



DIVISION OF
CORPORATION FINANCE

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

January 30, 2018

Thomas H. Redekopp
Duane Morris LLP
thredkopp@duanemorris.com

Re: Unitil Corporation
Incoming letter dated January 8, 2018

Dear Mr. Redekopp:

This letter is in response to your correspondence dated January 8, 2018 concerning the shareholder proposal (the "Proposal") submitted to Unitil Corporation (the "Company") by Edith D. Neimark (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: Edith D. Neimark
neimark@rutgers.edu

January 30, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Unifil Corporation
Incoming letter dated January 8, 2018

The Proposal would require directors to stand for election on a yearly basis.

We are unable to conclude that the Company has met its burden of establishing that it may exclude the Proposal under rule 14a-8(b). In this regard, we note that the Company does not state whether or not the Proponent responded to the Company's request for documentary support, and if the Proponent did respond, why the response failed to establish that the Proponent satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(b).

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(8)(ii) to the extent it could, if implemented, disqualify directors previously elected from completing their terms on the board. It appears, however, that this defect could be cured if the Proposal were revised to provide that it will not affect the unexpired terms of directors elected prior to the Proposal's implementation. Accordingly, unless the Proponent provides the Company with a proposal revised in this manner, within seven calendar days after receiving this letter, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(8)(ii).

Sincerely,

Evan S. Jacobson
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.

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January 8, 2018

VIA E-MAIL

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

**Re: Unitil Corporation -- Notice of Intent to Omit Shareholder Proposal from
Proxy Materials Pursuant to Rule 14a-8 and Request for No-Action Ruling**

Dear Ladies and Gentlemen of the Securities and Exchange Commission:

This firm represents Unitil Corporation, a New Hampshire corporation (the "Company"). On behalf of the Company, we are submitting this letter pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended, to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude one (1) shareholder proposal (the "Proposal") submitted by Ms. Edith D. Neimark (the "Proponent") from the Company's proxy materials for its 2018 Annual Meeting of Shareholders (the "2018 Proxy Materials"). The Company requests that the Staff of the Commission's Division of Corporation Finance (the "Staff") not recommend enforcement action by the Commission against the Company if the Company excludes the Proposal from its 2018 Proxy Materials for the reasons discussed below. In accordance with Rule 14a-8(j), this letter is being submitted not less than 80 days before the Company intends to file its definitive 2018 Proxy Materials with the Commission.

In accordance with Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), we are transmitting this letter by electronic mail to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we also are sending a copy of this letter to the Proponent by electronic mail at neimark@rci.rutgers.edu. Rule 14a-8(k) and SLB 14D provide that shareholder proponents should send companies a copy of any correspondence that the proponent

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January 8, 2018

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elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that, if the Proponent 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 in accordance with Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proponent submitted the Proposal to the Company by e-mail dated April 14, 2017, which the Company received on April 14, 2017. A copy of the Proponent's e-mail (which includes the Proposal) is attached as Exhibit A. For your convenience, the Proposal is set forth below.

“As a longtime holder of 1,000 shares of Unitil held in street name by Schwab I wish to propose (for next year's proxy?) [t]hat members of the Board of Directors of Unitil stand for election on a yearly basis.

Reading the annual proxy of Unitil is a step back in time to an earlier era when boards of directors were classified into thirds, the same members served continuously, and their main qualification seemed to be prominence in the geographic area. Other utilities have progressed beyond that era. They have classified boards at least some of whose members have sufficient technology background to deal with current advances such as faster more secure transmission and renewable energy. Unitil should follow their example.”

REASONS FOR EXCLUSION

On April 26, 2017, the Company sent a letter to the Proponent (by electronic mail) that, among other things, (i) notified the Proponent that the Proposal failed at least two requirements of Rule 14a-8, (ii) described such failures, and (iii) notified the Proponent that the Company intended to exclude the Proposal from the 2018 Proxy Materials unless the Proponent corrected the problems in a timely manner. A copy of the Company's letter, as well as an electronic mail transmitting the letter, is attached as Exhibit B.

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2018 Proxy Materials for the following reasons.

1. Eligibility Defect under Rule 14a-8(b). The Company may exclude the Proposal pursuant to Rule 14a-8(b) because the Proponent failed to demonstrate to the Company that the Proponent was eligible to submit a proposal. In particular, (i) the Proponent did not demonstrate that the Proponent continuously held (as a registered holder or beneficial holder) at least \$2,000 in market value, or 1%, of the Company's securities entitled to be voted on the Proposal at the 2018 Annual Meeting of Shareholders for at least one year by the date the Proponent submitted the Proposal and (ii) the Proponent did not provide a statement that the Proponent intends to continue to hold the securities through the date of the 2018 Annual Meeting of Shareholders.

January 8, 2018

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The Company informed the Proponent of these eligibility defects in its letter to the Proponent but the Proponent did not adequately correct the deficiencies.

2. Substantive Defect under Rule 14a-8(i)(8)(ii). The Company may exclude the Proposal pursuant to Rule 14a-8(i)(8)(ii) because the Proposal relates to the election of directors. The Proposal requests that all members of the Company's board of directors stand for election on a yearly basis. The Proposal would have the effect of removing some of the Company's directors from office in 2018 before their terms expire in 2019 and 2020. This is because (i) at the Company's 2016 annual meeting of shareholders, four directors were elected with terms that expire in 2019 and (ii) at the Company's 2017 annual meeting of shareholders, five directors were elected with terms that expire in 2020. The Company informed the Proponent of this substantive defect in its letter to the Proponent.

CONCLUSION

Based upon the foregoing reasons and analysis, we hereby respectfully request, on behalf of the Company, that the Staff confirm that it will not recommend enforcement action if the Proposal is excluded from the 2018 Proxy Materials. We would be pleased to provide any additional information and answer any questions that the Staff may have regarding this matter. I can be reached by phone at (857) 488-4231 and by email at thredkopp@duanemorris.com.

Kindly acknowledge receipt of this letter by return electronic mail. Thank you for your consideration of this matter.

Very truly yours,



Thomas H. Redekopp

THR

Attachments

cc: Edith D. Neimark
Sandra L. Whitney

Exhibit A

From: Edith Neimark <neimark@rutgers.edu>
Sent: Friday, April 14, 2017 11:50 AM
To: Whitney, Sandy
Subject: declassify board

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

As a longtime holder of 1,000 shares of Unitil held in street name by Schwab I wish to propose (for next year's proxy?) That members of the Board of Directors of Unitil stand for election on a yearly basis.

Reading the annual proxy of Unitil is a step back in time to an earlier era when boards of directors were classified into thirds, the same members served continuously, and their main qualification seemed to be prominence in the geographic area. Other utilities have progressed beyond that era. They have classified boards at least some of whose members have sufficient technology background to deal with current advances such as faster more secure transmission and renewable energy. Unitil should follow their example.

Exhibit B

From: Whitney, Sandy <whitney@unitil.com>
Sent: Wednesday, April 26, 2017 4:42 PM
To: Edith Neimark
Cc: Collin, Mark
Subject: RE: declassify board
Attachments: E Neimark UTL Response Letter_4.26.17.pdf

Good afternoon Ms. Neimark,

Thank you for your email message to Unitil Corporation ("Unitil") on April 14, 2017. I appreciate you taking the time to write to express your proposal.

Attached please find an electronic copy of Unitil's letter of response, as required by Rule 14a-8 of the Securities Exchange Act of 1934.

Should you have any questions, please don't hesitate to contact me.

Kind regards,

Sandra L. Whitney
Corporate Secretary

Unitil Corporation
6 Liberty Lane West
Hampton, NH 03842
T 603-773-6561 ▪ M 603-969-7148
www.unitil.com

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

From: Edith Neimark [mailto:neimark@rutgers.edu]
Sent: Friday, April 14, 2017 11:50 AM
To: Whitney, Sandy
Subject: declassify board

As a longtime holder of 1,000 shares of Unitil held in street name by Schwab I wish to propose (for next year's proxy?) That members of the Board of Directors of Unitil stand for election on a yearly basis.

Reading the annual proxy of Unitil is a step back in time to an earlier era when boards of directors were classified into thirds, the same members served continuously, and their main qualification seemed to be prominence in the geographic area. Other utilities have progressed beyond that era. They have classified boards at least some of whose members have sufficient technology background to deal with current advances such as faster more secure transmission and renewable energy. Unitil should follow their example.



April 26, 2017

VIA E-MAIL

Edith D. Neimark

e-mail: neimark@rutgers.edu

Re: Shareholder Proposal to Declassify Board

Dear Ms. Neimark:

Thank you for your e-mail to Unitil Corporation ("Unitil") dated April 14, 2017.

I appreciate you taking the time to write to express your proposal. I will forward your e-mail to Unitil's board of directors for its consideration. Of course, I am happy to discuss your proposal. I can be reached toll-free at (800) 999-6501.

I should add, however, that in reading your e-mail, I am unsure whether you intend (i) to present your proposal at Unitil's 2018 annual meeting of shareholders and (ii) for your proposal to be included in Unitil's proxy materials for that meeting. If that is your intention, then, as required by Rule 14a-8 of the Securities Exchange Act of 1934 ("Rule 14a-8"), Unitil is obliged to tell you that your proposal fails to follow at least two of the eligibility and procedural requirements of Rule 14a-8 as described on Appendix A, which is included beginning on page 2. As such, Unitil intends to exclude your proposal from its proxy materials for its 2018 annual meeting of shareholders unless you adequately correct the problems outlined in a timely manner, as described on Appendix A. Also, any proposal submitted by a shareholder for consideration at Unitil's annual meeting of shareholders must comply with the requirements of Unitil's bylaws, as described on Appendix A.

Again, thank you for your e-mail. Please call me if you wish to discuss your proposal further.

Very truly yours,

A handwritten signature in black ink that reads "Sandra L. Whitney".

Sandra L. Whitney
Corporate Secretary

Enclosure

cc: Mark H. Collin, Senior Vice President, Chief Financial Officer and Treasurer

Toll Free • 800.999.6501
Direct • 603.772.0775

6 Liberty Lane West
Hampton, NH 03842
www.unitil.com

Appendix A

If you intend (i) to present your proposal at the 2018 annual meeting of shareholders of Unutil Corporation (“Unutil”) and (ii) for your proposal to be included in Unutil’s proxy materials for that meeting, then, as required by Rule 14a-8 of the Securities Exchange Act of 1934 (“Rule 14a-8”), Unutil is obliged to tell you that your proposal fail to follow at least two of the eligibility and procedural requirements of Rule 14a-8 as described below. Unutil has enclosed a copy of Rule 14a-8 for your convenience.

1. You have failed to prove that you are eligible to submit a proposal

First, you must meet the eligibility requirements of Rule 14a-8(b).

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

If you are the registered holder of your securities (which means that you do not hold your shares through a broker or other third party, and that your name appears in Unutil’s records as a shareholder), you have to provide Unutil with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. Unutil’s records indicate that you are not a registered holder.

If you are not a registered holder, you must prove your eligibility to Unutil in one of two ways:

- (i) The first way is to submit to Unutil 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 required amount of 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.
- (ii) The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the Securities and Exchange Commission (the “SEC”), you may demonstrate your eligibility by submitting to Unutil:
 - 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 meeting of shareholders.

2. Your proposal fails because it would remove directors from office before their terms expire

Second, your proposal fails the requirements of Rule 14a-8(i)(8)(ii) because it would have the effect of removing some of Unitil's directors from office in 2018 before their terms expire in 2019 and 2020. This is because (i) at Unitil's 2016 annual meeting of shareholders, four directors were elected with terms that expire in 2019 and (ii) at Unitil's 2017 annual meeting of shareholders, which was held today, five directors were elected with terms that expire in 2020.

* * * * *

Unitil intends to exclude your proposal from its proxy materials for its 2018 annual meeting of shareholders unless you adequately correct the problems discussed above in a timely manner. To be timely, your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received this letter. **To the extent required by Rule 14a-8, Unitil will file its reasons for excluding your proposal with the SEC and provide you with a copy.**

Also, please note that, as described in Unitil's proxy statement for its 2017 annual meeting of shareholders:

- any proposal submitted by a shareholder for inclusion in Unitil's proxy material for Unitil's 2018 annual meeting of shareholders must be received by Unitil at its corporate headquarters by November 20, 2017; and
- Unitil's bylaws provide that any proposal submitted by a shareholder for consideration at Unitil's 2018 annual meeting of shareholders must be received by Unitil at its corporate headquarters not earlier than December 27, 2017 and not later than January 26, 2018. The proposal also must comply with the other requirements set forth in Unitil's bylaws.

§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]