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

DIVISION OF
CORPORATION FINANCE

February 21, 2019

J. Allen Overby
Bass Berry & Sims PLC
aoverby@bassberry.com

Re: HCA Healthcare, Inc.
Incoming letter dated December 21, 2018

Dear Mr. Overby:

This letter is in response to your correspondence dated December 21, 2018 concerning the shareholder proposal (the "Proposal") submitted to HCA Healthcare, Inc. (the "Company") by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated December 26, 2018, December 29, 2018, January 6, 2019 and February 3, 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: John Chevedden
***

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

February 21, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: HCA Healthcare, Inc.
Incoming letter dated December 21, 2018

The Proposal requests that the board take each step necessary so that each voting requirement in the Company's charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary, this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This Proposal includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). In this regard, we note your representation that the Company will provide shareholders at its 2019 annual meeting with an opportunity to approve amendments to its certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in the Company's governing documents. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(10). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Courtney Haseley
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

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JOHN CHEVEDDEN

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February 3, 2019

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

 # 4 Rule 14a-8 Proposal
HCA Holdings, Inc. (HCA)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 21, 2018 no-action request.

The company and its outside opinion seems to consider the proposal a precatory proposal – except for the part of the proposal in regard to adjourning the annual meeting.

100% of the proposal is a precatory proposal. The 3rd word of the proposal is "request."

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: John M. Franck II <John.Franck@HCAHealthcare.com>

January 6, 2019

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

 # 3 Rule 14a-8 Proposal
HCA Holdings, Inc. (HCA)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 21, 2018 no-action request.

The company incredibly claims that it could be inconsistent with the fiduciary duties of its Board of Directors to adjoin an annual meeting to obtain the necessary votes for a proposal already approved by the Board of Directors. The company fails to cite even one rule 14a-8 proposal that was excluded on this basis.

The text on the attached page from the company would seem to preclude adjournment of all shareholder meetings for all ballot items that were totally initiated by a Board of Directors.

The company should explain its claimed inability to adjourn its annual meeting with the ability of Anthem to do so in 2015 according to the 2nd attachment.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: John M. Franck II <John.Franck@HCAHealthcare.com>

c. The Proposal Would Require the Company to Continue to Solicit Votes to Approve the Proposal Even After the Right to Vote Thereon Has Been Terminated

Section 5 – Corporate Governance and Management

Item 5.07 Submission of Matters to a Vote of Security Holders.

On December 3, 2015, Anthem, Inc. ("Anthem") held a special meeting of shareholders (the "Special Meeting"). The voting results are as follows:

1. **Approval of the Issuance of Shares of Anthem Common Stock ("Proposal 1")**. Anthem's shareholders approved the issuance of Anthem common stock to Cigna Corporation ("Cigna") shareholders in the merger between Anthem Merger Sub Corp. and Cigna pursuant to the Agreement and Plan of Merger, dated as of July 23, 2015, among Anthem, Anthem Merger Sub Corp. and Cigna, as it may be amended from time to time. The following were the tabulated votes "For" and "Against" this proposal, as well as the number of "Abstentions":

For	Against	Abstain
208,687,202	1,077,817	1,217,269

2. **Approval of Adjournment of the Special Meeting ("Proposal 2")**. Because a quorum was present at the Special Meeting and Proposal 1 received the affirmative vote of a majority of votes cast at the Special Meeting, the vote on Proposal 2 to approve the adjournment of the Special Meeting to solicit additional proxies was not called.

Section 8 – Other Events

Item 8.01 Other Events.

On December 3, 2015, Anthem issued a press release announcing the results of the vote at the Special Meeting. A copy of the press release is furnished as Exhibit 99.1 to this report.

Section 9 – Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

The following exhibit is being furnished herewith:

Exhibit No.	Exhibit
99.1	Press Release dated December 3, 2015 announcing the results of the shareholder vote at the Special Meeting.

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JOHN CHEVEDDEN

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December 29, 2018

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

 # 2 Rule 14a-8 Proposal
HCA Holdings, Inc. (HCA)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 21, 2018 no-action request.

The company raised the issue of fiduciary duty which leads to the question of whether the board violated its fiduciary duty by not properly preparing for its 2017 annual meeting because the Board's proposal for a shareholder right to call a special meeting failed (requiring a 75% vote).

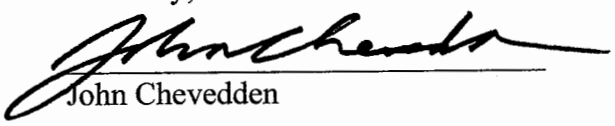
The 2017 company proxy said:
"The Board determined that the adoption of a right of stockholders to call special meetings, and hence the amendment described in this proposal, are appropriate following review of the policies and preferences of certain of our significant stockholders, as well as a review of the stockholder proposal included in Proposal 5 below."

The Board apparently made no special effort to obtain the 75%-vote clearly needed and was thus unprepared for its 2017 annual meeting.

The Board now has an opportunity to explain its rationale in terms of the fiduciary duty of the Board for not making a special effort in 2017 to obtain the supersized votes clearly needed for a proposal already approved by the Board of Directors. How does the board explain its half-way effort at its 2017 annual meeting in terms of its fiduciary duty?

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,



John Chevedden

cc: John M. Franck II <John.Franck@HCAHealthcare.com>

Item 5.07. Submission of Matters to a Vote of Security Holders.

At the Company's Annual Meeting of Stockholders (the "Annual Meeting") held on April 27, 2017 at the Company's corporate headquarters in Nashville, Tennessee, a total of 322,790,341 shares of our common stock, out of a total of 370,440,793 shares of common stock outstanding and entitled to vote, were present in person or represented by proxies. Voting results from the Annual Meeting were as follows:

1. The following 11 director nominees were elected to the Company's Board of Directors for a one-year term as follows:

	For	Against	Abstentions	Broker Non-Votes
R. Milton Johnson	303,553,107	7,061,565	2,038,848	10,136,821
Robert J. Dennis	276,260,966	36,174,201	218,353	10,136,821
Nancy-Ann DeParle	311,232,486	1,202,746	218,288	10,136,821
Thomas F. Frist III	310,866,035	1,600,808	186,677	10,136,821
William R. Frist	311,238,408	1,227,333	187,779	10,136,821
Charles O. Holliday, Jr.	311,208,238	1,226,563	218,719	10,136,821
Ann H. Lamont	309,162,152	3,272,295	219,073	10,136,821
Jay O. Light	308,860,514	3,573,986	219,020	10,136,821
Geoffrey G. Meyers	311,058,093	1,376,438	218,989	10,136,821
Wayne J. Riley, M.D.	311,205,765	1,230,474	217,281	10,136,821
John W. Rowe, M.D.	309,195,195	3,240,987	217,338	10,136,821

2. The selection of Ernst & Young LLP as the Company's independent registered public accounting firm for the year ending December 31, 2017 was ratified as follows:

For	Against	Abstentions	Broker Non-Votes
320,164,377	2,422,907	203,057	0

3. The adoption of a non-binding advisory resolution on the Company's named executive officer compensation as described in the 2017 proxy statement was approved as follows:

For	Against	Abstentions	Broker Non-Votes
295,299,898	16,858,961	494,661	10,136,821

4. The amendment to the Company's amended and restated certificate of incorporation to allow certain stockholders to request special meetings of stockholders as described in the 2017 proxy statement did not receive affirmative votes from the holders of at least seventy-five percent (75%) of the shares of common stock outstanding and entitled to vote at the Annual Meeting that was required to be approved and, therefore, was not approved as follows:

For	Against	Abstentions	Broker Non-Votes
267,559,664	42,188,975	2,904,881	10,136,821

5. The stockholder proposal regarding special shareowner meetings as described in the 2017 proxy statement was not approved as follows:

For	Against	Abstentions	Broker Non-Votes
101,912,357	207,378,545	3,362,618	10,136,821

Item 8.01. Other Events.

Following the Company's name change referenced in Item 5.03 above, the Company's CUSIP number will remain the same, and the Company's common stock, par value $0.01 per share, will continue to trade on the New York Stock Exchange under the trading symbol "HCA".

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JOHN CHEVEDDEN

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December 26, 2018

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

 # 1 Rule 14a-8 Proposal
HCA Holdings, Inc. (HCA)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 21, 2018 no-action request.

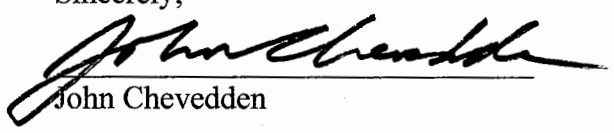
The company incredibly claims that it could be inconsistent with the fiduciary duties of its directors to adjoin an annual meeting to obtain the necessary votes for a proposal already approved by the Board of Directors.

The company did not give a single example of a Board of Directors explaining their rationale in terms of fiduciary duty for not adjoining an annual meeting to obtain the necessary votes for a proposal already approved by the Board of Directors.

The "fiduciary out" for the Board is to obtain the needed votes by another means – through diligence. The company does not claim that the needed votes for this topic would pose a serious challenge for the Board without adjourning the annual meeting.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,



John Chevedden

cc: John M. Franck II <John.Franck@HCAHealthcare.com>

[HCA: Rule 14a-8 Proposal, September 23, 2018 | Revised November 15, 2018]
[This line and any line above it – *Not* for publication.]

Proposal [4] – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This proposal includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting.

Adjourn is mentioned 23-times in our bylaws. It is an easy decision for shareholders to vote in favor of this proposal. HCA shareholders gave 86%-support to adopt a proposal similar to this in 2017. Shareholder proposals such as this have taken a leadership role to improve the corporate governance rules of our company. For instance our company adopted a requirement that a director needed a 51% vote to be elected instead of a 01% vote (2016) and adopted shareholder proxy access (2018) after shareholder proposals were submitted on these topics.

Shareowners are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner.

Currently a 1%-minority can frustrate the will of our 74%-shareholder majority. In other words a 1%-minority could have the power to prevent shareholders from improving management accountability. This can be particularly important during periods of management underperformance and/or an economic downturn. Currently the role of shareholders is diminished because management can simply push the snooze button in response to a 74%-vote of shareholders on certain issues.

Please vote to improve management accountability:
Simple Majority Vote – Proposal [4]
[The above line – *Is* for publication.]

BASS BERRY + SIMS PLC

150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-6200

December 21, 2018

VIA ELECTRONIC MAIL

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

Re: HCA Healthcare, Inc. Shareholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

On behalf of our client, HCA Healthcare, Inc., a Delaware corporation (the "Company" or "HCA"), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in reference to the Company's intention to exclude from its proxy statement and form of proxy (collectively, the "2019 Proxy Materials") for the Company's 2019 annual meeting of stockholders (the "Annual Meeting") a shareholder proposal and related supporting statement (the "Proposal"), received from Mr. John Chevedden (the "Proponent").

For the reasons outlined below, we hereby respectfully request that the Staff of the Division of Corporation Finance (the "Staff") not recommend any enforcement action to the Securities and Exchange Commission (the "Commission") if, in reliance on the analysis set forth below, it excludes the Proposal from its 2019 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), we are submitting this letter to the Staff via email at shareholderproposals@sec.gov, and the undersigned has included his name, email address and telephone number in this letter. We are simultaneously forwarding by email a copy of this letter to the Proponent as notice of the Company's intent to exclude the Proposal from the Company's 2019 Proxy Materials. Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, please consider this a reminder to the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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

THE SHAREHOLDER PROPOSAL

The Company first received a shareholder proposal from the Proponent on September 23, 2018. On November 15, 2018, the Company received the revised and current Proposal from the Proponent. A full copy of both proposals, as well as related correspondence with the Proponent, is attached hereto as Exhibit A. The Proposal includes the following resolution:

> "RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This proposal includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting."

BASES FOR EXCLUSION OF PROPOSAL

We hereby respectfully request that the Staff concur in our view that the Proposal may be properly excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(10) under the Exchange Act, because, as discussed below, the Company has approved amendments to the Company's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") and the Second Amended and Restated Bylaws (the "Bylaws"), subject to stockholder approval of the Certificate of Incorporation, to remove all existing supermajority voting requirements and has recommended that stockholders vote "FOR" the amendments to the Certificate of Incorporation, which substantially implement the Proposal.

We also respectfully request that the Staff concur in our view that the Proposal may be properly excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(2) under the Exchange Act, because it would "cause the company to violate any state, federal, or foreign law to which it is subject."

Lastly, we respectfully request that the Staff concur in our view that the Proposal may be properly excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(3) under the Exchange Act, because the Proponent's supporting statement is materially false and may mislead the Company's stockholders, in violation of the Commission's proxy rules.

BACKGROUND

The Company's Certificate of Incorporation and Bylaws contain three supermajority voting provisions, of which two are in the Certificate of Incorporation and one is in the Bylaws. Section 6 of Article VI of the Certificate of Incorporation provides that, on or following a

Trigger Date (as defined in the Certificate of Incorporation), any proposed amendment, alteration, change, addition or repeal of the Bylaws by the stockholders of the Company must be approved by the affirmative vote of the holders of at least seventy-five percent (75%) of the outstanding shares of the Company entitled to vote on such amendment, alteration, change, addition or repeal. Further, Article XI of the Certificate of Incorporation provides that any proposed amendment or repeal of, or to adopt a bylaw inconsistent with, certain provisions of the Certificate of Incorporation, requires the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of all outstanding shares of the Company entitled to vote generally in the election of directors.

Article VII of the Bylaws provides that any proposed amendment, alteration, change, addition or repeal of the Bylaws by the Company's stockholders must be approved by the affirmative vote of the holders of at least seventy-five percent (75%) of the outstanding shares of the Company, entitled to vote on such amendment, alteration, change, addition or repeal.

At its meeting on December 20, 2018, the Company's Board of Directors (the "Board") adopted resolutions (i) approving amendments to Article VI and Article XI of the Certificate of Incorporation to eliminate the supermajority voting requirements (collectively, the "Charter Amendments"), declaring the Charter Amendments advisable and in the best interest of the Company and its stockholders, directing that the Charter Amendments be submitted to stockholders for adoption at the Annual Meeting and recommending that stockholders vote to adopt the Charter Amendments and (ii) approving, contingent upon the effectiveness of the Charter Amendments, an amendment to Article VII of the Bylaws to eliminate the supermajority voting requirement (the "Bylaw Amendment" and, together with the Charter Amendments, the "Proposed Amendments"). The text of the Proposed Amendments, marked to show the proposed revisions, is attached as Exhibit B hereto. In the event that the Company's stockholders approve the Charter Amendments at the Annual Meeting, any future amendments to the Certificate of Incorporation would require the approval of a majority of the outstanding shares of common stock pursuant to Section 242 of the Delaware General Corporation Law (the "DGCL") and any future amendments to the Bylaws by the stockholders of the Company would require the approval of a majority of the outstanding shares of common stock. Because the Board lacks unilateral authority to amend the Certificate of Incorporation, and because the removal of the supermajority provision in the Bylaws would conflict with the provisions of the Certificate of Incorporation, submission of the Charter Amendments to the Company's stockholders will substantially implement the Proposal to the greatest extent allowed by applicable law and the Company's governing documents.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) As Substantially Implemented

a. Background and Overview of Rule 14a-8(i)(10)

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. The Staff has explained that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by management." Exchange Act Release No. 12598 (July 7, 1976). The Commission has made clear that, in order to meet the "substantially implemented" standard, a shareholder proposal need not be "fully effected" by the company. *See* Exchange Act Release No. 40018 (May 21, 1998) (reaffirming the position taken by the Commission in Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release")). Indeed, in the 1983 Release, the Commission concluded that the "previous formalistic application of [the rule]"—i.e., an interpretation that required line-by-line compliance by companies—"defeated its purpose" because proponents had been successfully avoiding exclusion by submitting proposals that deviated from existing company policy by only a few words. As such, the Commission revised its interpretation of the rule in the 1983 Release to allow the exclusion of proposals that had been "substantially implemented," which the Commission codified in Exchange Act Release No. 40018, at n.30 (May 21, 1998).

Applying this standard, the Staff has consistently taken the position that "a determination that the company has substantially implemented the proposal depends upon whether its particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991). The Staff has afforded no-action relief under Rule 14a-8(i)(10) when a company has addressed the underlying concerns and satisfied the essential objective of the proposal, even if the company (i) did not implement the proposal in every detail and/or (ii) exercised discretion in determining how to implement the proposal. *See, e.g., AbbVie Inc.* (Feb. 16, 2018); *Dover Corporation* (Dec. 15, 2017); *The Southern Co.* (Feb. 24, 2017); *Windstream Holdings, Inc.* (Feb. 14, 2017); *Exxon Mobil Corp.* (Mar. 17, 2015; *recon. denied* March 25, 2015); *MetLife, Inc.* (Feb. 4, 2015); *Visa Inc.* (Nov. 14, 2014); *Walgreen Co.* (Sept. 26, 2013); *McKesson Corp.* (Apr. 8, 2011); *Exelon Corp.* (Feb. 26, 2010); and *Masco Corp.* (Mar. 29, 1999). In each of these cases, the Staff concurred with the companies' determination that the proposal was substantially implemented for purposes of Rule 14a-8(i)(10) when the company had taken actions that included deviations from what was directly contemplated by the proposal, including in circumstances when the company had policies and procedures in place relating to the subject matter of the proposal, or the company had otherwise implemented the essential objective of the proposal.

b. The Board Has Approved the Proposed Amendments, Thereby Substantially Implementing the Shareholder Proposal

Under the "essential objectives" test, the Company may properly exclude the Proposal from its 2019 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal. Upon review of the text of the Proposal, the Proposal seeks to remove the supermajority vote requirements contained in the Certificate of Incorporation and the Bylaws. The Proposed Amendments, as approved by the Board and submitted to a Company stockholder vote, would eliminate every supermajority provision in the Certificate of Incorporation and the Bylaws.

Pursuant to Section 242 of the DGCL, the Board lacks unilateral authority to adopt the Proposed Amendments because such amendments require stockholder approval. As discussed above, the Staff has consistently concurred that proposals seeking to eliminate supermajority vote provisions may be excluded under Rule 14a-8(i)(10) where the board lacked unilateral authority to adopt the amendments, but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for stockholder approval at the next annual meeting. For example, in *AbbVie Inc.* (Feb. 16, 2018), the company's board approved amendments to the company's certificate of incorporation and bylaws to eliminate supermajority voting provisions, both of which would only become effective upon stockholder approval of the certificate of incorporation. The Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(10), stating the approval of the amendments by stockholders would result in the removal of "all supermajority voting requirements in the Company's certificate of incorporation and bylaws." *See, also Dover Corporation* (Dec. 15, 2017); *QUALCOMM Inc.* (Dec. 8, 2017); *The Southern Co.* (Feb. 24, 2017); *The Brink's Co.* (Feb. 5, 2015); *Visa Inc.* (Nov. 14, 2014); and *McKesson Corp.* (Apr. 8, 2011).

Further, the DGCL specifies a minimum vote for certain corporate actions, including an amendment to a corporation's certificate of incorporation, a merger or consolidation of a corporation and a dissolution of a corporation, each of which requires the affirmative vote of a majority of the outstanding shares entitled to vote on such matters. *See* DGCL §§ 242(b)(1), 251(c) and 275(b). The Staff has consistently permitted exclusion under Rule 14a-8(i)(10) of a proposal seeking to eliminate supermajority vote provisions where the amendments to the company's governing documents resulted in replacing each supermajority vote requirement with a majority of the outstanding shares vote requirement. For example, in *Korn/Ferry International* (July 6, 2017), the company argued that the certificate and bylaw amendments it would propose at the stockholders' meeting resulted in a proposal similar to the Proposal being excludable under Rule 14a-8(i)(10), and the Staff concurred with exclusion under Rule 14a-8(i)(10). *See also AbbVie Inc.* (Feb. 16, 2018); *The Southern Co.* (Feb. 24, 2017); *Windstream Holdings, Inc.* (Feb. 14, 2017) (each concurring with the exclusion of a simple majority shareholder proposal as substantially implemented where the company's board of directors approved amendments to the company's governing documents that would replace each provision that called for a supermajority vote with a majority of outstanding shares vote requirement).

Accordingly, consistent with the precedent cited above, the "essential objective" of the Proposal has been met, and the Company may exclude the Proposal from the 2019 Proxy Materials in reliance on Rule 14a-8(i)(10).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(2) As Violating Delaware State Law

Rule 14a-8(i)(2) provides that a company may omit a proposal which "would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." The Proposal includes a requirement that the Board take the steps necessary "to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the meeting." As more fully described in the opinion of the Delaware law firm Richards, Layton & Finger, P.A. enclosed as Exhibit C hereto, since the Proposal would require the Company to adjourn the Annual Meeting until there were sufficient votes necessary to approve the Proposal, the Proposal, if implemented, would violate Delaware law in that it would impermissibly (i) require the Board, the Chairman of the Board (the "Chairman") or the Chief Executive Officer of the Company (the "Chief Executive Officer") to adjourn the Annual Meeting even in circumstances where doing so is inconsistent with their fiduciary duties and subject to equitable challenge as a breach of fiduciary duty, (ii) impinge on the authority of the Board under Sections 141(a) and 213 of the DGCL and (iii) require the Company to continue to solicit votes to approve the Proposal even after the polls have been closed and the right to vote thereon has been terminated. The Staff has consistently afforded no-action relief under Rule 14a-8(i)(2) where a company has demonstrated the proposal at issue, if implemented, would cause the company to violate law to which it is subject. *See Schering-Plough Corp.* (Mar. 27, 2008) (allowing exclusion of a proposal asking the board of directors to adopt cumulative voting because the requested amendments to the certificate of incorporation would require approval of both the board of directors and shareholders); *Northrop Grumman Corp.* (Mar. 10, 2008) (allowing exclusion of a proposal asking the board of directors to amend governing documents to eliminate restrictions on shareholders' right to call a special meeting because the requested amendments would require approval of both the board of directors and shareholders).

a. The Proposal Would Require the Adjournment of the Annual Meeting Even Where Doing So Would Be Inconsistent with the Board's Fiduciary Duties

The Proposal includes a requirement that the Board take the steps necessary "to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the meeting." Under the Bylaws, unless a proposal to adjourn a meeting of stockholders is properly brought before the meeting, a meeting of stockholders at which a quorum is present or represented by proxy may only be adjourned by the Board or the Chairman or the Chief Executive Officer, acting as chairman of the meeting. *See* Article II, Section 7 of the Bylaws ("[T]he chairman of the meeting shall have the right and authority to convene and (for any or no reason) to recess or adjourn the meeting."). Because the Proposal is not a standalone proposal to

adjourn the Annual Meeting, the Proposal would require the Board, the Chairman or the Chief Executive Officer to adjourn the Annual Meeting to solicit the votes necessary for approval of the Proposal if the votes are lacking during the meeting, in an attempt to alter the results of an otherwise valid stockholder vote on the Proposal. Since pursuant to Delaware law the Company's directors and officers owe fiduciary duties to the Company and its stockholders when deciding to adjourn a meeting of stockholders, the Proposal's requirement to adjourn could prove inconsistent with those fiduciary duties. *See State of Wis. Investment Bd. v. Peerless Sys. Corp.*, 2001 WL 32639, at *2 (Del. Ch. Jan. 5, 2001); *see also* R. Franklin Balotti, Jesse A. Finkelstein & Gregory P. Williams, *Meetings of Stockholders*, § 8.11, at 8-21 (3d ed. 2018 supp.) ("[T]he decision to adjourn, when made by officers or directors, is subject to their fiduciary duties to shareholders."). The Proposal contains no limitations on the situations where the Annual Meeting must be adjourned, contains no other "fiduciary out" for the Board and contains no limitation on how many times the Annual Meeting must be adjourned. As such, because the Proposal would impermissibly require the Board, the Chairman or the Chief Executive Officer to adjourn the Annual Meeting even in circumstances where doing so is inconsistent with their fiduciary duties and subject to equitable challenge as a breach of fiduciary duty, the Proposal, if implemented, would violate Delaware law.

b. The Proposal Would Impinge on the Authority of the Board Under Sections 141(a) and 213 of the DGCL

The Proposal has the effect of impinging on the Board's power and authority to manage the business and affairs of the Company. Section 141(a) of the DGCL states that the business and affairs of Delaware corporations must be "managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation." The Certificate of Incorporation does not provide for management of the Company by persons other than the Board, and the Board's power and authority to manage the business and affairs of the Company extends to matters relating to the conduct of meetings of stockholders. The Proposal suggests that the Annual Meeting must continue to be adjourned and reconvened ad infinitum until such time as there are sufficient votes necessary to approve the Proposal. Such adjournment would require the Board to expend corporate funds on the adjournment of the Annual Meeting and the solicitation of further votes in favor of the approval of the Proposal and, assuming successive adjournments, would at some point require the Board to fix a new record date under Section 213 of the DGCL for determining the stockholders entitled to notice of and to vote at the adjourned meeting. The Proposal leaves no room for the Board to reach its own judgment as to whether such expending of corporate funds, adjournment of the Annual Meeting, or setting a new record date under Section 213 of the DGCL is advisable and in the best interests of the Company and its stockholders. As such the Proposal has the effect of impinging on the Board's power and authority under, and would therefore violate, Sections 141(a) and 213 of the DGCL.

c. The Proposal Would Require the Company to Continue to Solicit Votes to Approve the Proposal Even After the Right to Vote Thereon Has Been Terminated

Under Delaware law, the determination of whether a proposal has been validly approved at a meeting of stockholders cannot be made until the polls have been closed. *See Magill v. North American Refractories Co.*, 128 A.2d 233, 237 (Del. 1956) ("Until the polls are closed a stockholder may change his vote ..."). Once the polls close, the right to vote on a proposal terminates. Since the Proposal would require the Annual Meeting to be adjourned to solicit additional votes necessary to approve the Proposal only after a determination that "votes for approval are lacking", and since such a determination can only be definitively made after the polls are closed at the meeting and the right to vote thereon has been terminated, the Proposal, if implemented, would violate Delaware law.

Accordingly, the proposal, if implemented, would cause the company to violate Delaware state law, and the Company may exclude the Proposal from the 2019 Proxy Materials in reliance on Rule 14a-8(i)(2).

III. The Proposal May Be Excluded Under Rule 14a-8(i)(3) As Containing Materially False And Misleading Statements in Proxy Soliciting Materials

a. Background and Overview of Rule 14a-8(i)(3)

Rule 14a-8(i)(3) permits a company to exclude a shareholder proposal from its proxy materials if the proposal or accompanying statements in support are contrary to the Commission's proxy rules, including Rule 14a-9, which prohibits the inclusion of materially false or misleading statements in proxy materials. The Commission has determined that a proposal may be excluded pursuant to Rule 14a-8(i)(3) where "the company demonstrates objectively that a factual statement is materially false or misleading...." Staff Legal Bulletin No. 14B (September 15, 2004). Pursuant thereto, the Staff has previously permitted the exclusion of shareholder proposals and statements in support, both in full and in part, which contained false and misleading statements or omitted material facts necessary to make such statements not false or misleading. *See, e.g., Ferro Corp.* (Mar. 17, 2015); *JPMorgan Chase & Co.* (Mar. 11, 2014 and Mar. 28, 2014); *The Goldman Sachs Group, Inc.* (Mar. 7, 2014); and *General Electric Company* (Jan. 6, 2009) (each granting no-action relief where the company requested exclusion of a shareholder proposal for vagueness or materially misleading statements regarding standards for vote-counting).

b. Statements Made by the Proponent are False and Misleading

As in *Ferro Corp., JPMorgan Chase & Co., The Goldman Sachs Group, Inc.*, and *General Electric Company*, the Proposal includes statements concerning the fundamental subject of the Proposal — the Company's supermajority voting requirements — that are materially false and misleading to stockholders. In the Proposal, the Proponent asserts that "[c]urrently a 1%-

minority can frustrate the will of our 74%-shareholder majority." In other words, the supporting statement to the Proposal claims that holders of 1% of the Company's outstanding common stock may override the will of the holders of 74% of the Company's outstanding common stock. This is misleading and false. Holders of 1% of the Company possess no such power as it would require 26% of HCA's outstanding common stock to prevent passage of the Proposed Amendments. In fact, there exists no action pursuant to which the holders of 1% of the Company's outstanding shares could cause the Company to take or prevent the Company from taking, because the Company has no 99% supermajority voting requirement. Further, asserting that a 1%-minority is capable of frustrating the will of the Company's other shareholders implies that approving the Proposal would change this result. This is also false and misleading, compounded by the fact that the Company's stockholders possessed no such "power" in the first instance.

Further, the Proposal asserts, "It is an easy decision for shareholders to vote in favor of this proposal. HCA shareholders gave 86%-support to adopt a proposal similar to this in 2017." This is false and misleading. At the Company's annual meeting of stockholders held on April 27, 2017 (the "2017 Annual Meeting"), the Company's management put forward a proposal to approve an amendment to the Certificate of Incorporation to allow certain stockholders to request special meetings of stockholders. The Board also conditionally adopted an amendment to the Company's bylaws, to be automatically effective upon approval of the amendments to the Certificate of Incorporation by seventy-five percent (75%) of the voting power of all outstanding shares of the Company entitled to vote. Although the Board unanimously recommended in favor of the proposal, of the 370,440,793 shares of common stock outstanding and entitled to vote, only 267,559,664 voted in favor of the proposal at the 2017 Annual Meeting. As this represented only 72.2% of the outstanding shares of the Company entitled to vote, the proposal failed. Not only does the Proponent's assertion that the proposal received "86%-support" falsely state the number of the outstanding shares of the Company that voted in favor of the proposal, it misleads stockholders by implying that stockholders have a history of approving proposals "similar" to the Proposal by asserting a vote in favor the Proposal is an "easy decision".

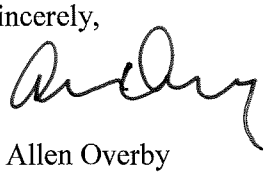
Since the first defect described above goes to the core of what Company stockholders would be asked to approve, and the second defect is also false and misleading, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2019 Proxy Materials under Rule 14a-8(i)(3) as materially false and misleading in violation of Rule 14a-9.

CONCLUSION

For the foregoing reasons, we respectfully request that the Staff not recommend any enforcement action from the Commission if the Company excludes the Proposal from its 2019 Proxy Materials. Should you have any questions, or if the Staff is unable to concur in 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.

Please do not hesitate to contact the undersigned, J. Allen Overby, at (615) 742-6211 or AOverby@bassberry.com.

Sincerely,



J. Allen Overby

Enclosures

cc: John M. Franck II, HCA Healthcare, Inc.
John Chevedden

EXHIBIT A

Proposals and Proponent Communications

JOHN CHEVEDDEN

*** ***

Mr. John M. Franck II
Vice President – Legal and Corporate Secretary
HCA Holdings, Inc. (HCA)
One Park Plaza
Nashville, TN 37203
PH: 615-344-9551
FX: 615-344-1600

Dear Mr. Franck,

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

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

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

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

Sincerely,

John Chevedden

September 23, 2018
Date

[HCA: Rule 14a-8 Proposal, September 23, 2018]
[This line and any line above it – *Not* for publication.]

Proposal [4] – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

It is an easy decision for shareholders to vote in favor of this proposal. HCA shareholders gave 86%-support to adopt a propsal similar to this in 2017.

Shareowners are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner.

Currently a 1%-minority can frustrate the will of our 74%-shareholder majority. In other words a 1%-minority could have the power to prevent shareholders from improving management accountability. This can be particularly important during periods of management underperformance and/or an economic downturn. Currently the role of shareholders is diminished because management can simply push the snooze button in response to a 74%-vote of shareholders on certain issues.

Please vote to improve management accountability:
Simple Majority Vote – Proposal [4]
[The above line – *Is* for publication.]

John Chevedden, *** sponsors this proposal.

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

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

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

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

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

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

JOHN CHEVEDDEN

*** ***

Mr. John M. Franck II
Vice President – Legal and Corporate Secretary
HCA Holdings, Inc. (HCA)
One Park Plaza
Nashville, TN 37203
PH: 615-344-9551
FX: 615-344-1600

REVISED 15 NOV 2018

Dear Mr. Franck,

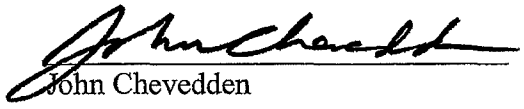
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

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

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

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

Sincerely,



John Chevedden

September 23, 2018

Date

[HCA: Rule 14a-8 Proposal, September 23, 2018 | Revised November 15, 2018]
[This line and any line above it – *Not* for publication.]

Proposal [4] – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This proposal includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting.

Adjourn is mentioned 23-times in our bylaws. It is an easy decision for shareholders to vote in favor of this proposal. HCA shareholders gave 86%-support to adopt a proposal similar to this in 2017. Shareholder proposals such as this have taken a leadership role to improve the corporate governance rules of our company. For instance our company adopted a requirement that a director needed a 51% vote to be elected instead of a 01% vote (2016) and adopted shareholder proxy access (2018) after shareholder proposals were submitted on these topics.

Shareowners are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner.

Currently a 1%-minority can frustrate the will of our 74%-shareholder majority. In other words a 1%-minority could have the power to prevent shareholders from improving management accountability. This can be particularly important during periods of management underperformance and/or an economic downturn. Currently the role of shareholders is diminished because management can simply push the snooze button in response to a 74%-vote of shareholders on certain issues.

Please vote to improve management accountability:
Simple Majority Vote – Proposal [4]
[The above line – *Is* for publication.]

Notes:
John Chevedden, *** sponsored this proposal.

Proposal [4] – Means [4] is the placeholder for the company to assign the number in the proxy.

Please note that the title of the proposal is part of the proposal. In the interest of clarity and to avoid confusion the title of this and each other ballot item is requested to be consistent throughout all the proxy materials.

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

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:
• the company objects to factual assertions because they are not supported;
• the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
• the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
• the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

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

Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting.
Please acknowledge this proposal promptly by email ***

HCA®

October 5, 2018

VIA FEDERAL EXPRESS AND EMAIL ***

Mr. John Chevedden
***

Dear Mr. Chevedden:

I am writing on behalf of HCA Healthcare, Inc. (the "Company"), which received from you on September 23, 2018, a shareholder proposal (the "Proposal") to be included in the Company's proxy statement (the "Proxy Statement") to be sent to the Company's shareholders in connection with the Company's next annual meeting of shareholders. We are currently reviewing the Proposal to determine if it is eligible for inclusion in the Proxy Statement; however, proof of your ownership of the Company's stock was not included with the Proposal. Therefore, in accordance with Rule 14a-8(f) of the Securities Exchange Act of 1934, the purpose of this letter is to notify you of the Proposal's deficiency with respect to proof of your ownership of the Company's stock as required by Rule 14a-8(b).

In order to be eligible to submit a shareholder proposal pursuant to Rule 14a-8, Rule 14a-8(b) requires a proponent to 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 annual meeting for at least one year by the date the proponent submits the proposal. The proponent must then continue to hold those securities through the date of the meeting at which the shareholder proposal is presented. Unless the proponent appears in the company's records as the registered holder of the securities, the proponent must offer poof of eligibility at the time the proposal is submitted.

In the Proposal, you stated your intention to hold the requisite amount of the Company's securities supporting your eligibility until after the annual meeting of shareholders at which the Proposal will be presented. However, the Proposal is currently deficient because you have not proven your ownership of such securities as required by Rule 14a-8(b). Because your name does not appear in the Company's stock register as the registered holder of the requisite amount of the Company's securities under Rule 14a-8(b), you must submit sufficient proof of ownership by either:

(i) submitting to the Company a written statement from the "record" holder of your stock in the Company (usually a broker or bank) verifying that, at the time you submitted the Proposal, you continuously held the securities for at least one year (please note that an account statement from your broker or bank will not satisfy this requirement); or

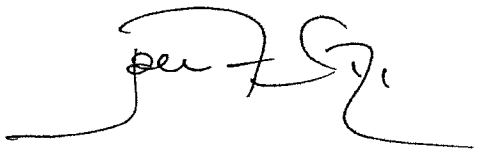
(ii) if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4, and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period

began with the U.S. Securities and Exchange Commission (the "SEC"), submitting to the Company: (a) a copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level, and (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.

Enclosed for your reference please find (i) a copy of Rule 14a-8 and (ii) recent guidance from the staff of the SEC regarding, among other things, 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, and common errors shareholders can avoid when submitting proof of ownership to companies.

Rule 14a-8(f) provides that your response, including the required proof of eligibility, must be postmarked or transmitted electronically no later than fourteen (14) calendar days from the date you receive this notice of defect. If you do not adequately cure the defect within the stipulated timeframe, Rule 14a-8(f) allows the Company to exclude the Proposal from the Proxy Statement. Please address any response to me at HCA Healthcare, Inc., One Park Plaza, Nashville, TN 37203, Attention: Corporate Secretary. Alternatively, you may e-mail your response to me at John.Franck@HCAHealthcare.com.

Sincerely,



John M. Franck II
Vice President, Legal and
Corporate Secretary

Enclosures:
Rule 14a-8 of the Securities Exchange Act of 1934
Division of Corporation Finance Staff Bulletin No. 14F
Division of Corporation Finance Staff Bulletin No. 14G
25428139.2

information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

NOTE 1 TO § 240.14A-7. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

NOTE 2 TO § 240.14A-7 When providing the information required by § 240.14a-7(a)(1)(ii), if the registrant has received affirmative written or implied consent to delivery of a single copy of proxy materials to a shared address in accordance with § 240.14a-3(e)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.

[57 FR 48292, Oct. 22, 1992, as amended at 59 FR 63684, Dec. 8, 1994; 61 FR 24657, May 15, 1996; 65 FR 65750, Nov. 2, 2000; 72 FR 4167, Jan. 29, 2007; 72 FR 42238, Aug. 1, 2007]

§ 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 antifraud 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]

§ 240.14a–9 False or misleading statements.

(a) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

(b) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

(c) No nominee, nominating shareholder or nominating shareholder group, or any member thereof, shall cause to be included in a registrant's proxy materials, either pursuant to the Federal proxy rules, an applicable state or foreign law provision, or a registrant's governing documents as they relate to including shareholder nominees for director in a registrant's proxy materials, include in a notice on Schedule 14N (§ 240.14n–101), or include in any other related communication, any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to a solicitation for the same meeting or subject matter which has become false or misleading.

NOTE: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

a. Predictions as to specific future market values.

b. Material which 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.

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

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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://tts.sec.gov/cgi-bin/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

U.S. Securities and Exchange Commission

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://tts.sec.gov/cgi-bin/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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Personal Investing

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

October 11, 2018

John Chevedden
***

To Whom It May Concern:

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

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than the share quantity listed in the following table in the following security, since June 1st, 2017:

Security Name	CUSIP	Symbol	Share Quantity
Honeywell International	438516106	HON	100
HCA HealthCare Inc	40412C101	HCA	50
Command Security Corp	20050L100	MPC	100
Borgwarner Inc	099724106	BWA	100
Emcor Group Inc	29084Q100	EME	100
Goodyear Tire and Rubber Company	382550101	GT	200

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

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-397-9945 between the hours of 8:30 a.m. and 5:00 p.m. Eastern Standard Time (Monday through Friday) and entering my extension 13813 when prompted.

Sincerely,

Stormy Delehanty
Personal Investing Operations

Our File: W272803-11OCT18

EXHIBIT B

Proposed Amendments

Proposed Amendments to the Amended and Restated Certificate of Incorporation

ARTICLE VI

BOARD OF DIRECTORS

Section 6. Bylaws. The Board of Directors is expressly authorized to make, alter, amend, change, add to or repeal the Bylaws of the Corporation by the affirmative vote of a majority of the total number of directors then in office. ~~Prior to the Trigger Date (as defined below), any amendment, alteration, change, addition or repeal of the Bylaws of the Corporation by the stockholders of the Corporations shall require the affirmative vote of the holders of a majority of the outstanding shares of the Corporation entitled to vote on such amendment, alteration, change, addition or repeal. On or following the Trigger Date, any~~ Any amendment, alteration, change, addition or repeal of the Bylaws of the Corporation by the stockholders of the Corporation shall require the affirmative vote of the holders of ~~at least seventy-five percent (75%)~~a majority of the outstanding shares of the Corporation, voting together as a class, entitled to vote on such amendment, alteration, change, addition or repeal.

* * *

ARTICLE XI

AMENDMENT

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by the DGCL, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage or separate class vote may be specified by law, this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation, or otherwise, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock required by law, this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation, or otherwise, ~~on or following the Trigger Date,~~ the affirmative vote of the holders of at least ~~seventy-five percent (75%)~~a majority of the voting power of all outstanding shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt any provision inconsistent with, or to amend or repeal any provision of~~, or to adopt a bylaw inconsistent with, Articles III, V, VI, VII, VIII, IX, X and XI of~~ this Amended and Restated Certificate of Incorporation.

Proposed Amendment to the Second Amended and Restated Bylaws

ARTICLE VII

AMENDMENTS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend, change, add to or repeal these Bylaws by the affirmative vote of a majority of the total number of directors then in office. Any amendment, alteration, change, addition or repeal of these Bylaws by the stockholders of the Corporation shall require the affirmative vote of the holders of at least ~~seventy-five percent (75%)~~a majority of the outstanding shares of the Corporation, voting together as a class, entitled to vote on such amendment, alteration, change, addition or repeal.

EXHIBIT C

Opinion of Richards, Layton & Finger, P.A.

RICHARDS LAYTON & FINGER

Attorneys at Law

December 13, 2018

HCA Healthcare, Inc.
One Park Plaza
Nashville, Tennessee 37203

Re: Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

We have acted as special Delaware counsel to HCA Healthcare, Inc., a Delaware corporation (the "Company"), in connection with a stockholder proposal (the "Proposal"), dated September 23, 2018 and revised November 15, 2018, that has been submitted to the Company by John Chevedden (the "Proponent") for the 2019 annual meeting of stockholders of the Company (the "Annual Meeting"). In this connection, you have requested our opinion as to certain matters under the laws of the State of Delaware.

For the purpose of rendering our opinion as expressed herein, we have been furnished with and have reviewed the following documents: (i) the Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware (the "Secretary of State") on March 8, 2011, as amended by the Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State on April 28, 2017 (collectively, the "Certificate of Incorporation"); (ii) the Second Amended and Restated Bylaws of the Company (the "Bylaws"); and (iii) the Proposal.

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and the legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed

herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

THE PROPOSAL

The Proposal states the following:

> "RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This proposal includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the meeting."

We have been advised that the Company is considering excluding the Proposal from the Company's proxy statement for the Annual Meeting under, among other reasons, Rule 14a-8(i)(2) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(2) provides that a registrant may omit a proposal from its proxy statement when "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." In this connection, you have requested our opinion as to whether, under Delaware law, the Proposal, if implemented, would violate Delaware law.

DISCUSSION

For the reasons set forth below, since the Proposal would require the Company to adjourn the Annual Meeting until such time as there are sufficient votes necessary to approve the Proposal, the Proposal, if implemented, would violate Delaware law in that it would impermissibly (i) require the Board of Directors of the Company (the "Board"), the Chairman of the Board (the "Chairman") or the Chief Executive Officer of the Company (the "Chief Executive Officer") to adjourn the Annual Meeting even in circumstances where doing so is inconsistent with their fiduciary duties and subject to equitable challenge as a breach of fiduciary duty, (ii) impinge on the authority of the Board under Sections 141(a) and 213 of the General Corporation Law of the State of Delaware (the "General Corporation Law") and (iii) require the

Company to continue to solicit votes to approve the Proposal even after the polls have been closed and the right to vote thereon has been terminated.[1]

The Proposal includes a requirement that the Company take the steps necessary "to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the meeting." Under the Bylaws, unless a proposal to adjourn a meeting of stockholders is properly brought before the meeting, a meeting of stockholders at which a quorum is present or represented by proxy may only be adjourned by the Board or the Chairman or the Chief Executive Officer, acting as chairman of the meeting.[2] Here, the Proposal is not a standalone proposal to adjourn the Annual Meeting. As such, the Proposal would require the Board, the Chairman or the Chief Executive Officer to adjourn the Annual Meeting to solicit the votes necessary for approval of the Proposal if the votes are lacking during the meeting. Indeed, the Proposal contains no limitation on how many times the Annual Meeting must be adjourned. Rather, the Proposal suggests that the Annual Meeting must continue to be adjourned and reconvened ad infinitum until such time as there are sufficient votes necessary to approve the Proposal.

A. The Proposal, if Implemented, Would Impermissibly Require Adjournment Even in Circumstances Where Adjournment is Inconsistent with Applicable Fiduciary Duties and Subject to Equitable Challenge as a Breach of Fiduciary Duty

Under the construct of Delaware corporate law, the board of directors manages the business and affairs of the corporation and the officers of the corporation are the principal agents of the corporation who carry out the directives of the board of directors. In order to carry

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[1] We note that it is not clear from the Proposal whether it is intended that the Company take the steps necessary to adjourn (x) the Annual Meeting if the votes are lacking to approve the Proposal, and/or (y) the stockholder meeting at which a proposal to eliminate the supermajority provisions in the Certificate of Incorporation and the Bylaws is presented to the stockholders. Although for purposes of our opinion as set forth herein we assume the Proposal intends for the mandate to apply to the Annual Meeting, the Proposal, if implemented, would violate Delaware law for the reasons set forth herein under either interpretation.

[2] *See* Article II, Section 7 of the Bylaws ("The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting or stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to recess or adjourn the meeting.").

Under the Bylaws, the chairman of the meeting is either the Chairman or the Chief Executive Officer. *See* Article II, Section 7 of the Bylaws ("At each annual meeting of stockholders, the chairman of the board, if one shall have been elected, or, in his absence or if one shall not have been elected, the chief executive officer shall act as chairman of the meeting.").

out its mandate, the board of directors of a Delaware corporation is granted broad and varied powers, certain of which may be delegated to the officers of the corporation. The exercise of these powers by the board of directors and the officers of a corporation is not unfettered. Rather, in exercising such managerial authority, the board of directors and the officers of the corporation owe fiduciary duties to the corporation and all of its stockholders.[3] As such, the actions taken by the board of directors and the officers of the corporation are subject to equitable challenge.

In the adjournment context, the Court of Chancery of the State of Delaware (the "Court of Chancery") has stated that "in deciding to adjourn . . . a meeting, officers and directors must abide by their fiduciary duties to shareholders. Where a decision to adjourn is made due to an improper purpose, that decision may be challenged as a breach of fiduciary duty."[4] The Court of Chancery has recognized that one such improper purpose for an adjournment is an adjournment that is "specifically aimed at interfering with the results of a valid shareholder vote," which the Court noted would "bestir deep judicial suspicion."[5] The Court further stated that "[a]ny efforts by those controlling the vote to alter the results of that vote, even where there is no clear conflict of interest between the directors and the shareholders, must be undertaken with extreme caution so as not to undermine the legitimacy of the corporate structure itself."[6] Here, the Proposal would require the Board, the Chairman or the Chief Executive Officer to adjourn the Annual Meeting precisely for the purpose of altering the results of a valid stockholder vote on the Proposal as it would require the Annual Meeting to be adjourned only if there were not sufficient votes to approve the Proposal at the meeting. As noted above, the Proposal would require the Board, the Chairman or the Chief Executive Officer to continue adjourning and reconvening the meeting perpetually until such time as a different result (namely, the approval of the Proposal) was achieved.

Furthermore, although the Court of Chancery has recognized that there are circumstances in which an adjournment to solicit additional votes in favor of a proposal may be

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[3] *Gantler v. Stephens*, 965 A.2d 695 (Del. 2009) ("[O]fficers of Delaware corporations, like directors, owe fiduciary duties of care and loyalty, and . . . the fiduciary duties of officers are the same as those of directors."); *City of Miami Gen. Emps' & Sanitation Emps' Ret. Trust v. Comstock*, 2016 WL 4464156, at *22 (Del. Ch. Aug. 24, 2016) ("Under Delaware law, officers owe the same fiduciary duties as directors.").

[4] *State of Wis. Investment Bd. v. Peerless Sys. Corp.*, 2001 WL 32639, at *2 (Del. Ch. Jan. 5, 2001); *see also* R. Franklin Balotti, Jesse A. Finkelstein & Gregory P. Williams, *Meetings of Stockholders*, § 8.11, at 8-21 (3d ed. 2018 supp.) ("[T]he decision to adjourn, when made by officers or directors, is subject to their fiduciary duties to shareholders.").

[5] *State of Wis. Investment Bd. v. Peerless Sys. Corp.*, 2000 WL 1805376, at *19 (Del. Ch. Dec. 4, 2000).

[6] *Id.*

consistent with a board's or officer's fiduciary duties,[7] there is no "fiduciary out" under the Proposal that would allow the Board, the Chairman or the Chief Executive Officer to decline to adjourn the Annual Meeting if such an adjournment was inconsistent with their fiduciary duties. Thus, the Proposal mandates the adjournment, even if under the then existing circumstances the Board, the Chairman or the Chief Executive Officer (as applicable) determine their fiduciary duties require them to do otherwise.

The Court of Chancery has also stated that "when directors believe that measures are in the stockholders' best interests, they have a fiduciary duty to pursue the implementation of those measures in an efficient fashion."[8] As noted above, the Proposal does not state how many times the Annual Meeting must be adjourned before the obligation to adjourn the Annual Meeting expires and suggests that the Annual Meeting must continue to be adjourned each time it is reconvened if, at such time, there are not sufficient votes to approve the Proposal. Adjourning and reconvening a meeting of stockholders will require the Company to expend significant time and expense. The Proposal, however, does not permit the Board, the Chairman or the Chief Executive Officer to determine whether expending such time and expense is consistent with their fiduciary duties, including the duty to seek stockholder approval of measures requiring such approval in an efficient fashion.

Because the Proposal would impermissibly require the Board, the Chairman or the Chief Executive Officer to adjourn the Annual Meeting even in circumstances where doing so is inconsistent with their fiduciary duties and subject to equitable challenge as a breach of fiduciary duty, the Proposal, if implemented, would violate Delaware law.

B. The Proposal, if Implemented, Would Impermissibility Impinge on the Authority of the Board under Sections 141(a) and 213 of the General Corporation Law

Section 141(a) of the General Corporation Law provides:

> The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of

[7] *See Mercier v. Inter-Tel (Delaware), Inc.*, 929 A.2d 786, 808 (Del. Ch. 2007) (noting that while directors cannot "use inequitable means that dupe or dragoon stockholders into consenting" to matters submitted to the stockholders for their approval, directors "can use the legal means at their disposal in order to pursue stockholder approval" including "tools like the ability to set and revise meeting dates or to adjourn a convened meeting.").

[8] *Id.* at 808.

> directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.[9]

Significantly, if there is to be any variation from the mandate of Section 141(a), it can only be as "otherwise provided in [the General Corporation Law] or in its certificate of incorporation."[10] The Certificate of Incorporation does not provide for management of the Company by persons other than the Board. Thus, the Board possesses the full power and authority to manage the business and affairs of the Company.[11] The Board's power and authority to manage the business and affairs of the Company extends to matters relating to the conduct of meetings of stockholders. For example, it is the Board, not the stockholders, who is granted the authority to determine a record date for the Annual Meeting under Section 213(a) of the General

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[9] 8 *Del. C.* § 141(a). *See also* Article III, Section 1 of the Bylaws ("The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.").

[10] *See, e.g.*, *Lehrman v. Cohen*, 222 A.2d 800, 808 (Del. 1966). We note that Section 113 of the General Corporation Law permits a corporation to adopt bylaws providing for the reimbursement by the corporation of expenses incurred by a stockholder in soliciting proxies in connection with an election of directors, subject to the terms and conditions set forth in such bylaw. Section 113 does not, however, divest the board of directors of the broader power to manage and direct the expenditure of corporate funds and commitment of corporate resources in connection with meetings of stockholders. Rather, the adoption of Section 113 provides further evidence and support of the principle that a board cannot be divested of its managerial power unless that divestiture is expressly permitted by the General Corporation Law. In this regard, Section 113 only divests the board of directors of managerial authority relating to a subset of expenses to be incurred in connection with a meeting of stockholders. Furthermore, the board of directors, through its ability to amend the bylaws when such power is conferred in the certificate of incorporation, still retains some authority as it relates to any reimbursement obligation permissible under Section 113 of the General Corporation Law. *See* 8 *Del. C.* § 113 (providing, in relevant part, that such reimbursement obligation may be contingent upon, among other lawful conditions, "limitations on the amount of reimbursement based upon . . . the amount spent by the corporation in soliciting proxies in connection with the election").

[11] *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984); *see also In re CNX Gas Corp. S'holders Litig.*, 2010 WL 2705147, at *10 (Del. Ch. July 5, 2010) ("the premise of board-centrism animates the General Corporation Law"); *McMullin v. Beran*, 765 A.2d 910, 916 (Del. 2000) ("One of the fundamental principles of the Delaware General Corporation Law statute is that the business affairs of a corporation are managed by or under the direction of its board of directors.") (citing 8 *Del. C.* § 141(a)); *Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281, 1291 (Del. 1998) ("One of the most basic tenets of Delaware corporate law is that the board of directors has the ultimate responsibility for managing the business and affairs of a corporation.").

Corporation Law.[12] Similarly, the Board is vested with the authority to determine how and when notice of a meeting of stockholders should be given and what corporate resources should be expended in connection therewith.[13] Such decisions are reserved by statute to the discretion of the Board, not the stockholders.

Here, however, the Proposal would impermissibly impinge on the authority of the Board to determine whether to adjourn the Annual Meeting, how corporate funds should be expended and the stockholders entitled to notice of and to vote at potential adjournments of the Annual Meeting pursuant to the Proposal. As noted above, the Proposal mandates adjournment of the Annual Meeting (regardless of the views of the Board on the issue). Indeed, the Proposal requires that the Annual Meeting must continue to be adjourned each time it is reconvened if, at such time, there are not sufficient votes to approve the Proposal. As such, assuming that there are not sufficient votes to approve the Proposal at the Annual Meeting or successive adjournments thereof, the Proposal would repeatedly impinge on the Board's managerial authority in terms of the decision whether to adjourn the Annual Meeting and would require the Board to continue to expend significant additional corporate funds to adjourn and reconvene the meeting, regardless of whether doing so was determined by the Board to be advisable and in the best interests of the Company and all of its stockholders. In addition, if the Annual Meeting is adjourned and reconvened numerous times, because of "Section 213(a)'s requirement that the board or a board committee set the record date by resolution",[14] the Board would be required to fix a new record date for the adjourned meeting when the record date initially set for the Annual Meeting became stale as a result of successive adjournments.[15] Thus, the Proposal would require

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[12] 8 *Del. C.* § 213(a) ("In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, *the board of directors* may fix a record date . . .") (emphasis added); *Empire of Carolina, Inc. v. Deltona Corp.*, 514 A.2d 1091, 1095 (Del. 1986) ("Subsection 213(a) thereby vests primary authority to fix a record date with the board of directors. This is consistent with the fundamental principle of Delaware Corporate Law that duly elected directors manage the business and affairs of the corporation.").

[13] *See Jones Apparel Group, Inc. v. Maxwell Shoe Co., Inc.*, 883 A.2d 837, 851 n.38 (Del. Ch. 2004) ("Under the DGCL, it is the directors who in the first instance must decide when to give notice [of a meeting of stockholders], since it is they who, under § 141(a), manage the business and affairs of the corporation."); *Alessi v. Beracha*, 849 A.2d 939, 943 (Del. Ch. 2004) (finding that it would be "unreasonable" to infer that directors of a Delaware corporation were unaware of the corporation's program to reacquire its shares because of the directors' responsibility under Section 141(a) to oversee the expenditure of corporate funds).

[14] *In re Staples, Inc. S'holders Litig.*, 792 A.2d 934, 964 (Del. Ch. 2001).

[15] *See High River Limited Partnership v. Dell Inc.*, C.A. No. 8762-CS (TRANSCRIPT) (Del. Ch. Aug. 16, 2013) (declining to find a colorable wrong in setting a new record date for a stockholder meeting given the "stale nature" of the prior record date); *In re The MONY Group, Inc. S'holder Litig.*, 853 A.2d 661, 672 (Del. Ch. 2004) (approving the resetting of a "stale

the Board to fix a new record date for the adjourned meeting,[16] regardless of whether fixing the new record date (and continuing to submit the Proposal to the stockholders) was advisable and in the best interests of the Company and its stockholders in the judgment of the Board.

Under Delaware law, directors cannot be directed by some percentage of the stockholders to enter into a contract or take an action that would prevent the board (or a committee thereof) from "completely discharging its fundamental management duties to the corporation and its stockholders."[17] Nor can a contract, bylaw or stockholder resolution "limit in a substantial way the freedom of director decisions on matters of management policy."[18] The Delaware courts have consistently applied these principles to prevent attempts to dictate future conduct or decisions by directors, whether by contract, bylaw, stockholder resolution or otherwise.[19]

For example, in *Quickturn*, the Delaware Supreme Court invalidated a provision of a stockholder rights plan adopted by the company's board of directors, which prevented any newly elected board from redeeming the rights plan for six months, because the provision would "impermissibly deprive any newly elected board of both its statutory authority to manage the corporation [under the General Corporation Law] and its concomitant fiduciary duty pursuant to that statutory mandate."[20] Similarly, in *AFSCME*, the Delaware Supreme Court held that neither the board nor the stockholders of a Delaware corporation were permitted to adopt a bylaw provision that required future boards of directors to reimburse stockholders for the reasonable expenses they incurred in connection with a proxy contest.[21] The Court held that the proposed

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record date"); *Bryan v. W. Pac. R. Corp.*, 35 A.2d 909, 914-15 (Del. Ch. 1944) (enjoining a meeting of stockholders where the stock transfer books were closed almost eight months before the meeting); *Kurz v. Holbrook*, 989 A.2d 140, 178-79 (Del. Ch. 2010) *rev'd on other grounds*, *Crown EMAK Partners, LLC v. Kurz*, 922 A.2d 377 (Del. 2010) (stating that "[w]hat legitimizes the stockholder vote as a decision-making mechanism is the premise that stockholders with economic ownership are expressing their collective view as to whether a particular course of action serves the corporate goal of stockholder wealth maximization" and noting that cases addressing the staleness of a record date reflect the Delaware courts' concerns about misalignment between the voting interest and economic interests of stockholders in connection with legitimating conditions necessary for meaningful stockholder voting).

[16] In addition to fixing a new record date, the Board would also be required to give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting. *See* 8 *Del. C.* § 222.

[17] *Quickturn*, 721 A.2d at 1291.

[18] *Abercrombie v. Davies*, 123 A.2d 893, 899 (Del. Ch. 1956).

[19] *See Quickturn*, 721 A.2d at 1291; 8 *Del. C.* §141(a) ("The business and affairs of every corporation ... shall be managed by or under the direction of a board of directors....").

[20] *Quickturn*, 721 A.2d at 1291.

[21] *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d. 227, 239 (Del. 2008).

bylaw would impermissibly "prevent the directors from exercising their full managerial power in circumstances where their fiduciary duties would otherwise require them to deny reimbursement to a dissident slate."[22]

As in the *Quickturn* and *AFSCME* cases, the Proposal, if implemented, would impermissibly impinge on the Board's authority to determine whether to adjourn a meeting, to determine how corporate funds should be expended and to determine the record date for stockholders entitled to notice of and to vote at potential adjournments of the Annual Meeting pursuant to the Proposal. Additionally, as described more fully above, the Proposal, if implemented, could require the Board, the Chairman and the Chief Executive Officer to adjourn the Annual Meeting even in circumstances where their fiduciary duties would otherwise require them to decline to adjourn the Annual Meeting in order to solicit additional votes in favor of the approval of the Proposal. These decisions are no less fundamental to the Company than the decision not to redeem a stockholder rights plan addressed by the Delaware Supreme Court in *Quickturn* or to reimburse proxy expenses addressed by the Delaware Supreme Court in *AFSCME*.

Thus, because the Proposal would require the Board to adjourn the Annual Meeting, would require the Board to expend corporate funds on the adjournment of the Annual Meeting and the solicitation of further votes in favor of the approval of the Proposal and would at some point require the Board to fix a new record date for determining the stockholders entitled to notice of and to vote at the adjourned meeting, the Proposal would, if implemented, impermissibly impinge upon the authority of the Board under Sections 141(a) and 213 of the General Corporation Law and therefore violate Delaware law.

C. The Proposal, if Implemented, Would Impermissibly Require the Company to Solicit Votes to Approve the Proposal Even After the Polls Have Been Closed and the Right to Vote Thereon Has Been Terminated

Under Delaware law, the determination of whether a proposal has been validly approved at a meeting of stockholders cannot be made until the polls have been closed.[23] Once

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[22] *Id.* As discussed in additional detail herein, Section 113 of the General Corporation Law, which was adopted after the *AFSCME* decision, specifically permits Delaware corporations to adopt bylaws providing for the reimbursement by the corporation of expenses incurred by a stockholder in soliciting proxies in connection with the election of directors. The adoption of Section 113, however, did not overrule the principles of common law adopted by the Delaware Supreme Court in *AFSCME*. Rather, as noted above, the adoption of Section 113 provides further evidence and support of the principle that a board cannot be divested of its managerial power unless that divestiture is expressly permitted by the General Corporation Law.

[23] *See Magill v. North American Refractories Co.*, 128 A.2d 233, 237 (Del. 1956) ("Until the polls are closed a stockholder may change his vote ...").

the polls have been closed, however, the right to vote on such proposal terminates.[24] Accordingly, the Delaware courts have repeatedly held that inspectors of election properly refuse to accept proxies submitted after the closing of the polls, leaving stockholders to bear responsibility for their failure to vote when the polls are open.[25] As such, once the polls have been closed on the Proposal and it has been determined whether there were sufficient votes necessary to approve the Proposal, the Company cannot then, assuming that there were not sufficient votes to approve the Proposal, re-open the polls on the Proposal and solicit additional votes in favor of the approval thereof. Therefore, since the Proposal would require the Annual Meeting to be adjourned to solicit additional votes necessary to approve the Proposal only after a determination that "votes for approval are lacking" and such a determination can only be definitively made after the polls are closed at the meeting and the right to vote thereon has been terminated, the Proposal, if implemented, would violate Delaware law.

CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, it is our opinion that the Proposal, if implemented, would violate Delaware law.

The foregoing opinion is limited to the laws of the State of Delaware. We have not considered and express no opinion on the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and to the Proponent in connection with the matters

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[24] *See Scherer v. R.P. Scherer Corp.*, 1988 WL 103311, at *8 (Del. Ch. Oct. 5, 1988) (holding that where "the polls had not closed" and "voting was still possible, including a withdrawal of its earlier vote" the trustee was obligated to withdraw the vote it had cast upon receiving a notice of an order of the Court of Appeals staying voting of the shares in question).

[25] *See* 8 Del. C. § 231(c) ("The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise."); *Atterbury v. Consolidated Coppermines Corp.*, 20 A.2d 743, 748 (Del. Ch. 1941) ("Where the Inspectors have closed the polls, counted the votes and announced the result of a vote, it is then too late to open the polls and receive the votes of any [stockholders] who have not voted."); *Concord Financial Group, Inc. v. Tri-State Motor Transit Co. of Delaware*, 567 A.2d 1, 12 (Del. Ch. 1989) ("The polls were closed ... The Inspector had no authority to open the polls to permit [stockholders] to vote...").

addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

WH/SN