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

DIVISION OF
CORPORATION FINANCE

March 13, 2019

Amanda Maki
Phillips 66
amanda.k.maki@p66.com

Re: Phillips 66
Incoming letter dated January 8, 2019

Dear Ms. Maki:

This letter is in response to your correspondence dated January 8, 2019 concerning the shareholder proposal (the "Proposal") submitted to Phillips 66 (the "Company") by Winston Dines et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We have also received correspondence on the Proponents' behalf dated February 11, 2019. 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,

M. Hughes Bates
Special Counsel

Enclosure:

cc: Sanford Lewis
sanfordlewis@strategiccounsel.net

March 13, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Phillips 66
Incoming letter dated January 8, 2019

The Proposal requests that the board issue an annual report to shareholders on plastic pollution.

There appears to be some basis for your view that the Company may exclude Dana B. Kahn, Daniel Handler & Lisa Brown Family Trust, Maida Lynn Revocable Trust, Michelle Swenson & Stan Drobac Revocable Trust, Patricia Rose Lurie Revocable Trust, and The Amy Wendel Revocable Trust as co-proponents of the Proposal under rule 14a-8(f). We note that these co-proponents appear to have failed to supply, within 14 days of receipt of the Company's request, documentary support sufficiently evidencing that they satisfied the minimum ownership requirement for the one-year period as required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if the Company omits these co-proponents from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

We are unable to concur in your view that the Company may exclude the Proposal or portions of the supporting statement under rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading. We are also unable to conclude that you have demonstrated objectively that the portions of the supporting statement you reference are materially false or misleading. We are also unable to conclude that the Proposal impugns character, integrity or reputation, without factual foundation, in violation of rule 14a-9. Accordingly, we do not believe that the Company may omit the Proposal or portions of the supporting statement from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(6). We are unable to conclude that the Company would lack the power or authority to implement the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(6).

Sincerely,

Eric Envall
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

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

SANFORD J. LEWIS, ATTORNEY

Via electronic mail
February 11, 2019
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Phillips 66 Regarding Plastic Pollution on Behalf of Winston Dines

Ladies and Gentlemen:

Winston Dines (the "Proponent") is beneficial owner of common stock of Phillips 66 (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. I have been asked by the Proponent to respond to the letter dated January 8, 2019 ("Company Letter") sent to the Securities and Exchange Commission by Paula A. Johnson, Executive Vice President. In that letter, the Company contends that the Proposal may be excluded from the Company's 2019 proxy statement.

I have reviewed the Proposal, as well as the letter sent by the Company, and based upon the foregoing, as well as the relevant rules, it is my opinion that the Proposal must be included in the Company's 2019 proxy materials and that it is not excludable under Rule 14a-8. A copy of this letter is being emailed concurrently to Paula A. Johnson, Executive Vice President.

SUMMARY

The Proposal requests that the Board of Directors of Phillips 66 issue an annual report to shareholders, at reasonable cost and omitting proprietary information, on plastic pollution. The report should disclose trends in the amount of pellets, powder, or granules released to the environment by the company annually, and concisely assess the effectiveness of the company's policies and actions to reduce the volume of the company's plastic materials contaminating the environment.

The Company Letter asserts that the proposal is excludable under Rule 14a-8(i)(6) as impossible to implement because its principal activities in relation to plastics are under the auspices of a joint venture with Phillips 66, rather than under its sole control, and therefore claims that the Company lacks the power and authority to implement the Proposal. However, the actions sought by the Proposal are entirely within the Company's control, and therefore Rule 14a-8(i)(6) is inapplicable and not a basis for exclusion.

The Company Letter also asserts that elements of the proposal are either vague, or false or misleading, such that the Proposal should be excluded under Rule 14a-8(i)(3). However, the plain language of the Proposal is neither vague, nor misleading, and some of the Company's advocacy assertions could be included in its opposition statement, but are not a basis for exclusion under Rule 14a-8(i)(3).

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Finally, the Company Letter asserts that the co-filers failed to provide proof of ownership. The Proponent concedes that this occurred, and therefore does not contest that co-filers need not be listed in the printing of the Proposal.

THE PROPOSAL

Whereas plastic pollution is a global environmental crisis. Chevron Phillips Chemical Co., owned jointly by Phillips 66 and Chevron, is one of the world's top producers of olefins and polyolefins, used in the production of plastics such as polypropylene and polyethylene. As a major petrochemical producer, it operates facilities that produce plastic pellets.

Most plastic products originate from plastic pellets, also known as pre-production pellets, or nurdles, manufactured in polymer production plants. Due to spills and poor handling procedures, billions of such plastic pellets are swept into waterways during production or transport annually and increasingly found on beaches and shorelines, adding to harmful levels of plastic pollution in the environment.

Eight million tons of plastics leaks into oceans annually. Plastics degrade in water to small particles that animals mistake for food; plastic pollution impacts 260 species, causing fatalities from ingestion, entanglement, suffocation, and drowning. Plastic does $13 billion in damage to marine ecosystems annually. If no action is taken, oceans are expected to contain more plastic than fish by 2050. Pellets are similar in size and shape to fish eggs and are often mistaken by marine animals for food. Plastic pellets can absorb toxins such as dioxins from water and transfer them to the marine food web and potentially to human diets, increasing the risk of adverse effects to wildlife and humans.

Nearly 200 nations pledged to eliminate plastic pollution in the world's oceans at the United Nations Environment Assembly in Nairobi last December. The United Nations Undersecretary-General has called this issue "an ocean Armageddon." The U.S. Microbead-Free Waters Act of 2015 banned one form of microplastic pollution—microbeads used in cosmetic products.

Plastic pellets are estimated to be the second largest direct source of microplastic pollution to the ocean by weight; up to 53 billion pellets may be spilled annually in the United Kingdom alone. A recent study concluded that up to 36 million plastic pellets may be spilled from one major industry production complex in Sweden.

Chevron Phillips Chemical is listed as a member of Operation Clean Sweep, an industry program that encourages use of best practices for pellet management and containment to reduce pellet loss, but this initiative provides no public reporting.

Given the severe biodiversity and economic impacts of plastic pollution described above, there is an urgent need to increase and improve reporting on pellet spills and remediation, as well as discussing accountability for pellet spill remediation in more detail.

BE IT RESOLVED Shareholders request that the Board of Directors of Phillips 66 issue an annual report to shareholders, at reasonable cost and omitting proprietary information, on plastic pollution. The report should disclose trends in the amount of pellets, powder or granules released to the environment by the company annually, and concisely assess the effectiveness of the company's policies and actions to reduce the volume of the company's plastic materials contaminating the environment.

Supporting statement: Proponent recommends that the report include discussion of pellet loss prevention, cleanup and containment.

ANALYSIS

I. The Board is not powerless to conduct the actions requested under the Proposal, and therefore the Proposal is not excludable under Rule 14a-8(i)(6).

The Company notes that, together with Chevron USA Inc., it is a 50% owner of CPChem, through which the Company produces pre-production plastic pellets. It should also be noted that the Company in its own fact sheet, describes the Chevron Phillips Chemical company as a *segment* of its operations:

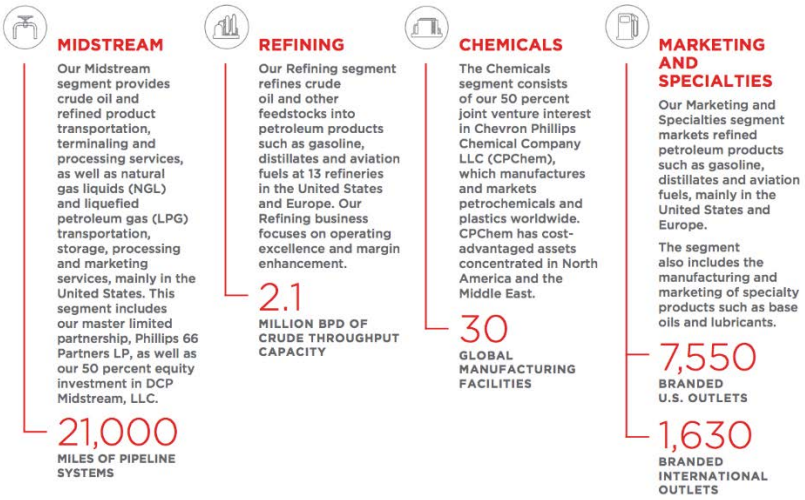

Figure 1 From Phillips 66 Fact Sheet Describing the Company's Segments
Source https://www.phillips66.com/newsroom-site/Documents/factsheet.pdf

The Company Letter asserts that it is "impossible" for the Company to effectuate the request of the proposal because their principal source of plastics pollution comes from this joint venture, not directly in the control of either company.

> The Company believes that the Proposal is excludable under Rule 14a-8(i)(6) because (1) the Company does not own or operate any petrochemical facilities that produce Pellets and (2) with respect to the Company's only equity investment that does operate such facilities (specifically referenced twice in the Supporting Statement), the Company does not have the power or authority to unilaterally cause the entity to act.

The Proposal requests that the Board of Directors of Phillips 66 issue an annual report on plastic pollution. The report should disclose trends in the amount of pellets, powder or granules released to the environment by the company annually, and concisely assess the effectiveness of the company's policies and actions to reduce the volume of the company's plastic materials contaminating the environment. In the supporting statement, the proposal recommends that the report include discussion of pellet loss prevention, cleanup, and containment.

As a 50% co-owner of a plastics company, the Company does not lack the ability to study or report on plastics pollution from its projects, regardless of whether the project is a joint venture. Although the Company Letter asserts that "….any such report would have to be produced by CPChem, through its employees and officers," there is no basis for concluding that the Board of Directors lacks the ability to seek the data required by the proposal, and to issue a report. The Board could either request that CPChem produce such a report. The Company Letter acknowledges that it controls three of the six voting board seats of CPChem – at a minimum, it has considerable influence in seeking action by the company. Failing that, the Board could ask the research and environmental personnel of Phillips 66 to conduct the study.

The precedents cited by the Company are inapropos

The Proposal is analogous to a number of examples in which companies attempted to utilize Rule 14a-8(i)(6) for exclusion based on limits to the companies' control of third parties, but in practicality had the capacity to implement the request of the proposal and therefore the proposal was not excludable. Here the Board is capable of conducting the study requested, even if it involves requests for data from third parties. A similar scenario was raised in *Host Hotels & Resorts, Inc.* (Feb. 28, 2018), where the company, a real estate investment trust that owns a diverse portfolio of hotels operating under brands such as Marriott International, Hilton Worldwide Holdings, Hyatt Hotels Corporation, etc. The proposal requested that the company issue an annual sustainability report regarding operations at the company's properties using the Global Reporting Initiative Sustainability Reporting Standards. The company argued that it lacked the power or authority to implement the proposal because in order to gather the information needed to write the report, *it would have to compel the managers of these companies to share the data necessary to complete a sustainability report*. Given that these companies were controlled by independent third-party managers, the company argued it lacked the power or authority to compel them to gather and convey this information. However, the Staff was unable to conclude that the Company would lack the power or authority to implement the proposal, and could not concur with the request for exclusion on the basis of Rule 14a-8(i)(6).

Similarly, in *CONSOL Energy* (March 23, 2007), the company argued that a proposal seeking reporting on how the company was responding to pressure to reduce carbon dioxide emissions

from "current and proposed power plant operations" was excludable on the basis of Rule 14a-8(i)(6) because the company's only interest in any power plant was majority interest (83%) in company CNX Gas, which had an interest in a single 88-megawatt, gas fired power plant through a joint venture with a major eastern power utility. The Staff was unable to agree that the company could omit the proposal on this basis.

In *General Electric Company* (January 18, 2011) the proposal requested detailed reporting on animal testing in product development, including the number and species of all animals used "in house" and at contract research laboratories. GE argued under Rule 14a-8(i)(6) that *gathering this information from third parties would be impossible*. The Staff rejected this assertion.

In *DTE Energy Company* (February 2, 2018), another case where a company claimed the proposed action was outside its control, Staff was unable to agree to omit the proposal. In DTE the proposal requested a report on cost avoidance and potential financial benefit of early closure of a nuclear power plant owned by the company. Company argued that the proposal should be excludable on the basis of Rule 14a-8(i)(6), because the proposal amounted to a request to close the plant immediately, which the company could not do – the company could not unilaterally act to close a power plant, *because such action required approval of a third party*, its regional grid operator, "which approval is not assured and is beyond the company's control"; therefore, the company claimed that it lacked the power and authority to implement the proposal. Staff disagreed, noting that the company "does not lack the power or authority to implement the proposal".

In contrast, the Company cites Rule 14a-8(i)(6) precedents where the proposals requested the company take specific action with regard to the sales of certain products or services, or implement employment policy, at a company it did not control. See *eBay Inc*. (based on its organizational structure, eBay International did not have the power to prevent the board of directors of the relevant joint venture from taking any action relating to the operations of the joint venture), *Firestone Tire* (as a minority investor of a joint venture selling certain products and equipment to the military regime of South Africa during Apartheid, the company lacked the power to prevent the sale of certain products should the majority owner decide to proceed) and *Harsco Corp.* (where the company was a 50% owner of a joint venture neither directly nor indirectly controlled by the Company, and the other joint venture party had the right to appoint the joint venture's chairman, who was empowered to cast the deciding vote in the event of a tie sign, the company lacked the power or authority to implement a statement of principles applicable to the joint venture's employment policies in South Africa).

Accordingly, the Proposal is not excludable pursuant to Rule 14a-8(i)(6).

II. The Proposal May Not Be Excluded Under Rule 14a-8(i)(3)

The Company Letter asserts that the Proposal is either vague, or materially false or misleading, or impugns the Company. None of these assertions raise excludable issues. The plain language of the proposal is clear and is neither false nor misleading within the meaning of Rule14a-8(i)(3), despite the overreaching assertions by the Company. The Company Letter raises a series of advocacy points, some of which it might well include in its opposition statement to the proposal. However, the arguments raised by the company do

not rise to the level of "objectively false and misleading" statements that merit Staff action to exclude them. Nor is the Proposal so vague that the board or shareholders would not understand how the proposal can be implemented.

Review of Staff Guidelines on Rule 14a-8(i)(3)

The Company Letter is out of step with Staff practice in review under Rule 14a-8(i)(3). The problem with the kinds of subjective arguments raised by the Company letter was explained in Staff Legal Bulletin 14B September 15, 2004:

> Unfortunately, our discussion of rule 14a-8(i)(3) in SLB No. 14 has caused the process for company objections and the staff's consideration of those objections to evolve well beyond its original intent. The discussion in SLB No. 14 has resulted in an unintended and unwarranted extension of rule 14a-8(i)(3), as many companies have begun to assert deficiencies in virtually every line of a proposal's supporting statement as a means to justify exclusion of the proposal in its entirety. Our consideration of those requests requires the staff to devote significant resources to editing the specific wording of proposals and, especially, supporting statements….We believe that the staff's process of becoming involved in evaluating wording changes to proposals and/or supporting statements has evolved well beyond its original intent and resulted in an inappropriate extension of rule 14a-8(i)(3). In addition, we believe the process is neither appropriate under nor consistent with rule 14a-8(l)(2), which reads, "The company is not responsible for the contents of [the shareholder proponent's] proposal or supporting statement." Finally, we believe that current practice is not beneficial to participants in the process and diverts resources away from analyzing core issues arising under rule 14a-8.
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> ***
>
> Accordingly, we are clarifying our views with regard to the application of rule 14a-8(i)(3). Specifically, because the shareholder proponent, and not the company, is responsible for the content of a proposal and its supporting statement, we do not believe that exclusion or modification under rule 14a-8(i)(3) is appropriate for much of the language in supporting statements to which companies have objected. Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:
>
> - the company objects to factual assertions because they are not supported;
>
> - the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
>
> - the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or

- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

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

The bulletin noted that there "continue to be certain situations where we believe modification or exclusion may be consistent with our intended application of rule 14a-8(i)(3)." ….Specifically, reliance on rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where:

- statements directly or indirectly impugn character, integrity, or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation;

- the company demonstrates objectively that a factual statement is materially false or misleading;

- the resolution contained in the proposal is so inherently vague or 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 — this objection also may be appropriate where the proposal and the supporting statement, when read together, have the same result; and

- substantial portions of the supporting statement are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which she is being asked to vote.

As discussed below, none of the Company's assertions under Rule 14a-8(i)(3) qualify for these limited circumstances for exclusion.

The language of the proposal is not materially misleading.

First, the Company Letter attempts to assert that the language of the proposal is misleading where it contains estimates of plastics pollution and that the estimate of 8 million tons of plastic pollution in the oceans includes municipal solid waste. The plain language of the Proposal states:

> Eight million tons of plastics leaks into oceans annually. Plastics degrade in water to small particles that animals mistake for food; plastic pollution impacts 260 species, causing fatalities from ingestion, entanglement, suffocation, and drowning. Plastic does $13 billion in damage to marine ecosystems annually.

The Proponent's use of the estimates of eight million tons of plastic pollution, of $13 billion damage to marine ecosystems, and of a trend toward more plastics than fish in the ocean, are each reasonable advocacy statements which reflect the order of magnitude of damage by plastics. The Company is free to dispute and pick apart the relevance of these figures in its opposition statement, but they are not materially misleading to investors. Further, the proponent notes that the Company's plastic pellets may or may not be a significant contributor to millions of tons of plastics reaching the Marine ecosystem. As noted in the proposal, the plastic pellets pose special risks due to their size and ability to be taken up by marine animals as food. The Company's plastic pellets are clearly part of each of these problems, and are relevant to total global plastics pollution, total global costs, and contribute to the amount of plastics in the ocean relative to fish.

The Company is free to assert in its opposition statement that pellets from its joint venture do not constitute a significant source of ocean pollution, but this is not a materially misleading issue within the meaning of the Staff Legal Bulletin. Despite the Company's hyperbolic challenge, there is no assertion in the Proposal that the Company is doing $13 billion in damage to marine ecosystems, nor that the Company's pellets are the only source of plastics pollution.

Secondly, the company asserts that the estimates of pellets released to the environment are misleading. The Company is similarly free in its opposition statement to quibble with the estimates of the number of pellets being released to the environment. The Company could certainly attempt to assert in its opposition statement that those figures do not apply to the Company's own facilities and indeed, if it is true, to assert that no pellets are released from its own facilities and that the existing estimates do not necessarily reflect the amount of pellets reaching the ocean. These implications are not drawn in the Proposal.

The plain language of the Proposal is not vague.

The Company Letter also asserts that the language of the Proposal is vague despite the plain language of the Proposal requesting a report on "plastic pollution" that discloses "trends in the amount of pellets, powder or granules released to the environment by the company annually." The Proposal further provides that the report should assess the effectiveness of the company's policies and actions to reduce "the volume of the company's plastic materials" contaminating the environment.

This is not a situation where the board or shareholders would be unclear in the meaning of the proposal such that they would either not understand terms raised in the proposal, or how the proposal could be implemented.

First, the Company Letter asserts that the Proposal "fails to clearly identify the "company" and, depending on the context, the term could refer either to CPChem or Phillips 66.

Although the Proposal would not exclude other relevant parts of Phillips 66 operations, if any exist, but for purposes of informing shareholders voting on the proposal, reading the Proposal it is perfectly clear that the proposal is focused on Phillips 66' role in the joint project with

Chevron.

The Company Letter then goes on to try to claim vagueness of the most self-evident terms stated in the proposal. It argues that the Proposal does not define the concept of "plastic pollution," and "the company's plastics pollution." The resolved clause, however, clearly defines the plastic pollution addressed by the Proposal. It states that "the report should disclose trends in the amount of pellets, powder or granules released to the environment by the company annually, and concisely assess the effectiveness of the company's policies and actions to reduce the volume of the company's plastic materials contaminating the environment. This language is sufficiently clear for the Company and shareholders to understand what is being asked of the Company.

As such the claims of vagueness are like the claims in *JP Morgan Chase* (March 11, 2011), where, in a proposal on a political contributions report, the company attempted to claim that the phrase "used to participate or intervene in any political campaign" was vague. While there were possible nuances of the phrase, the language was clear enough on its face, that Staff was unable to conclude that the proposal is so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company in implementing the proposal, would be able to determine with any reasonable certainty what actions or measures the proposal requires. Similarly, in the present instance there is no real sense that shareholders or the board would have difficulty understanding how to interpret or implement the Proposal.

The Proposal does not impugn the Company.

Finally, the Company Letter asserts that the proposal impugns the Company. As noted above, plastic pellets are estimated to be the second largest direct source of microplastic pollution to the ocean by weight. **The Proposal notes an industry-wide problem and seeks information on the Company's performance on the issue; it does not presume to know where the Company stands among its peers.** Since 2013, at least eight companies in California have been fined or sued by the U.S. Environmental Protection Agency for violating Clean Water Act storm water permits by failing to prevent plastic pellets from entering the environment. In July 2018, a Formosa Plastics petrochemical plant in Texas was fined $120,000 by the Texas Commission on Environmental Quality for failing to control pellet releases. Local residents in Texas have filed a related lawsuit against the company alleging discharge of from 500 million to 5 billion pellets, in violation of its permit, and seeks cleanup and larger penalties. Recent large-scale pellet spills include 108,000 pounds spilled in the Port of Durban in 2017 that impacted 750 miles of South African coastline, and 330,000 pounds of pellets that collected on shores near Hong Kong after a 2012 spill.

There is ample evidence to suggest that pellets are released from operations similar to the Company's joint venture. It is certainly appropriate for the Company to quantify the degree to which pellets from its operations are contaminating – or not contaminating – the environment as requested by the Proposal.

The Company's objection that the proposal impugns the company is without basis and not a grounds for exclusion under Rule 14a-8(i)(3).

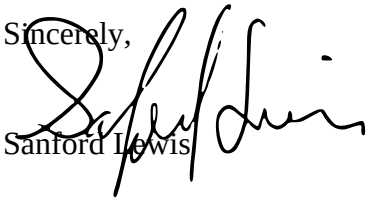
III. The Company Letter correctly notes that proof of ownership was not received from co-filers.

The Proponent concedes that proof of ownership was not submitted by the co-filers, and therefore the co-filers need not be included in the listing of the proposal on the proxy.

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2019 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,



Sanford Lewis

cc: Paula A. Johnson

January 8, 2019

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Phillips 66
Shareholder Proposal of As You Sow

Ladies and Gentlemen:

Phillips 66 (which is sometimes referred to as the "Company") is submitting this letter pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude from its proxy statement and form of proxy for its May 2019 Annual Meeting of Shareholders (collectively, the "2019 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from As You Sow on behalf of Winston Dines (the "Proponent") and on behalf of Dana B. Kahn, Daniel Handler & Lisa Brown Family Trust, Maida Lynn Revocable Trust, Michelle Swenson & Stan Drobac Revocable Trust, Patricia Rose Lurie Revocable Trust, and The Amy Wendel Revocable Trust as co-filers.

We hereby respectfully request that the Staff concur in our view that (i) Dana B. Kahn, Daniel Handler & Lisa Brown Family Trust, Maida Lynn Revocable Trust, Michelle Swenson & Stan Drobac Revocable Trust, Patricia Rose Lurie Revocable Trust, and The Amy Wendel Revocable Trust (collectively, the "Co-Filers") be excluded as co-filers pursuant to Rule 14a-8(b) because they failed to provide adequate proof of ownership and (ii) the Proposal may be excluded from the 2019 Proxy Materials pursuant to Rules 14a-8(i)(6) and (3) as outlined below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are submitting this request for no-action relief via the Commission's email address, shareholderproposals@sec.gov. In accordance with Rule 14a-8(j) of the Exchange Act, this letter is being filed with the Commission no later than 80 calendar days before the Company intends to file the definitive 2019 Proxy Materials with the Commission, and we are contemporaneously sending a copy of this letter and its attachments to the Proponent.

SUMMARY OF THE PROPOSAL

The resolved clause of the Proposal states:

"BE IT RESOLVED Shareholders request that the Board of Directors of Phillips 66 issue an annual report to shareholders, at reasonable cost and omitting proprietary information, on plastic pollution. The report should disclose trends in the amount of pellets, powder or granules released to the environment by the company annually, and concisely assess the effectiveness of the company's policies and actions to reduce the volume of the company's plastic materials contaminating the environment."

The statements supporting the Proposal provide the reasoning behind the Proposal: "Given the severe biodiversity and economic impacts of plastic pollution described [in the supporting statements], there is an urgent need to increase and improve reporting on pellet spills and remediation, as well as discussing accountability for pellet spill remediation in more detail."

A full copy of the Proposal is attached to this letter as Exhibit A hereto. In addition, pursuant to Staff Legal Bulletin No. 14C (June 28, 2005), relevant correspondence exchanged with the Proponent is attached as Exhibit B hereto.

BASES FOR EXCLUSION

We respectfully request that the Staff concur in our view that:

(i) The Co-Filers may be properly excluded as co-filers pursuant to Rule 14a-8(b) because they failed to provide adequate proof of ownership thereunder;

(ii) The Proposal may be properly excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(6) because the Company lacks the power and authority to implement the Proposal; and

(iii) The Proposal may be properly excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proposal and/or supporting statement contains false or misleading statements and are vague and indefinite in violation of Rule 14a-9 under the Exchange Act.

ANALYSIS

I. Dana B. Kahn, Daniel Handler & Lisa Brown Family Trust, Maida Lynn Revocable Trust, Michelle Swenson & Stan Drobac Revocable Trust, Patricia Rose Lurie Revocable Trust, and The Amy Wendel Revocable Trust May be Excluded as Co-Filers Under Rule 14a-8(b) Because They Failed to Establish the Requisite Eligibility to Submit the Proposal and Failed to Provide Sufficient Proof of Ownership After Receiving Proper Notice of Deficiency Under Rule 14a-8(f)(1)

On November 27, 2018, As You Sow, on behalf of the Proponent and the Co-Filers, submitted the Proposal to the Company via overnight delivery and e-mail. *See* Exhibit A. As You Sow's submission of the Proposal included authorizations from the Proponent and the Co-Filers indicating that As You Sow was authorized "to deal on Stockholder's behalf with any and all aspects of the shareholder resolution." *See* Exhibit A.

Each of the Proponent and Co-Filers' authorization letters accompanying the Proposal stated that they "continuously owned over $2,000 worth of stock." *See* Exhibit A. The Company reviewed its stock records, which did not indicate that the Proponent or any of the Co-Filers were the record owners of any shares of Company securities.

Accordingly, in a letter dated and sent on December 5, 2018, within fourteen calendar days of the date when the Company received the Proposal, the Company notified As You Sow of the Proposal's procedural deficiencies as required by Rule 14a-8(f) (the "Deficiency Notice"). In the Deficiency Notice, attached hereto as Exhibit B, the Company clearly informed As You Sow of the requirements of Rule 14a-8 and how the procedural deficiencies could be cured. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including a written statement from the "record" holder of the Proponent's or Co-Filers' shares (usually a broker or a bank) verifying that the Proponent or the Co-Filers continuously held the required number or amount of Company shares for the one-year period preceding and including the date the Proposal was submitted (November 27, 2018); and
- that any response to the Deficiency Notice had to be postmarked or transmitted electronically no later than fourteen calendar days from the date As You Sow received the Deficiency Notice.

The Deficiency Notice also included a copy of Rule 14a-8 and of Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F"). The Deficiency Notice was sent via overnight delivery and via email on December 5, 2018.

On December 10, 2018, the Company received a response to the Deficiency Notice containing proof of the Proponent's ownership. *See* Exhibit B. However, the Company never received a response to the Deficiency Notice containing proof of the Co-Filers' ownership.

Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14") specifies that when the shareholder is not the registered holder, the shareholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the shareholder may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, SLB 14.

The Staff consistently has consistently granted no-action relief when proponents have failed, following a timely and proper request by a company, to furnish evidence of eligibility to submit the shareholder proposal.

The Company satisfied its obligation under Rule 14a-8 by transmitting to As You Sow in a timely manner the Deficiency Notice, which specifically set forth the information and instructions listed above and attached a copy of both Rule 14a-8 and SLB 14F. *See* Exhibit B. However, neither As You Sow nor the Co-Filers provided the proof of ownership required by Rule 14a-8(b)(2), and as described in the Deficiency Notice and in SLB 14F. Because the Co-Filers, despite receiving timely and proper notice of deficiency from the Company pursuant to Rule 14a-8(f)(1), have not demonstrated that they continuously owned the required number of Company shares for the one-year period prior to and including the date the Proposal was submitted to the Company, as required by Rule 14a-8(b), we ask that the Staff concur that the Company may exclude each of Dana B. Kahn, Daniel Handler & Lisa Brown Family Trust, Maida Lynn Revocable Trust, Michelle Swenson & Stan Drobac Revocable Trust, Patricia Rose Lurie Revocable Trust, and The Amy Wendel Revocable Trust as co-filers of the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because the Company Lacks the Power and Authority to Implement the Proposal

Rule 14a-8(i)(6) provides that a shareholder proposal may be excluded from a company's proxy statement if the company lacks the power or authority to implement the proposal. Chevron Phillips Chemical Company LLC ("CPChem") is a joint venture indirectly owned by the Company and Chevron Corporation ("Chevron"). CPChem, together with its joint ventures, is one of the world's top producers of olefins and polyolefins and a leading supplier of aromatics, alpha olefins, styrenics, specialty chemicals, piping and proprietary plastics. CPChem produces chemical products that are essential to manufacturing over 70,000 consumer and industrial products.

The Proposal requests that the Board of Directors of Phillips 66 annually issue a report regarding trends in the amount of pellets, powder or granules (collectively referred to herein as "pellets") released to the environment "by the *company* annually, and concisely assess the effectiveness of the *company's* policies and actions to reduce the volume of the *company's* plastic materials contaminating the environment" (emphasis added). Phillips 66, however, does not own or operate petrochemical facilities that produce pellets. Rather, Phillips 66 has an equity investment in CPChem, which, with its joint ventures partners, operates 30 manufacturing facilities located in seven countries. Some of these facilities produce pre-production plastic pellets. These pellets are used by others in the value chain to make finished plastic products such as appliances, furniture, electronics, automobile parts, building and construction materials, packaging, trash bags, cups, eating utensils, sporting and recreational equipment, toys, medical devices, and other finished plastic products.

CPChem is a separate and distinct entity from Phillips 66. CPChem is a member managed limited liability company. Phillips 66 Company, a wholly-owned subsidiary of Phillips 66, and Chevron U.S.A. Inc., a wholly-owned subsidiary of Chevron, are the sole members of CPChem, each owning a 50% interest. The Third Amended and Restated Limited Liability Company Agreement of CPChem (the "LLC Agreement") provides that the board of directors of CPChem (the "CPChem Board") will conduct, manage and control the business and affairs of CPChem and will make any rules and regulations the CPChem Board deems to be in the best interest of CPChem. The CPChem Board has delegated management of the day-to-day activities and affairs of CPChem to the officers of CPChem. No officer of CPChem is an officer or employee of Phillips 66.

The LLC Agreement provides that the CPChem Board consists of six voting directors and two non-voting directors. Each of Phillips 66 and Chevron has the right to appoint three of the six voting directors. At least one Phillips 66-appointed director and at least one Chevron-appointed director must be present at a meeting in order to establish a quorum for the transaction of business, and every act or decision done or made by the CPChem Board requires the unanimous consent of all voting directors present at which a quorum is present. Any action by written consent requires the written consent of at least one Phillips 66-appointed director and one Chevron-appointed director. As a result, any action that requires approval of the CPChem Board requires the affirmative vote of at least one Phillips 66-appointed CPChem Board member and one Chevron-appointed CPChem Board member.

For actions requiring a vote of the members, the LLC Agreement states that each member is entitled to cast that number of votes corresponding to such member's percentage interest. Further, the unanimous vote of the members will constitute the act of all members. As a result, both Phillips 66 and Chevron must vote in favor of a matter for any action that requires a vote of the members.

Phillips 66 does not have the power or authority to take any action that would require the approval of CPChem's members or the CPChem Board without the concurrence of Chevron. The Proposal requests that the Board of Directors of Phillips 66 issue an annual report regarding "the company's" pellet spills, policies and actions, presumably referring to CPChem. The decision to publicly report the information that the Proponent requests is a matter under the purview of the CPChem Board and/or its management. Phillips 66 lacks the majority representation on the CPChem Board necessary to direct such reporting. Further, any such report would have to be produced by CPChem, through its employees and officers. As discussed above, however, management of the day-to-day activities and affairs of CPChem has been delegated to the officers of CPChem, none of whom is an officer or employee of Phillips 66. As such, the Phillips 66 Board of Directors lacks the power and authority to direct the production of such a report.

The Staff permitted the exclusion of a proposal on similar grounds in *eBay Inc.* (Mar. 26, 2008). In *eBay*, a shareholder submitted a proposal requesting that the eBay board of directors enact a policy prohibiting the sale of dogs and cats on the website of a joint venture owned by eBay International AG, a wholly-owned subsidiary of eBay, and TOM Online Inc., an independent online portal and wireless internet company headquartered in China. TOM Online was not controlled by eBay, and eBay had no ownership interest in TOM Online. eBay asserted that it could properly omit the proposal from its proxy statement under Rule 14a-8(i)(6) because it lacked the power and authority to implement the proposal. eBay owned 49% of the joint venture's shares and TOM Online owned the remained 51%. Pursuant to the joint venture's organizational documents, each joint venture share had one vote and questions arising at any shareholders meeting were required to be decided by at least 50% of the shares. eBay stated that, "without support from TOM Online, eBay International does not have the power or authority to take any action that would be required to be approved by the shareholders" of the joint venture. Further, eBay lacked majority representation on the joint venture's board of directors and therefore, absent concurrence from TOM Online, eBay International did not have the power to prevent the board of director of the joint venture from taking any action relating to the operations of the joint venture.

Additionally, the Staff has indicated that exclusion under Rule 14a-8(i)(6) "may be justified where implementing the proposal would require intervening actions by independent third parties." *See 1998 Release,* at note 20. In *American Home Products Corp.* (Feb. 3, 1997), the Staff concurred with the exclusion of a proposal requesting that the company include certain warnings on its contraceptive products, where the company could not add the warnings without first getting government regulatory approval. Similarly, in *SCEcorp* (Dec. 20, 1995, recon. denied Mar. 6, 1996), the Staff concurred with the exclusion of a proposal that would have required unaffiliated fiduciary trustees of the company to amend voting agreements. The decision to publicly produce the report the Proposal requests is a decision for CPChem to make, not the Phillips 66 Board of Directors. Phillips 66 has an equity interest in and board representation on CPChem, but its ownership and board representation is shared equally with

Chevron. The Phillips 66 Board of Directors could not publish the report without the consent of Chevron and therefore, it is beyond Phillips 66's power to voluntarily report such information publicly as the Proposal would require.

Accordingly, we respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(6).

III. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because the Proposal Violates the Proxy Rules

Rule 14a-8(i)(3) under the Exchange Act permits a company to exclude statements contained in a shareholder proposal if such statements are contrary to the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy solicitation materials.

In Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"), the Commission confirmed that Rule 14a-8(i)(3) allows for the modification or exclusion of a proposal or supporting statement if the company "demonstrates objectively that a factual statement is materially false or misleading." The Staff has consistently concurred in the exclusion of proposals that include factual statements that are materially false or misleading and relate to the subject matter of a proposal. *See Ferro Corp.* (Mar. 17, 2015) (concurring in the exclusion of a proposal requesting that an Ohio company reincorporate in Delaware because the proposal included supporting statements misstating Ohio law); *AT&T Inc.* (Feb. 2, 2009) (concurring in the exclusion of a proposal requesting an adoption of a bylaw to implement a lead independent director position because the proposal included a supporting statement misstating the independence standard of the Council of Institutional Investors).

Also in SLB 14B, the Commission indicated that Rule 14a-8(i)(3) allows modification or exclusion "where the resolution contained in the proposal is so inherently vague or 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." Additionally, the Staff has determined that a shareholder proposal may be excludable as materially misleading where "any action ultimately taken by the Company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (Mar. 12, 1991).

Finally, the Staff has concurred in the exclusion of proposals that "directly or indirectly impugns character, integrity or personal reputation or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation." *SLB 14B*. For example, in *General Magic, Inc.* (May 1, 2000) the Staff concurred in the exclusion of a proposal requesting that the company make "no more false statements" to its shareholders. The company argued that the proposal created the false impression that the

company had previously tolerated dishonest behavior by its employees when the company had not; in fact, the company had corporate policies in place to the contrary. *See also Philip Morris Companies Inc.* (Feb. 7, 1991) (concurring in the exclusion of a proposal that implied the company "advocates or encourages bigotry and hate" under former Rule 14a-8(c)(3)).

As discussed below, we believe that each of the foregoing reasons set forth in the Commission's prior guidance provides a basis for the proper exclusion of the Proposal from the 2019 Proxy Materials.

A. Several supporting statements in the Proposal are materially false and misleading, and therefore excludable.

The Proposal requests Phillips 66's Board of Directors to issue a report on plastic pollution, including trends in amounts of pellets, powder and granules released annually and the effectiveness of policies and actions to reduce the volume of plastic materials contaminating the environment. Although the supporting statements correctly state that CPChem is a producer of plastic pellets and the Proposal requests information on trends in pellet spills, the Proponent's support for the Proposal deals primarily with plastic waste – finished plastic products that are disposed of after use - not pre-production plastic pellets.

The Proponent describes in great lengths the "global environmental crisis" of plastic pollution and in doing so, has improperly implied that such crisis is due to pellet spills, rather than plastics generally. In fact, the Proponent states that "[g]iven the severe biodiversity and economic impacts of plastic pollution described [in the supporting statement], there is an urgent need to increase and improve reporting on pellet spills and remediation, as well as discussing accountability for pellet spill remediation in more detail." The biodiversity and economic impacts included in the supporting statements generally relate to finished plastic products and the amount of those products that find their way into waterways due to a lack of recycling and poor waste management practices. As a result, several of the supporting statements are materially misleading to shareholders because the information is directly relevant to shareholders' consideration of the Proposal.

i. Proponent's Statement: Eight million tons of plastics leaks into oceans annually.

Proponent's statement that "eight million tons of plastics leaks into oceans annually" appears to be derived from a 2015 study by the National Center for Ecological Analysis and Synthesis (NCEAS) entitled "*Plastic waste inputs from land into the ocean.*"[1] That study attempted to quantify the annual amount of mismanaged plastic waste worldwide that could potentially enter the ocean from populations living within 50 kilometers of a coast. Specifically, the methodology used in the study included estimating (i) per capita waste generation rates; (ii)

[1] *See* http://science.sciencemag.org/content/347/6223/768

the percentage of plastic in that waste (predicted using a model based on U.S. EPA reports of plastics in municipal solid waste streams in the United States) and (ii) the percentage of that waste that is mismanaged. For the latter estimate, the study considered countries' inadequate waste management practices and littering. For example, waste managed in landfills in high- and middle-income countries and in composting, recycling and waste-to-energy programs was considered adequately managed, whereas dumps and landfills in low-income countries were considered inadequately managed. For littering, the study used a national estimate of litter mass published by Keep America Beautiful in 2009.

By asserting that eight million tons of plastic leak into the ocean annually, without any qualifying language, the Proponent mischaracterizes the statement as an actual calculation, rather than an estimate. The calculation is an estimate of plastics contained in municipal solid waste that is mismanaged. Pre-production plastic pellets are not municipal solid waste. Pellets are a valuable product sold as a feedstock used by others to make finished plastic products, not an item that is disposed of and becomes municipal solid waste. Finished products become municipal solid waste at the end of their life cycle. However, the statement implies that Phillips 66 or CPChem is the source of the eight million tons and/or that plastic pellets manufactured by CPChem are a significant contributor to the calculation. The statement is therefore misleading in the context of the Proposal.

ii. Proponent's Statement: Plastic does $13 billion in damage to marine ecosystems annually.

The Proponent included no source for the $13 billion figure. We believe it was derived from a report entitled "*Valuing Plastic, The Business Case for Measuring, Managing and Disclosing Plastic Use in the Consumer Goods Industry*" issued by the United Nations Environment Programme (UNEP) in 2014.[2] That report attempted to show the "total natural capital cost" of plastic used in the consumer goods industry, which includes companies that produce toys, athletic goods, soft drinks, personal products and pharmaceuticals, among others. The report assessed both the upstream and downstream impacts of plastic use in products and packaging. The downstream impacts include the end-of-life stage of finished products such as littering and disposal. The "total natural capital cost" to the marine environment included estimates of (i) revenue losses to fisheries, aquaculture activities and marine tourism; (ii) opportunity costs for volunteer hours spent cleaning beaches; and (iii) how much people are hypothetically willing to pay for the preservation of marine species and biodiversity. The UNEP report concluded that $13 billion is the "total natural capital cost" to marine ecosystems from littering and improper disposal of finished plastic products manufactured by the companies in the consumer goods industry included in the report. It is important to note that the UNEP report's

[2] *See* https://www.unenvironment.org/resources/report/valuing-plastic-business-case-measuring-managing-and-disclosing-plastic-use

methodology excludes primary microplastics, such as plastic pellets used in industrial feedstocks.

Stating that $13 billion of damage to marine ecosystems is caused by plastics annually, without any context, is misleading to shareholders. The Proponent's statement implies that there is an actual cost of $13 billion, when the dollar figure is an estimate of a hypothetical amount of damage caused. Additionally, the Proponent states that "plastic" causes the damage, which, in light of the Proposal, could lead a reasonable shareholder to conclude – erroneously – that pellet spills cause $13 billion of damage annually or that Phillips 66 of CPChem incur $13 billion of costs, neither of which is true. Given that the report calculating the $13 billion specifically excludes plastic pellets from the impact of plastics in the ocean, the statement is misleading in the context of the Proposal.

iii. Proponent's Statement: If no action is taken, oceans are expected to contain more plastic than fish by 2050.

This statement appears to come from a 2016 World Economic Forum report entitled "*The New Plastics Economy: Rethinking the future of plastics,*" which was produced by the Ellen MacArthur Foundation.[3] That report, and the data included in the report, focused on plastic packaging, including water and soft drink bottles, shopping bags, shampoo, chemical and detergent bottles, cosmetic containers, microwave dishes, CD cases, and other plastic packaging. The report stated that if no action is taken, by 2050, the ocean could contain more plastics than fish by weight. The methodology for the calculation included an estimate of the stock of plastics in the ocean as of 2015; estimated annual leakage rates and annual growth rates in leakage through 2025 from the NCEAS report; and projections of annual plastic leakage from 2025-2050 based on long-term GDP growth estimates. As described in (i), above, however, the NCEAS report was based on municipal solid waste. Accordingly, the estimate of the comparable weight of plastics that may be in the ocean by 2050 also is based on municipal solid waste, not pre-production plastic pellets.

By stating that plastics could outweigh fish by 2050 in support of the Proposal, the Proponent incorrectly implies that preproduction plastic pellets could outweigh fish when the estimate actually is based on estimates of plastics in municipal waste streams. The statement is misleading in the context of the Proposal, which requires reporting of the "company's plastic materials."

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[3] *See* https://www.ellenmacarthurfoundation.org/publications/the-new-plastics-economy-rethinking-the-future-of-plastics

iv. Proponent's Statement: [U]p to 53 billion pellets may be spilled annually in the United Kingdom alone. A recent study concluded that up to 36 million plastic pellets may be spilled from one major industry production complex in Sweden.

We believe that the supporting statement that up to 53 billion pellets may be spilled annually in the United Kingdom comes from a February 2016 study commissioned by Fidra and conducted by Eunomia Research & Consulting Ltd entitled "*Study to Quantify Pellet Emissions in the UK.*"[4] Eunomia's study estimated that plastic pellet loss in the UK could be anywhere from 5.3 billion to 53 billion pellets each year. The study estimated that pellets could be lost at different points in the plastics value chain, including during production; during transportation and at other intermediary facilities; during processing; and through improper commercial waste management. The study assigned each point in the plastics value chain an assumed rate of loss. However, the study did not attempt to calculate how many pellets then enter rivers and are transported to the ocean.

The supporting statement regarding the production complex in Sweden appears to come from a 2018 study conducted by researchers at the University of Gothenberg of a chemical industry cluster in Stenungsund, Sweden that hosts a polyethylene production facility, an ethylene producing cracker, and several other companies that participate in the handling and transporting of produced pellets.[5] The study used a combination of measurements and photo documentation in the field, theoretical calculations and models. The different assumptions used corresponded to an annual release of between 3 million and 36 million pellets.

By citing only the highest numbers - 53 billion and 36 million - and omitting the actual estimated ranges, the supporting statements are misleading. Further, the Proponent's use of these figures is misleading because they can be read to mean that those spills can be attributed to Phillips 66 or CPChem. Neither Phillips 66 nor CPChem have plastic manufacturing facilities in the UK or Sweden. The statements also are misleading in that they could be read to imply that such spill volumes can be extrapolated to apply to other petrochemical facilities, such as those owned and operated by CPChem. There is no basis in the Proponent's statement supporting such an extrapolation.

Each of the above factual statements are materially misleading to shareholders because the information is directly relevant to shareholders' consideration of the Proposal. Accordingly, we respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(3).

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[4] *See* https://www.eunomia.co.uk/reports-tools/study-to-quantify-pellet-emissions-in-the-uk/

[5] *See* https://www.sciencedirect.com/science/article/pii/s0025326x18300523

B. The Proponent's Proposal is vague and indefinite

The Staff has consistently concurred in the exclusion of shareholder proposals that fail to define or explain the meaning of key terms. For instance, in *PetSmart, Inc.* (Apr. 12, 2010), the Staff concurred in the exclusion of a proposal requesting the board to require that its suppliers bar the purchase of animals for sale from distributors that have violated or are under investigations for violations of "the law." No-action relief was granted on the basis that the term "the law," which the proposal failed to define, was likely to mislead shareholders because the supporting statements focused on animal abuse, but the term "the law" is so broad and generic that it would require the company to prohibit its suppliers from dealing with distributors who have violated a law unrelated to the treatment of animals. *See also Moody's Corp.* (Feb. 10, 2014) (concurring in the exclusion of a proposal requesting a report on the use of "ESG risk assessments" in the company's credit rating methodologies because the proposal failed to define ESG and, although the supporting statements explained that the resolution aimed to disclose the company's "social, environmental and government performance," the proposal failed to link these terms to the acronym).

Similarly, in *Bank of America Corp.* (Feb. 25, 2008), the Staff concurred in the exclusion of a proposal requesting a moratorium on "further involvement in activities that support MTR coal mining or the construction of new coal-burning power plants that emit carbon dioxide." No-action relief was granted on the basis that it was unclear what actions the company should take, or cease taking, to implement the proposal. Further, the supporting statements offered little guidance on what are "activities that support" MTR coal mining or the construction of new coal-burning plants. *See also Puget Energy, Inc.* (Mar. 7, 2002) (concurring in the exclusion of a proposal requesting "improved corporate governance" because the proposal and supporting statement fail to clearly describe this term).

Here, the Proposal requests a report on "plastic pollution" that discloses "trends in the amount of pellets, powder or granules released to the environment by the company annually." The Proposal further provides that the report should assess the effectiveness of the company's policies and actions to reduce "the volume of the company's plastic materials" contaminating the environment.

As an initial matter, the Proposal fails to clearly identify the "company," and depending on the context, the term could refer either to CPChem or Phillips 66. The Proposal requests the Board of Directors of Phillip 66 to issue the report, but Phillips 66 does not handle pellets, powder or granules and does not produce plastics. Further, Phillips 66 does not have policies regarding reduction of plastic materials because it does not produce plastic materials.

In addition, the Proposal does not define the concept of "plastic pollution." Although the Proposal requests specific information on the trends of pellet spills, it also requests information on policies and actions to reduce "the volume of the company's plastic materials" contaminating

the environment. The scope of the requested report on plastic is unclear: is it with respect to pellets specifically, or some broader definition of plastics? It also is unclear to what the requested assessment of actions to reduce "the volume of plastic materials" applies: is it pellets at production facilities; pellets lost by others through the value chain; and/or the end-use products that are made from pellets?

Like the phrases "activities that support" (*Bank of America*) or "improved corporate governance" (*Puget Energy*), the vagueness of the terms "the company," "plastic pollution" and "the volume of the company's plastic materials" create uncertainty for shareholders in determining exactly what they are voting on and uncertainty for the Company as to how to implement the Proposal, if adopted.

The lack of definitions or explanations of these terms render the Proposal so vague and indefinite that neither the shareholders nor the Company are able to determine with any reasonable certainty what actions or measures the Proposal requires. Accordingly, we respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(3).

C. *The Proposal and the supporting statements impugn the reputation of the Company and indirectly make charges concerning improper, illegal or immoral conduct, without factual foundation*

The supporting statements for the Proposal allege that billions of plastic pellets are swept into waterways during production or transport annually due to "spills and poor handling procedures" and that there is an "urgent need" for discussing accountability for spill remediation in more detail. These statements impugn Phillips 66, the public company that owns an interest in CPChem, and CPChem as the owner and operator of manufacturing facilities, as a company that spills pellets and has poor handling procedures. This is particularly true given the Proposal requests an assessment of policies and actions to reduce the volume of "the company's plastic materials contaminating the environment." Taken together, the Proposal and its supporting statements suggest that Phillips 66 as the equity investor, and CPChem as the owner and operator of facilities that produce pellets, are already contaminating the environment, and action is required to reduce such contamination.

By requesting a report on actions to reduce the volume of plastic materials contaminating the environment, the Proposal creates the impression that Phillips 66 and/or CPChem is currently contaminating the environment with plastic materials, without any factual foundation.

Accordingly, we respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(3).

CONCLUSION

Based on the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company:

(i) excludes Dana B. Kahn, Daniel Handler & Lisa Brown Family Trust, Maida Lynn Revocable Trust, Michelle Swenson & Stan Drobac Revocable Trust, Patricia Rose Lurie Revocable Trust, and The Amy Wendel Revocable Trust as co-filers from the Proposal under Rule 14a-8(f) because none of them supplied sufficient documentary support evidencing satisfaction of the continuous share ownership requirements of Rule 14a-8(b); and

(ii) excludes the Proposal from its 2019 Proxy Materials pursuant to Rules 14a-8(i)(6) and 14a-8(i)(3).

If you have any questions, or if the Staff is unable to concur with our view without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. Members of the Staff should feel free to contact Amanda Maki, Senior Counsel, at (832) 765-3061 or by email at Amanda.k.maki@p66.com for any such information of discussions.

Sincerely,

Paula A. Johnson
Executive Vice President, Legal and Government Affairs, General Counsel and Corporate Secretary

Attachments

cc: Cameron MacKerron, As you Sow

EXHIBIT A

PROPOSAL SUBMITTED BY

PROPONENT AND CO-FILERS

AS YOU SOW

1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

November 27, 2018

Paula A. Johnson
Corporate Secretary
Phillips 66
P.O. Box 421959
Houston, Texas 77210

Dear Ms. Johnson:

As You Sow is concerned about the impact of spills of plastic pre-production pellets. Chevron Phillips Chemical Co., owned jointly by Phillips 66 and Chevron, is one of the world's top producers of olefins and polyolefins, and operates facilities that produce plastic pellets. Due to spills and poor handling procedures, billions of plastic pellets are swept into waterways during production or transport annually and increasingly found on beaches and shorelines, adding to harmful levels of plastic pollution in the environment. The company provides no public reporting about pellet spills or remediation.

We reached out in recent months to start a dialogue but received no response. Therefore, to protect our right to bring this issue before shareholders, *As You Sow* is filing a shareholder proposal on behalf of Winston Dines ("Proponent"), a shareholder of Phillips 66, for action at the next annual meeting of Phillips 66. Proponent submits the enclosed shareholder proposal for inclusion in Phillips 66's 2019 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on her behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

We are available to discuss this issue and optimistic that such discussion could result in resolution of the Proponent's concerns. To schedule a dialogue, please contact Conrad MacKerron, Senior Vice President at mack@asyousow.org.

Sincerely,

Conrad MacKerron
Senior Vice President

Enclosures
- Shareholder Proposal
- Shareholder Authorization

Whereas plastic pollution is a global environmental crisis. Chevron Phillips Chemical Co., owned jointly by Phillips 66 and Chevron, is one of the world's top producers of olefins and polyolefins, used in the production of plastics such as polypropylene and polyethylene. As a major petrochemical producer, it operates facilities that produce plastic pellets.

Most plastic products originate from plastic pellets, also known as pre-production pellets, or nurdles, manufactured in polymer production plants. Due to spills and poor handling procedures, billions of such plastic pellets are swept into waterways during production or transport annually and increasingly found on beaches and shorelines, adding to harmful levels of plastic pollution in the environment.

Eight million tons of plastics leaks into oceans annually. Plastics degrade in water to small particles that animals mistake for food; plastic pollution impacts 260 species, causing fatalities from ingestion, entanglement, suffocation, and drowning. Plastic does $13 billion in damage to marine ecosystems annually. If no action is taken, oceans are expected to contain more plastic than fish by 2050. Pellets are similar in size and shape to fish eggs and are often mistaken by marine animals for food. Plastic pellets can absorb toxins such as dioxins from water and transfer them to the marine food web and potentially to human diets, increasing the risk of adverse effects to wildlife and humans.

Nearly 200 nations pledged to eliminate plastic pollution in the world's oceans at the United Nations Environment Assembly in Nairobi last December. The United Nations Undersecretary-General has called this issue "an ocean Armageddon." The U.S. Microbead-Free Waters Act of 2015 banned one form of microplastic pollution—microbeads used in cosmetic products.

Plastic pellets are estimated to be the second largest direct source of microplastic pollution to the ocean by weight; up to 53 billion pellets may be spilled annually in the United Kingdom alone. A recent study concluded that up to 36 million plastic pellets may be spilled from one major industry production complex in Sweden.

Chevron Phillips Chemical is listed as a member of Operation Clean Sweep, an industry program that encourages use of best practices for pellet management and containment to reduce pellet loss, but this initiative provides no public reporting.

Given the severe biodiversity and economic impacts of plastic pollution described above, there is an urgent need to increase and improve reporting on pellet spills and remediation, as well as discussing accountability for pellet spill remediation in more detail.

BE IT RESOLVED Shareholders request that the Board of Directors of Phillips 66 issue an annual report to shareholders, at reasonable cost and omitting proprietary information, on plastic pollution. The report should disclose trends in the amount of pellets, powder or granules released to the environment by the company annually, and concisely assess the effectiveness of the company's policies and actions to reduce the volume of the company's plastic materials contaminating the environment.

Supporting statement: Proponent recommends that the report include discussion of pellet loss prevention, cleanup and containment.

November 20, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned (the "Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with the named Company for inclusion in the Company's 2019 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: WINSTON DINES

Company: The Phillips 66 Company

Subject: Reporting on Plastic Pellet Spills and Prevention Measures

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives *As You Sow* the authority to address on the Stockholder's behalf any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name in relation to the resolution.

The shareholder further authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:
Winston Dines
58BDF834C7894E6...

Winston Dines

Title (if applicable, usually "Trustee", leave Blank otherwise)

Name of Shareholding Entity (if applicable, leave Blank otherwise)

AS YOU SOW

1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

November 27, 2018

Paula A. Johnson
Corporate Secretary
Phillips 66
P.O. Box 421959
Houston, Texas 77210

Dear Ms. Johnson:

As You Sow is co-filing a shareholder proposal on behalf of the following Phillips 66 shareholders for action at the next annual meeting of Phillips 66:

- Dana B. Kahn
- Daniel Handler & Lisa Brown Family Trust
- Maida Lynn Revocable Trust
- Michelle Swenson & Stan Drobac Revocable Trust
- Patricia Rose Lurie Revocable Trust
- The Amy Wendel Revocable Trust

The Proponent has submitted the enclosed shareholder proposal for inclusion in the 2019 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

Please note that *As You Sow* also represents the lead filer of this proposal, Winston Dines.

Letters authorizing *As You Sow* to act on co-filers' behalf are enclosed. A representative of the lead filer will attend the stockholders' meeting to move the resolution as required.

Sincerely,

Conrad MacKerron
Senior Vice President

Enclosures
- Shareholder Proposal
- Shareholder Authorizations

Whereas plastic pollution is a global environmental crisis. Chevron Phillips Chemical Co., owned jointly by Phillips 66 and Chevron, is one of the world's top producers of olefins and polyolefins, used in the production of plastics such as polypropylene and polyethylene. As a major petrochemical producer, it operates facilities that produce plastic pellets.

Most plastic products originate from plastic pellets, also known as pre-production pellets, or nurdles, manufactured in polymer production plants. Due to spills and poor handling procedures, billions of such plastic pellets are swept into waterways during production or transport annually and increasingly found on beaches and shorelines, adding to harmful levels of plastic pollution in the environment.

Eight million tons of plastics leaks into oceans annually. Plastics degrade in water to small particles that animals mistake for food; plastic pollution impacts 260 species, causing fatalities from ingestion, entanglement, suffocation, and drowning. Plastic does $13 billion in damage to marine ecosystems annually. If no action is taken, oceans are expected to contain more plastic than fish by 2050. Pellets are similar in size and shape to fish eggs and are often mistaken by marine animals for food. Plastic pellets can absorb toxins such as dioxins from water and transfer them to the marine food web and potentially to human diets, increasing the risk of adverse effects to wildlife and humans.

Nearly 200 nations pledged to eliminate plastic pollution in the world's oceans at the United Nations Environment Assembly in Nairobi last December. The United Nations Undersecretary-General has called this issue "an ocean Armageddon." The U.S. Microbead-Free Waters Act of 2015 banned one form of microplastic pollution—microbeads used in cosmetic products.

Plastic pellets are estimated to be the second largest direct source of microplastic pollution to the ocean by weight; up to 53 billion pellets may be spilled annually in the United Kingdom alone. A recent study concluded that up to 36 million plastic pellets may be spilled from one major industry production complex in Sweden.

Chevron Phillips Chemical is listed as a member of Operation Clean Sweep, an industry program that encourages use of best practices for pellet management and containment to reduce pellet loss, but this initiative provides no public reporting.

Given the severe biodiversity and economic impacts of plastic pollution described above, there is an urgent need to increase and improve reporting on pellet spills and remediation, as well as discussing accountability for pellet spill remediation in more detail.

BE IT RESOLVED Shareholders request that the Board of Directors of Phillips 66 issue an annual report to shareholders, at reasonable cost and omitting proprietary information, on plastic pollution. The report should disclose trends in the amount of pellets, powder or granules released to the environment by the company annually, and concisely assess the effectiveness of the company's policies and actions to reduce the volume of the company's plastic materials contaminating the environment.

Supporting statement: Proponent recommends that the report include discussion of pellet loss prevention, cleanup and containment.

October 26, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder:	The Amy Wendel Revocable Trust
Company:	Phillips 66 (Chevron-Phillips Chemical Company LLC)
Resolution Request:	Plastic Pellets

The Stockholder has continuously owned over $2,000 worth of stock of the above mentioned Company, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

Sincerely,

DocuSigned by:
Daniel Meisel
25DB9E974DA9455...

Daniel Meisel

Trustee

The Amy Wendel Revocable Trust

November 1, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder:	Dana B. Kahn
Company:	Phillips 66 (Chevron-Phillips Chemical Company LLC)
Resolution Request:	Plastic Pellets

The Stockholder has continuously owned over $2,000 worth of stock of the above mentioned Company, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

Sincerely,

DocuSigned by:
Dana B. Kahn
C44FF2BF1C4B45...

Dana B. Kahn

As Account Owner

Dana B. Kahn

November 2, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder:	Daniel Handler & Lisa Brown Family Trust
Company:	Phillips 66 (Chevron-Phillips Chemical Company LLC)
Resolution Request:	Plastic Pellets

The Stockholder has continuously owned over $2,000 worth of stock of the above mentioned Company, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

Sincerely,

DocuSigned by:
Daniel Handler
9F34BA850BDF487
~~Daniel Handler~~

Trustee

Daniel Handler & Lisa Brown Family Trust

DocuSigned by:
Lisa Brown
22A88909C20C487
Lisa Brown

Trustee

Daniel Handler & Lisa Brown Family Trust

November 12, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder:	Maida Lynn Revocable Trust
Company:	Phillips 66 (Chevron-Phillips Chemical Company LLC)
Resolution Request:	Plastic Pellets

The Stockholder has continuously owned over $2,000 worth of stock of the above mentioned Company, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

The shareholder further authorizes As You Sow to send a letter of support of the resolution on Stockholder's behalf concerning the resolution.

Sincerely,

DocuSigned by:
Maida Lynn
A03B8A7C132A45B...

Maida Lynn

Trustee

Maida Lynn Revocable Trust

October 16, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder:	Michelle Swenson & Stan Drobac Revocable Trust
Company:	Phillips 66 Co (Chevron-Phillips Chemical LLC)
Resolution Request:	Plastic Pellets

The Stockholder has continuously owned over $2,000 worth of stock of the above mentioned Company, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

Sincerely,

DocuSigned by:
Michelle Swenson
ABE03E3719CF47E

Michelle Swenson

Trustee

Michelle Swenson & Stan Drobac Revocable Trust

October 15, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder:	Patricia Rose Lurie Revocable Trust
Company:	Phillips 66 (Chevron-Phillips Chemical LLC)
Resolution Request:	Plastic Pellets

The Stockholder has continuously owned over $2,000 worth of stock of the above mentioned Company, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

Sincerely,

DocuSigned by:
Patricia Lurie
6DB32074AF11461

Patricia Lurie

Trustee

Patricia Rose Lurie Revocable Trust

EXHIBIT B

CORRESPONDENCE

Amanda K. Maki
Senior Counsel

PHILLIPS 66
2331 CityWest Blvd.
Houston, TX 77042
Phone 832-765-3061
Amanda.k.maki@p66.com

December 5, 2018

VIA OVERNIGHT MAIL AND ELECTRONIC DELIVERY

As You Sow
Attn: Mr. Conrad MacKerron
1611 Telegraph Ave., Suite 1450
Oakland, California 94612
Email: mack@asyousow.org

Re: Submissions of shareholder proposal dated November 27, 2018 (the "Proposal")

Dear Mr. MacKerron:

Phillips 66, a Delaware corporation (the "Company"), is in receipt of your letters dated November 27, 2018, submitted on behalf of Winston Dines (the "Lead Proponent") and Dana B. Kahn, Daniel Handler & Lisa Brown Family Trust, Maida Lynn Revocable Trust, Michelle Swenson & Stan Drobac Revocable Trust, Patricia Rose Lurie Revocable Trust, The Amy Wendel Revocable Trust and Winston Dines (together with the Lead Proponent, the "Proponents").

The purpose of this letter is to notify you (pursuant to the requirements of Rule 14a-8(f) under Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) that the above referenced submissions of the Proposal fail to satisfy certain eligibility and procedural requirements specified under Rule 14a-8(b). Pursuant to Rule 14a-8(f), your response to this letter must be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter (the "Deadline"). If you fail to adequately correct the eligibility and procedural deficiencies specified below and respond to this letter before the Deadline, the Company may exclude the Proposal from its proxy statement.

Exchange Act Rule 14a-8(b)(1) requires that for a shareholder to be eligible to submit a proposal for inclusion in a company's proxy statement, the shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date the shareholder submits the proposal. As of the date hereof, we have not received proof that the Proponents have satisfied the Exchange Act Rule 14a-8(b) ownership requirements as of the date that the Proposal was submitted to the Company.

Specifically, the authorization letters from the several Proponents state that each of the Proponents has "continuously owned over $2,000 worth of stock of [Phillips 66], with voting rights, for over a year." The dates of these letters range from October 15, 2018 to November 20, 2018. It is therefore unclear whether each Proponent has held the requisite shares for the entire one-year period preceding and including the date the Proposal was submitted (November 27, 2018), as required by Rule 14a-8(b)(1). Included as an attachment to this letter is a copy of the Federal Express postmark of the

overnight delivery as well as the electronic submission of the Proposal, showing the submission date as November 27, 2018.

Additionally, none of the Proponents is included in the Company's records as being a record holder of our shares. Therefore, the statements by the Proponents regarding their respective shareholdings do not satisfy the proof of ownership requirements because the Proponents presumably are beneficial, not record, holders of Phillips 66 shares.

To remedy these defects, you must submit sufficient proof of each Proponent's continuous ownership of the requisite number of shares of Phillips 66 common stock for the one-year period preceding and including November 27, 2018, the date the Proposal was submitted to the Company. As explained in Exchange Act Rule 14a-8(b) and in guidance issued by the staff of the Securities and Exchange Commission (the "SEC"), sufficient proof of each Proponent's continuous ownership must be in the form of:

(1) A written statement from the ***record*** holder of such Proponent's shares (usually a broker or a bank) verifying that such Proponent continuously held the requisite number of shares of common stock for the one-year period preceding and including November 27, 2018, along with a written statement that such Proponent intends to continually own such shares through the date of the Company's annual meeting; or

(2) If such Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents of updated forms, reflecting such Proponent's ownership of the requisite number of shares of common stock as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that such Proponent continuously held the requisite number of shares of common stock for the one-year period preceding and including November 27, 2018 and intends to continually own such shares through the date of the Company's annual meeting.

If you intend to demonstrate a Proponent's ownership by submitting a written statement from the record holder of such Proponent's shares of common stock as set forth in clause (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 with DTC. You can confirm whether a Proponent's broker or bank is a DTC participant by asking the broker or bank or by checking DTC's participant list, which is available at www.dtcc.com. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If such Proponent's broker or bank is a DTC participant, then you need to submit a written statement from such Proponent's broker or bank verifying that such Proponent continuously held the requisite number of shares of Common Stock for the one-year period preceding and including November 27, 2018.

(2) If such Proponent's broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which such Proponent's shares are held verifying that such Proponent continuously held the requisite number of shares of common stock for the one-year period preceding and including November 27, 2018. You should be able to find out the identity of the DTC participant by asking such Proponent's broker or bank. If the DTC participant that holds such Proponent's shares of common stock is not able to confirm such Proponent's individual holdings but is able to confirm the holdings of such Proponent's broker or bank, then you may 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 27, 2018, the requisite number of shares of common stock were continuously held by such Proponent: (i) one from such Proponent's broker or bank confirming such Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

This letter will constitute the Company's notice to you under Exchange Act Rule 14a-8(f) of this deficiency. The SEC's rules require that your response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to Ms. Amanda Maki, Senior Counsel, c/o Phillips 66, 2331 CityWest Blvd., Houston, Texas 77042. Alternatively, you may transmit any response by email to me at Amanda.k.maki@p66.com. For your reference, we have enclosed copies of Rule 14a-8 and Staff Legal Bulletins No. 14F and No. 14G. We urge you to review these materials carefully before submitting the proof of each Proponent's ownership to ensure it is compliant.

Please note that the requests in this letter are without prejudice to any other rights that the Company may have to exclude the Proposal from its proxy materials on any other grounds permitted by Rule 14a-8.

If you have any questions on this matter, please feel free to contact me at 832.765.3061.

Very truly yours,

Amanda K. Maki
Senior Counsel - SEC

Enclosures:
Evidence of Proposal submission date (Exhibit A)
Rule 14a-8 under the Securities Exchange Act of 1934, as amended (Exhibit B)
Division of Corporation Finance Staff Legal Bulletins No. 14F and 14G (Exhibit C)

cc: Paula A. Johnson, Corporate Secretary, Phillips 66
Kwan Hong Teoh, Research Manager, As You Sow

EXHIBIT A

Proof of Date of Proponents' Submissions

(See attached)

ORIGIN ID:JEMA (510) 735-8151
ANDREW BEHAR
AS YOU SOW
1611 TELEGRAPH AVE
SUITE 1450
OAKLAND, CA 94612
UNITED STATES US

SHIP DATE: 27NOV18
ACTWGT: 0.25 LB
CAD: ***

BILL SENDER

TO PAULA JOHNSON, CORP. SECRETARY
PHILLIPS 66
3010 BRIARPARK DRIVE

HOUSTON TX 77042

(000) 000-0000 REF PETROCHEMICALS
INV
PO DEPT

552.0/E:4A/DCA6

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FedEx Express

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RECEIVED

WED - 28 NOV 10:30A
PRIORITY OVERNIGHT

***

AB NQIA

77042
TX-US IAH

***

Girardi, Nick

From: Conrad MacKerron <mack@asyousow.org>
Sent: Tuesday, November 27, 2018 6:14 PM
To: RSC:P66 Investor Relations
Cc: Kwan Hong Teoh
Subject: [EXTERNAL]PSX - Shareholder Proposal, ATTN: CORP. SEC>
Attachments: PSX_2019_Lead.pdf; PSX_2019_MultiCo.pdf

Dear Ms. Johnson,

Please find enclosed the filing letters for a shareholder proposal, submitted for inclusion in Phillips 66's 2019 proxy statement. A paper copy was also mailed via FedEx. Confirmation receipt of this email would be appreciated.

Thank you.

Best regards,

Conrad MacKerron
Senior Vice President
As You Sow
1611 Telegraph Ave., Ste. 1450 | Oakland, CA 94612
510.735.8140 (direct line) | 510.761.7050 (mobile)
www.asyousow.org

Founder
Plastic Solutions
INVESTOR ALLIANCE

EXHIBIT B

Exchange Act Rule 14a-8

(See attached)

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

§240.14a-8 Shareholder proposals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within

14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials

within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT C

Staff Legal Bulletins No. 14F and 14G

(See attached)

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

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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:

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

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

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)…."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.[1] By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.[2] If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to

correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.[4]

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the

exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

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[1] An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

[2] Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

[3] Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

[4] A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

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

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Wealth Management

345 California Street
29th Floor
San Francisco, CA 94104-2642

December 10, 2018

Paula A. Johnson
Corporate Secretary
Phillips 66
P.O. Box 421959
Houston, Texas 77210

Dear Ms. Johnson:

RBC Capital Markets, LLC, acts as custodian for Winston Dines.

We are writing to verify that our books and records reflect that, as of market close on November 27, 2018, Winston Dines owned 283.000 shares of Phillips 66 (PSX) (Cusip: 718546104) representing a market value of approximately $25,826.58 and that, Winston Dines has owned such shares since 06/03/1992. We are providing this information at the request of Winston Dines in support of its activities pursuant to rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me directly at 415-445-8378.

Sincerely,

Manny Calayag
Vice President - Assistant Complex Manager