



DIVISION OF  
CORPORATION FINANCE

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

February 26, 2018

Jeffrey R. Vetter  
Fenwick & West LLP  
jvetter@fenwick.com

Re: Facebook, Inc.  
Incoming letter dated January 22, 2018

Dear Mr. Vetter:

This letter is in response to your correspondence dated January 22, 2018 concerning the shareholder proposal (the "Proposal") submitted to Facebook, Inc. (the "Company") by David Ridenour (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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: David Ridenour  
\*\*\*

February 26, 2018

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

Re: Facebook, Inc.  
Incoming letter dated January 22, 2018

The Proposal relates to a policy.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(f). We note that the Proponent appears not to have responded to the Company's request for documentary support indicating that the Proponent has satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

Sincerely,

M. Hughes Bates  
Special Counsel

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

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



SILICON VALLEY 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041  
TEL: 650.988.8500 FAX: 650.938.5200 WWW.FENWICK.COM

January 22, 2018

Via 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, DC 20549

Re: Facebook, Inc. - Stockholder Proposal Submitted by David Ridenour

Ladies and Gentlemen:

This letter is to inform the Securities and Exchange Commission (the “*Commission*”) that our client, Facebook, Inc., a Delaware corporation (the “*Company*”), intends to omit from its form of proxy card and other proxy materials (the “*Proxy Materials*”) for the Company’s 2018 annual meeting of stockholders, the stockholder proposal and supporting statement (the “*Proposal*”) submitted to the Company by David Ridenour (the “*Proponent*”). Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “*Act*”), the Company respectfully requests confirmation that the staff (the “*Staff*”) of the Commission will not recommend enforcement action if the Company excludes the Proposal from its Proxy Materials for the reason discussed below.

Pursuant to Rule 14a-8(j), this letter is being submitted not less than 80 days before the Company files its definitive copies of the Proxy Materials with the Commission, and the Company has concurrently sent copies of this correspondence to the Proponent. The Proposal, the accompanying supporting statement, along with copies of all relevant correspondence between the Company and the Proponent are attached to this letter as Attachment A.

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

#### Reasons for Excluding the Proposal

Pursuant to Rule 14a-8(b) and 14a-8(f)(1) under the Act, the Company may exclude the Proposal from the Proxy Materials because the Proponent failed to substantiate his eligibility to submit the Proposal under Rule 14a-8(b).

## **Discussion**

Rule 14a-8(b)(1) provides, in part, that “[i]n order to be eligible to submit a proposal, [a shareholder] must have continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date [the shareholder] submit[s] the proposal.” Staff Legal Bulletin No. 14 specifies that when the shareholder is not a registered holder, the shareholder “is responsible for proving his or her eligibility to submit a proposal to the company,” which the shareholder may do by one of the two ways provided in Rule 14a-8(b)(2). See Section C.1.c, Staff Legal Bulletin No. 14 (Jul. 13, 2001). Staff Legal Bulletin No. 14F recently clarified that these proof of ownership letters must come from the “record” holder of the Proponent’s shares, and that only Depository Trust Company (“*DTC*”) participants are viewed as record holders of securities that are deposited at DTC. See Staff Legal Bulletin No. 14F (Oct. 18, 2011) (“*SLB 14F*”). Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including failing to provide the beneficial ownership information required under Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time.

The Proponent submitted the Proposal to the Company via overnight delivery on December 14, 2017. The Proponent did not include with his letter any documentary evidence of his ownership of Company shares. In addition, the Company reviewed its stock records, which do not indicate that the Proponent is a record holder of Company shares.

Accordingly, the Company sent via overnight delivery a letter dated December 28, 2017, notifying the Proponent of the requirements of Rule 14a-8 and how the Proponent could cure the procedural deficiency (the “*Deficiency Notice*”). The Deficiency Notice provided detailed information regarding the “record” holder requirements, as clarified by SLB 14F, and attached a copy of Rule 14a-8 and SLB 14F. Specifically, the Deficiency Notice stated (i) the ownership requirements of Rule 14a-8(b), (ii) that, according to the Company’s stock records, the Proponent was not a record holder of sufficient shares, (iii) the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b) and (iv) that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

A copy of the Deficiency Notice is attached hereto in Attachment A. The Company sent the Deficiency Notice on December 28, 2017, which was within 14 calendar days of the Company’s receipt of the Proposal. Overnight delivery service records confirm delivery of a physical copy of the Deficiency Notice at 10:39 a.m. Eastern Time on December 29, 2017. Accordingly, the Proponent’s response to the Deficiency Notice was required to be postmarked or transmitted electronically by January 12, 2018, which was 14 calendar days after the Proponent’s receipt of the Deficiency Notice. As of the date of this letter, the Company has not received a response to the Deficiency Notice from the Proponent.

The Staff has previously concurred in the exclusion of a shareholder proposal based on a proponent’s failure to provide evidence of eligibility to submit a proposal in response to a Company’s proper deficiency notice. See, e.g., *General Electric Co.* (avail. Jan. 2, 2018) (concurring with the exclusion of a proposal where the proponent failed to provide any response to a deficiency notice sent by the company); *salesforce.com, inc.* (avail. Feb. 14, 2017); *Amazon.com*,

*Inc.* (avail. Mar. 29, 2011) (same); *General Motors Corp.* (avail. Feb. 19, 2008) (same). As in *General Electric*, *salesforce.com*, *Amazon.com* and *General Motors*, the Proponent failed to provide evidence of ownership of Company shares, either with his original proposal or in response to the Company's proper deficiency notice, and has therefore not demonstrated eligibility under Rule 14a-8 to submit the Proposal.

**Conclusion**

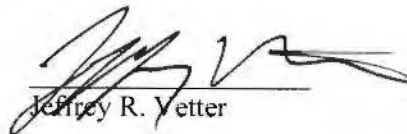
In view of the foregoing, the Company has concluded that it may exclude the Proposal from the Proxy Materials in reliance on Rule 14a-8(b) and Rule 14a-(f)(1) under the Act.

\* \* \*

Should the Staff have any questions or desire any additional information regarding this subject, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its Rule 14a-8(j) response. In this case, please contact the undersigned by telephone at (650) 335-7631.

This request is being submitted electronically pursuant to guidance found in SLB 14D. Accordingly, we are not enclosing the additional six copies ordinarily required by Rule 14a-8(j). Pursuant to Rule 14a-8(j)(1) under the Act, a copy of this letter and the attachments is being sent to the Proponent.

Sincerely,



Jeffrey R. Vetter

Enclosures

cc:

David W. Kling, Vice President, Deputy General Counsel and Corporate Secretary, Facebook, Inc.  
Michael L. Johnson, Deputy General Counsel and Assistant Secretary, Facebook, Inc.  
David Ridenour

**Attachment A**

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December 14, 2017

Via FedEx

David Kling  
ATTN: Corporate Secretary  
Facebook, Inc.  
1601 Willow Road  
Menlo Park, California 94025

Dear Mr. Kling,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the Facebook, Inc. (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations.

I have owned Facebook, Inc. stock with a value exceeding \$2,000 for a year prior to and including the date of this Proposal and intend to hold these shares through the date of the Company’s 2018 annual meeting of shareholders.

A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Copies of correspondence or a request for a “no-action” letter should be forwarded to David Ridenour, \*\*\*.

Sincerely,



David Ridenour

Enclosure: Shareholder Proposal



## **True Diversity Board Policy**

**Resolved**, that the shareholders of Facebook, Inc. (the “Company”) request the Board adopt a policy to disclose to shareholders the following:

1. A description of the specific minimum qualifications that the Board’s nominating committee believes must be met by a nominee to be on the board of directors; and
2. Each nominee’s gender, race/ethnicity, skills, ideological diversity and experience presented in a chart or matrix form.

The disclosure shall be presented to the shareholders through the annual proxy statement and the Company’s website within six (6) months of the date of the annual meeting and updated on an annual basis.

### **Supporting Statement**

We believe that boards that incorporate diverse perspectives can think more critically and oversee corporate managers more effectively. By providing a meaningful disclosure about potential Board members, shareholders will be better able to judge how well-suited individual board nominees are for the Company and whether their listed skills, experience and attributes are appropriate in light of the Company’s overall business strategy. The Company’s compliance with Item 407(c)(2)(v) of SEC Regulation S-K requires it to identify the minimum skills, experience and attributes that all board candidates are expected to possess.

Information such as a candidate’s race and gender will satiate liberal bean counters.

However, true diversity comes from diversity of thought. There is ample evidence that the Company – and Silicon Valley generally – operate in ideological hegemony that eschews conservative people, thoughts and values. This ideological echo chamber can result in groupthink that is the antithesis of diversity. This can be a major risk factor for shareholders.

We believe a diverse board is a good indicator of sound corporate governance and a well-functioning board. Diversity in board composition is best achieved through highly qualified candidates with a wide range of skills, experience, beliefs and board independence from management.

We are requesting comprehensive disclosures about board composition and what qualifications the Company seeks for its Board, therefore we urge shareholders to vote FOR this proposal.

12/14/17, 12:29 PM

ORIGIN ID: GBOA \*\*\*  
DAVID RIDENOUR

SHIP DATE: 14DEC17  
ACTWGT:  
CAD: 100230591/INNET3920

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BI LSENDER

*121517-2*

TO DAVID KLING  
FACEBOOK

1601 WILLOW ROAD

ATTN: CORPORATE SECRETARY

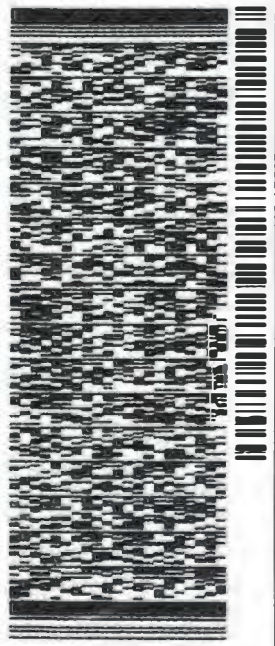
MENLO PARK CA 94025

(650) 308-7300  
REF

PO

DEPT

549J1574CH04C



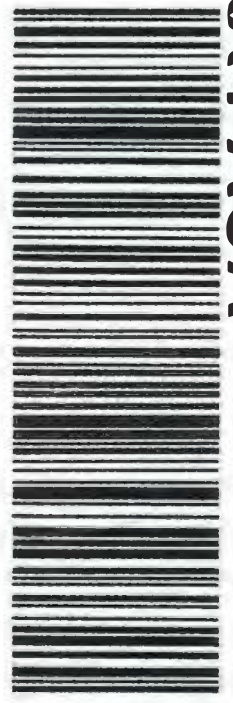
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TRK#  
[ 0204 ] \*\*\*

FRI - 15 DEC 10:30A  
PRIORITY OVERNIGHT

XX PAOA

94025  
CA-US SFO



*Extremely Urgent*

**RY 272**  
**FZ 227**  
**1 10:30**  
**D 5937**  
**12:15**

Insert shipping document here.

December 28, 2017

**Via Federal Express**

David Ridenour

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Dear Mr. Ridenour:

On December 15, 2017, Facebook, Inc. ("**Facebook**") received your letter containing a shareholder proposal entitled "True Diversity Board Policy" (the "**Proposal**") for Facebook's 2018 Annual Meeting of Stockholders (the "**Meeting**").

Pursuant to Rule 14a-8 under the Securities and Exchange Act of 1934, as amended ("**Rule 14a-8**"), at the time the Proposal was submitted, you were required to provide verification to Facebook that you were eligible to submit such a proposal. To be eligible, you must have continuously held at least \$2,000 in market value, or 1%, of Facebook's securities entitled to be voted on the Proposal at the Meeting for the one year period prior to the date the Proposal was submitted. For your convenience, we have enclosed a copy of Rule 14a-8, which describes in Question 2 the eligibility and procedural requirements for submitting a proposal and how you can demonstrate to Facebook eligibility to submit a proposal. Facebook's records do not indicate that you are a record holder of a sufficient number of Facebook's securities to satisfy these requirements.

To date, Facebook has not received proof that you have satisfied the ownership requirement under Rule 14a-8 and are therefore eligible to submit the Proposal. To remedy this defect and prove eligibility to Facebook, you must provide Facebook's Secretary with a written statement from the record holder of your shares (usually a broker or bank) verifying that you continuously held at least \$2,000 in market value, or 1%, of Facebook's securities entitled to be voted on the Proposal at the Meeting for at least one year preceding and including the date that the Proposal was submitted (December 15, 2017).

Pursuant to the Securities and Exchange Commission ("**SEC**") Staff Legal Bulletin No. 14F ("**SLB No. 14F**"), only brokers or banks that are Depository Trust Company ("**DTC**") participants will be viewed as record holders for purposes of Rule 14a-8. Therefore, you must obtain the required written statement from the DTC participant through which your securities are held. You can confirm whether your broker or bank is a DTC participant by checking DTC's participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>.

If the broker or bank that holds your shares is not on DTC's participant list, you should be able to find out the identity of the DTC participant through which your shares are held by asking your broker or bank. If the DTC participant is not able to confirm your individual holdings but knows the holdings of the applicable broker or bank, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time that the Proposal was submitted, the required amount of securities were

continuously held by you for at least one year—one from the applicable broker or bank confirming the required ownership, and the other from the DTC participant confirming the broker or bank's ownership. Please see the enclosed copy of SLB No. 14F for further information.

Please send the written statement(s) referred to above to Facebook, Inc., c/o Secretary, 1601 Willow Road, Menlo Park, CA 94025 (or alternatively you may transmit the statement electronically to investor@fb.com). Pursuant to Rule 14a-8, your response must be postmarked, or transmitted electronically, no later than 14 calendar days from the date you received this notification. If the deficiencies noted above are not corrected within this time period, Facebook may elect not to include your Proposal in its proxy statement for the Meeting.

We also wanted to remind you that you or your qualified representative are required to attend the Meeting to present the Proposal, as indicated in Question 8 of the enclosed Rule 14a-8.

If you have any questions, please feel free to contact me at \*\*\*. Thank you for your interest in Facebook.

Very truly yours,

A handwritten signature in black ink that reads "Erin Guldiken". The signature is written in a cursive, flowing style.

Erin Guldiken  
Lead Corporate Counsel

cc: Jeffrey R. Vetter, Fenwick & West LLP  
Investor Relations, Facebook, Inc.  
Enclosure

# Your package has been delivered

Tracking # \*\*\*

Ship date:  
Thu, 12/28/2017

Delivery date:  
Fri, 12/29/2017 10:39  
am

\*\*\*  
Facebook HQ  
Menlo Park, CA 94025:  
US



DAVID RIDENOUR  
\*\*\*  
\*\*\*  
US

## Shipment Facts

Our records indicate that the following package has been delivered

|                            |  |
|----------------------------|--|
| Tracking number:           | ***  |
| Status:                    | Delivered: 12/29/2017<br>10:39 AM Signed for By:<br>Signature not required |
| Reference:                 | ***  |
| Signed for by:             | Signature not required   |
| Delivery location:         | ***  |
| Delivered to:              | Residence  |
| Service type:              | FedEx Priority Overnight   |
| Packaging type:            | FedEx Envelope   |
| Number of pieces:          | 1  |
| Weight:                    | 0.50 lb.   |
| Special handling/Services: | Deliver Weekday<br>Residential Delivery                                    |
| Standard transit:          | 12/29/2017 by 10:30 am   |

