Lisa Krestynick  
Attorney-Adviser

## **DIVISION OF CORPORATION FINANCE INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal 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 and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate 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 adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

February 1, 2018

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

**# 7 Rule 14a-8 Proposal**  
**Ecolab Inc. (ECL)**  
**Special Shareholder Meeting**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the December 18, 2017 no-action request.

In regard to the page 6 company issue about supporting statements being material to the subject matter of the proposal, "... statements in the proxy material regarding the company's existing corporate governance practices are important to the stockholder's decision whether to vote in favor of the proposed measure." This is from Express Scripts Holding Co. 2014 WL 631538.

The company did not claim that there was zero logic in considering the qualifications of current directors when deciding to improve the shareholder right to call a special meeting – which could be a meeting about electing a new director.

The company failed to explain its Rule 14a-8(i)(3) perspective in light of the following Ariel text the company published to accompany a 2016 rule 14a-8 proxy access proposal:

Each of our directors serves a one-year term and stands for re-election at each annual meeting.

Directors must be elected by a majority vote in an uncontested election and a director who fails to receive the required number of votes for re-election must tender his or her written resignation for consideration by the Board.

All of our directors, with the exception of our Chief Executive Officer, are independent.

We have an independent Lead Director with substantial and clearly delineated authority.

Our Lead Director provides strong independent leadership of our Board by, among other things, presiding at executive sessions in connection with every regularly scheduled Board meeting.

Our By-Laws permit stockholders holding 25% of the voting power of our outstanding capital stock to call a special stockholder meeting.

In 2012, in response to a non-binding stockholder proposal at the 2011 Annual Meeting, the Board recommended and stockholders approved amendments to the Company's Certificate of Incorporation to eliminate the supermajority voting provisions.

We do not have a stockholder rights plan.

Proxy access has zero mention in the above company text.

If the proponent had reported such "irrelevant" text to the Staff – it would have had zero impact on excluding even one word of the above company text.

The company failed to provide any published report that investors are finding it totally irrelevant when a company is required to disclose \$104 million in business transactions between its directors and their related entities.

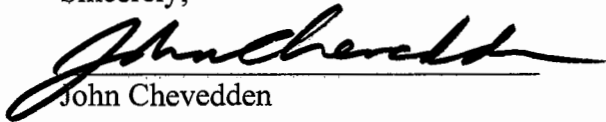
In the middle of page 5 the company said Mr. Chazen *is not* a member of the Audit Committee. The proposal said Mr. Chazen *was* a member of the Audit Committee.

Page 23 from the company no action request lists 5 transactions that total \$104 million in regard to 3 directors.

The company failed to address whether its page 23 data adds to or detracts from the independence of its 3 directors at issue.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Michael C. McCormick <mike.mccormick@ecolab.com>

January 28, 2018

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

**# 6 Rule 14a-8 Proposal**  
**Ecolab Inc. (ECL)**  
**Special Meeting**  
**John Chevedden**


Ladies and Gentlemen:

This is in regard to the December 18, 2017 no-action request.

In regard to the page 6 company issue about supporting statements being material to the subject matter of the proposal, "... statements in the proxy material regarding the company's existing corporate governance practices are important to the stockholder's decision whether to vote in favor of the proposed measure." This is from *Express Scripts Holding Co.* 2014 WL 631538.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Michael C. McCormick <mike.mccormick@ecolab.com>

January 18, 2018

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

**# 5 Rule 14a-8 Proposal**  
**Ecolab Inc. (ECL)**  
**Special Meeting**  
**John Chevedden**


Ladies and Gentlemen:

This is in regard to the December 18, 2017 no-action request.

The company did not claim that there was zero logic in factoring in the qualifications of current directors when deciding to improve the shareholder right to call a special meeting.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Michael C. McCormick <mike.mccormick@ecolab.com>

January 8, 2018

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

**# 4 Rule 14a-8 Proposal**  
**Ecolab Inc. (ECL)**  
**Special Meeting**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the December 18, 2017 no-action request.

The company failed to explain its Rule 14a-8(i)(3) view in light of the following text the company published to accompany a 2016 rule 14a-8 proxy access proposal:

Each of our directors serves a one-year term and stands for re-election at each annual meeting.

Directors must be elected by a majority vote in an uncontested election and a director who fails to receive the required number of votes for re-election must tender his or her written resignation for consideration by the Board.

All of our directors, with the exception of our Chief Executive Officer, are independent.

We have an independent Lead Director with substantial and clearly delineated authority. Our

Lead Director provides strong independent leadership of our Board by, among other things, presiding at executive sessions in connection with every regularly scheduled Board meeting.

Our By-Laws permit stockholders holding 25% of the voting power of our outstanding capital stock to call a special stockholder meeting.

In 2012, in response to a non-binding stockholder proposal at the 2011 Annual Meeting, the Board recommended and stockholders approved amendments to the Company's Certificate of Incorporation to eliminate the supermajority voting provisions.

We do not have a stockholder rights plan.

Proxy access is not mentioned at all in the above company text.



If the proponent had reported such irrelevant text to the Staff – it would have had zero impact on the publication of the above company text.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Michael C. McCormick <mike.mccormick@ecolab.com>

January 3, 2018

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

**# 3 Rule 14a-8 Proposal**  
**Ecolab Inc. (ECL)**  
**Special Meeting**  
**John Chevedden**

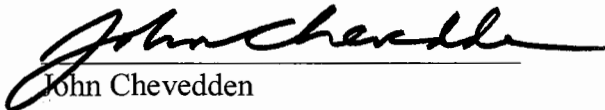
Ladies and Gentlemen:

This is in regard to the December 18, 2017 no-action request.

The company failed to provide any published report that investors find it totally irrelevant when a company is required to disclose \$104 million business transactions between its directors and their related entities.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

  
John Chevedden

cc: Michael C. McCormick <mike.mccormick@ecolab.com>



December 31, 2017

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

**# 2 Rule 14a-8 Proposal**  
**Ecolab Inc. (ECL)**  
**Special Meeting**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the December 18, 2017 no-action request.

In the middle of page 5 the company said Mr. Chazen is not a member of the Audit Committee. The proposal said Mr. Chazen was a member of the Audit Committee.

The attached page 23 from the company no action request lists 5 transactions that total \$104 million in regard to 3 directors.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Michael C. McCormick <mike.mccormick@ecolab.com>



**Proposal [4] –Special Shareholder Meeting Improvement**

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting. This proposal does not impact our board's current power to call a special meeting.

Scores of Fortune 500 companies allow a 10% of shares to call a special meeting compared to Ecolab's higher requirement. Ecolab shareholders do not have the full right to call a special meeting that is available under Delaware law.

Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison in 2013.

An enhanced ability of shareholders to call a special meeting would give shareholders greater standing to have input in improving the makeup of our board of directors after the 2018 annual meeting. For instance, we did not have oversight of our CEO by an independent chairman. And our CEO received as much as 9-times the negative votes as other directors.

Carl Casale, David MacLennan and Stephen Chazen had relatively short tenure and were marked as inside-related directors – this is not a good trend for board refreshment at Ecolab. Leslie Stuart Biller had 20 years long tenure. Long-tenure can detract from the independence of a director no matter how well qualified. Independence is a highly valuable attribute in a director. Inside-related status and long-tenure are the opposite of this highly valuable attribute.

To compound matters the 3 relatively new directors, who were inside-related, had an oversized influence on our audit committee – holding 50%-control. They also had 40%-control of our nomination committee. Serious consideration should be given to keeping inside-related directors off such important board committees.

Please vote to improve director accountability to shareholders:

**Special Shareholder Meeting Improvement – Proposal [4]**

[The line above is for publication.]

December 26, 2017

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

**# 1 Rule 14a-8 Proposal**  
**Ecolab Inc. (ECL)**  
**Special Meeting**  
**John Chevedden**

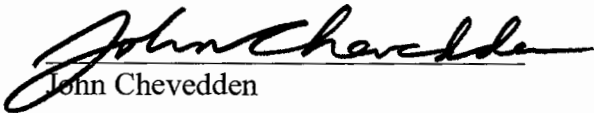
Ladies and Gentlemen:

This is in regard to the December 18, 2017 no-action request.

The attached page is page 23 from the company no action request. The company failed to address whether its page 23 data adds to or detracts from the independence of its 3 directors at issue.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

  
John Chevedden

cc: Michael C. McCormick <mike.mccormick@ecolab.com>





**Proposal [4] –Special Shareholder Meeting Improvement**

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting. This proposal does not impact our board's current power to call a special meeting.

Scores of Fortune 500 companies allow a 10% of shares to call a special meeting compared to Ecolab's higher requirement. Ecolab shareholders do not have the full right to call a special meeting that is available under Delaware law.

Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison in 2013.

An enhanced ability of shareholders to call a special meeting would give shareholders greater standing to have input in improving the makeup of our board of directors after the 2018 annual meeting. For instance, we did not have oversight of our CEO by an independent chairman. And our CEO received as much as 9-times the negative votes as other directors.

Carl Casale, David MacLennan and Stephen Chazen had relatively short tenure and were marked as inside-related directors – this is not a good trend for board refreshment at Ecolab. Leslie Stuart Biller had 20 years long tenure. Long-tenure can detract from the independence of a director no matter how well qualified. Independence is a highly valuable attribute in a director. Inside-related status and long-tenure are the opposite of this highly valuable attribute.

To compound matters the 3 relatively new directors, who were inside-related, had an oversized influence on our audit committee – holding 50%-control. They also had 40%-control of our nomination committee. Serious consideration should be given to keeping inside-related directors off such important board committees.

Please vote to improve director accountability to shareholders:

**Special Shareholder Meeting Improvement – Proposal [4]**

[The line above is for publication.]

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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SINGAPORE  
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TORONTO

December 18, 2017

**BY EMAIL** ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))

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

RE: Ecolab Inc. – 2018 Annual Meeting  
Omission of Shareholder Proposal of  
John Chevedden

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Ecolab Inc. (the “Company”), a Delaware corporation, to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by John Chevedden (the “Proponent”) from the proxy materials to be distributed by the Company in connection with its 2018 annual meeting of shareholders (the “2018 proxy materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal from the 2018 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents submit to the Commission or the Staff. Accordingly, we remind the Proponent that if he submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the Company.

**I. The Proposal**

The resolution contained in the Proposal reads as follows:

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting. This proposal does not impact our board's current power to call a special meeting.

The supporting statement contained in the Proposal reads as follows:

Scores of Fortune 500 companies allow a 10% of shares to call a special meeting compared to Ecolab's higher requirement. Ecolab shareholders do not have the full right to call a special meeting that is available under Delaware law.

Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison in 2013.

An enhanced ability of shareholders to call a special meeting would give shareholders greater standing to have input in improving the makeup of our board of directors after the 2018 annual meeting. For instance, we did not have oversight of our CEO by an independent chairman. And our CEO received as much as 9-times the negative votes as other directors.

Carl Casale, David MacLennan and Stephen Chazen had relatively short tenure and were marked as inside-related directors — this is not a good trend for board refreshment at Ecolab. Leslie Stuart Biller had 20 years long tenure. Long-tenure can detract from the independence of a director no matter how well qualified. Independence is a highly

valuable attribute in a director. Inside-related status and long-tenure are the opposite of this highly valuable attribute.

To compound matters the 3 relatively new directors, who were inside-related, had an oversized influence on our audit committee — holding 50%-control. They also had 40%-control of our nomination committee. Serious consideration should be given to keeping inside-related directors off such important board committees.

Please vote to improve director accountability to shareholders:  
**Special Shareholder Meeting Improvement — Proposal [4]**

## **II. Basis for Exclusion**

We hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the 2018 proxy materials pursuant to Rule 14a-8(i)(3) because the Proposal is materially false and misleading.

## **III. Background**

On November 18, 2017, the Company received the Proposal. On November 21, 2017, the Company received a letter from Fidelity Investments verifying the Proponent's stock ownership (the "Broker Letter"). Copies of the Proposal, the Broker Letter and certain related correspondence are attached hereto as Exhibit A.

## **IV. The Proposal May be Excluded Under Rule 14a-8(i)(3) Because it is Materially False and Misleading in Violation of Rule 14a-9**

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded if the proposal or supporting statement violates Rule 14a-9, which prohibits materially false or misleading statements "with respect to any material fact, or which omit[s] to state any material fact necessary in order to make the statements therein not false or misleading."

The Company believes that the Proposal is materially false and misleading because the supporting statement contains numerous factual statements that are materially false and misleading and numerous statements that are irrelevant to the subject matter of the Proposal.

**A. The Proposal Contains Factual Statements that are Materially False and Misleading**

A proposal may be excluded pursuant to Rule 14a-8(i)(3) if “the company demonstrates objectively that a factual statement is materially false or misleading.” Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“SLB 14B”). *See, e.g., Ferro Corp.* (Mar. 17, 2015) (permitting exclusion of a proposal mischaracterizing Ohio and Delaware corporate law, noting that the company had “demonstrated objectively that certain factual statements in the supporting statement are materially false and misleading”); *Rite Aid Corp.* (Mar. 13, 2015) (permitting exclusion of a sentence included in the supporting statement falsely claiming, among other things, that the Commission supported the proposal); *Entergy Corp.* (Feb. 14, 2007) (permitting exclusion of a proposal regarding a requested shareholder vote on the compensation committee report where the supporting statement made objectively false statements regarding executive compensation, director committee membership, and director stock ownership).

The Company believes that the following italicized portions of the Proposal’s supporting statement are objectively false and materially misleading:

1. *Carl Casale, David MacLennan and Stephen Chazen had relatively short tenure and were marked as inside-related directors — this is not a good trend for board refreshment at Ecolab.*

*Independence is a highly valuable attribute in a director. Inside-related status and long-tenure are the opposite of this highly valuable attribute.*

This portion of the Proposal’s supporting statement states that Messrs. Casale, MacLennan and Chazen (the “Directors”) “were marked” by an unidentified source as “inside-related directors,” and accordingly the Directors are not “independent” directors. The last two sentences of this paragraph assert that “inside-related status” is the “opposite” of the “highly valuable attribute” of “independence.” Clearly the Proponent is saying that these “inside-related directors” are not “independent.” As stated in the Company’s 2017 Proxy Statement (the “2017 Proxy Statement”), the board of directors of the Company (the “Board”) determined that each of the Directors was “independent” in accordance with the listing standards of the New York Stock Exchange (the “NYSE”), the rules and regulations of the Commission, applicable law, and the Board’s Director Independence Standards. Outside corporate governance evaluators agree with the Board’s “independence” determinations. Institutional Shareholders Services classified the Directors as “independent outsiders” in its Proxy Analysis and Benchmark Policy Voting



Recommendations Report (the “ISS Report”) related to the Company’s 2017 annual meeting of shareholders (the “2017 Annual Meeting”). Similarly, Glass Lewis, classified the Directors as “independent” in its Proxy Paper Report related to the 2017 Annual Meeting (the “Glass Lewis Report”). The supporting statement falsely states that the Directors were “marked as inside-related directors” when no one has so “marked” them. Copies of relevant portions of the ISS Report and the Glass Lewis Report are attached hereto as Exhibit B and Exhibit C, respectively.

2. *To compound matters the 3 relatively new directors, who were inside-related, had an oversized influence on our audit committee — holding 50%-control.*

The Proposal’s supporting statement communicates that the Audit Committee is not composed of “independent” directors. If true, the Company would not be in compliance with listing standards of the NYSE or the rules and regulations of the Commission. As stated in the 2017 Proxy Statement, the Board determined that each member of the Audit Committee, including each of the Directors, was “independent” in accordance with Sections 303A.02 and 303A.07(b) of the listing standards of the NYSE, Rule 10A-3 under the Exchange Act, and the Board’s Director Independence Standards. Additionally, the ISS Report and the Glass Lewis Report both rated the Audit Committee as 100% independent. The supporting statement also falsely asserts with no basis that the Directors—who are unaffiliated and do not act as a “group”—have “oversized influence” and “control” 50% of the Audit Committee. Additionally, the supporting statement misrepresents the current composition of the Audit Committee. As indicated on the Company’s corporate website, Mr. Chazen is not a member of the Audit Committee. Therefore, the supporting statement falsely states that the Audit Committee is “50%-control[led]” by “inside-related”—i.e., not “independent”—directors.

3. *They also had 40%-control of our nomination committee.*

The Proposal’s supporting statement also communicates that the Governance Committee is not composed of “independent” directors. If true, the Company would not be in compliance with listing standards of the NYSE. As stated in the 2017 Proxy Statement, the Board determined that each member of the Governance Committee, which includes Messrs. Casale and MacLennan, met the independence requirements of the Commission, the listing standards of the NYSE, and the Board’s Director Independence Standards. Additionally, the ISS Report and the Glass Lewis Report both rated the Governance Committee as 100% independent. Therefore, the supporting statement falsely states that the Governance Committee is “40%-control[led]” by “inside-related”—i.e., not “independent”—directors.

The false statements described above could mislead or improperly influence the Company's shareholders in their consideration of the Proposal, the candidacies of the Directors for reelection to the Board, and the candidacies of the other directors for reelection to the Board. The statements characterize the Board as operating in violation of the law, the listing standards of the NYSE and good corporate governance principles. These statements are materially false and misleading.

**B. Substantial Portions of the Supporting Statement are Irrelevant to a Consideration of the Subject Matter of the Proposal**

A proposal may be excluded pursuant to Rule 14a-8(i)(3) where "substantial portions of the supporting statement are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which she is being asked to vote." SLB 14B. For example, in *The Kroger Co.* (Mar. 27, 2017), the proposal requested that the board adopt a policy to require the board chair to be independent. The proposal's supporting statement, however, devoted an entire paragraph to discussing the reputational risk of selling produce treated with neonicotinoids (insecticides highly toxic to bees). In granting relief under Rule 14a-8(i)(3) to exclude that paragraph, the Staff concluded that it was "irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote." See, e.g., *Entergy Corp.* (Feb. 14, 2007) (permitting exclusion under Rule 14a-8(i)(3) of a proposal where, along with other misleading defects in the proposal, the supporting statement was irrelevant to the subject matter of the proposal); *Energy East Corp.* (Feb. 12, 2007) (same); *The Bear Stearns Cos. Inc.* (Jan. 30, 2007) (same); see also, e.g., *Sara Lee Corp.* (July 31, 2007) (permitting exclusion under Rule 14a-8(i)(3) of portions of a supporting statement discussing the proponent's personal affairs, which the company argued were irrelevant to the proposal's request that the board publish a report on shareholder proposals and which the Staff concluded "may be materially false or misleading under rule 14a-9").

As in the precedent described above, the Proposal's supporting statement contains numerous statements that are confusing and completely irrelevant to a consideration of the Proposal's apparent subject matter. The Proposal, titled "Special Shareholder Meeting Improvement," ostensibly relates to "improving" the Company's existing special meeting bylaw by lowering the aggregate percentage of the Company's common stock that is required to call a special meeting from 25% to 10%. The fourth and fifth paragraphs of the supporting statement are devoted entirely to matters related to the independence and tenure of certain of the Company's directors and members of the Audit Committee and the Governance

Committee, rather than explaining why the 10% threshold in the Proposal is preferable to the current 25% threshold. Several statements in these paragraphs are objectively false and convey that the Directors, who serve on the Audit Committee and the Governance Committee, are not "independent." These false statements have no relevance to the topic of the Proposal and create a strong likelihood that a reasonable shareholder would be uncertain as to whether he or she was being asked to vote on changing the threshold at which shareholders could call a special meeting or whether the Directors should be removed from the Audit Committee and the Governance Committee. (See the last sentence of the fifth paragraph of the supporting statement: "Serious consideration should be given to keeping inside-related directors off such important board committees.")

Accordingly, the Company believes that the Proposal may be excluded from its 2018 proxy materials pursuant to Rule 14a-8(i)(3) as materially false and misleading. Alternatively, to the extent the Staff does not concur that the entire Proposal may be excluded, the Company requests that it be permitted to exclude those portions of the Proposal's supporting statement that are objectively false and misleading or irrelevant to the subject matter of the Proposal, specifically, (a) the first sentence of the fourth paragraph of the supporting statement, (b) the portion of the last sentence of the fourth paragraph of the supporting statement containing "[i]nside-related status and," and (c) the entire fifth paragraph of the supporting statement.

#### **V. Conclusion**

The Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 proxy materials.

Should the Staff disagree, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (312) 407-0500.

Very truly yours,

  
Charles W. Mulaney, Jr.

Enclosures



Office of Chief Counsel  
December 18, 2017  
Page 8

cc: Michael C. McCormick  
Executive Vice President, General Counsel and Secretary  
Ecolab Inc.

Theodore D. Herzog  
Associate General Counsel – International and Assistant Secretary  
Ecolab Inc.

John Chevedden

**EXHIBIT A**

(see attached)

**From:** \*\*\*  
**Sent:** Saturday, November 18, 2017 9:21 AM  
**To:** Seifert, Jim  
**Cc:** Herzog, Ted; Lynn, Cheryl  
**Subject:** Rule 14a-8 Proposal (ECL)``  
**Attachments:** CCE18112017.pdf

Mr. Seifert,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,

John Chevedden

JOHN CHEVEDDEN

\*\*\*

Mr. James J. Seifert  
Corporate Secretary  
Ecolab Inc. (ECL)  
One Ecolab Place  
St. Paul, MN 55102  
PH: 800-232-6522  
FX: 651-293-2092

Dear Mr. Seifert,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance—especially compared to the substantial capitalization of our company.

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

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to  
\*\*\*

Sincerely,

  
John Chevedden

November 18, 2017  
Date

cc: Ted Herzog <Ted.Herzog@ecolab.com>  
Assistant Secretary  
PH: 651-293-4142  
FX: 651-293-2573  
Cheryl Lynn <Cheryl.Lynn@ecolab.com>

[ECL – Rule 14a-8 Proposal, November 18, 2017]11-20

[This line and any line above it is not for publication.]

**Proposal [4] –Special Shareholder Meeting Improvement**

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting. This proposal does not impact our board’s current power to call a special meeting.

Scores of Fortune 500 companies allow a 10% of shares to call a special meeting compared to Ecolab’s higher requirement. Ecolab shareholders do not have the full right to call a special meeting that is available under Delaware law.

Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison in 2013.

An enhanced ability of shareholders to call a special meeting would give shareholders greater standing to have input in improving the makeup of our board of directors after the 2018 annual meeting. For instance, we did not have oversight of our CEO by an independent chairman. And our CEO received as much as 9-times the negative votes as other directors.

Carl Casale, David MacLennan and Stephen Chazen had relatively short tenure and were marked as inside-related directors – this is not a good trend for board refreshment at Ecolab. Leslie Stuart Biller had 20 years long tenure. Long-tenure can detract from the independence of a director no matter how well qualified. Independence is a highly valuable attribute in a director. Inside-related status and long-tenure are the opposite of this highly valuable attribute.

To compound matters the 3 relatively new directors, who were inside-related, had an oversized influence on our audit committee – holding 50%-control. They also had 40%-control of our nomination committee. Serious consideration should be given to keeping inside-related directors off such important board committees.

Please vote to improve director accountability to shareholders:

**Special Shareholder Meeting Improvement – Proposal [4]**

[The line above is for publication.]

John Chevedden,  
proposal.

\*\*\*

sponsors this

Notes:

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

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

\*\*\*

**From:** Herzog, Ted <Ted.Herzog@ecolab.com>  
**Sent:** Saturday, November 18, 2017 1:33 PM  
**To:** \*\*\*  
**Cc:** McCormick, Mike (Law); Abrahams, Renee; Lynn, Cheryl  
**Subject:** Re: Rule 14a-8 Proposal (ECL)``

Mr. Chevedden:

I acknowledge receipt of your email.

Please note that Jim Seifert has retired and that Mike McCormick is Ecolab's General Counsel.

Best regards,

Ted Herzog

On Nov 18, 2017, at 9:21 AM, \*\*\* wrote:

Mr. Seifert,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,

John Chevedden

<CCE18112017.pdf>

**From:** \*\*\*  
**Sent:** Tuesday, November 21, 2017 1:49 PM  
**To:** Seifert, Jim  
**Cc:** Herzog, Ted; Lynn, Cheryl  
**Subject:** Rule 14a-8 Proposal (ECL) blb  
**Attachments:** CCE21112017\_7.pdf

Mr. Seifert,  
Please see the attached broker letter.  
Sincerely,  
John Chevedden



Personal Investing

P.O. Box 770001  
Cincinnati, OH 45277-0045

November 20, 2017

John R. Chevedden  
\*\*\*

To Whom It May Concern:

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

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than the share quantity listed in the following table in each of the following securities, since October 1, 2016:

Security name	CUSIP	Trading symbol	Share quantity
Ecolab, Inc.	278865100	ECL	100
Capital One Financial Corp.	14040H105	COF	100
General Dynamics Corp.	369550108	GD	100
Illinois Tool Works, Inc.	452308109	ITW	100
Ryder Systems, Inc.	783549108	R	100

The securities referenced in the preceding table are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-397-9945 between the hours of 8:30 a.m. and 5:00 p.m. Central Time (Monday through Friday) and entering my extension 15838 when prompted.

Sincerely,

A handwritten signature in black ink, appearing to read 'George Stasinopoulos'.

George Stasinopoulos  
Personal Investing Operations

Our File: W644869-20NOV17

Fidelity Brokerage Services LLC, Members NYSE, SIPC.

**From:** Herzog, Ted <Ted.Herzog@ecolab.com>  
**Sent:** Tuesday, November 21, 2017 2:12 PM  
**To:** John Chevedden  
**Cc:** McCormick, Mike (Law); Vander Vorst, Jennifer; Abrahams, Renee; Lynn, Cheryl  
**Subject:** FW: Rule 14a-8 Proposal (ECL) blb  
**Attachments:** CCE21112017\_7.pdf

Mr. Chevedden:

Thank you for providing proof of ownership of 100 shares of Ecolab's common stock.

As noted in my e-mail on November 18, Jim Seifert has retired. Future correspondence regarding matters of this nature should be addressed to Mike McCormick, Executive Vice President, General Counsel and Secretary of Ecolab Inc., with a copy to Jennifer Vander Vorst and to me. Please see below for contact information for Mr. McCormick and Ms. Vander Vorst:

Michael C. McCormick  
EVP & GENERAL COUNSEL  
ECOLAB 1 ECOLAB PLACE, ST. PAUL, MN 55102 T 651 250 4142 F 651 250 2471 E  
[mike.mccormick@ecolab.com](mailto:mike.mccormick@ecolab.com)

Jennifer Vander Vorst  
EXECUTIVE ASSISTANT to GENERAL COUNSEL  
ECOLAB ONE ECOLAB PLACE, ST. PAUL, MN 55102 T 651 250 2982 F 651 250 2471 E  
[jennifer.vandervorst@ecolab.com](mailto:jennifer.vandervorst@ecolab.com)

Best regards,

Ted Herzog

Ted Herzog  
ASSOCIATE GENERAL COUNSEL - INTERNATIONAL AND ASSISTANT SECRETARY

ECOLAB 1 ECOLAB PLACE, ST. PAUL, MN 55102-2739 T 651 250 2396 M 612 859 9009 F 651 250 2573  
E [ted.herzog@ecolab.com](mailto:ted.herzog@ecolab.com)

-----Original Message-----

From: \*\*\*  
Sent: Tuesday, November 21, 2017 1:49 PM  
To: Seifert, Jim  
Cc: Herzog, Ted; Lynn, Cheryl  
Subject: Rule 14a-8 Proposal (ECL) blb

Mr. Seifert,

Please see the attached broker letter.

Sincerely,

John Chevedden

Personal Investing

P.O. Box 770001  
Cincinnati, OH 45277-0045

November 20, 2017

John R. Chevedden  
\*\*\*

To Whom It May Concern:

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

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than the share quantity listed in the following table in each of the following securities, since October 1, 2016:

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Capital One Financial Corp.	14040H105	COF	100
General Dynamics Corp.	369550108	GD	100
Illinois Tool Works, Inc.	452308109	ITW	100
Ryder Systems, Inc.	783549108	R	100

The securities referenced in the preceding table are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-397-9945 between the hours of 8:30 a.m. and 5:00 p.m. Central Time (Monday through Friday) and entering my extension 15838 when prompted.

Sincerely,

A handwritten signature in black ink, appearing to read "George Stasinopoulos".

George Stasinopoulos  
Personal Investing Operations

Our File: W644869-20NOV17

Fidelity Brokerage Services LLC, Members NYSE, SIPC.

**EXHIBIT B**

(see attached)









**EXHIBIT C**

(see attached)

**PROXY PAPER**  
**ECOLAB INC.**


GLASS LEWIS

NYSE: ECL

ISIN: US2788651006

MEETING DATE: 04 MAY 2017

RECORD DATE: 07 MARCH 2017

PUBLISH DATE: 08 APRIL 2017

**INDEX MEMBERSHIP:** DJSI NA; S&P 500; FTSE4GOOD GLOBAL  
 INDEX; RUSSELL 1000; RUSSELL 3000;  
 DJSI WORLD
**SECTOR:** MATERIALS**INDUSTRY:** CHEMICALS**COUNTRY OF TRADE:** UNITED STATES**COUNTRY OF INCORPORATION:** UNITED STATES**HEADQUARTERS:** MINNESOTA**VOTING IMPEDIMENT:** NONE**DISCLOSURES:** NONE**COMPANY DESCRIPTION**

Ecolab Inc. provides water, hygiene, and energy technologies and services for customers worldwide. The company operates in three segments: Global Industrial, Global Institutional, and Global Energy.

OWNERSHIP	COMPANY PROFILE	ESG PROFILE	COMPENSATION	PEER COMPARISON	VOTE RESULTS
APPENDIX					

**2017 ANNUAL MEETING**

PROPOSAL	ISSUE	BOARD	GLASS LEWIS	CONCERNS
1.00	Election of Directors	FOR	FOR	
1.01	Elect Douglas M. Baker, Jr.	FOR	FOR	
1.02	Elect Barbara J. Beck	FOR	FOR	
1.03	Elect Leslie S. Biller	FOR	FOR	
1.04	Elect Carl M. Casale	FOR	FOR	
1.05	Elect Stephen I. Chazen	FOR	FOR	
1.06	Elect Jeffrey M. Ettinger	FOR	FOR	
1.07	Elect Arthur J. Higgins	FOR	FOR	
1.08	Elect Michael Larson	FOR	FOR	
1.09	Elect David W. MacLennan	FOR	FOR	
1.10	Elect Tracy B. McKibben	FOR	FOR	
1.11	Elect Victoria J. Reich	FOR	FOR	
1.12	Elect Suzanne M. Vautrinot	FOR	FOR	
1.13	Elect John J. Zillmer	FOR	FOR	
2.00	Ratification of Auditor	FOR	FOR	
3.00	Advisory Vote on Executive Compensation	FOR	FOR	
4.00	Frequency of Advisory Vote on Executive Compensation	1 YEAR	1 YEAR	

## 1.00: ELECTION OF DIRECTORS

FOR

PROPOSAL REQUEST: Election of thirteen directors

ELECTION METHOD: Majority w/ Resignation Policy

## RECOMMENDATIONS &amp; CONCERNS:

FOR: D. Baker, Jr. ; B. Beck ; L. Biller ; C. Casale ; S. Chazan ; J. Ettinger ; A. Higgins ; M. Larson ; D. MacLennan ; T. McKibben ; V. Reich ; S. Vautrinot ; J. Zillmer

## BOARD OF DIRECTORS

UP	NAME	AGE	GENDER	GLASS LEWIS CLASSIFICATION	COMPANY CLASSIFICATION	OWNERSHIP**	COMMITTEES				TERM START	TERM END	YEARS ON BOARD
							AUDIT	COMP	GOV	NOM			
✓	Douglas M. Baker, Jr.* •CEO •Chair	58	M	Insider 1	Not Independent	Yes					2004	2017	13
✓	Barbara J. Beck	56	F	Independent	Independent	Yes		✓	✓		2008	2017	9
✓	Leslie S. Biller	69	M	Independent	Independent	Yes		✓			1997	2017	20
✓	Carl M. Casale*	55	M	Independent 2	Independent	Yes	✓		✓	✓	2013	2017	4
✓	Stephen I. Chazan	70	M	Independent 3	Independent	Yes	✓				2013	2017	4
✓	Jeffrey M. Ettinger	58	M	Independent 4	Independent	Yes		✓			2015	2017	2
✓	Arthur J. Higgins	61	M	Independent	Independent	Yes		✓	✓	✓	2010	2017	7
✓	Michael Larson	57	M	Independent 5	Independent	Yes					2012	2017	5
✓	David W. MacLennan	57	M	Independent 6	Independent	Yes	✓		✓	✓	2015	2017	2
✓	Tracy B. McKibben	47	F	Independent	Independent	Yes	✓				2015	2017	2
✓	Victoria J. Reich	59	F	Independent	Independent	Yes	C				2009	2017	8
✓	Suzanne MeVautrinot	57	F	Independent	Independent	Yes	✓				2014	2017	3
✓	John J. Zillmer	61	M	Independent	Independent	Yes		✓	✓	✓	2006	2017	11

C = Chair, \* = Public Company Executive. ■ = Withhold or Against Recommendation

1. eChair and CEO.e

2. President and CEO of CHS, Inc., which purchased products from the Company for approximately \$3 million in fiscal year 2016.e

3. eFormer CEO (until April 2016) of Occidental Petroleum Corporation, which purchased products from the Company for approximately \$63 million and received approximately \$6 million from the Company for products in fiscal year 2016.e

4. eChair and former CEO (until October 2016) of Hormel Foods Corp., which purchased products from the Company for approximately \$11 million and received approximately \$100,000 from the Company for products in fiscal year 2016.e

5. eChief investment officer to William H. Gates III and has voting and investment power with respect to approximately 9.8% of the Company's common stock held by Cascade Investment, LLC.e

6. eChair and CEO of Cargill, Inc., which purchased products from the Company for approximately \$26 million and sold approximately \$6 million of products to the Company in fiscal year 2016.e

\*\*Percentages displayed for ownership above 5%, when available

NAME	ATTENDED AT LEAST 75% OF MEETINGS	PUBLIC COMPANY EXECUTIVE	ADDITIONAL PUBLIC COMPANY DIRECTORSHIPS
Douglas M. Baker, Jr.	Yes	Yes	(2) <u>U.S. Bancorp; Target Corporation</u>
Barbara J. Beck	Yes	No	None
Leslie S. Biller	Yes	No	None
Carl M. Casale	Yes	Yes	None
Stephen I. Chazen	Yes	No	(2) <u>Occidental Petroleum Corporation; Williams Companies, Inc.</u>
Jeffrey M. Ettinger	Yes	No	(2) <u>The Toro Company; Hormel Foods Corporation</u>
Arthur J. Higgins	Yes	No	(2) <u>Zimmer Holdings, Inc.; Endo International PLC</u>
Michael Larson	Yes	No	(4) <u>AutoNation, Inc.; Republic Services, Inc.; Fomento Economico Mexicano SAB de CV; Western Assets Fund</u>
David W. MacLennan	Yes	No	None
Tracy B. McKibben	Yes	No	(1) <u>GlassBridge Enterprises, Inc.</u>
Victoria J. Reich	Yes	No	(2) <u>H&amp;R Block, Inc.; Ingrezion Inc.</u>
Suzanne M. Vautrinot	Yes	No	(2) <u>Symantec Corporation; Wells Fargo &amp; Company</u>
John J. Zillmer	Yes	No	(4) <u>Reynolds American Inc.; Performance Food Group Company; Veritiv Corporation; CSX Corporation</u>

## ■ MARKET PRACTICE

INDEPENDENCE AND COMPOSITION	ECL*	REQUIREMENT	BEST PRACTICE
Independent Chair	No	No <sup>1</sup>	Yes <sup>5</sup>
Board Independence	92%	Majority <sup>2</sup>	66.7% <sup>5</sup>
Audit Committee Independence	100% : Independent Chair	100% <sup>3</sup>	100% <sup>5</sup>
Compensation Committee Independence	100%	100% <sup>2</sup>	100% <sup>5</sup>
Nominating Committee Independence	100%	100% <sup>2</sup>	100% <sup>5</sup>
Percentage of women on board	31%	N/A <sup>4</sup>	N/A <sup>6</sup>
Directors' biographies	DEF14A; Page 22		

\* Based on Glass Lewis Classification

1. NYSE Listed Company Manual

2. Independence as defined by NYSE listing rules<sup>8</sup>

3. Securities Exchange Act Rule 10A-3 and NYSE listing rules

4. No current marketplace listing requirement

5. CII

6. N/A

Glass Lewis believes that boards should: (i) be at least two-thirds independent; (ii) have standing audit, compensation and nomination committees comprised solely of independent directors; and (iii) designate an independent chair, or failing that, a lead independent director.

## ■ GLASS LEWIS ANALYSIS

We believe it is important for shareholders to be mindful of the following:

### BOARD LEADERSHIP

Following the departure of Jerry Levin from the board at the 2017 annual meeting, the board will have neither an independent chair nor an independent lead or presiding director. We view an independent chair as better able to oversee the executives of the Company and set a pro-shareholder agenda without management and, consequently, without conflicts that an executive insider or affiliated director might face. This, in turn, leads to a more proactive and effective board of directors in our view. Therefore, we believe the board should appoint an independent chair or lead or presiding director to replace Mr. Levin as soon as is practicable.