October 1, 2019

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: QUALCOMM Incorporated
Stockholder Proposal Submitted by J. Michael Schaefer
Securities Exchange Act of 1934 - Rule 14a-8
Request for No-Action Letter

Ladies and Gentlemen:

On behalf of our client, QUALCOMM Incorporated, a Delaware corporation (the “Company”), we are submitting this letter advising you of the Company’s intent to exclude from its Proxy Statement and form of Proxy (collectively, the “2020 Proxy Materials”) for its 2020 Annual Meeting of Stockholders (the “2020 Annual Meeting”) the attached Stockholder Proposal (the “Proposal”) and related Statement in Support (as amended, the “Supporting Statement”) submitted by J. Michael Schaefer (the “Proponent”).

In addition, we respectfully request, on behalf of the Company, written or oral confirmation that the staff (the “Staff”) of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Commission”) will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended, the Company omits the Proposal and the Supporting Statement from the 2020 Proxy Materials on the basis set forth below.

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

• submitted this letter no later than 80 calendar days before the Company intends to file its definitive 2020 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 (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, by copy of this letter we are reminding the Proponent that if the Proponent elects to submit any 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.

I. BASIS FOR EXCLUSION

We respectfully request that the Staff concur with our view that the Proposal may be properly omitted from the 2020 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to establish the requisite eligibility to submit the Proposal within the required time following the Company’s proper and timely notice.

II. BACKGROUND

On March 18, 2019, the Company received the Proposal in a letter dated March 16, 2019 (the “Submission Letter”). A copy of that letter is included in Exhibit A. The Proposal was not accompanied by any proof of ownership of the Company’s securities and the Submission Letter included other deficiencies, including the absence of the required representation of the Proponent’s intent to continue owning the requisite number of securities through the date of the 2020 Annual Meeting. The Company reviewed its stock records and determined that the Proponent did not appear as the record owner of any shares of the Company’s securities entitled to vote on the Proposal. The Company also noted that the Proponent had not submitted a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting his ownership of securities of the Company. Accordingly, in a letter dated March 28, 2019, which was sent within 14 days of the date the Company received the Proposal, the Company notified the Proponent of the Proposal’s various procedural deficiencies (the “Deficiency Notice”), as required by Rule 14a-8(f).1 Specifically, the Deficiency Notice stated (i) 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, (ii) that, under Rule 14a-8(b), the Proponent must submit a written statement of his intent to hold the requisite number of shares through the date of the 2020 Annual Meeting, and (iii) that the Proponent’s response had to be postmarked or transmitted electronically no later than 14 calendar days from the date that the Proponent received the Deficiency Notice. The Deficiency Notice also included, among other things, a copy of Rule 14a-8, Staff Legal Bulletin No. 14F (“SLB 14F”) and Staff Legal Bulletin No. 14G (“SLB 14G”). A copy of the Deficiency Notice, which contains evidence of the date that the Deficiency Notice was delivered to the Proponent, is included in Exhibit B. The Proponent received the Deficiency Notice via email on March 28, 2019 with the courtesy copy being delivered on March 29, 2019.

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1 On March 28, 2019 the Company sent the Deficiency Notice by email to the Proponent using the email address provided in the Submission Letter and the Company also sent a courtesy copy of the Deficiency Notice to the Proponent via Federal Express to the physical address contained in the Submission Letter.
On April 5, 2019, the Company received an undated letter from the Proponent (the “Ownership Letter”) containing documentation provided by the Proponent in response to the Deficiency Notice. In the Ownership Letter, the Proponent revised the Supporting Statement and included (i) a page, apparently from a TD Ameritrade FAQ site, showing the DTC number of TD Ameritrade, (ii) a “Statement for Account” for an unnamed account for the month of March 2018, (iii) a “Statement for Account” for an unnamed account for the month of March 2019, and (iv) a “My Profile” page for a TD Ameritrade joint account with the last four numbers of the account matching the last four numbers of the account on each of the Statement for Account pages. The Ownership Letter also contained a statement of the Proponent’s intent to continue owning shares, although (as discussed below) it appears that the Proponent does not actually own any Company shares. A copy of the Ownership Letter, along with the documentation provided by the Proponent, is included in Exhibit C. The My Profile page provided with the Ownership Letter (i) lists the joint owners of that account as Derek D. Schaefer and Michael R. Schaefer, neither of whom is the Proponent, and (ii) provides an address for the account that is different from the address used by the Proponent in the Submission Letter. Based on other available information, the Company believes that the securities held in the account referenced on the My Profile page are owned by the adult children of the Proponent, rather than the Proponent. Also, since the My Profile page only contains the last four numbers of the referenced account, the only item that links the Statement for Account pages to the My Profile page is a handwritten addition at the end of the Ownership Letter. The Company received no other evidentiary information from the Proponent within the 14-day period following Proponent’s receipt of the Deficiency Notice.

On July 5, 2019 (after the end of the 14-day period established by Rule 14a-8(f)(1) for responding to the Deficiency Notice) the Company received an email from the Proponent regarding the Ownership Letter. The Company responded to that email on July 19 (again by email with a courtesy copy by Federal Express), notifying the Proponent of his failure to address the ownership verification requirements of Rule 14a-8 that had been described in the Deficiency Notice. Following the Company’s response, the Proponent sent additional emails, to which the Company responded. Copies of all of the correspondence subsequent to the delivery of the Ownership Letter (collectively, the “Subsequent Correspondence”) are included in Exhibit D.

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2 An online search using search terms Michael R. Schaefer and Derek Schaefer revealed a decision in a court case from Texas in 2005. That decision indicated that J. Michael Schaefer has two sons, Michael R. Schaefer and Derek Schaefer, each of whom is an adult. See, Schaefer v. Bellfort Chateau L.P., Tex. Ct. of Appeals, 14th District, August 18, 2005 (2005 WL 1981299). Additionally, a biography of J. Michael Schaefer posted on a public website indicates that J. Michael Schaefer has two sons, Derek and Michael. For privacy concerns, we have not attached those materials to this letter, but will provide them supplementally to the Staff upon request.
III. Analysis: The Proposal may be properly excluded under Rule 14a-8(f)(1) because the Proponent failed to supply sufficient documentary support to satisfy the ownership verification requirements of Rule 14a-8(b).

A. The Proponent did not submit the required proof from a DTC participant (or an affiliate of a DTC participant) of his continuous ownership of the Company’s securities within the 14-day period following his receipt of the Deficiency Notice.

1. The Written Statement of Ownership Must Come from a DTC Participant or an Affiliate of a DTC Participant.

Rule 14a-8(b) specifies that, when a shareholder submitting a proposal is not a record holder and has not filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, the proponent must prove eligibility to submit the proposal through a written statement from the “record” holder (usually a broker or bank) verifying ownership of the requisite securities. SLB 14F explained that this statement must come from a DTC participant, stating:

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.

SLB 14G clarified that the proof of ownership letter could come from an affiliate of a DTC participant. We note that SLB 14F contains sample language for the DTC participant (or affiliate) to provide the requisite verification of securities ownership. SLB 14F and SLB 14G were specifically referenced in the Deficiency Notice and complete copies of those Staff Legal Bulletins and Rule 14a-8 accompanied the Deficiency Notice.

The Deficiency Notice both informed the Proponent that he was required to submit sufficient proof of ownership to establish that he had beneficial ownership of the requisite amount of the Company’s securities for the purposes of Rule 14a-8 and it described the requirements for such documentation. The Deficiency Notice clearly stated that the ownership verification statement must come from a DTC participant or its affiliate. Specifically, the Deficiency Notice indicated that the Proponent needed to provide to the Company “a written statement from the ‘record’ holder of the securities (usually a broker or a bank that is a DTC participant) verifying that, as of the date the Submission was submitted, you continuously held the requisite number of Company securities for at least one year preceding and including March 16, 2019.” The Deficiency Letter also explained that:

The SEC Staff published Staff Legal Bulletins No. 14F (“SLB 14F”) and No. 14G (“SLB 14G”) to provide guidance in helping stockholders comply with the requirement to prove ownership by providing a written statement from the
"record" holder of the securities. In SLB 14F, the SEC Staff stated that only brokers or banks that are DTC participants (clarified in SLB 14G to include affiliates thereof) will be viewed as "record" holders for purposes of Rule 14a-8. Thus, you will need to obtain the required written statement from the DTC participant through which your securities are held (emphasis added).

SLB 14G has numerous references to "proof of ownership letters" as the means to be used to document a proponent's ownership of a company’s securities for purposes of Rule 14a-8. The Proponent did not provide the required written statement of ownership from a DTC participant or an affiliate. Rather than follow the process and use the sample ownership verification language that the Staff provided in SLB 14F, the Proponent provided documents that fall far short of verifying his ownership. Therefore, the Proponent did not satisfy the securities ownership verification requirements of Rule 14a-8(b).

2. Investment Statements Do Not Provide Verification of Continuous Ownership.

The two Statement for Account pages provided by the Proponent with the Ownership Letter do not satisfy the requirements of Rule 14a-8(b) because they fail to demonstrate that the Proponent beneficially owned the requisite number of shares of Company securities continuously for at least one year preceding and including March 16, 2019, the date of submission of the Proposal. In Section C.1.c(2) of Staff Legal Bulletin No. 14 ("SLB 14"), the Staff addressed whether periodic investment statements, like the Statement for Account pages, could satisfy the continuous ownership verification requirements of Rule 14a-8(b). In SLB 14, the Staff stated that a shareholder's monthly, quarterly or other periodic investment statements do not demonstrate sufficient continuous ownership of securities. Instead, the Staff advised that a proponent "must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities continuously for a period of one year as of the time of submitting the proposal." (emphasis in original)

The Staff has consistently followed this guidance, even when the account statements submitted by a proponent indicated a purchase date. See, e.g., BlackRock, Inc. (March 21, 2019) (monthly account summaries are insufficient proof of continuous ownership), E.I. du Pont de Nemours and Co. (January 17, 2012) (excerpt from monthly brokerage statement, including date of acquisition, was insufficient proof of ownership), and Verizon Communications, Inc. (January 25, 2008) (current ownership amount and original date of purchase was insufficient proof of ownership). Similarly, documentation from a broker that establishes ownership only as of certain specific dates is not sufficient to establish continuous ownership for the one-year period required by Rule 14a-8(b). See, e.g., Exxon Mobil Corp. (March 28, 2019). As in the case of Andrea Electronics Corp. (June 13, 2013), the Proponent’s Statement for Account periodic investment statements leave open the possibility that the account dropped below the required level of ownership during the year prior to submission of the Proposal. As such, the Statement for Account pages to not satisfy the requirement to verify continuous ownership under Rule 14a-8(b).
3. **The Materials Provided by the Proponent Indicate that the Shares of the Company are Not Owned by the Proponent.**

Even if the materials submitted with the Ownership Letter were of a type that supported verification of the Rule 14a-8(b) continuous ownership requirements, the documents submitted by the Proponent indicate that the shares are actually owned by adult sons of the Proponent, rather than the Proponent. As noted above, the My Profile page provided with the Ownership Letter states that the account reflected therein is owned by Derek D. Schaefer and Michael R. Schaefer, rather than the Proponent. We are not aware of any situation where the Staff permitted a proponent to include securities that are owned by other persons (including relatives other than a spouse) to be considered as securities owned by the proponent, especially where the relatives do not reside with the proponent. Additionally, the Ownership Letter contains no indication that the Proponent is attempting to act as a representative of the owners of that account. Thus, not only did the Proponent fail to provide (within the 14-day response period following his receipt of the Deficiency Notice) the required proof of continuous ownership from a DTC participant or an affiliate, but the materials the Proponent did provide indicate that he is not the owner of the shares that he claims would allow him to submit the Proposal under Rule 14a-8.

B. **Notwithstanding the Proponent’s suggestions in the Subsequent Correspondence, the Company is not obligated to continue providing opportunities for the Proponent to cure the defects in his submission.**

It is well established that when a company provides proper notice of a defect to a proponent and the proponent fails to cure the defect, the company is not required to provide further opportunities for the proponent to cure. Section C.6. of SLB 14 states that a company may exclude a proposal pursuant to Rule 14a-8(f) if a company provides a timely and proper notice of defect(s) and “the shareholder timely responds but does not cure the eligibility or procedural defect(s).” The Staff has followed that guidance in many instances where a proponent’s timely response to a notice of defect(s) failed to establish the required share ownership and the company did not send a second deficiency notice. See, e.g., *TheStreet, Inc.* (March 1, 2016), *The Coca Cola Co.* (December 16, 2014), *Mondelez Int’l Inc.* (January 15, 2013). In this case, the Company timely delivered the Deficiency Notice to the Proponent and the Proponent’s response failed to cure the ownership verification defects sited in the Deficiency Notice within 14 days of his receipt of the Company’s request.

IV. **CONCLUSION**

The Company believes it is allowed, and it intends, to exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to substantiate his eligibility to submit the Proposal under Rule 14a-8(b) by providing the verification of continuous ownership information described in the Deficiency Notice within 14 days of his receipt of the Deficiency Notice. Although the Deficiency Notice requested evidence to verify the securities ownership requirements of Rule
14a-8(b)(1), the documentation provided by the Proponent fails to establish sufficient proof that the Proponent is the owner of the requisite amount of the Company's securities for the purposes of Rule 14a-8. The Ownership Letter and accompanying materials provided by the Proponent (i) do not constitute a written statement from the “record” holder of the Proponent’s ownership of the relevant securities of the Company for the purposes of Rule 14a-8, (ii) do not verify “continuous” ownership during the requisite period, and (iii) in fact, document that the Proponent is not the owner of the Company shares that he claims support his ability to submit the Proposal.

Because the Proponent failed to provide the required proof of continuous beneficial ownership of the Company’s securities within 14 days of receipt of the Deficiency Notice, he did not meet the requirements for establishing ownership in accordance with Rules 14a-8(b) and 14a-8(f)(1). Accordingly, we believe that the Company should be able to exclude the Proposal from the 2020 Proxy Materials.

We would be happy to provide you with any additional information or answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to doug.rein@us.dlapiper.com. If we can be of further assistance in this matter, please do not hesitate to call me at (858) 677-1443 or email David Zuckerman, the Company’s Senior Vice President, Legal Counsel and Assistant Secretary at dzuckerm@qualcomm.com.

Very truly yours,

DLA Piper LLP (US)

Douglas J. Rein
Partner

Admitted in California

Enclosures

cc:    Donald J. Rosenberg, Executive Vice President, General Counsel and Corporate Secretary, QUALCOMM Incorporated
       David Zuckerman, Senior Vice President, Legal Counsel and Assistant Secretary, QUALCOMM Incorporated
       J. Michael Schaefer
March 16, 2019

Donald J. Rosenberg, Secretary
Qualcomm Corporation
5775 Morehouse Dr.
San Diego, Ca. 92121

Re: Shareholder Proposal for 2020 Shareholder Meeting

Dear Mr. Secretary:

Please consider and include in our next proxy statement appropriate materials for approval of cumulative voting for election of our directors. Here is my suggested copy and I anticipate your approval. This is to be deemed submitted as of the first day permitted by Rules.

Respectfully,

MICHAEL SCHAEFER
Investor, 100 shares, in name of TD Ameritrade acct having been held not less that the required time, and this being only Proposal.
SHAREHOLDER PROPOSAL by Michael Schaefer, 100 share investor

Resolved by shareholders assembled in person and by proxy that the shareholders recommend to the Board of Directors that they take such action as may be appropriate to provide cumulative voting for future shareholder meetings to permit shareholders the option of voting their shares cumulatively, rather than regularly, for election of directors to office in all future meetings wherein voting is involved.

STATEMENT IN SUPPORT

Cumulative voting is a type of voting procedure that helps strengthen the ability of minority shareholders to elect a director. This allows shareholders to cast all their votes for a simple nominee, or several when multiple candidates are offered, the shareholders total votes being multiplied by the number of candidates to choose from.

Qualcomm now has 'regular voting'; shareholders may not vote more than one share per each candidate. I submit that any shareholder should be able to give greater votes to their favorite candidate/candidates, and fewer or none to those they support less or not at all. Cumulative voting is mandatory law in California, Arizona and elsewhere but Qualcomm is a Delaware corporation subject to their law.

As we develop substantial investors who seek leadership in our corporation, it is in our best interest that we vote YES for cumulative voting, give our major investors more say-so as to what's going on. This is consistent with our being on the edge of change.

MICHAEL SCHAEFER
March 28, 2019

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Mr. J. Michael Schaefer

Re: Notice of Defects in Stockholder Proposal Dated March 16, 2019

Mr. Schaefer:

On March 18, 2019, we received your letter, dated March 16, 2019, containing a proposal that you requested be included in the proxy materials of Qualcomm Incorporated (the “Company”) for the Company’s 2020 Annual Meeting of Stockholders, which proposal requested that our Board of Directors take appropriate action to provide for cumulative voting with respect to the election of our directors (the “Submission”).

The purpose of this letter is to inform you that the Submission does not comply with Rule 14a-8(b) of the Securities and Exchange Commission (“SEC”) promulgated under the Securities Exchange Act of 1934, as amended. We also believe the Submission does not comply with SEC Rule 14a-9. I have included a copy of Rule 14a-8 and Rule 14a-9 for your reference.

Rule 14a-8 Defects

Rule 14a-8 requires a stockholder to demonstrate, at the time he or she submits a stockholder proposal, that he or she is eligible to submit such a proposal under Rule 14a-8(b). Based on our search of the Company’s records, we are unable to verify that you are a registered holder of Company securities entitled to vote on the proposal, and you have not filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting your ownership of the requisite number of Company securities.

Accordingly, we are unable to verify whether you meet the requirements set forth in Rule 14a-8(b)(1) that you have continuously owned at least $2,000 dollars in market value, or 1%, of Company securities entitled to vote on the proposal for at least one year from the date you submitted the Submission. Similarly, we have not received a written statement from the “record” holder of your securities verifying that, at the time you submitted the Submission to us, you had continuously held the requisite number of securities for at least one year.

Second, the Submission does not contain the required representation from you that you intend to continue owing the requisite number of securities through the date of our 2020 Annual Meeting of Stockholders.
To remedy the first Rule 14a-8 defect, you, or your agent, must submit sufficient proof to the Company of your ownership of Company securities. As explained in Rule 14a-8(b), sufficient proof may be submitted in one of the following forms:

1. A written statement from the "record" holder of the securities (usually a broker or a bank that is a Depository Trust Company (DTC) participant) verifying that, as of the date the Submission was submitted, you continuously held the requisite number of Company securities for at least one year preceding and including March 16, 2019; or

2. If you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the requisite number of Company securities 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 you continuously held the requisite number of Company securities for the one-year period as of the date of the statement.

The SEC Staff published Staff Legal Bulletins No. 14F ("SLB 14F") and No. 14G ("SLB 14G") to provide guidance in helping stockholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the securities. In SLB 14F, the SEC Staff stated that only brokers or banks that are DTC participants (clarified in SLB 14G to include affiliates thereof) will be viewed as "record" holders for purposes of Rule 14a-8. Thus, you will need to obtain the required written statement from the DTC participant through which your securities are held. If you are not certain whether your broker or bank is a DTC participant, you may check the DTC's participant list, which is currently available on the Internet at www.dtcc.com/client-center/DTC-directories.aspx. If the broker or bank that holds your Company securities is not on DTC's participant list, you will need to obtain proof of ownership from the DTC participant through which your securities are held. If the DTC participant knows the holdings of your broker or bank, but does not know your holdings, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the Submission was submitted, you continuously held the required amount of securities for at least one year preceding and including March 16, 2019; with one statement from your broker or bank confirming your required ownership, and the other statement from the DTC participant confirming the broker or bank's ownership. Please see the enclosed copies of SLB 14F and SLB 14G for further information.

To remedy the second Rule 14a-8 defect, you must provide a written statement that you intend to hold your shares through the date of our 2020 Annual Meeting of Stockholders.

Rule 14a-9 Defects

Additionally, even if we receive the required proof of your ownership of Company securities and the required statement regarding your intent to hold those securities through the date of our 2020 Annual Meeting of Stockholders, we may seek to exclude the Submission from our proxy materials. Rule 14a-8(l) sets forth several reasons for which we may exclude stockholder proposals. Rule 14a-8(l)(3) allows us to exclude any stockholder proposal that is contrary to the SEC's proxy rules, including Rule 14a-9. Rule 14a-9 prohibits companies from including materially false or misleading statements in its proxy materials. You state in the Submission that "Cumulative voting is mandatory law in California, Arizona and elsewhere." According to our preliminary research, only five states, including Arizona, provide for mandatory cumulative voting for companies incorporated within their respective jurisdictions. In ten states, including California, cumulative voting is the default, but companies may opt out through stockholder approved provisions in their articles of incorporation. We believe that it is false and misleading to imply that California would mandate cumulative
voting had the Company been incorporated under California law; as a public company, we would legally be allowed to opt out of such provision, as we believe most California public companies have done. We also believe that stating "and elsewhere" is misleading in that it suggests mandatory cumulative voting laws are common, which they are not. In fact, our research indicates that less than 3% of Fortune 500 companies (and similarly small numbers of S&P 500 companies) currently provide cumulative voting rights.

Requirements for Responses

Pursuant to Rule 14a-8(f), if you would like us to consider the proposal contained in the Submission for inclusion in our proxy materials for our 2020 Annual Meeting of Stockholders, you must send us a response that corrects the Rule 14a-8 deficiencies noted above. We also recommend that you correct the Rule 14a-9 defects to allow both you and us to avoid involving the SEC staff.

If you mail a response to the address above, it must be postmarked no later than 14 calendar days from the date you receive this letter. If you wish to submit a response electronically, you must submit it to the email address above within 14 calendar days of your receipt of this letter. If you do not furnish the required information within the 14 calendar days we believe that we will be entitled to omit the proposal from our proxy statement for our 2020 Annual Meeting of Stockholders.

We would be happy to discuss with you our research regarding cumulative voting, how few large public companies have cumulative voting and the reasons why we believe that cumulative voting is unnecessary for our Company.

Thank you for your attention to this matter.

Sincerely,

QUALCOMM Incorporated

[Signature]
David M. Zuckerman
Senior Vice President, Legal Counsel
and Assistant Secretary

cc: Donald J. Rosenberg, Executive Vice President, General Counsel and Corporate Secretary
Cameron Jay Rains, Global Co-CEO Americas and Co-Chairman, DLA Piper (US) LLP

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(i).

(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.
Rule 14a-9 False or misleading statements.

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

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

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

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

a. Predictions as to specific future market values.

b. Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.

c. Failure to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter.

d. Claims made prior to a meeting regarding the results of a solicitation.
Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

- Common errors shareholders can avoid when submitting proof of ownership to companies;

- The submission of revised proposals;

- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and

- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.
B. The types of brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

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

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

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

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

2. The role of the Depository Trust Company

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

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

In The Hain Celestial Group, Inc. (Oct. 1, 2008), we took the position that an introducing broker could be considered a “record” holder for purposes of
Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities. Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, Hain Celestial has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8 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, 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.\(^2\)

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).\(^18\) 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, 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.

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.

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.


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.

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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

- the use of website references in proposals and supporting statements.

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

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8
1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

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

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

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

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

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

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

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

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

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

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

**D. Use of website addresses in proposals and supporting statements**

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

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(l)(3) if the information contained on the
website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.¹

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

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

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

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

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

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

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

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

\(^1\) An entity is an “affiliate” of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

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

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

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

http://www.sec.gov/interp/legals/cfslb14g.htm
Re: Notice of Defects in Stockholder Proposal

Dear Mr. Zuckerman:

Hopefully this response to your March 28th letter clears my proposal for inclusion, please advise by email or ordinary mail if it does not. Thank you for inclusions.

1. Enclosed is DOCUMENTATION reflecting my ownership of 100 shares. First page from TD Ameritrade identifies their DTC #, 0188. Second page shows ownership of over $2500 in value as of 3/1/18; Third page shows ownership over $5000 in value as of 3/1/19

2. Please be assured that I intend to continue owning at least $2000 in value through the 2020 Annual Meeting. This is my written statement.

3. This writing serves to amend the proposal submitted March 16, 2019 by restating:

STRIKE: “Cumulative voting is mandatory law in California, Arizona and elsewhere but Qualcomm is a Delaware corporation subject to their law”.

NEW: Cumulative voting is provided for in the laws of over ten states. But not in Delaware where our corporation is incorporated. Some states make it mandatory, other states allow corporations to “opt out” by vote of shareholders. I believe it is necessary for our company so that any large investor can be assured having a seat on our board, if desired, and that such right has a positive effect on market value of our stock. Management disagrees. It's up to us shareholders to decide this issue, we are the boss. Please vote “YES” or else management will use its discretionary authority to vote your Shares “NO”. We have a duty to be responsible active investors.

--30--
Qualcomm has an image of being more progressive than many other public companies. While management may not feel that cumulative voting is "necessary", I think it would be welcomed by shareholders and more consistent with fundamental fairness for our investors. I think founder Dr. Irwin Jacobs, a significant shareholder, would vote for my proposal.

Respectfully,

MICHAEL SCHAEFER

Schaefra account
What is your DTC number (Broker Clearing Number)?

The DTC number is 0188, and the firm name is TD Ameritrade.
**Statement for Account #**  
03/01/18 - 03/31/18

### Income Summary Detail *

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<thead>
<tr>
<th>Description</th>
<th>Current</th>
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<tbody>
<tr>
<td>Qualified Dividends</td>
<td>$52.50</td>
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<tr>
<td>IDA Interest</td>
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*This section displays current and year to date taxation values for this account. The current totals may not equate to the total payments listed on this statement as corrections to tax reports can include changes made to previous payments and removal of payments reportable in a previous tax year (spillover dividends). The year to date totals will accurately reflect your cumulative taxation.*

### Account Positions

<table>
<thead>
<tr>
<th>Investment Description</th>
<th>Symbol/ CUSIP</th>
<th>Quantity</th>
<th>Current Price</th>
<th>Market Value</th>
<th>Purchase Date</th>
<th>Cost Basis</th>
<th>Average Cost</th>
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<tbody>
<tr>
<td>Stocks - Cash</td>
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<td></td>
<td></td>
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<tr>
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<tr>
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<td>55.41</td>
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</table>

**Total Stocks**  
$26,994.22  
$73,726.44

**Total Cash Account**  
$26,994.22  
$73,726.44
Statement for Account #
03/01/19 - 03/31/19

### Online Cash Services Summary

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<tr>
<th>Description</th>
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<tr>
<td>Subtotal</td>
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</tr>
<tr>
<td>TOTAL</td>
<td>0.00</td>
</tr>
</tbody>
</table>

### Income Summary Detail

<table>
<thead>
<tr>
<th>Description</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualified Dividends</td>
<td>$ 88.00</td>
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<tr>
<td>IDA Interest</td>
<td>12.25</td>
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</table>

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</tr>
</thead>
<tbody>
<tr>
<td>Stock - Cash</td>
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Total Stocks: $72,226.73  $141,450.68
## My Profile

### General Information

- **Account name**: DEREK D SCHAEFER & MICHAEL R SCHAEFER JT TEN
- **Account type**: Joint Tenancy WROS
- **Account number**: ***
- **Account owners**: DEREK D SCHAEFER & MICHAEL R SCHAEFER
- **Account PIN**: ***

### Personal Information

- **Physical street address**: ***
- **Daytime phone number**: ***
- **Evening phone number**: ***
- **Primary email address**: ***
- **Marital status**: ***
- **Number of dependents**: ***

### Employment Information

- **Employment status**: ***
- **Occupation**: ***
- **Industry of occupation**: ***
- **Business/employer name**: ***
- **Business/employer address**: ***

### Beneficiaries

- **Approximate annual income**: ***
- **Approximate net worth**: ***
- **Approximate liquid net worth**: ***
- **Source of ongoing funding**: ***

### Personal Affiliations

1. **Are you, or is your spouse, or is any member of your immediate family living in the same household (including parents, in-laws, siblings, or dependents) listed by, employed by, or associated with a broker-dealer firm, a financial services regulator, a securities exchange, or a member of a securities exchange?** No
2. **Are you, or is your spouse, or is any member of your immediate family (including parents, in-laws, siblings, or dependents) a member of the board of directors, a 10% shareholder, or a policy-making officer of a publicly traded company?** No

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This is not an offer or solicitation in any jurisdiction where we are not authorized to do business, or where such offer or solicitation would be contrary to the local laws and regulations of that jurisdiction, including, but not limited to persons residing in Australia, Canada, Hong Kong, Japan, Saudi Arabia, Singapore, UK, and the countries of the European Union.

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YOUR RECEIPT AND USE OF THIS SERVICE IS SUBJECT TO THE TERMS AND CONDITIONS OF YOUR ELECTRONIC AGREEMENT WITH TD Ameritrade.

https://invest.ameritrade.com/grid/p/site
Dear Mr. Zuckerman:

I have not received any objection to my compliance with your March request, and assume all is in order. If not please advise me with specifics within 10 days so I can provide more, or resubmit. There is ample time and the Commission favors the investor.

Respectfully,

J. MICHAEL SCHAEFER
Shareholder; TD Ameritrade Vesting
Mr. Schaefer -

Please see the attached letter, which was also sent to you today via FedEx, in response to your email below.

Thank you.

---

From: j michael schaefer •
Sent: Friday, July 5, 2019 11:56 AM
To: David Zuckerman <dzuckerm@qualcomm.com>
Subject: [EXT] Your letter of March 28 in reply to my submission of Rule 14a proposal March 16

Dear Mr. Zuckerman:

I have not received any objection to my compliance with your March request, and assume all is in order. If not please advise me with specifics within 10 days so I can provide more, or resubmit. There is ample time and the Commission favors the investor.

Respectfully,

J. MICHAEL SCHAEFER
Shareholder; TD Ameritrade Vesting
July 19, 2019

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Mr. J. Michael Schaefer

Re: Stockholder Proposal Dated March 16, 2019

Mr. Schaefer:

I am writing in response to your electronic mail message of July 5, 2019 regarding the stockholder proposal ("Submission") contained in your letter dated March 16, 2019, as modified by your letter received on April 5, 2019, which you requested be included in the proxy materials of Qualcomm Incorporated (the "Company") for the Company's 2020 Annual Meeting of Stockholders.

In our notice of defects ("Notice of Defects") sent to you by Federal Express and electronic mail on March 28, 2019 (which included a copy of Rule 14a-8 and Rule 14a-9 of the Securities and Exchange Commission ("SEC"), together with copies of SEC Staff Legal Bulletins No. 14F and No. 14G), we notified you of various deficiencies in your Submission, including the lack of verification of your continuous ownership of Company securities for at least one year from the date you submitted your Submission. In our Notice of Defects, we notified you that you needed to send us information that corrected the Rule 14a-8 deficiencies within 14 calendar days from the date you received our Notice of Defects. While we expect that the electronic mail transmission was received earlier, we received confirmation of Federal Express delivery on March 29, 2019, which means that your response and required information needed to be sent by April 12, 2019. On April 5, 2019, we received from you an undated letter responding to our Notice of Defects and containing copies of what appear to be certain statements from a TD Ameritrade account and what appears to be a profile cover page for a jointly owned TD Ameritrade account. We did not receive any other information from you that was sent within the 14 calendar days following your receipt of our Notice of Defects.

The Company believes that the information you have provided does not satisfy the ownership verification requirements of Rule 14a-8. First, the SEC staff has consistently taken the position that submission of periodic brokerage account statements is not sufficient proof of ownership of securities. Indeed, Staff Legal
Bulletin No. 14F (which as noted above we provided to you in our Notice of Defects) contains sample language for a broker to use in providing the required verification of ownership. Second, your brokerage statements do not reflect your ownership as of March 16, 2019 (the date the Submission was submitted).

We believe that the SEC rules in this area attempt to strike a balance, with stockholders being required to demonstrate the specified level of ownership to be able to submit proposals for inclusion in a company’s proxy statement, while recognizing the costs incurred by companies in responding to and including proposals within proxy materials. We believe the SEC staff consistently has permitted companies to exclude stockholder proposals in situations where, as is the case with your Submission, the stockholder failed to submit the required verification of ownership of company securities within the 14-day period specified in Rule 14a-8 following receipt of a notice regarding the failure to provide the required verification of ownership. Since the 14-day period expired over three months ago, you did not provide the required ownership verification within the specified period, and the Company believes that it will be able to exclude your Submission from its proxy materials. Alternatively, if you were to submit a second proposal, we believe it would be excludable under the “one proposal rule” included in Rule 14a-8(c) (please refer to the copy of Rule 14a-8 previously sent to you).

For these reasons, and to spare the SEC staff the time and expense of processing a no action request with respect to your Submission, we request that you respond to this letter with a written communication withdrawing your Submission.

Sincerely,

QUALCOMM Incorporated

David M. Zuckerman
Senior Vice President, Legal Counsel and Assistant Secretary

cc: Donald J. Rosenberg, Executive Vice President, General Counsel and Corporate Secretary
    Cameron Jay Rains, Global Co-CEO Americas and Co-Chairman, DLA Piper (US) LLP
I am appalled at your negligent and picky rejection and harassment and within 30 days will file a complaint with the division of corporation finance as to your noncompliance with good faith performance by myself. It is sad you are not as good a corporate citizen as your general corporate image suggests.

J. MICHAEL SCHAEFER

On Friday, July 19, 2019, 04:58:10 PM PDT, David Zuckerman <dzuckerm@qualcomm.com> wrote:

Mr. Schaefer –

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Thank you.

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Respectfully,

J. MICHAEL SCHAEFER

Shareholder; TD Ameritrade Vesting
Mr. Schaefer –

We are in receipt of your July 19, 2019 email (below). While we disagree with the positions you have taken in that email, you will have the opportunity to present your views to the SEC in connection with the No-Action Letter process.

In the meantime, I would be happy to discuss Cumulative Voting with you at your convenience.

My contact information is below.

Thank you.

David Zuckerman
Senior Vice President & Legal Counsel
Qualcomm Incorporated
5775 Morehouse Drive, N-585L
San Diego, CA 92121
(858) 658-4218
dzuckerm@qualcomm.com

I am appalled at your negligent and picky rejection and harassment and within 30 days will file a complaint with the division of corporation
finance as to your noncompliance with good faith performance by myself. It is sad you are not as good a corporate citizen as your general corporate image suggests.

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J. MICHAEL SCHAEFER

Shareholder; TD Ameritrade Vesting
when you threaten that resubmission would be a prohibited 2nd proposal, I have no incentive to seek TD Ameritrade letter confirming my continuous ownership (which I thought my statement and two TD Ameritrade statements established). I have asked the SEC to accept my statement or specific that it would not be a 2nd Proposal if I sent in something else (and what I should gather; we have plenty of time. Thank you. (I am open to amending it I just think a shareholder vote is in our best interests).

On Wednesday, July 24, 2019, 09:19:34 AM PDT, David Zuckerman <dzuckerm@qualcomm.com> wrote:

Mr. Schaefer –

We are in receipt of your July 19, 2019 email (below). While we disagree with the positions you have taken in that email, you will have the opportunity to present your views to the SEC in connection with the No-Action Letter process.

In the meantime, I would be happy to discuss Cumulative Voting with you at your convenience.

My contact information is below.

Thank you.

David Zuckerman
Senior Vice President & Legal Counsel
Qualcomm Incorporated
5775 Morehouse Drive, N-585L
San Diego, CA 92121
(858) 658-4218
dzuckerm@qualcomm.com
I am appalled at your negligent and picky rejection and harassment and within 30 days will file a complaint with the division of corporation finance as to your noncompliance with good faith performance by myself. It is sad you are not as good a corporate citizen as your general corporate image suggests.

J. MICHAEL SCHAEFER
Mr. Schaefer –

Please see the attached letter, which was also sent to you today via FedEx, in response to your email below.

Thank you.

From: j michael schaefer
Sent: Friday, July 5, 2019 11:56 AM
To: David Zuckerman <dzuckerm@qualcomm.com>
Subject: [EXT] Your letter of March 28 in reply to my submission of Rule 14a proposal March 16

Dear Mr. Zukerman:

I have not received any objection to my compliance with your March request, and assume all is in order.

If not please advise me with specifics within 10 days so I can provide more, or resubmit. There is ample
time and the Commission favors the investor.

Respectfully,

J. MICHAEL SCHAEFER

Shareholder; TD Ameritrade Vesting
I do not think the SEC minds having to deal with these disputes. In 1962 I was on SEC staff in Washington, cleaning proxy statements, sending "no comment letters" to corporate secretaries, during my Georgetown Law student days. jms

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