



DIVISION OF
CORPORATION FINANCE

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

April 3, 2019

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: Amazon.com, Inc.
Incoming letter dated January 22, 2019

Dear Mr. Mueller:

This letter is in response to your correspondence dated January 22, 2019 concerning the shareholder proposal (the "Proposal") submitted to Amazon.com, Inc. (the "Company") by The Nathan Cummings Foundation (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfm/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: Laura Campos
The Nathan Cummings Foundation
laura.campos@nathancummings.org

April 3, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Amazon.com, Inc.
Incoming letter dated January 22, 2019

The Proposal requests that the Company report on its efforts to address hate speech and the sale of offensive products throughout its businesses.

We are unable to concur in your view that the Company may exclude the Proposal under rules 14a-8(b) and 14a-8(f). We note that the Proponent appears to have supplied documentary support sufficiently evidencing that it satisfied the minimum ownership requirement for the one-year period as required by rule 14a-8(b). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7) as relating to the Company's ordinary business operations. In this regard, we note that the Proposal appears to focus on an issue that is significant to the Company. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Frank Pigott
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

January 22, 2019

VIA E-MAIL

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

Re: *Amazon.com, Inc.*
Shareholder Proposal of The Nathan Cummings Foundation
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Amazon.com, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders (collectively, the “2019 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from The Nathan Cummings Foundation (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to 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.

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THE PROPOSAL

The Proposal states:

Resolved:

Investors request that Amazon report on its efforts to address hate speech and the sale of offensive products throughout its businesses. The report should be produced at reasonable cost, exclude proprietary information and discuss Amazon's process to develop policies to address hate speech and offensive products, the experts and stakeholders it consulted while developing these policies and the enforcement mechanisms it has put in place, or intends to put in place, to ensure compliance.

A copy of the Proposal and Supporting Statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

For the reasons discussed below, we believe the Proposal properly may be excluded from the 2019 Proxy Materials pursuant to:

- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide adequate proof of continuous share ownership in response to the Company's proper request for such information; and
- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations; specifically, the products and services offered for sale by the Company and the Company's customer relations.

BACKGROUND

On November 28, 2018, the Proponent submitted the Proposal to the Company via United Parcel Service ("UPS") two-day mail, which the Company received on November 30, 2018. The Proponent included a return mailing address and contact phone number in its cover letter accompanying the Proposal and did not provide any alternative contact information, including an email address. *See* Exhibit A. On November 29, 2018, Amalgamated Bank sent the Company a letter via UPS overnight mail purporting to verify the Proponent's ownership of Company shares, which the Company received on November 30, 2018. *See* Exhibit B.

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The Proponent's submission contained a procedural deficiency because it did not provide sufficient verification of the Proponent's ownership of the requisite number of Company shares from the record owner of those shares. Specifically, the letter from Amalgamated Bank submitted by the Proponent did not verify the Proponent's continuous ownership of Company shares for the one-year period preceding and including November 28, 2018, the date the Proposal was submitted to the Company. In addition, the Company reviewed its stock records, which did not indicate that the Proponent was the record owner of any shares of Company securities.

Accordingly, on December 13, 2018, the Company sent the Proponent a letter via UPS overnight mail notifying the Proponent of the procedural deficiency as required by Rule 14a-8(f) (the "Deficiency Notice"). In the Deficiency Notice, attached hereto as Exhibit C, the Company informed the Proponent of the requirements of Rule 14a-8 and how it could cure the procedural deficiency. Specifically, the Deficiency Notice stated:

- that the Proponent must submit verification of the Proponent's ownership of the requisite number of Company shares from the record owner of those shares for the one-year period preceding and including November 28, 2018, the date the Proposal was submitted to the Company; and
- that the Proponent's response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

The Deficiency Notice also included a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F"). See Exhibit C. UPS records confirm delivery of the Deficiency Notice at 9:46 a.m. on December 14, 2018. See Exhibit D. The Company has received no further correspondence from the Proponent regarding the Proponent's ownership of Company shares.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish The Requisite Eligibility To Submit The Proposal.

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to establish its eligibility to submit the Proposal under Rule 14a-8(b) despite the Company's explicit and timely notice of the Proposal's procedural deficiencies. Specifically, the Proponent has not demonstrated that it continuously owned the required number of Company shares for the one-year period prior to and including the date the Proposal was submitted to the Company as required by Rule 14a-8(b).

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

Rule 14a-8(f)(1) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the deficiency and the proponent fails to correct the deficiency within the required time. Staff Legal Bulletin No. 14G (Oct. 16, 2012) (“SLB 14G”) provides guidance on 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). Among other things, SLB 14G reiterates “that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects,” and states that a company must “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.”

The Proponent submitted the Proposal to the Company via UPS two-day mail on November 28, 2018 and included no documentary evidence of its ownership of Company shares with the Proposal. Furthermore, the letter sent by Amalgamated Bank on November 29, 2018 did not constitute adequate documentary evidence of the Proponent’s ownership of Company shares. Specifically, the letter from Amalgamated Bank was insufficient because it stated the number of shares the Proponent held as of November 20, 2018, but did not cover the full one-year period preceding and including November 28, 2018, the date the Proposal was submitted to the Company. In addition, the Company reviewed its stock records, which do not indicate that the Proponent is a record owner of Company shares.

Accordingly, the Company sought sufficient verification of share ownership from the Proponent. Specifically, the Company sent the Deficiency Notice via UPS overnight mail notifying the Proponent of the requirements of Rule 14a-8 and how the Proponent could cure the procedural deficiency. The Company sent the Deficiency Notice on December 13, 2018 and it was received

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by the Proponent on December 14, 2018, which was within 14 calendar days of the Company's receipt of the Proposal. The Deficiency Notice provided detailed information regarding the "record" holder requirements, as clarified by SLB 14F, and attached a copy of Rule 14a-8 and SLB 14F. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient shares;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b); and
- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

The Deficiency Notice also specifically identified the deficiencies in the letter from Amalgamated Bank, stating:

In addition, to date we have not received adequate proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

The November 28, 2018 letter from Amalgamated Bank that you provided is insufficient because it states the number of shares the Proponent held as of November 20, 2018 but does not cover the full one-year period preceding and including November 28, 2018, the date the Proposal was submitted to the Company.

To remedy this defect, the Proponent must obtain a new proof of ownership letter verifying the Proponent's continuous ownership of the required number or amount of Company shares for the one-year period preceding and including November 28, 2018, the date the Proposal was submitted to the Company.

A copy of the Deficiency Notice is attached hereto as Exhibit C. UPS records confirm delivery of the Deficiency Notice to the Proponent on December 14, 2018 at 9:46 a.m. See Exhibit D. As of the date of this letter, the Company has not received a response to the Deficiency Notice from the Proponent.

The Staff consistently has granted no-action relief to registrants where proponents have failed, following a timely and proper request by a registrant, to furnish the full and proper evidence of

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continuous share ownership for the full one-year period preceding and including the submission date of the proposal. For example, in *The Home Depot, Inc.* (avail. Feb. 5, 2007), the company, upon receiving a proposal that had been submitted on October 19, 2006, sent a deficiency notice to the shareholder regarding the lack of proof of ownership. The letter from the broker that the shareholder sent in response to the deficiency notice stated that the shareholder had ownership of the shares from November 7, 2005 to November 7, 2006. However, the Staff concurred in the exclusion of the proposal because the letter did not account for the period from October 19, 2005 to November 7, 2005 and therefore was insufficient to prove continuous share ownership for one year as of October 19, 2006, the date the proposal was submitted. *See also Comcast Corp.* (avail. Mar. 26, 2012) (letter from broker stating ownership for one year as of November 23, 2011 was insufficient to prove continuous ownership for one year as of November 30, 2011, the date the proposal was submitted); *International Business Machines Corp.* (avail. Dec. 7, 2007) (letter from broker stating ownership as of October 15, 2007 was insufficient to prove continuous ownership for one year as of October 22, 2007, the date the proposal was submitted); *Sempre Energy* (avail. Jan. 3, 2006) (letter from broker stating ownership from October 24, 2004 to October 24, 2005 was insufficient to prove continuous ownership for one year as of October 31, 2005, the date the proposal was submitted); *International Business Machines Corp.* (avail. Jan. 7, 2002) (letter from broker stating ownership on August 15, 2001 was insufficient to prove continuous ownership for one year as of October 30, 2001, the date the proposal was submitted).

The Staff also has permitted the exclusion of a shareholder proposal based on language in the proof of ownership letter that did not sufficiently pinpoint the dates for which the proponent had ownership of its stock. In *Intel Corp.* (Mar. 11, 2016) ("*Intel Corp. 2016*"), the company, upon receiving a proposal that appeared to have been submitted on November 30, 2015, sent a deficiency notice to the shareholder regarding the proponent's insufficient proof of ownership. The proponent replied with a letter from its broker stating that "as of 12/03/2015 Heartland Initiative, Inc. has beneficial ownership of at least \$2,000 in market value of the voting securities of Intel Corp. and that such beneficial ownership has existed for one or more years." The Staff concurred in the exclusion of the proposal because the letter from the proponent's broker failed to specifically provide proof of ownership as of and for the one year preceding the date on which the proposal appeared to have been submitted (*i.e.*, November 30, 2015), because it had not accounted for ownership over several days before the proposal was submitted (*i.e.*, November 30, 2014 through December 2, 2014). Similarly, in *Andrea Electronics Corp.* (avail. June 13, 2013), the company, upon receiving a proposal that had been submitted on March 1, 2013, sent a deficiency notice to the shareholder regarding the proponent's insufficient proof of ownership. In response, the proponent sent a letter from its broker stating that the proponent's account held a position in the company "[o]n or about July 8, 2008" and that "[a]s of March 26, 2013 the [proponent's] account holds a current position of 125,468 shares." However, the Staff concurred in the exclusion of the proposal because the statements in the aforementioned broker letter did

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not prove continuous ownership for the one-year period preceding and including March 1, 2013, as the statements left open the possibility that the proponent exited and entered its position in the company's securities at various times between July 8, 2008 and March 26, 2013. *See also Johnson & Johnson* (avail. Jan 8, 2013) (letter from broker stating that the shares had been continuously held since November of 2011 was insufficient to prove continuous ownership for one year as of November 13, 2012, the date the proposal was submitted); *International Business Machines Corp.* (avail. Dec. 26, 2002) (letter from broker stating that the proponent “owns the following shares and has owned them for more than one year as of September 2002” left open the possibility that the proponent had sold her shares on a date prior to September 5, 2002, the date her proposal was submitted, and was thus insufficient to prove continuous ownership for one year as of the submission date); *International Business Machines Corp.* (avail. Jan. 14, 2002) (letter from bank stating that the shares had been held “since prior to November 30, 2000” was insufficient to prove continuous ownership for one year as of November 8, 2001, the date the proposal was submitted).

As in *Intel Corp. 2016* and the other precedents above, the Proponent failed to provide sufficient documentary evidence of ownership of Company shares for the one-year period preceding and including the date the Proposal was submitted to the Company, either with its original Proposal or in response to the Company’s timely Deficiency Notice. Specifically, the Proponent submitted the Proposal on November 28, 2018, but the Amalgamated Bank letter verifies ownership as of November 20, 2018. In relevant part, the Amalgamated Bank letter states:

This letter will verify that as of November 20 2018, the Nathan Cummings Foundation held 375 shares of Amazon.com, Inc. common stock. It has continuously held more than \$2,000 worth of these shares for at least one year and intends to continue to hold at least \$2,000 worth of these shares at the time of your next annual meeting.

As such, even though the Amalgamated Bank letter was dated November 28, 2018, the letter specifically verified the Proponent’s ownership only as of and for the one-year period preceding November 20, 2018, and did not account for the Proponent’s ownership over several days before the Proposal was submitted (*i.e.*, November 21, 2018 through November 28, 2018).

Just as the proposal in *Intel Corp. 2016* was excludable under Rule 14a-8(f) because the proponent’s broker letter did not clearly account for ownership over several days before the proposal was submitted, the Proposal is excludable under Rule 14a-8(f) because the Amalgamated Bank letter has not clearly accounted for the Proponent’s ownership from November 21, 2018 (the day after the “as of” date of the Amalgamated Bank letter) through November 28, 2018 (the date the Proposal was submitted). Accordingly, we ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

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II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations.

A. Factual Background.

The Company takes seriously its commitment to diversity and respect for diverse backgrounds, including gender, race, ethnicity, religion, sexual orientation, disability, and other dimensions of diversity, which are enduring values for the Company as reflected in a number of Company policies.¹ This commitment extends not only to the Company's workforce, but to the customer experience, as well. As acknowledged by the Proponent, the Company's Restricted Products Policy (specifically, the section on Offensive and Controversial Materials) prohibits "products that promote, incite or glorify hatred, violence, racial, sexual or religious intolerance or promote organizations with such views."² The Company maintains these policies to ensure a welcoming environment for its global customers and selling partners to do business, while offering the widest selection of items on earth. By their nature, application of these policies requires the exercise of judgment. The Offensive and Controversial Materials policy states:

We exercise judgment in allowing or prohibiting listings and we keep our global community of customers and cultural differences and sensitivities in mind when reviewing and making a decision on products.

Listings for items that Amazon deems offensive are prohibited on Amazon.com. Amazon reserves the right to determine the appropriateness of listings on its site, and remove any listing at any time.

Because the Proposal addresses the sale of products throughout the Company's businesses, it applies to the hundreds of millions of products that third-party sellers offer for sale through the Company's websites.³ With respect to third-party sellers, the Company establishes the terms

¹ See, e.g., Amazon.com Code of Business Conduct and Ethics, <https://ir.aboutamazon.com/corporate-governance/documents-charters/code-business-conduct-and-ethics> ("Amazon.com provides equal opportunity in all aspects of employment and will not tolerate any illegal discrimination or harassment of any kind. For more information, see the Amazon.com policies on Equal Employment Opportunity and Workplace Harassment in the Amazon.com Owner's Manual.").

² Offensive and Controversial Materials, available at: <https://sellercentral.amazon.com/gp/help/external/200164670> (Nov. 8, 2018)

³ As stated on page 3 of the Company's Annual Report on Form 10-K for the year ended December 31, 2017, "We offer programs that enable sellers to grow their businesses, sell their products on our websites and their own branded websites, and fulfill orders through us. We are not the seller of record in these transactions. We

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upon which they may offer and sell products through the Company's website, and then the third-party sellers determine whether to offer specific products to the public.

The Company has, and will continue to develop and implement, processes to enforce compliance with the Company's offensive products policies. The Offensive Products team covers global operations and seeks information about potentially offensive products from various sources including customer contacts, social media posts, and the press. This process is broad-based and involves obtaining multiple perspectives and high-judgment senior leadership review that is run through a global coordinator to make policy determinations to prohibit product listings. To support its efforts to enforce offensive products policies, the Company has developed (and continues to iterate on and monitor the effectiveness of) automated systems, that may also involve a manual review component for ambiguous cases, to remove products that violate the Company's policies. Under the processes outlined above, the Company has removed hundreds of thousands of product listings from its stores during the past 12 months, including products that promote, incite, or glorify hatred, violence, racial, sexual, or religious intolerance or promote organizations with such views.

B. Background On The Ordinary Business Standard under Rule 14a-8(i)(7).

The Proposal may be omitted pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations. Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. One of these is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight."

earn fixed fees, a percentage of sales, per-unit activity fees, interest, or some combination thereof, for our seller programs."

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The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues,” the latter of which are not excludable under Rule 14a-8(i)(7) because they “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). Note 4 of Staff Legal Bulletin 14E (Oct. 27, 2009) states that “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.” The Staff reaffirmed this position in Note 32 of Staff Legal Bulletin 14H (Oct. 22, 2015), explaining “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.” In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”).

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).” *Johnson Controls, Inc.* (avail. Oct. 26, 1999). Accordingly, the Staff consistently has concurred in the exclusion of shareholder proposals seeking reports when the subject matter concerns ordinary business operations. *See, e.g., FedEx Corp.* (avail. July 11, 2014) (concurring with the exclusion of a proposal asking the board to report on how the company could “better respond to reputational damage from its association with the Washington D.C. NFL franchise team name controversy,” which involved ordinary business matters—*i.e.*, the manner in which the company advertises its products and services); *Exxon Mobil Corp.* (avail. Mar. 6, 2012) (concurring with the exclusion of a proposal asking the board to prepare a report on “environmental, social and economic challenges associated with the oil sands,” which involved ordinary business matters (the economic challenges associated with oil sands)).

Similar to the precedents cited above, the Proposal requests a report involving a subject matter that addresses the Company’s ordinary business operations, and therefore may be excluded under Rule 14a-8(i)(7).

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C. *The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Addresses Decisions Concerning A Wide Variety Of The Products Offered For Sale By The Company.*

The Proposal is excludable pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations because it addresses the selection of products sold through the Company's websites and other businesses. This point is demonstrated by the Supporting Statement, which references products that it asserts could be found listed for sale on the Amazon.com website. Decisions regarding the products the Company sells implicate myriad factors that must be considered by the Company's management, including the tastes and preferences of customers, the products offered by the Company's competitors, the laws where the Company's products are sold, the availability of sufficient quantity and quality of products to meet demand, and the prices charged by the Company's suppliers. Balancing such interests is a complex issue and is "so fundamental to management's ability to run [the C]ompany on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." See 1998 Release.

Thus, the Staff consistently has concurred in the exclusion of proposals relating to the sale of particular products. In *Amazon.com, Inc.* (avail. Mar. 11, 2016) ("Amazon 2016") the Staff concurred in the exclusion of a proposal requesting that the Company "issue a report addressing animal cruelty in the supply chain," where the supporting statement requested that the report "articulate whether the company has guidelines, above and beyond legal compliance, for identifying animal cruelty associated with products sold on its website; explain inconsistencies with respect to cruel production methods in the current selection of items offered for sale; propose policy options for strengthening any existing guidelines." The Company argued that the proposal was excludable under Rule 14a-8(i)(7) because it addressed products offered for sale by the Company. The Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7), noting in particular that "the proposal relates to the products and services offered for sale by the company." As the Staff further explained, "[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7)." Similarly, in *Amazon.com, Inc.* (avail. Mar. 27, 2015) ("Amazon 2015") the Staff concurred in the exclusion of a proposal requesting that the Company disclose the "reputational and financial risks that it may face . . . pertaining to the treatment of animals used to produce products it sells." Despite the proponent arguing that the proposal was not excludable because it merely requested a report and did not attempt to stop, or otherwise command control over the sale of particular products, the Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7), noting in particular that "the proposal relates to the products and services offered for sale by the company."

The foregoing precedent with respect to the Company's operations are consistent with numerous no-action letters issued to other retailers with respect to proposals addressing the sale of certain

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types or categories of products or services. *See Wal-Mart Stores, Inc.* (avail. Mar. 20, 2014) (“Wal-Mart 2014”) (granting no-action relief with respect to a proposal requesting board oversight of determinations whether to sell certain products that endanger public safety and well-being, could impair the reputation of the company and/or would be offensive to family and community values, on the basis that the proposal related to “the products and services offered for sale by the company”), *aff’d and cited in Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 327 (3d Cir. 2015); *Rite Aid Corp.* (avail. Mar. 24, 2015) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting that a committee of the company’s board “[p]rovide oversight concerning the formulation, implementation and public reporting of policies and standards that determine whether or not the [c]ompany should sell a product that (1) [e]specially endangers public health and well-being[,] (2) [h]as substantial potential to impair the reputation of the [c]ompany and/or (3) [w]ould reasonably be considered by many to be offensive to the values integral to the [c]ompany’s promotion of its brand”); *Wal-Mart Stores, Inc. (Porter)* (avail. Mar. 26, 2010) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal “to adopt a policy requiring all products and services offered for sale in the United States of America by Wal-Mart and Sam’s Club stores shall be manufactured or produced in the United States of America,” and noting that “the proposal relates to the products and services offered for sale by the company”); *Lowe’s Cos., Inc.* (avail. Feb. 1, 2008) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal encouraging the company to end the sale of glue traps as relating to “the sale of a particular product”); *The Kroger Co.* (avail. Mar. 20, 2003) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company cease making available certain shopping cards to its customers as relating to “the manner in which a company sells and markets its products”).

Like the proposals in *Amazon 2016* and *Amazon 2015*, and the other precedent cited above, the Proposal addresses the Company’s decisions concerning products that are offered for sale through its retail businesses. The Proposal and Supporting Statement are particularly similar to the proposal and supporting statement at issue in *Amazon 2016*. In both instances: the proponents sought a report regarding the Company’s efforts to address the sale of products the proponent found objectionable; the proponents acknowledged that the Company had a policy related to the products at issue and specifically referred to the Company’s Restricted Products Policy; and the proponents expressed concerns over the potential impact on the Company from the sale of specific categories of products.

Even if there are potential controversies around the sale of particular products, the Staff consistently has concurred that a proposal relating to a retailer’s sale determination of which products and services are offered for sale may be excluded under Rule 14a-8(i)(7). *See, e.g., CVS Caremark Corp.* (avail. Feb. 25, 2010) (concurring in exclusion of a proposal requesting a report on how the company is responding to rising public pressures to discourage sales of tobacco

Office of Chief Counsel
Division of Corporation Finance
January 22, 2019
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products); *The Home Depot, Inc.* (avail. Jan. 24, 2008) (concurring with the exclusion of a proposal encouraging the company to end the sale of glue traps, which the proponent claimed “are cruel and inhumane to the target animals and pose a danger to companion animals and wildlife,” because the proposal related to the sale of a particular product); *PetSmart, Inc.* (avail. Apr. 14, 2006) (concurring with the exclusion of a proposal requesting that the board issue a report detailing whether the company will end all bird sales because the proposal related to the sale of particular goods); *American Express Co.* (avail. Jan. 25, 1990) (concurring with the exclusion of a proposal under the predecessor to Rule 14a-8(i)(7) requesting that the board “discontinue all fur promotions in an effort to maintain [the company’s] respected and progressive public image” because the proposal related to the promotion and sale of a particular product).

D. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Concerns Policies Pursuant To Which The Company Grants Third Parties Access To Its Website.

The Proposal also may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations because it addresses policies pursuant to which the Company permits third parties to access its website. The Proposal requests “a report on [the Company’s] efforts to address hate speech and the sale of offensive products throughout its businesses.” The Proposal also requests that the Company report on “the enforcement mechanisms it has put in place, or intends to put in place, to ensure compliance” with its policies to address offensive products. As noted above, a significant amount of the products sold on the Company’s Amazon.com website are products offered for sale by third-party sellers, not the Company. In this context, the third-party sellers are the Company’s customers.⁴ With respect to third-party sellers, the Company establishes the terms upon which they may offer and sell products through the Company’s website, and then the third-party sellers determine whether to offer specific products to the public. Thus, by addressing products that are sold by third-party sellers through the Company’s websites, the Proposal addresses the Company’s customer relationships, an issue that the Staff repeatedly has concurred relates to ordinary business matters within the scope of Rule 14a-8(i)(7).

The Staff consistently has concurred with the exclusion of proposals concerning customer relations pursuant to Rule 14a-8(i)(7). For example, in *The Coca-Cola Co.* (avail. Feb. 17, 2010, *recon. denied* Mar. 3, 2010), the Staff concurred with the exclusion of a proposal requesting a report discussing policy options in response to public concerns regarding bottled water. In making its determination, the Staff noted that “[p]roposals that concern customer relations and

⁴ As page 3 of the Company’s Annual Report on Form 10-K explains, “In each of our segments, we serve our primary customer sets, consisting of consumers, sellers, developers, enterprises, and content creators.” (emphasis added).

Office of Chief Counsel
Division of Corporation Finance
January 22, 2019
Page 14

decisions relating to product quality are generally excludable under rule 14a-8(i)(7).” *See also Bank of America Corp.* (avail. Jan. 6, 2010) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requiring the company to stop accepting matricula consular cards as a form of identification, which effectively sought “to limit the banking services the [company could] provide to individuals the [p]roponent believe[d] [we]re illegal immigrants,” because the proposal sought to control the company’s “customer relations or the sale of particular services”); *Bank of America Corp.* (avail. Jan. 22, 2009) (same); *Wells Fargo & Co.* (avail. Feb. 16, 2006) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company not provide its services to payday lenders as concerning “customer relations”); *Bank of America Corp.* (avail. Mar. 7, 2005) (same).

The Company’s policies pursuant to which the Company grants third parties access to its Amazon.com website relate to the Company’s dealings with its customers. As with the foregoing precedents, decisions regarding customer relations implicate ordinary business policies even when the activities of those customers may be controversial, and therefore the Proposal properly may be excluded under Rule 14a-8(i)(7).

E. The Proposal Does Not Transcend The Company’s Ordinary Business Operations.

As reflected in the Company’s Offensive and Controversial Materials Policy, the Company concurs with the Proponents regarding the importance of opposing violence and bias on the basis of race, ethnicity, disability, sexual orientation, or religion, and of the importance of maintaining and enforcing policies to address the sale of offensive products throughout its businesses. Yet, that shared view demonstrates that the Proposal relates to the Company’s ordinary business operations and does not focus on a significant policy issue within the meaning of the Staff’s interpretations of Rule 14a-8(i)(7). For example, the Staff recently concurred that the Company could exclude a proposal addressing the placement of promotional or other marketing material on online sites or platforms that produce and disseminate content that many people may find objectionable. *Amazon.com, Inc.* (avail. Mar. 23, 2018) (“Amazon 2018”). Even though the Staff has found that discrimination issues can implicate a significant policy issue, the Staff concurred that in the context of establishing and administering policies relating to advertising through channels that could be viewed by some as implicating those issues, the proposal did not raise a significant policy issue with a sufficient nexus to the Company. Likewise, the Proposal here does not raise a significant policy issue within the meaning of the Staff’s interpretations of Rule 14a-8(i)(7) in the context of determinations regarding the sale of particular categories of products.

Similarly, in *Intel Corp.* (avail. Mar. 19, 1999, *recon. granted* Mar. 31, 1999) (“*Intel Corp 1999*”), the proposal requested that the company condition its sponsorship of the International Science and Engineering Fair on the fair’s operators changing their rules to restrict the use of

Office of Chief Counsel
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Page 15

animal tests by some contestants. Even though the Staff has found that the use of animals in scientific tests implicates a significant policy issue, the Staff concurred that as to Intel, the proposal implicated only an ordinary business issue (decisions to commence contributions to a particular charity), and that there was not a sufficient nexus between the significant policy issue and Intel.

As in *Amazon 2018* and *Intel Corp. 1999*, the Proposal does not raise a significant policy issue within the meaning of the Staff's interpretations of Rule 14a-8(i)(7) as to the Company because decisions regarding selection of products and services to be sold through the Company's businesses do not transcend the Company's day-to-day operations. Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2019 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Mark Hoffman, the Company's Vice President & Associate General Counsel, Corporate and Securities, and Legal Operations, and Assistant Secretary, at (206) 266-2132.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Mark Hoffman, Amazon.com, Inc.
Laura Campos, The Nathan Cummings Foundation

EXHIBIT A

THE · NATHAN · CUMMINGS · FOUNDATION

November 28, 2018

RECEIVED

NOV 30 2018

David A. Zapolsky
Corporate Secretary
Amazon.com, Inc.
410 Terry Avenue North
Seattle, Washington 98109

AMAZON.COM, INC.
LEGAL DEPARTMENT

Dear Mr. Zapolsky,

The Nathan Cummings Foundation is an endowed institution with approximately \$450 million of investments. As an institutional investor, the Foundation believes that the way in which a company approaches environmental, social and governance issues has important implications for long-term shareholder value.

It is with these considerations in mind that we submit this resolution for inclusion in Amazon.com, Inc.'s proxy statement under Rule 14a-8 of the general rules and regulations of the Securities Exchange Act of 1934. The Nathan Cummings Foundation is the primary sponsor of this proposal.

The Nathan Cummings Foundation is the beneficial owner of over \$2,000 worth of shares of Amazon.com, Inc. stock. Verification of this ownership, provided by our custodian, Amalgamated Bank, will be sent in a separate letter. We have continuously held over \$2,000 worth of these shares of Amazon.com, Inc. stock for more than one year and will continue to hold these shares through the shareholder meeting.

If you have any questions or concerns about the Foundation's submission of this resolution, please contact me at (212) 787-7300. Thank you for your time.

Sincerely,



Laura Campos

Director, Corporate & Political Accountability

Whereas:

On average, 250,000 hate crimes were perpetrated in America each year between 2004 and 2015 according to the Bureau of Justice Statistics, which defines hate crimes as “crimes that the victim perceived to be motivated by bias due to the victim’s race, ethnicity, disability, sexual orientation, or religion.” (<https://bit.ly/2vO6T0c>) Hate crimes appear to be on the rise (<https://wapo.st/2zNrNM4>), and some have suggested that online hate speech, which Merriam-Webster defines as speech expressing hatred of a particular group of people, can help weaken inhibitions against harmful acts. (<https://ti.me/2qtvdzh>)

According to its policy on offensive and controversial materials, “Amazon does not allow products that promote, incite or glorify hatred, violence, racial, sexual or religious intolerance or promote organizations with such views.” (<https://amzn.to/2mezrZt>, accessed November 19, 2018)

Unfortunately, this policy appears to be applied inconsistently, which may indicate a lack of clear internal policies and effective controls. While Amazon.com, Inc. (“Amazon”) has removed some offensive products, a July 2018 report found racist, Islamophobic, homophobic and anti-Semitic items on Amazon’s platforms. (<https://bit.ly/2tX37yK>) As of November 19, 2018, searches on Amazon.com showed that offensive and controversial products continue to be available for sale through the platform. For instance, a search for “Kek,” a satirical religion associated with the white nationalist movement, returned dozens of results, including Kek flags, which intentionally evoke the design of the Nazi war flag. (<https://bit.ly/2puFOf9>)

The gap between Amazon’s stated policy and its practices is concerning. Making offensive products available could expose Amazon to reputational damage and impair relationships with key stakeholders including customers, regulators and employees. This is particularly true as Amazon continues to pursue growth in more diverse and culturally complex international markets.

In both the European Union and the United States other companies, including Ryanair and Waffle House, have faced boycotts for failing to address racism encountered by customers. Both Germany and the European Union have enacted laws restricting hate speech. For instance, a German law requires the removal of hate speech within 24 hours and levies fines against companies that do not comply.

Amazon’s employees may feel uncomfortable aiding in the dissemination of hateful materials and employees belonging to targeted groups may feel unsupported by Amazon. According to research published in the *Harvard Business Review*, disengaged employees have 37% higher absenteeism, 49% more accidents, and 18% lower productivity. (<https://hbr.org/2015/12/proof-that-positive-work-cultures-are-more-productive>)

Resolved:

Investors request that Amazon report on its efforts to address hate speech and the sale of offensive products throughout its businesses. The report should be produced at reasonable cost, exclude proprietary information and discuss Amazon’s process to develop policies to address hate speech and offensive products, the experts and stakeholders it consulted while developing these policies and the enforcement mechanisms it has put in place, or intends to put in place, to ensure compliance.

11/30/18 10:10 AM

Ricoh Executive Mail

Priority:

1 of 1

Kristin Thresher

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NEW YORK NY 10018

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AMAZON.COM, INC.
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SEATTLE WA 98109-5210

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EXHIBIT B



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NOV 30 2018

AMAZON.COM, INC.
LEGAL DEPARTMENT

November 28, 2018

David A. Zapolsky
Corporate Secretary
Amazon.com, Inc.
410 Terry Avenue North
Seattle, Washington 98109

Dear Mr Zapolsky,

This letter will verify that as of November 20 2018, the Nathan Cummings Foundation held 375 shares of Amazon.com, Inc. common stock. It has continuously held more than \$2,000 worth of these shares for at least one year and intends to continue to hold at least \$2,000 worth of these shares at the time of your next annual meeting.

The Amalgamated Bank serves as custodian and record holder for the Nathan Cummings Foundation. The above-mentioned shares are registered in a nominee name of the Amalgamated Bank. The shares are held by the Bank through DTC Account #2352.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Hutton".

Chuck Hutton
First Vice President
Investment Management Division, Client Service

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Kristin Thresher

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Overview

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	Date	Location
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	Out for Delivery	11/30/2018 7:34 A.M.	Seattle, WA, United States
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EXHIBIT C

December 13, 2018

Client: 03981-00258

VIA OVERNIGHT MAIL

Laura Campos
The Nathan Cummings Foundation
475 Tenth Ave., 14th Floor
New York, NY 10018

Dear Ms. Campos:

I am writing on behalf of Amazon.com, Inc. (the “Company”), which received on November 30, 2018, the shareholder proposal you submitted on behalf of The Nathan Cummings Foundation (the “Proponent”) pursuant to Securities and Exchange Commission (“SEC”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2019 Annual Meeting of Shareholders (the “Proposal”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company’s shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company’s stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received adequate proof that the Proponent has satisfied Rule 14a-8’s ownership requirements as of the date that the Proposal was submitted to the Company. The November 28, 2018 letter from Amalgamated Bank that you provided is insufficient because it states the number of shares the Proponent held as of November 20, 2018 but does not cover the full one-year period preceding and including November 28, 2018, the date the Proposal was submitted to the Company.

To remedy this defect, the Proponent must obtain a new proof of ownership letter verifying the Proponent’s continuous ownership of the required number or amount of Company shares for the one-year period preceding and including November 28, 2018, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 28, 2018; or
- (2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting

the Proponent's ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the required number or amount of Company shares for the one-year period.

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

- (1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 28, 2018.
- (2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 28, 2018. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including November 28, 2018, the required number or amount of Company shares were continuously held: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue NW, Washington, D.C. 20036-5306. Alternatively, you may transmit any response by email to me at RMueller@gibsondunn.com.

Laura Campos
December 13, 2018
Page 3

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671.
For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

A handwritten signature in blue ink, reading "Ronald O. Mueller", is displayed within a light blue rectangular box.

Ronald O. Mueller

Enclosures

Rule 14a-8 – Shareholder Proposals

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

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

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?*

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

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

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

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

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

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

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

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

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

(e) *Question 5:* What is the deadline for submitting a proposal?

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

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

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

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

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

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

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

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

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

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

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

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

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

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

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

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

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

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

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

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

- (i) Would disqualify a nominee who is standing for election;
- (ii) Would remove a director from office before his or her term expired;
- (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
- (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
- (v) Otherwise could affect the outcome of the upcoming election of directors.

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

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

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

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

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

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

- (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;
- (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
- (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

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

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal?

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

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

(i) The proposal;

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

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

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments? Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

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

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

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

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

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

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

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

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

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



**Division of Corporation Finance
Securities and Exchange Commission**

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://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-8⁷ 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.

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/interp/leg/cfs14f.htm>

EXHIBIT D

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

Weight

0.00 LBS

Service

UPS Next Day Air®

Shipped / Billed On

12/13/2018

Delivered On

12/14/2018 9:46 A.M.

Delivered To

NEW YORK, NY, US

Received By

DAOIEL

Left At

Reception

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 12/14/2018 1:40 P.M. EST