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

DIVISION OF
CORPORATION FINANCE

February 8, 2018

Scott H. Kimpel
Hunton & Williams LLP
skimpel@hunton.com

Re: DTE Energy Company
Incoming letter dated December 12, 2017

Dear Mr. Kimpel:

This letter is in response to your correspondence dated December 12, 2017 concerning the shareholder proposal (the "Proposal") submitted to DTE Energy Company (the "Company") by Sarah Moore (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also received a letter from the Proponent dated January 5, 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: Sarah Moore
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*** FISMA & OMB Memorandum M-07-16

February 8, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: DTE Energy Company
Incoming letter dated December 12, 2017

The Proposal requests that the Company publish an assessment of the long-term impact its environmental record has had on its capital access, equity performance and brand value or goodwill.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In this regard, we note that the Proposal relates, in part, to an assessment of potential antitrust fines. Accordingly, 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)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

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.

January 5th, 2018

Sarah Moore
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VIA EMAIL (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: **DTE** Energy Company
Shareholder Proposal Submitted By Sarah Moore
Securities Exchange Act of 1934 - Rule 14a-8

Dear Ladies and Gentlemen:

I am writing as the shareholder filing a resolution with DTE Energy Company, a Michigan corporation ("DTE" or the "Company"), in response to DTE's no-action request (the "Request") to exclude my shareholder resolution from its proxy for its 2018 Annual Meeting of Shareholders. While DTE seeks to exclude the proposal entitled "Assessment of the Impact of Environmental Infractions and Remediation on Capital Access, Equity Performance and Brand Value" (the "Proposal"), I have evidence that the Company's case for exclusion pursuant to Rule 14a-8G promulgated under the Securities Exchange Act of 1934 is without merit. I respectfully request that the Staff of the Division of Corporation Finance (the "Staff') of the Securities and Exchange Commission (the "Commission") deny DTE's exclusion Request.

Regarding DTE's "Basis for Exclusion," I will address each of the Company's three points in its Request:

1. DTE requests exclusion "pursuant to Rule 14a-8(c) because the Proposal constitutes multiple proposals."

DTE then proceeds to break down what is really one proposal into its constituent parts, to claim it is multiple proposals.

The unity of the issues raised in the Proposal derives from an independent report prepared for investors by Sustainalytics that identified a series of environmental issues and infractions that the analysts believed to be material and relevant to affect the company's financial performance. This Proposal requests that the company provide its analysis of these interrelated issues as identified by respected external analysts.

The Proposal is for DTE to publish a report detailing how the company's environmental record materially affects its business. Such a report would likely include various ways DTE's environmental infractions and contributions have impacted the company. To say detailing those different effects, which all could be easily included in one published report, are separate requests is misleading and untrue.

The enclosed Sustainalytics report of DTE's environmental-social and governance or ESG rating, which my Proposal references, demonstrates the interrelatedness of the issues raised in the proposal.

Conducting a "cost-benefit analysis of improving DTE's environmental record by remediating DTE's now defunct Shenango coke facility" is not a separate request. DTE's environmental violations at the Shenango coke facility are an important part of its environmental record negatively affecting Sustainalytics ESG rating of DTE. Given that the Deutsche Bank Study referenced in the Proposal revealed that such ESG ratings affect companies' access to capital and stock performance, analyzing the cost-benefits of remediating Shenango is relevant to the environmental record and how it could potentially be improved.

The Sustainalytics report also references an antitrust lawsuit regarding DTE's Nexus Gas Transmission Project as negatively affecting DTE's ESG rating. According to the Sustainalytics DTE report the antitrust suit was filed by an *environmental* organization. "The Sierra Club also alleges that the construction of Nexus will increase electricity rates for retail customers above competitive levels and will exclude more cost-effective energy suppliers, including renewable energy sources in Michigan." So again, measuring the impact of this specific incident as mentioned in the Proposal are part of the company's overall ESG record affecting its rating and thus its access to capital and stock performance, according to the Deutsche Study. If the Nexus Pipeline headline risk is part of the company's overall record and ESG rating, its impact can be part of a single ESG-record study.

Prior Staff decisions considering proposals for reports addressing multiple issues in a general issue area have rejected the idea that requesting such a report reflects "multiple proposals." See, for instance, Anheuser-Busch Cos. Inc. (February 28, 1993) a multi-part report regarding under-age drinking, Marathon Petroleum (February 27, 2017) a multipart report on indigenous rights in acquisitions, Safeway Inc. (March 7, 2010) global warming.

The supporting statement here suggests what the report "could include," not what it must include. They are recommendations to the board whose oversight would determine the contents of the report. Also, note that those supporting recommendations while more than one thing are similar to the variety of potential measurements other proposals have identified.

2. DTE requests exclusion of the Proposal "pursuant to (ii) Rule 14a-8(i)(3) because the proposal is "impermissibly vague and indefinite so as to be inherently misleading;"

Again, this applies the same atomizing logic to one proposal for a report on the

impact of the company's ESG record by breaking it down into its constituent parts and claiming they are separate requests and therefore vague.

According to DTE's Request: "The Proposal vacillates among so many unrelated subjects that the Company's shareholders could not be expected to make an informed decision on the exact substance of the matters being presented. The Proposal leaves critical terms and phrases undefined and subject to multiple interpretations, and it does not provide sufficient guidance to enable the Company to implement it without making numerous and significant assumptions regarding what the Proponent is actually contemplating."

Again, the proposal is to publish one impact report of DTE's ESG record. It is ironic that much of DTE's ESG record, including the Shenango coke facility violation and Nexus pipeline antitrust case, is encapsulated in a report the Proposal references by Sustainalytics, a far smaller company than DTE that writes such ESG ratings reports for 7,000 companies. If Sustainalytics can produce such reports for thousands of companies detailing various aspects of their ESG records, why is not possible for DTE to do the same and measure the impact of that record on its business? There is nothing vague about that request.

The violations related to the Shenango coke facility and the Nexus pipeline anti-trust suit are detailed in Sustainalytics ratings report for DTE, and it is evident that DTE's history regarding both affected Sustainalytics' rating of the company. There is nothing vague about the quantified impact of Shenago and Nexus in the Sustainalytics report rating. Yet if DTE seeks to claim that its history at Shenango is of no import, let it do so publicly so shareholders can see this in an environmental report.

DTE's no action Request also states: "The Proposal fails to define what is meant by the phrases 'environmental infractions and remediation' and 'environmental record.' The use of separate terminology would imply that the Proponent assigns different meanings to these phrases. The term 'infractions and remediation' would seem limited to past violations and any related remedial efforts, whereas 'environmental record' would seem to encompass a much wider array of issues beyond simple violations and remediation, but reasonable minds could disagree as to this interpretation."

But the Proposal also states: "Shareholders request that DTE Energy, with board oversight, publish an assessment of the long-term impact its environmental record has had on its capital access, equity performance and brand value or goodwill." The "board oversight" is to help determine how DTE's "environmental record" would be defined in the report. One can assume DTE's board of directors is composed of people with reasonable minds who can come to an agreement as to the meaning of the term "environmental record." Since the Sustainalytics report has already defined that environmental record to rate DTE, it would be easy for DTE's board to adapt Sustainalytics ratings and record system for the company as a template.

And the Proposal states in its Supporting Statement what such a report "could" include, as a suggestion. If DTE deems such matters irrelevant to such a report, let the company explain why in the proxy voting ballot instead of excluding a proposal that merely makes a recommended inclusion.

3. DTE requests exclusion of the Proposal "pursuant to (ii) Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations."

According to Staff Legal Bulletin No. 14I (CF), dated November 1, 2017 and linked here https://www.sec.gov/interps/legal/cfslb14i.htm :

"The Commission has stated that the policy underlying the "ordinary business" exception rests on two central considerations.[2] The first relates to the proposal's subject matter; the second, the degree to which the proposal "micromanages" the company. Under the first consideration, proposals that raise matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote.[3] Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations.[4]

At issue in many Rule 14a-8(i)(7) no-action requests is whether a proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant. These determinations often raise difficult judgment calls that the Division believes are in the first instance matters that the board of directors is generally in a better position to determine. A board of directors, acting as steward with fiduciary duties to a company's shareholders, generally has significant duties of loyalty and care in overseeing management and the strategic direction of the company. A board acting in this capacity and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote."

First, it seems hard for DTE to argue my Proposal micromanages the company's business as the Proposal is to publish a report of the company's environmental record, not to change any specific aspect of DTE's underlying business. The fact that DTE cites SEC bulletins from 1983 instead of the most up-to-date Staff releases to bolster its case that asking for an environmental-related report is micromanaging its day-to-day business shows a lack of understanding of more recent precedent. There have been literally hundreds of accepted and voted on proxies requesting environmental reports at U.S. companies in recent years, including at DTE. The report itself would easily "be subject to direct shareholder oversight" upon publication.

Second, it is relatively easy to prove that how DTE's environmental record affects its access to capital, equity performance and brand value or goodwill "focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote." As the Proposal states: "More than 1,750 signatories with a combined $70 trillion in assets under management have agreed to follow the United Nations' Principles for Responsible Investment, the first principle of which is incorporating ESG issues into investment

decisions. These signatories include DTE Energy's largest shareholders."

Such shareholders must by default care about a company's environmental record, or they wouldn't have signed Principals for Responsible Investment. They have a right to know whether DTE's environmental history is affecting its financial performance. Analyzing that ESG data as detailed in the Sustainalytics report and its impact on DTE transcends ordinary business operations. It does so much in fact, that Sustainalytics is publishing similar data and ratings for 7,000 companies. Investors are incorporating that environmental data into their selection criteria for securities, the Deutsche Bank study referenced in the Proposal showed. Meanwhile, lenders are incorporating it into their decisions to provide debt capital company. Such data is highly relevant to the future viability of any corporation.

For all of these reasons I ask that you not permit DTE to exclude my Proposal from its proxy for its 2018 Annual Meeting of Shareholders.

Sincerely,

Sarah Moore

Shareholder Proposal — Assessment of the Impact of Environmental Infractions and Remediation on Capital Access, Equity Performance and Brand Value

Whereas: In June 2012, Deutsche Bank published a report entitled "Sustainable Investing: Establishing Long-Term Value and Performance," analyzing 100 academic studies on sustainable investing and found:

"100% of the academic studies agree that companies with high ratings for CSR [Corporate Social Responsibility] and ESG [Environmental, Social and Governance] factors have a lower cost of capital in terms of debt (loans and bonds) and equity. In effect, the market recognizes that these companies are lower risk than other companies and rewards them accordingly."

And: "89% of the studies we examined show that companies with high ratings for ESG factors exhibit market-based outperformance, while 85% of the studies show these types of company's exhibit accounting-based outperformance."

More than 1,750 signatories with a combined $70 trillion in assets under management have agreed to follow the United Nations' Principles for Responsible Investment, the first principle of which is incorporating ESG issues into investment decisions. These signatories include DTE Energy's largest shareholders.

Sustainalytics, a leading ESG rating firm, assigns DTE Energy an "Average" ESG score. Among DTE's "Qualitative Performance - Controversies" Sustainalytics cited as having the "highest controversy level" influencing its rating were "Operations Incidents, Emissions, Effluents and Waste, Land Use, Biodiversity and Anti-Competitive Practices." Specifically, with the Environmental Quantitative Performance score, DTE receives a 0 out of 100 for "Environmental Penalties" and "Carbon Intensity," the report citing that "the company has received more than one major environmental fine or non-monetary sanction in the last three years" and that "the company's carbon emissions intensity is well above the industry median."

Among the fines Sustainalytics cited for its rating were air pollution violation fines from the Allegheny County Health Department for DTE's coke plant on Neville Island. Also noted was a complaint from the Sierra Club with the Federal Trade Commission and the Department of Justice that DTE's Nexus Gas Transmission Project was breaching antitrust rules.

Sustainalytics' ESG ratings are employed by Morningstar, the most popular mutual fund research firm. Companies receiving "Above Average" and "High" sustainability ratings from Morningstar should receive more investor dollars from ESG-focused funds.

DTE operates in increasingly deregulated and fragmented energy markets in which renewable alternatives to coal and natural gas are becoming competitively priced. In such an environment, DTE's brand image will affect consumers' decision whether to use it as their energy provider.

Resolved: Shareholders request that DTE Energy, with board oversight, publish an assessment of the long-term impact its environmental record has had on its capital access, equity performance and brand value or goodwill.

Supporting Statement:

The report could include:

- A cost-benefit analysis of improving DTE's environmental record by remediating DTE's now defunct Shenango coke facility and replacing it with a renewable energy one such as a solar array.
- An assessment of the potential antitrust fines and damage to DTE's brand from headline risk over its Nexus pipeline.

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December 12, 2017

VIA EMAIL (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: DTE Energy Company
Shareholder Proposal Submitted By Sarah Moore
Securities Exchange Act of 1934 - Rule 14a-8

Dear Ladies and Gentlemen:

I am writing on behalf of DTE Energy Company, a Michigan corporation ("DTE" or the "Company"), pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to inform you that the Company intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Shareholders (the "2018 Proxy Materials") a shareholder proposal entitled "Assessment of the Impact of Environmental Infractions and Remediation on Capital Access, Equity Performance and Brand Value" (the "Proposal"), submitted by Sarah Moore (the "Proponent"). We respectfully request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with the Company's view that, for the reasons stated below, the Company may exclude the Proposal from the 2018 Proxy Materials.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), the Company is emailing this letter and its exhibits to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), the Company is submitting this letter not less than 80 calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission and is concurrently sending a copy of this correspondence 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 proponent elects to submit to the Commission or the Staff. Accordingly, the Company is taking this

opportunity to inform the Proponent that if she submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned.

The Proposal

The Proposal states:

Resolved: Shareholders request that DTE Energy, with board oversight, publish an assessment of the long-term impact its environmental record has had on its capital access, equity performance and brand value or goodwill.

Supporting Statement: The report could include:

- A cost-benefit analysis of improving DTE's environmental record by remediating DTE's now defunct Shenango coke facility and replacing it with a renewable energy one such as a solar array.

- An assessment of the potential antitrust fines and damage to DTE's brand from headline risk over its Nexus pipeline.

A copy of the Proposal, supporting information and all related correspondence is attached hereto as Exhibit A.

Basis for Exclusion

As discussed in more detail below, the Company respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to:

(i) Rule 14a-8(c) because the Proposal constitutes multiple proposals;

(ii) Rule 14a-8(i)(3) because it is impermissibly vague and indefinite so as to be inherently misleading; and

(iii) Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations.

Background

The Proponent submitted to the Company the Proposal entitled "Assessment of the Impact of Environmental Infractions and Remediation on Capital Access, Equity Performance and Brand Value" in a letter dated November 6, 2017, which was received by the Company via regular mail on November 13, 2017. The Company reviewed its stock records, which did not indicate that the Proponent was the record owner of sufficient shares to satisfy the requirements of Rule 14a-8(b) of the Exchange Act. The submission included a copy ofa letter from Charles Schwab to the Company, dated October 24, 2017 (the "Schwab Letter"), which confirmed that the Proponent's "account has held shares of DTE Energy Company: DTE continuously for the past year." The submission also included a written statement that the Proponent "intend[s] to own[ ] . . . at least $2,000 worth of DTE's common stock through the date of the 2018 annual meeting."

Accordingly, on November 16, 2017, within 14 days of the date the Company received the Proposal, the Company sent the Proponent a letter via overnight mail notifying her of the procedural deficiencies, as required by Rule 14a-8(f) (the "Deficiency Notice"). In the Deficiency Notice, the Company informed the Proponent of the requirements of Rule 14a-8 and how to cure the procedural deficiencies. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);e
- that, according to the Company's stock records, neither the Proponent nor thee Proponent's Roth Contributory IRA was a record owner of sufficient shares;e
- the type of statement or documentation necessary to demonstrate beneficiale ownership under Rule 14a-8(b), including the requirement for the statement toe verify that the Proponent continuously held the requisite number of Companye shares for the one-year period preceding and including November 6, 2017, the datee the Proposal was submitted;e
- that the Proponent must submit verification of the Proponent's ownership of thee requisite number of Company shares from the record owner of those shares;e
- that to be a record holder, a broker or bank must be a DTC participant ande provided the DTC website address at which the Proponent could confirm whethere a particular broker or bank was a DTC participant;e

- that the Proponent is required under Rule 14a-8(b) to provide a statement of here intent to continue ownership of the required number of shares through the date of the Company's 2018 Annual Meeting of Shareholders;

- that a shareholder may submit no more than one proposal to a company for a particular shareholders meeting;

- that the Proponent's response must be postmarked or transmitted electronically no later than 14 days from the date the Proponent receives the Deficiency Notice; and

- that a copy of the shareholder proposal rules set forth in Rule 14a-8 and Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") were enclosed.

Shipping records from overnight courier service UPS confirm delivery of the Deficiency Notice to the Proponent on November 17, 2017.

The Company received the Proponent's response to the Deficiency Letter on December 1, 2017, which response purported to remedy the proof of ownership deficiencies identified in the Deficiency Notice. Specifically, the Proponent's response included a second letter from Charles Schwab, dated November 28, 2017 (the "Second Schwab Letter"), which stated that "as of November 28, 2017 Sarah Moore has held continuously for at least fourteen months, 24.9243 shares of DTE Energy Co (DTE) in her account . . . The DTC number for Charles Schwab & Co. Inc. is 0164." The Proponent's response did not attempt to remedy the multiple proposal deficiency identified in the Deficiency Notice. The Company has received no further correspondence from the Proponent or her broker regarding the Proposal.

I. The Proposal May Be Excluded Under Rule 14a-8(c) Because The Proposal Constitutes Multiple Proposals.

The Company may exclude the Proposal from the 2018 Proxy Materials because the Proposal constitutes multiple proposals in violation of Rule 14a-8(c). Rule 14a-8(c) provides that a shareholder "may submit no more than one proposal to a company for a particular shareholders' meeting." The one-proposal limitation applies not only to proponents who submit multiple proposals in multiple submissions, but also to proponents who submit multiple proposals as elements or components of an ostensibly single proposal. Although there is significant ambiguity to the Proposal (as discussed in greater detail below in Section II), we believe the Proposal could be read to seek to provide shareholders with the opportunity

to mandate that the Company's board of directors take the following separate and distinct actions:

(1)areport on the Company's "environmental record";a

(2)aanalyze the Company's "capital access" and "equity performance";a

(3)aanalyze the Company's "brand image" and "brand value";a

(4)aanalyze "goodwill";a

(5)aanalyze the Company's compliance with environmental law;a

(6)aassess the financial and reputational impacts associated with the Company'sa alleged "environmental infractions";a

(7)aassess the financial and reputational impacts associated with the Company'sa "environmental . . . remediation";a

(8)aconduct a "cost-benefit analysis of improving DTE's environmental record bya remediating DTE's now defunct Shenango coke facility and replacing it with aa renewable energy one such as a solar array";a

(9)aanalyze the Company's compliance with antitrust law; anda

(10)aassess the "potential fines and damage to DTE's brand from headline risk over itsa Nexus pipeline."a

The Staff has consistently recognized that Rule l4a-8(c) permits the exclusion of proposals combining separate and distinct elements that lack a single well-defined unifying concept, even if the elements are presented as part of a single program and relate to the same general subject matter. For example, in *American Electric Power* (Jan. 2, 2001), the Staff concurred in the exclusion of a proposal which sought to: (i) limit the term of director service, (ii)arequire at least one board meeting per month, (iii) increase the retainer paid to thea company's directors and (iv) hold additional special board meetings when requested by thea Chairman or any other director. The Staff found that the proposal constituted multiplea proposals despite the proponent's argument that all of the actions were about the "governancea of AEP." *See also PG&E Corp.* (Mar. 11, 2010) (concurring in the exclusion of a proposala requesting the company to (i) mitigate all potential risks encompassed by studies of aa

particular power plant site, (ii) defer any request for or expenditure of funds for license renewal at the site and (iii) limit the production of high-level radioactive wastes at the site); *Parker-Hannifin Corp.* (Sept. 4, 2009) (concurring in the exclusion of a proposal requesting the company to institute a Triennial Executive Pay Vote program that provides shareholders the opportunity to (i) approve the compensation, incentive plans and post-employment benefits of the company's named executive officers and (ii) comment on and ask questions about the company's executive compensation policies on a forum); *Duke Energy Corp.* (Feb. 27, 2009) (concurring in the exclusion of a proposal requesting the company to (i) require candidate directors to have personally owned at least $2000 worth of the company common stock for at least one year prior to their nomination, (ii) have candidates declare any potential conflicts of interest upon nomination and (iii) limit director compensation to company common stock only).

Staff no-action letter precedent indicates that the test for whether a single submission with multiple elements and components (such as the Proposals) actually constitutes more than one proposal is whether the elements or components of the proposal are closely related and essential to a single well-defined unifying concept. *See Pacific Enterprises* (Feb. 19, 1998) (concurring in the exclusion of a single submission related to six matters when the company argued that the elements failed to constitute "closely related elements and essential components of a single well-defined unitary concept necessary to comprise a single shareholder proposal"). *See also, e.g., Textron, Inc.* (Mar. 7, 2012) (concurring with the company's view that a proposal was excludable under Rule 14a-8(c) because a "change of control" provision in a proxy access proposal diverged from the proposal's overarching goal of providing shareholders with proxy access and instead sought to address a possible consequence of shareholders utilizing the proposed proxy access mechanism); *General Motors Corporation* (Apr. 9, 2007) (concurring in the exclusion of a single submission under Rule 14a-8(c) when the company argued that the proposal included several distinct steps to restructure the company and were not so closely related to comprise a single proposal).

Even where multiple elements or components of a proposal relate to some general or central topic, a proposal that contemplates a variety of loosely related actions may be excludable as multiple proposals under Rule 14a-8(c). *See, e.g., Eaton Corporation* (Feb. 20, 2012) (concurring in the exclusion of a proposal in reliance on Rule 14a-8(c) where the proposal contained multiple components related to employee compensation relating, and accounting for, sales to independent distributors, the method of reporting of corporate ethics, accounting practices relating to goodwill and other intangible assets and concerns relating to operations in India, with the Staff specifically noting that the proposal relating to the method of reporting corporate ethics involved a separate and distinct matter from the proposals

relating to employee compensation relating to, and accounting for, sales to independent distributors, the method of reporting of corporate ethics, accounting practices relating to goodwill and other intangible assets, and concerns relating to operations in India); *General Motors Corporation* (Apr. 9, 2007); *HealthSouth Corporation* (Mar. 28, 2006) (concurring in the exclusion of a proposal regarding amendments to the company's bylaws related to board membership that included proposals on the number of directors serving on the board and to vacancies on the board); *Compuware Corporation* (July 3, 2003) (concurring in the exclusion of a proposal to improve overall efficiency and operations of a company that included features requiring the reimbursement of life insurance premiums, the use of a competitive bidding system for printing contracts, the termination of a specific contract, the chief executive officer to devote all of his time to increasing sales and profitability, the filing of a Form 8-K for certain events and the release of an announcement when officers and directors plan to sell or transfer shares); *Fotoball USA, Inc.* (May 6, 1997) (concurring in the exclusion of a proposal regarding requests for directors which included minimum share ownership for directors, that directors be paid in shares or options and that non-employee directors perform no other services for the company for compensation).

Here, the Proponent requests that the Company report on a varied array of issues involving a broad and unrelated collection of topics. The title of the proposal itself contains five separate and disparate subjects: "environmental infractions," "remediation," "capital access," "equity performance" and "brand value." The "Whereas" clauses make unsubstantiated allegations concerning violations of "antitrust rules" while also referring to the Company's position in "increasingly deregulated and fragmented energy markets in which renewable alternatives to coal and natural gas are becoming competitively priced." The "Resolved" clause retains the concepts of "capital access," "equity performance" and "brand value" but loses "environmental infractions and remediation" in favor of the concept of "environmental record," then adds an entirely new concept of "goodwill." Whether the Proponent refers to "goodwill" in the context of public relations or instead in the context of financial reporting is unclear; each is a plausible interpretation based on surrounding text in the Proposal.

The Supporting Statement tacks in a different direction, requesting that the Company's report include both "a cost-benefit analysis of improving DTE's environmental record by remediating DTE's now defunct Shenango coke facility and replacing it with a renewable energy one such as a solar array" and "an assessment of the potential antitrust fines and damage to DTE's brand from headline risk over its Nexus pipeline." As a point of fact, the Nexus pipeline is a 50-50 joint venture between the Company and Enbridge Inc., an unrelated third party, over which the Company does not have unilateral control. The "Resolved" clause

seeks historical information (in the past tense) by referring to the "impact" the Company's "environmental record *has* had" (emphasis added), but the Supporting Statement is inherently forward-looking by referring to future plans for the Shenango facility and an assessment of "*potential* antitrust fines and damages" (emphasis added) with respect to events that have not (and may never) come to pass.

Although portions of the Proposal could be characterized as relating to the broad concept of environmental law compliance, even this loose connection collapses when the Proposal shifts to "antitrust rules," "remediating" the "Shenango coke facility and replacing it with a renewable energy one such as a solar array" and "headline risk" over the routine operations of the joint-venture Nexus pipeline. The Proponent has attempted to combine an assortment of distinct matters into a single proposal without the elements being sufficiently closely related and essential to a single well-defined unifying concept. For example, antitrust law and environmental law are two entirely separate regulatory regimes, and antitrust law has no logical connection to "environmental infractions and remediation" or the Company's "environmental record." Likewise, the Company's general "environmental record" is distinguishable from the narrow issue of replacing the Shenango facility with a solar array and the possibly related statement that "renewable alternatives to coal and natural gas are becoming competitively priced." Each of these issues is separately distinguishable from the Nexus pipeline and "potential antitrust fines and damage to DTE's brand from headline risk." Moreover, the requests concerning the Shenango facility and the Nexus pipeline seem divorced from the concepts of "capital access" and "equity performance."

While the Staff has on occasion determined that a single submission with separate elements was actually one proposal, one of the following often was true:

- The separate elements were linked to a narrow, discrete topic or action. *See, e.g., Washington Mutual Inc.* (Feb. 20, 2007) (enhancing director nominees' qualification requirements to exclude (i) salaried employees and (ii) certaine significant stockholders).

- The separate elements were either sequential, interdependent, or temporally linked, to achieve a combined purpose. *See, e.g., Meadow Valley Corporation* (Mar. 30, 2007) (liquidating the company and then distributing proceeds of that liquidatione to stockholders).

- The separate elements were associated with a specific legal requirement. *See, e.g., JP Morgan Chase & Co.*(Mar. 3, 2009) (implementation of executivee

compensation reforms set forth for recipients of funding under the Troubled Asset Relief Program).

None of these exceptions apply to the Proposal. One may argue that the one unifying topic among the elements is environmental compliance, which itself is certainly not a narrow, discrete topic. However, the separate elements of the Proposal are not sequential, interdependent, or temporally linked, to achieve a combined purpose. Instead, they concern a wide and varied range of fundamentally unrelated issues. Parts of the Proposal seem to deal with historical facts, and others are forward-looking. The separate elements of the Proposal also are not associated with a specific legal requirement, and in fact, relate to two separate and entirely unrelated bodies of law when antitrust rules are introduced. Moreover, the Company's "environmental record" has no relationship to the narrow question of how it chooses to operate a decommissioned coke facility or a natural gas pipeline on a day-to-day basis, none of which is related to "capital access" and "equity performance."

The scope of the Proposal is incredibly broad and represents a myriad of separate and distinct actions submitted under the guise of a single Proposal. The Company alerted the Proponent to these deficiencies in a timely and proper deficiency letter from its counsel, yet the Proponent took no steps to remedy these defects. As a result, the Proposal may properly be excluded under Rule 14a-8(c).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

A. Rule 14a-8(i)(3)

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if "the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." Rule 14a-9 provides that no solicitation shall be made by means of any proxy statement containing "any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading," which requires that information in a proxy statement be clearly presented.

The Staff has consistently concurred that shareholder proposals that are vague and indefinite are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because shareholders cannot make an informed decision on the merits of a proposal without at least

knowing what they are voting on. The Staff has taken the position that shareholder proposals may be excluded under Rule 14a-8(i)(3) if they are so inherently vague and indefinite that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."). Furthermore, the Staff has concurred that a shareholder proposal is sufficiently misleading so as to justify its exclusion where a corporation and its shareholders might interpret the proposal differently. *See Fuqua Industries, Inc.* (Mar. 12, 1991) (noting that any action taken by the company upon implementation of the proposal could be significantly different from the actions envisioned by the shareholders voting on the proposal).

The Staff also has consistently concurred with the exclusion of proposals which do not define critical terms or phrases or otherwise provide guidance on what is required to implement the proposals. For example, in *Bank of America Corp.* (Feb. 25, 2008), the Staff concurred with the exclusion of a proposal requesting that the corporation amend its policies to "observe a moratorium on all financing, investment and further involvement in activities that support MTR [(mountain top removal) projects]," but did not define what would constitute "further involvement" and "activities that support MTR [projects]." *See also Eastman Kodak Co.* (Mar. 3, 2003) (concurring in the exclusion of a proposal seeking to cap executive salaries at $1 million, including bonus, perks and options, because it failed to define various terms and how options were to be valued); *American Telephone and Telegraph Company* (Jan. 12, 1990) (concurring in the exclusion of a proposal seeking to prohibit a corporation from "interfering" with "government policy" of foreign governments, as it would require, if implemented, subjective determinations regarding what is considered to be "interference" and "government policy" as well as when the proposal would apply).

B. The Proposal is impermissibly vague and indefinite.

The Proposal is impermissibly vague and indefinite and is therefore excludable under Rule 14a-8(i)(3). The Proposal vacillates among so many unrelated subjects that the Company's shareholders could not be expected to make an informed decision on the exact substance of the matters being presented. The Proposal leaves critical terms and phrases undefined and subject to multiple interpretations, and it does not provide sufficient guidance

to enable the Company to implement it without making numerous and significant assumptions regarding what the Proponent is actually contemplating.

As noted above, the Proponent requests that the Company report on a confusing array of issues involving a broad and unrelated collection of topics. The title of the Proposal itself contains five separate and disparate subjects: "environmental infractions," "remediation," "capital access," "equity performance" and "brand value." Confusingly, the "Resolved" clause retains the concepts of "capital access," "equity performance" and "brand value" but loses "environmental infractions and remediation" in favor of the concept of "environmental record," then adds an entirely new concept of "goodwill."

The "Whereas" clauses also cloud the reader's understanding by making unsubstantiated allegations concerning purported violations of "antitrust rules" while also referring to the Company's position in "increasingly deregulated and fragmented energy markets in which renewable alternatives to coal and natural gas are becoming competitively priced." The Supporting Statement further muddies the waters, requesting that the Company's report include both "a cost-benefit analysis of improving DTE's environmental record by remediating DTE's now defunct Shenango coke facility and replacing it with a renewable energy one such as a solar array" and "an assessment of the potential antitrust fines and damage to DTE's brand from headline risk over its Nexus pipeline." Although portions of the Proposal could be characterized as relating to the broad concept of environmental law compliance, even this loose connection collapses when the Proposal shifts to "antitrust rules," converting the "Shenango coke facility" to a "solar array" and "headline risk" over the routine operations of the joint venture Nexus pipeline.

The Proposal fails to define what is meant by the phrases "environmental infractions and remediation" and "environmental record." The use of separate terminology would imply that the Proponent assigns different meanings to these phrases. The term "infractions and remediation" would seem limited to past violations and any related remedial efforts, whereas "environmental record" would seem to encompass a much wider array of issues beyond simple violations and remediation, but reasonable minds could disagree as to this interpretation. By introducing the concept of antitrust law, it also is unclear whether the Proponent assumes antitrust law and environmental law are one and the same, though we believe most readers would not conflate these two separate bodies of law. Also, whether the Proponent refers to "goodwill" in the context of public relations or instead in the context of financial reporting is unclear to the reader; each is a plausible interpretation based on surrounding text in the Proposal. Furthermore, "headline risk" is an amorphous term with no

single accepted definition. Each of these highlighted phrases, as used in the Proposal, is vague and overly broad and generic.

The Company and its shareholders could rationally differ on the type and scope of the report being requested by the Proponent. In light of the various and sundry issues raised in the Proposal, it is unclear to the Company what actions the Proponent is seeking shareholders to approve, and if approved, what measures the Company should report on or implement. As highlighted above, at a minimum the Proposal requests that the Company take each of the following actions: report on the Company's "environmental record"; analyze the Company's "capital access" and "equity performance"; analyze the Company's "brand image" and "brand value"; analyze "goodwill"; analyze the Company's compliance with environmental law; assess the financial and reputational impacts associated with the Company's alleged "environmental infractions"; assess the financial and reputational impacts associated with the Company's "environmental . . . remediation"; conduct a "cost-benefit analysis of improving DTE's environmental record by remediating DTE's now defunct Shenango coke facility and replacing it with a renewable energy one such as a solar array"; analyze the Company's compliance with antitrust law; and assess the "potential fines and damage to DTE's brand from headline risk over its Nexus pipeline." When presented with the Proposal, a shareholder may reasonably wonder: Is the emphasis of the Proposal on environmental law or antitrust law? Am I voting on converting the Shenango coke facility to a solar array? Alternatively, am I voting on the Nexus pipeline? Since the Company is not the 100% owner of the Nexus pipeline, what exactly am I weighing in on? Does the Proponent understand that the Company does not have unilateral control over the Nexus pipeline? Given the shift in tense between the Company's past acts and future opportunities, what temporal period am I being asked to vote on? The Proposal's use of broad and generic undefined terms causes the scope of the Proposal to be potentially far-reaching and leaves numerous unanswered questions for the Company and its shareholders.

The Staff has consistently permitted the exclusion of a proposal "involving vague and indefinite determinations . . . that neither the shareholders voting on the proposal nor the company would be able to determine with reasonable certainty what measures the company would take if the proposal was approved." For example, in *PetSmart, Inc.* (Apr. 12, 2010), the proposal requested that the board require that the company's suppliers bar the purchase of animals for sale from distributors that have violated or are under investigation for violations of "the law." In concurring in the exclusion of the proposal under Rule 14a-8(i)(3), the Staff noted that "the proposal does not sufficiently explain the meaning of 'the law' and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *See, e.g., Alcoa Inc.* (Dec.

24, 2002) (concurring in the exclusion of a proposal requesting the company to commit itself to "full implementation of these human rights standards"); *Puget Energy, Inc.* (Mar. 7, 2002) (concurring in the exclusion of a proposal requesting the implementation of a "policy of improved corporate governance").

The Proposal is not clearly presented, and key terms in the Proposal are vague, undefined, and overly broad and generic. Similar to the proposals above-described, the Proposal is so inherently vague and indefinite that neither the shareholders, nor the Company in implementing the Proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires in the preparation of the report. In addition, the Proposal is misleading because any action ultimately taken by the Company upon implementation of the Proposal could be significantly different from the actions envisioned by the Proponent and the shareholders voting on the Proposal. Thus, the Company believes that the Proposal is impermissibly vague and indefinite so as to be misleading, and therefore, the Proposal may properly be excluded pursuant to Rule 14a-8(i)(3).

III. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating To The Company's Ordinary Business Operations.

A. Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to exclude from its proxy materials a shareholder proposal that "deals with a matter relating to the company's ordinary business operations." In the Commission's release accompanying the 1998 amendments to Rule 14a-8, the Commission stated that the general underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission identified two central considerations that underlie the ordinary business exclusion. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

As explained in the 1998 Release, under the first consideration, a proposal that raises matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" may be excluded, unless the proposal raises social policy issues that are sufficiently significant to transcend day-to-day business matters.

A proposal's request for a review of certain risks does not preclude exclusion if the underlying subject matter of the proposal is ordinary business. As the Staff indicated in Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), in evaluating shareholder proposals that request a risk assessment:

> [R]ather than focusing on whether a proposal and supporting statement relatee to the company engaging in an evaluation of risk, we will instead focus on thee subject matter to which the risk pertains or that gives rise to the risk. . . . [S]imilar to the way in which we analyze proposals asking for the preparatione of a report, the formation of a committee or the inclusion of disclosure in ae Commission-prescribed document—where we look to the underlying subjecte matter of the report, committee or disclosure to determine whether thee proposal relates to ordinary business—we will consider whether thee underlying subject matter of the risk evaluation involves a matter of ordinarye business to the company.e

A proposal being framed in the form of a request for a report also does not change the nature of the proposal. The Staff has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the substance of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983).

B. The Proposal relates to the Company's legal compliance program.

Although the Proposal represents a myriad of separate and distinct topics, portions of the Proposal implicate the Company's compliance with legal and regulatory requirements. Specifically, the Proposal relates to the Company's compliance with environmental and antitrust laws. For instance, the title of the Proposal references an "assessment of the impact of *environmental infractions* and remediation" (emphasis added). The Proposal contains several references to alleged environmental and antitrust violations and specifically mentions past environmental "fines from the Allegheny County Health Department" related to the Company's Shenango coke facility and an unsubstantiated "complaint from the Sierra Club with the Federal Trade Commission and the Department of Justice that DTE's Nexus Gas

Transmission Project was breaching antitrust rules." The "Resolved" clause and the Supporting Statement also request information relating to the Company's "environmental record," which, as discussed above, could plausibly be interpreted as relating to the concept of environmental law compliance. Moreover, the Supporting Statement requests an assessment of the "potential antitrust fines . .a from headline risk over its Nexus pipeline." The report sought by the Proposal, therefore, necessarily addresses the Company's compliance with laws.

In a long line of no-action letters, the Staff has consistently concurred that proposals relating to compliance with laws and regulations involve ordinary business and are excludable under Rule 14a-8(i)(7). In *Halliburton Co.* (Mar. 10, 2006), for example, the Staff concurred in the exclusion of a proposal requesting a report evaluating the potential impact of certain violations and investigations on the company's reputation and stock price, as well as the company's plan to prevent further violations, "as relating to [the company's] ordinary business operations (i.e., general conduct of a legal compliance program)." Further, in *FedEx Corp.* (July 14, 2009), a proposal requested a report discussing the compliance of the company and its contractors with state and federal laws governing proper classification of employees and independent contractors and was supported by statements about "multiple lawsuits" and a "spate of negative publicity" arising from the company's alleged misclassification of employees and independent contractors. In concurring in the exclusion of the proposal, the Staff noted that the proposal "relat[ed] to FedEx's ordinary business operations (i.e., general legal compliance program)." *See also Navient Corp.* (Mar. 26, 2015) (concurring in the exclusion of a proposal requesting a report on the company's internal controls over its student loan servicing operations, including a discussion of the actions taken to ensure compliance with applicable federal and state laws, as "concern[ing the] company's legal compliance program"); *JPMorgan Chase & Co.* (Mar. 13, 2014) (concurring in the exclusion of a proposal requesting the board evaluate opportunities for clarifying and enhancing implementation of board members' and officers' fiduciary, moral and legal obligations to shareholders and other stakeholders); *Raytheon Co.* (Mar. 25, 2013) (concurring in the exclusion of a proposal requesting a report on the board's oversight of the company's efforts to implement the provisions of the Americans with Disabilities Act, the Fair Labor Standards Act, and the Age Discrimination in Employment Act because "[p]roposals that concern a company's legal compliance program are generally excludable under rule 14a-8(i)(7)"); *Sprint Nextel Corp.* (Mar. 16, 2010) (concurring in the exclusion of a proposal requesting an explanation as to why the company had not adopted an ethics code that would promote ethical conduct and compliance with securities laws on the basis that the proposal concerned "adherence to ethical business practices and the conduct of legal

compliance programs"); *Verizon Communications Inc.* (Jan. 7, 2008) (concurring in the exclusion of a proposal requesting the board adopt policies to ensure the company and its contractors do not engage in illegal trespass actions and prepare a report to shareholders describing the company's policies for preventing and handling illegal trespassing incidents); *The AES Corp.* (Jan. 9, 2007) (concurring in the exclusion of a proposal requesting the board create an ethics oversight committee of independent directors to monitor the company's compliance with applicable laws, rules and regulations of the federal, state, local governments, and the AES Code of Business Conduct and Ethics, as "relating to its ordinary business operations (i.e., general conduct of a legal compliance program)"); *Ford Motor Company* (Mar. 19, 2007) (concurring in the exclusion of a proposal requesting appointment of independent legal advisory commission to investigate alleged violations of law); *ConocoPhillips* (Feb. 23, 2006) (concurring in the exclusion of a proposal requesting a report on the policies and procedures adopted to reduce or eliminate the recurrence of certain violations and investigations); *General Electric Co.* (Jan. 4, 2005) (proposal requesting a report detailing the company's broadcast television stations" activities to meet public interest obligations, excludable on the basis that it related to ordinary business matters); *HR Block Inc.* (Aug. 1, 2006) (concurring in the exclusion of a proposal seeking implementation of a legal compliance program with respect to lending policies); *Monsanto Corp.* (Nov. 3, 2005) (concurring in the exclusion of a proposal seeking board oversight of compliance with code of ethics and applicable federal, state and local rules and regulations); *Hudson United Bancorp* (Jan. 24, 2003) (concurring in the exclusion of a proposal requesting the board appoint an independent shareholders' committee to investigate possible corporate misconduct); *Allstate Corp.* (Feb. 16. 1999) (concurring in the exclusion of a proposal requiring establishing an independent shareholder committee to investigate and prepare a report on whether there has been illegal activity by the company); *Associates First Capital Corp.* (Feb. 23, 1999) (concurring in the exclusion of a proposal to form a committee to investigate possible improper lending practices); *Citicorp* (Jan. 9, 1998) (concurring in the exclusion of a proposal requesting the board form an independent committee of outside directors to oversee the audit of contracts with foreign entities to ascertain if bribes and other payments of the type prohibited by the Foreign Corrupt Practices Act or local laws had been made in the procurement of contracts); *Humana Inc.* (Feb. 25, 1998) (concurring in the exclusion of a proposal urging the company to appoint a committee of outside directors to oversee the company's corporate anti-fraud compliance program); *Crown Central Petroleum Corp.* (Feb. 19, 1997) (concurring in the exclusion of a proposal requesting the board investigate whether the company and its franchisees are in compliance with applicable laws regarding sales of cigarettes to minors); *Lockheed Martin Corp.* (Jan. 29, 1997) (concurring in the exclusion of a proposal requesting the audit and ethics committee evaluate whether the company has a legal

compliance program that is adequate to prevent and respond to violations of law, particularly with respect to laws and regulations that concern conflicts of interest and hiring of former government officials and employees, and to prepare a report on its findings); *Xerox Corp.* (Feb. 29, 1996) (concurring in the exclusion of a proposal requesting the board appoint a committee to review and report on the company's adherence to human rights and environmental standards with respect to its overseas business); *AT&T* (Jan. 16, 1996) (concurring in the exclusion of a proposal requesting the board initiate a review of the company's maquiladora operations, including the adequacy of wage levels and environmental standards and practices and make the summary report available to shareholders).

The Company is a diversified energy company involved in the development and management of energy-related businesses and services nationwide. Its operating units include an electric utility serving 2.2 million customers in Southeastern Michigan and a natural gas utility serving 1.3 million customers in Michigan. The Company's portfolio includes non-utility energy businesses focused on power and industrial projects, natural gas pipelines, gathering and storage and energy marketing and trading. As an energy provider, the Company and its operations are subject to the regulatory jurisdiction of various agencies at the federal, state and local level. These laws and regulations, particularly relating to environmental regulations applicable to the Company's core operations, significantly affect the way the Company does business. Compliance with these laws is so fundamental to management's ability to run the Company on a day-to-day basis that it cannot, as a practical matter, be subject to direct shareholder oversight, especially for a company operating in a highly-regulated industry, such as the Company.

The Company is committed to operating its business with integrity and in compliance with laws, rules and regulations. The Company has numerous dedicated compliance and legal professionals whose focus is ensuring that the Company meets and exceeds its legal obligations, including staff devoted exclusively to the environmental component of the Company's legal compliance program. Compliance teams work closely with senior management to provide independent review and oversight of the Company's operations, with a focus on compliance with applicable local, state and federal laws and regulations. The Company's lawyers provide legal advice to assist in efforts to ensure compliance with all applicable laws and regulations and the Company's compliance and ethics programs. At the board of directors level, the Audit Committee assists the board of directors in its oversight responsibility of the Company's compliance with legal and regulatory requirements. As provided for in its charter, the Audit Committee reviews the policies, programs, performance and activities relating to the Company's compliance and ethics programs and meets periodically with senior management to review compliance with local, state and federal laws

and regulations and ethics programs. The Company is constantly updating and improving its compliance practices.

Here, as in the no-action letters cited above, the Proposal specifically requests information concerning compliance with law and the Company's legal compliance program, an area that falls squarely within management's purview and the scope of the ordinary business exclusion. The Company's practices to ensure compliance with laws and regulations governing the Company's business, including determination of the appropriate means by which to comply with such laws, are fundamental elements of management's responsibility for the day-to-day operation of the Company's business and cannot, as a practical matter, be subject to direct shareholder oversight, especially for a company operating in a highly-regulated industry, such as the Company.

The Proponent also seeks to micro-manage the Company's environmental compliance program by probing too deeply into the often technical as well as economic challenges associated with environmental compliance. For instance, the Supporting Statement specifically requests a "cost-benefit analysis of improving DTE's environmental record by remediating DTE's now defunct Shenango coke facility and replacing it with a renewable energy one such as a solar array." The Company has highly trained specialists that evaluate the Company's environmental compliance and the suitability of available technologies to assist in that goal. These decisions relating to the appropriate means by which to comply with environmental regulations are at the core of matters involving the Company's business and operations, are extremely complex and are beyond the ability of shareholders, as a group, to make informed judgments. This is precisely the type of micro-management that the Commission sought to avoid with Rule 14a-8(i)(7). Thus, the Company believes that the Proposal relates to its ordinary business operations, and therefore, the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7).

C.a *The Proposal seeks a risk assessment in connection with a subject matter that concerns ordinary business operations.*

The Proposal seeks an assessment of risks related to the Company's "capital access, equity performance and brand value" arising out of certain "environmental infractions and remediation" and unsubstantiated allegations of antitrust violations. The Proposal suggests that there are financial and reputational risks associated with the Company failing to comply with certain laws and regulations and requests, among other things:

- a "An assessment of the long-term impact its environmental record has had on itsa capital access, equity performance and brand value or goodwill";a
- a "A cost-benefit analysis of improving DTE's environmental record by remediatinga DTE's now defunct Shenango coke facility . . . ;a
- a "An assessment of the potential antitrust fines and damage to DTE's brand froma headline risk over its Nexus pipeline."a

The information provided in support of the Proposal also strongly suggests that the Proposal relates to reputational and financial risks associated with the Company failing to comply with certain laws and regulations. For example, the Proposal, in the first seven paragraphs, discusses the potential financial and performance "rewards" for companies with "Above Average" or "High" sustainability ratings, including "hav[ing] a lower cost of capital in terms of debt . . . and equity," "receiv[ing] more investor dollars from ESG-focused funds" and "exhibit[ing] market-based outperformance . . . [and] accounting based-outperformance" and states that the Company received an "Average" rating because of certain alleged compliance violations. The Proposal also states that "DTE's brand image will affect consumers' decision whether to use it as their energy provider."

The Staff has consistently concurred in the exclusion of shareholder proposals seeking risk assessments when the underlying subject matter concerns ordinary business operations. For example, in *Willamette Industries, Inc.* (Mar. 20, 2001), the company argued that a proposal to report on the company's environmental problems and efforts to resolve them, including an estimate of worst case financial exposure due to environmental issues for the next ten years, among other matters, was excludable under Rule 14a-8(i)(7) because it related to the company's compliance with environmental regulations. In concurring in the exclusion of the proposal, the Staff noted that the proposal "relat[ed] to its ordinary business operations (i.e., evaluation of risk)." *See, e.g., Amazon.com, Inc.* (Mar. 27, 2015) (concurring in the exclusion of a proposal asking the board to report on "reputational and financial risks that it may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells" which involved ordinary business operations relating to the products and services offered for sale); *FedEx Corp.* (July 11, 2014) (concurring in the exclusion of a proposal asking the board to report on how the company could "better respond to reputational damage from its association with the Washington D.C. NFL franchise team name controversy," which involved ordinary business matters (the manner in which the company advertises its products and services)); *Exxon Mobil Corp.* (Mar. 6, 2012) (concurring in the exclusion of a proposal asking the board to prepare a report on

"environmental, social and economic challenges associated with the oil sands," which involved ordinary business matters (the economic challenges associated with oil sands)); *Sempra Energy* (Jan. 12, 2012, recon. denied Jan. 23, 2012) (concurring in the exclusion of a proposal requesting a report on the company's management of certain "risks posed by Sempra operations in any country that may pose an elevated risk of corrupt practices" where the company argued that the proposal related to decisions regarding the location of company facilities and implicated its efforts to ensure ethical behavior and to oversee compliance with applicable laws, noting that "the underlying subject matter of these risks appears to involve ordinary business matters"); *AT&T Inc.* (Feb. 13, 2012) (concurring in the exclusion of a proposal requesting a report on financial and reputational risks posed by continuing to use technology that inefficiently consumed electricity); *The Western Union Company* (Mar. 14, 2011) (concurring in the exclusion of a proposal requesting establishment of a risk committee that would report on the company's approach to monitoring and control of potentially material risk exposures, as well as how "an identified risk category (e.g. risks to customer base, fee structure, community and customer good will, growing competition) is being addressed"); *The TJX Companies, Inc.* (Mar. 29, 2011) (concurring in the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and a report to shareholders on the assessment); *Newmont Mining Corp.* (Feb. 4, 2004) (concurring in the exclusion of a proposal requesting that the board publish a comprehensive report on the risk to the company's operations, profitability and reputation from its social and environmental liabilities under Rule 14a-8(i)(7)); *Xcel Energy Inc.* (Apr. 1, 2003) (concurring in the exclusion of a proposal urging the board to issue a report disclosing the economic risks associated with the company's past, present and future emissions of certain gases and the public stance of the company regarding efforts to reduce these emissions); *Mead Corporation* (Jan. 31, 2001) (concurring in the exclusion of a proposal requesting a report of the company's environmental risks in financial terms).

In the present case, the Proposal is similarly structured as a request to provide an assessment of risks and risk mitigation arising from a subject matter that includes aspects of the Company's ordinary business operations. As described above, the underlying subject matter of the risk evaluation described in the Proposal relates to the Company's ordinary business operations—the Company's compliance with law. Assessing the risks associated with the Company's compliance with certain laws and regulations, as well as deciding whether to mitigate some of the risk by remediating the Shenango facility, is an ordinary business decision that is similar in nature to the various topics included in the preceding no-action letters. Consequently, the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7).

D. The Proposal does not focus on a significant policy issue.

The Company does not believe that the Proposal focuses on a significant policy issue that transcends the Company's ordinary business or its day-to-day operations. The fact that the Proposal mentions the environment or renewable energy does not remove it from the scope of Rule 14a-8(i)(7) because the Proposal focuses on the financial and reputational consequences of a failure by the Company to comply with laws and regulations and not on a broader social policy issue.

The Staff has allowed the exclusion of proposals if their overall focus is not on a significant policy issue or other matter that is outside of ordinary business. For example, in *Exxon Mobil Corp.* (Mar. 6, 2012), the Staff allowed for the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the possible short and long term risks to the company's finances and operations posed by the environmental, social and economic challenges associated with the oil sands. In its no-action letter, the Staff noted that the proposal "addresses the 'economic challenges' associated with the oil sands and does not, in our view, focus on a significant policy issue." *See also JPMorgan Chase & Co.* (Mar. 12, 2010) (concurring in the exclusion of a proposal requesting the adoption of a policy barring future financing of companies engaged in a particular practice impacting the environment because the proposal addressed "matters beyond the environmental impact of JPMorgan Chase's project finance decisions"); *Bank of America Corp.* (Feb. 24, 2010) (same); *General Electric Co.* (Jan. 9, 2009) (concurring in the exclusion of a proposal requesting a report addressing the potential costs and benefits to the company of divesting its nuclear energy investment in the near future, and investing instead in renewable energy as relating to the company's ordinary business operations).

Similar to the proposal in *Exxon Mobil*, the Proposal is concerned with the financial impact on the Company's earnings and value of its shares, both of which are matters that do not transcend the Company's ordinary business or its day-to-day operations. The Proposal is entitled "Assessment of the Impact of Environmental Infractions and Remediation on *Capital Access, Equity Performance and Brand Value*" (emphasis added). Similarly, the "Resolved" clause requests an "assessment of the long-term impact its environmental record has had on its *capital access, equity performance and brand value or goodwill*" (emphasis added). The Supporting Statement also requests a "cost-benefit analysis of improving DTE's environmental record" and an "assessment of the potential antitrust fines . . . from headline risk over its Nexus pipeline."

Indeed, the Proposal discusses the "environment," "renewable energy" and "carbon emissions" only in the context of the Company's economic performance. For example, ESG factors are discussed to support the Proponent's proposition that companies with high sustainability ratings "have a lower cost of capital in terms of debt (loans and bonds) and equity," "exhibit market-based outperformance," "exhibit accounting-based outperformance" and "should receive more investor dollars from ESG-focused funds." Further, the Proposal mentions the "company's carbon emissions intensity" only in relation to the Company's ESG rating from Sustainalytics. Moreover, the Proposal mentions "renewable alternatives" and "renewable energy" only twice in the Proposal—once to support the proposition that renewable energy is making energy markets more "competitively priced" and once in relation to a "cost-benefit analysis of improving DTE's environmental record by remediating" the Shenango facility.

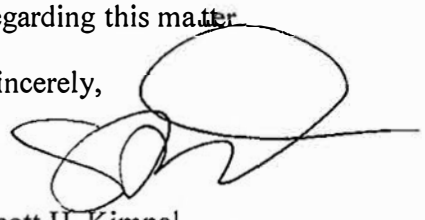
As discussed above, the Company's legal compliance program is core to the Company's day-to-day business and operations, and the Proposal does not focus on a significant policy issue that transcends the Company's ordinary business or its day-to-day operations. Accordingly, the Company believes that the Proposal relates to its ordinary business operations, and therefore, the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7).

Conclusion

For the foregoing reasons, the Company respectfully requests your confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from the 2018 Proxy Materials.

Please do not hesitate to contact me at (202) 955-1524, or by email at skimpel@hunton.com, if you have any questions or require any additional information regarding this matter.

Sincerely,



Scott H. Kimpel

HUNTON&
WILLIAMS

Enclosures

cc: Timothy Kraepel, Director – Legal (Securities, Finance & Governance), DTE Energy Company (via email)
Sarah Moore (via overnight delivery)

EXHIBIT A

6 November 2017

DTE Corporate Secretary
DTE Energy Company
One Energy Plaza
Room 2386 WCB
Detroit MI 48226-1279

To Whom It May Concern:

I am a beneficial stockholder and wish to submit this resolution for inclusion in the proxy statement that DTE Energy plans to circulate to shareowners in anticipation of its 2018 annual meeting. The proposal is being submitted in accordance with Rule 14a-8 of the general rules and regulations of the Securities Exchange Act of 1934. It relates to DTE's environmental record and policies. A representative of the filer will attend the annual meeting to move the resolution as required by SEC rules.

I have beneficially owned more than $2,000 worth of DTE Energy' s common stock for longer than a year. A letter from my broker Charles Schwab Charles Schwab confirming that ownership is enclosed. I intend to ownership of at least $2,000 worth of DTE's common stock through the date of the 2018 annual meeting, which a representative is prepared to attend.

Feel free to contact me should you have any questions or concerns.

Sincerely,

Sarah Moore
Roth Contributory IRA
***

Acct. #***** ***

*** FISMA & OMB Memorandum M-07-16

Shareholder Proposal — Assessment of the Impact of Environmental Infractions and Remediation on Capital Access, Equity Performance and Brand Value

Whereas: In June 2012, Deutsche Bank published a report entitled "Sustainable Investing: Establishing Long-Term Value and Performance," analyzing 100 academic studies on sustainable investing and found:

"100% of the academic studies agree that companies with high ratings for CSR [Corporate Social Responsibility] and ESG [Environmental, Social and Governance] factors have a lower cost of capital in terms of debt (loans and bonds) and equity. In effect, the market recognizes that these companies are lower risk than other companies and rewards them accordingly."

And: "89% of the studies we examined show that companies with high ratings for ESG factors exhibit market-based outperformance, while 85% of the studies show these types of company's exhibit accounting-based outperformance."

More than 1,750 signatories with a combined $70 trillion in assets under management have agreed to follow the United Nations' Principles for Responsible Investment, the first principle of which is incorporating ESG issues into investment decisions. These signatories include DTE Energy's largest shareholders.

Sustainalytics, a leading ESG rating firm, assigns DTE Energy an "Average" ESG score. Among DTE's "Qualitative Performance – Controversies" Sustainalytics cited as having the "highest controversy level" influencing its rating were "Operations Incidents, Emissions, Effluents and Waste, Land Use, Biodiversity and Anti-Competitive Practices." Specifically, with the Environmental Quantitative Performance score, DTE receives a 0 out of 100 for "Environmental Penalties" and "Carbon Intensity," the report citing that "the company has received more than one major environmental fine or non-monetary sanction in the last three years" and that "the company's carbon emissions intensity is well above the industry median."

Among the fines Sustainalytics cited for its rating were air pollution violation fines from the Allegheny County Health Department for DTE's coke plant on Neville Island. Also noted was a complaint from the Sierra Club with the Federal Trade Commission and the Department of Justice that DTE's Nexus Gas Transmission Project was breaching antitrust rules.

Sustainalytics' ESG ratings are employed by Morningstar, the most popular mutual fund research firm. Companies receiving "Above Average" and "High" sustainability ratings from Morningstar should receive more investor dollars from ESG-focused funds.

DTE operates in increasingly deregulated and fragmented energy markets in which renewable alternatives to coal and natural gas are becoming competitively priced. In such an environment, DTE's brand image will affect consumers' decision whether to use it as their energy provider.

Resolved: Shareholders request that DTE Energy, with board oversight, publish an assessment of the long-term impact its environmental record has had on its capital access, equity performance and brand value or goodwill.

Supporting Statement:

The report could include:

- A cost-benefit analysis of improving DTE's environmental record by remediating DTE's now defunct Shenango coke facility and replacing it with a renewable energy one such as a solar array.
- An assessment of the potential antitrust fines and damage to DTE's brand from headline risk over its Nexus pipeline.

October 24, 2017

Sarah Elizabeth Moore
Roth Contributory IRA
***

Account #: ****-* ***
Questions: +1 (877) 561-1918
x70029

Here is the information you request.

Dear Sarah Moore,

I'm writing to confirm the above referenced account has held shares of DTE Energy Company: DTE continuously for the past year.

Thank you for choosing Schwab. We appreciate your business and look forward to serving you in the future. If you have any questions, please call me or any Client Service Specialist at +1 (877) 561-1918 x70029.

Sincerely,

Erica Throop

Erica Throop
Associate, CS&S Help Desk
8332 Woodfield Crossing Blvd
Indianapolis, IN 46240-2482

*** FISMA & OMB Memorandum M-07-16

FROM: (000) 000-0000
Thaddeus Popovich
***

SEWICKLEY PA 15143
US

SHIP DATE: 10NOV17
ACTWGT: 0.30 LB
CAD: 6990435/SSF01822
DIMMED: 13 X 9 X 1 IN

BILL 3rd PARTY

TO **DTE CORPORATE SECRETARY**
DTE ENERGY COMPANY
ONE ENERGY PLZ
Room 2386 WCB
Detroit MI 48226 **(US)**

(313) 235-8922 REF:
INV:
PO: DEPT:

FedEx Ground

G

TRK#*
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48226

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829-6087
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PD:RO:100:Y
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DETROIT,MI
RM 2386
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DTE ENERGY COMPANY
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HUNTON & WILLIAMS

HUNTON & WILLIAMS LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20037-1701

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

SCOTT H. KIMPEL
DIRECT DIAL: 202 • 955 • 1524
EMAIL: SKimpel@hunton.com

November 16, 2017

FILE NO: 55788.41

VIA OVERNIGHT DELIVERY

Ms. Sarah Moore
***

Dear Ms. Moore:

I am writing on behalf of our client, DTE Energy Company (the "Company"), which received your stockholder submission entitled "Assessment of the Impact of Environmental Infractions and Remediation on Capital Access, Equity Performance and Brand Value" (the "Submission") on November 13, 2017. The Submission contains certain procedural deficiencies that SEC regulations require the Company to bring to your attention.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), provides that stockholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. The Company's stock records do not indicate that you or your Roth Contributory IRA are the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received adequate proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Submission was submitted to the Company. The October 24, 2017, letter from Charles Schwab (the "Schwab Letter") that you provided is insufficient because it verifies ownership for an indefinite period prior to October 24, rather than for the one-year period preceding and including November 6, 2017, the date the Submission was submitted to the Company. In addition, the Schwab Letter is insufficient because it does not state that the shares were held continuously during the required one-year period.

To remedy these defects, you must obtain a new proof of ownership letter verifying your continuous ownership of the required number of Company shares for the one-year period preceding and including November 6, 2017, the date the Submission was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

*** FISMA & OMB Memorandum M-07-16

(l) a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that you continuously held the required number of Company shares for the one-year period preceding and including November 6, 2017; or

(2) if you have filed with the SEC a Schedule l3D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the required number of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and statement that you continuously held the required number of Company shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository. DTC is also known through the account name of Cede & Co. Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number of Company shares for the one-year period preceding and including November 6, 2017.

(2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number of Company shares for the: one-year period preceding and including November 6, 2017. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership

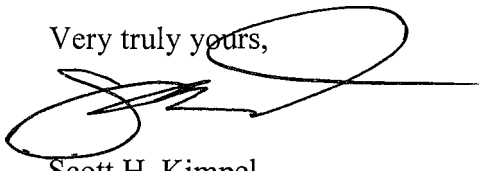
statements verifying that, for the one-year period preceding and including November 6, 2017, the required number of Company shares were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

Moreover, as discussed above, under Rule 14a-8(b) of the Exchange Act, a stockholder must have continuously held at least $2,000 in market value, or 1%, of the Company's securities entitled to vote on the proposal for at least one year as of the date the proposal was submitted to the Company *and* must provide to the Company a written statement of the stockholder's intent to continue ownership of the required number of shares through the date of the Company's 2018 Annual Meeting of Stockholders. We believe that your written statement that you "intend to ownership of at least $2,000 worth of DTE's common stock" is not adequate to confirm that you intend to hold the required number of the Company's shares through the date of the 2018 Annual Meeting of Shareholders. To remedy this defect, you must submit a written statement that you intend to continue holding the required number of Company shares through the date of the Company's 2018 Annual Meeting of Shareholders.

Finally, according to Rule 14a-8(c) under the Exchange Act, a stockholder may submit no more than one proposal to a company for a particular stockholders' meeting. We believe that the Submission includes more than one stockholder proposal. Specifically, while parts of the Submission appear to relate to the Company's "environmental record", other items request analysis of disparate topics such as "capital access", "equity performance", "brand image", "brand value", "goodwill", "remediating DTE's now defunct Shenango coke facility and replacing it with a renewable one such as a solar array", and "antitrust fines and damages" relating to the "Nexus pipeline", among other things. We believe that each of these topics addresses a separate and distinct matter. You can correct this procedural deficiency by indicating which proposal you would like to submit and which proposals you would like to withdraw.

Please note that the SEC's rules require your response to this letter be postmarked or transmitted electronically to me no later than 14 calendar days from the date you receive this letter. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Very truly yours,



Scott H. Kimpel

Enclosures

Appendix A
Rule 14a-8

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

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§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]

Appendix B
Staff Legal Bulletin No. 14F

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

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

accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

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

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

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

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

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

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

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

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

participant?

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

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

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

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

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act

on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

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

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

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

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

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

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

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

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

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

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

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

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

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

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

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

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

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

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

the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

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

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

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

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

Kimpel, Scott H.

From: iShip_Services@iship.com
Sent: Friday, November 17, 2017 10:45 AM
To: Kelley, JaVonda
Subject: Delivery Notification

The shipment to Ms. Sarah Moore has been delivered.

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SHIPMENT SUMMARY
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SENDER
Hunton & Williams LLP

Washington, DC 20037

RECIPIENT
Ms. Sarah Moore

BELLEVILLE, MI 48111-8809 US

SHIPPED THROUGH
Hunton & Williams
202-955-1827

CARRIER & SERVICE
UPS Next Day Air

SHIPMENT TRACKING & REFERENCE
Tracking No.: ***
Shipment ID: ***
Client Matter #: 55788.000041
User ID: 10165

SHIP DATE
Thursday, November 16, 2017

DELIVERY DATE
Fri 17 Nov 2017 09:24 AM

MESSAGE FROM SENDER

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TRACKING INFORMATION
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To get complete tracking information, click the following link:

https://iship.com/trackit/track.aspx?t=1&Track= ***

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QUESTIONS OR CONCERNS ABOUT THIS SHIPMENT?
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If you have questions regarding this shipment, have the carrier tracking number ready and then contact UPS directly:

1-800-PICK-UPS (1-800-742-5877)

Or contact the facility listed in the SHIPPED THROUGH section above.

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DO NOT REPLY DIRECTLY TO THIS E-MAIL
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Questions or Comments about the iShip service?
mailto:info@iship.com

Need technical support for the iShip service?
mailto:support@iship.com

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On-line shipping and tracking services brought to you by iShip(r).
Shipping Insight.(r)
Want to use iShip for your corporate shipping? Visit http://iship.com.

Friday, November 17, 2017 07:45 AM Pacific Standard Time

November 6th, 2017

Sarah Moore
***

DTE Corporate Secretary
DTE Energy Company
One Energy Plaza
Room 2386 WCB
Detroit MI 48226-1279

To Whom It May Concern:

I am a beneficial stockholder and wish to submit this resolution for inclusion in the proxy statement that DTE Energy plans to circulate to shareowners in anticipation of its 2018 annual meeting. The proposal is being submitted in accordance with Rule 14a-8 of the general rules and regulations of the Securities Exchange Act of 1934. It relates to DTE's environmental record and policies. A representative of the filer will attend the annual meeting to move the resolution as required by SEC rules.

***

I am located at the address shown above— . I have beneficially owned more than $2,000 worth of DTE Energy' s common stock for at least thirteen months. A letter from my broker Charles Schwab confirming that ownership is enclosed. I pledge to continue to hold the required stock until after the date of the next shareholder meeting in 2018. I intend to continue ownership of at least $2,000 worth of DTE's common stock through the date of the 2018 annual meeting, which a representative is prepared to attend. Feel free to contact me should you have any questions or concerns.

Sincerely,

Sarah Moore
Roth Contributory IRA
Account #***** ***

CC: Andy Behar, As You Sow and James McRitchie, CorpGov.net

November 28, 2017

Sarah Moore
Roth Contributory IRA
***

Account #: ****- ***
Questions: +1 (877) 561-1918
x48558

Dear Sarah Moore,

I am writing to confirm that as of November 28, 2017 Sarah Moore has held continuously for at least fourteen months, 24.9243 shares of shares of DTE Energy Co (DTE) in her account ****-* *** registered as Sarah Elizabeth Moore, Contributory IRA. The DTC number for Charles Schwab & Co. Inc. is 0164.

This letter is for informational purposes only and is not an official record. Please refer to your statements and/or trade confirmations as they are the official record of your account(s).

Thank you for choosing Schwab. We appreciate your business and look forward to serving you in the future. If you have any questions, please call me or any Client Service Specialist at +1 (877) 561-1918 x48558.

Sincerely,

Jonathan Dick

Jonathan Dick
CS&S Help Desk
9800 Schwab Way
Lone Tree, CO 80124

*** FISMA & OMB Memorandum M-07-16

Shareholder Proposal — Assessment of the Impact of Environmental Infractions and Remediation on Capital Access, Equity Performance and Brand Value

Whereas: In June 2012, Deutsche Bank published a report entitled "Sustainable Investing: Establishing Long-Term Value and Performance," analyzing 100 academic studies on sustainable investing and found:

"100% of the academic studies agree that companies with high ratings for CSR [Corporate Social Responsibility] and ESG [Environmental, Social and Governance] factors have a lower cost of capital in terms of debt (loans and bonds) and equity. In effect, the market recognizes that these companies are lower risk than other companies and rewards them accordingly."

And: "89% of the studies we examined show that companies with high ratings for ESG factors exhibit market-based outperformance, while 85% of the studies show these types of company's exhibit accounting-based outperformance."

More than 1,750 signatories with a combined $70 trillion in assets under management have agreed to follow the United Nations' Principles for Responsible Investment, the first principle of which is incorporating ESG issues into investment decisions. These signatories include DTE Energy's largest shareholders.

Sustainalytics, a leading ESG rating firm, assigns DTE Energy an "Average" ESG score. Among DTE's "Qualitative Performance - Controversies" Sustainalytics cited as having the "highest controversy level" influencing its rating were "Operations Incidents, Emissions, Effluents and Waste, Land Use, Biodiversity and Anti-Competitive Practices." Specifically, with the Environmental Quantitative Performance score, DTE receives a 0 out of 100 for "Environmental Penalties" and "Carbon Intensity," the report citing that "the company has received more than one major environmental fine or non-monetary sanction in the last three years" and that "the company's carbon emissions intensity is well above the industry median."

Among the fines Sustainalytics cited for its rating were air pollution violation fines from the Allegheny County Health Department for DTE's coke plant on Neville Island. Also noted was a complaint from the Sierra Club with the Federal Trade Commission and the Department of Justice that DTE's Nexus Gas Transmission Project was breaching antitrust rules.

Sustainalytics' ESG ratings are employed by Morningstar, the most popular mutual fund research firm. Companies receiving "Above Average" and "High" sustainability ratings from Morningstar should receive more investor dollars from ESG-focused funds.

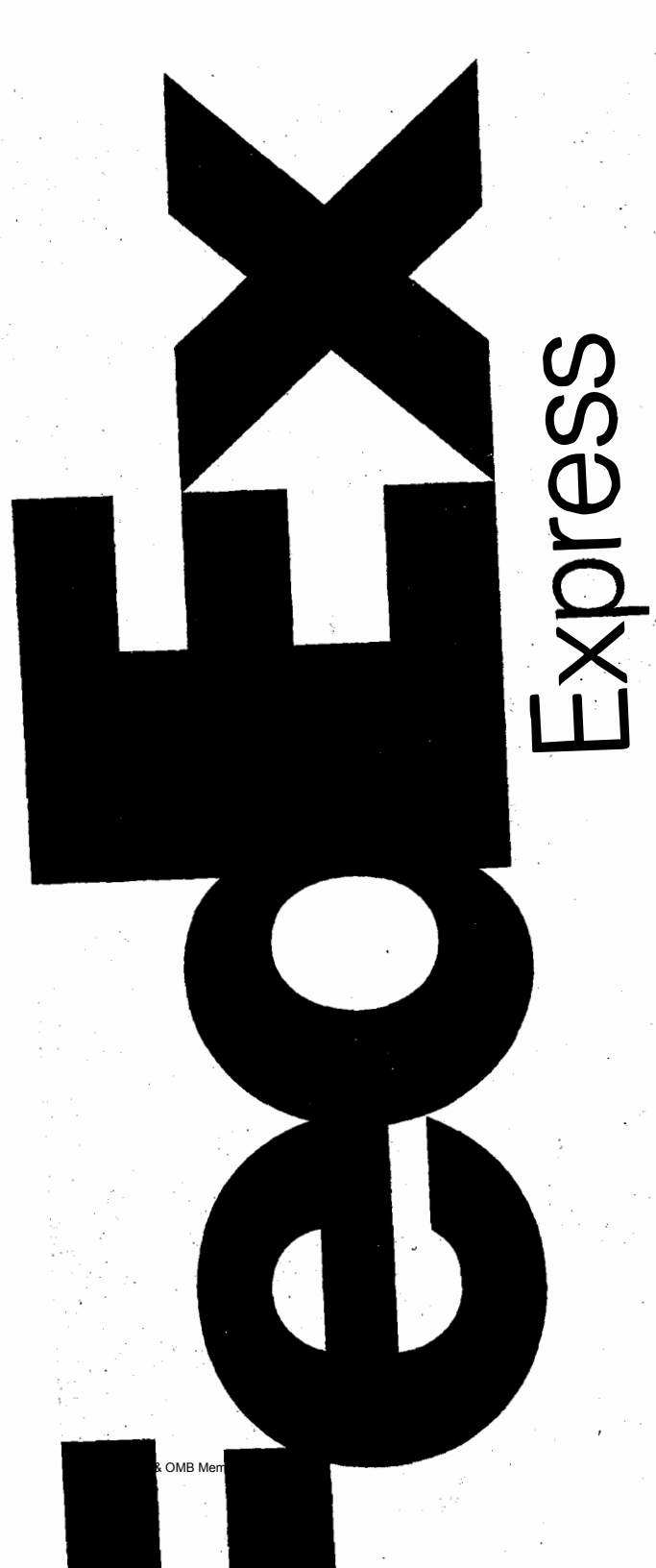
DTE operates in increasingly deregulated and fragmented energy markets in which renewable alternatives to coal and natural gas are becoming competitively priced. In such an environment, DTE's brand image will affect consumers' decision whether to use it as their energy provider.

Resolved: Shareholders request that DTE Energy, with board oversight, publish an assessment of the long-term impact its environmental record has had on its capital access, equity performance and brand value or goodwill.

Supporting Statement:

The report could include:

- A cost-benefit analysis of improving DTE's environmental record by remediating DTE's now defunct Shenango coke facility and replacing it with a renewable energy one such as a solar array.
- An assessment of the potential antitrust fines and damage to DTE's brand from headline risk over its Nexus pipeline.



earthsmart
FedEx carbon-neutral
envelope shipping

Align top of FedEx Express® shipping

ORIGIN ID:CFAA ***
***

SHIP DATE: 30NOV17
ACTWGT: 0.20 LB
CAD: 6990872/SSF01822

BILL THIRD PARTY

TO SCOTT KIMPEL
HUNTON WILLIAMS
2200 PENNSYLVANIA AVE NW

WASHINGTON DC 20037
(202) 955-1500 REF:
INV:
PO: DEPT:

FedEx Express

FRI - 01 DEC 10:30A

Hunton & Williams LLP

Inbound Date & Time: 12/01/2017 10:13:44 AM

To Kimpel, Scott H.(DC-0725)
From thsaddus popovich
Return Type
Parcel Type

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Part # 156297-435 ARDS EXP 11/18

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9760 12.01

& OMB Mem