



**BNY MELLON**

**Legal**  
240 Greenwich Street  
New York, NY 10286

December 13, 2019

Via Electronic Mail ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))

Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20519

Re: The Bank of New York Mellon Corporation  
Request to Omit Stockholder Proposal of Kenneth Steiner

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), The Bank of New York Mellon Corporation, a Delaware corporation (the "Company") hereby gives notice of its intention to omit from the proxy statement and form of proxy for the Company's 2020 Annual Meeting of Stockholders (together, the "2020 Proxy Materials") a stockholder proposal (including its supporting statement, the "Proposal") received from John Chevedden on behalf of Kenneth Steiner (the "Proponent"). The full text of the Proposal and all other relevant correspondence with the Proponent are attached as Exhibit A.

The Company believes it may properly omit the Proposal from the 2020 Proxy Materials for the reasons discussed below. The Company respectfully requests confirmation that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission if the Company excludes the Proposal from the 2020 Proxy Materials.

This letter, including the exhibits hereto, is being submitted electronically to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). Pursuant to Rule 14a-8(j), we have filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission. A copy of this

letter is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from the 2020 Proxy Materials.

**I. The Proponent's Proposal**

The Proposal reads as follows:

**“Proposal [4] – Let Shareholders Vote on Bylaw and Charter Amendments**

Shareholders request that the Board of Directors take the steps necessary to adopt a bylaw that requires any amendment to the bylaws or charter, that is approved by the board, shall be subject to a non-binding shareholder vote as soon as practical unless such amendment is already subject to a binding vote.

It is important that bylaw and charter amendments take into consideration the impact that such amendments can have on limiting the rights of shareholders and/or on reducing the accountability of directors and managers. For example, Directors could adopt a narrowly crafted exclusive forum bylaw to suit the unique circumstances facing the company.

A proxy advisor recently adopted a policy to vote against directors who unilaterally adopt bylaw provisions or amendments to the articles of incorporation that materially diminish shareholder rights. This proposal is consistent with, “BNY Mellon regularly engages with and solicits the feedback of its stockholders and is proud of its track record of responsiveness to stockholders.” A shareholder vote is the best form of shareholder engagement.

If our directors are opposed to this proposal then it would be useful for our directors to give recent examples of companies whose directors took the initiative and adopted bylaws that primarily benefitted shareholders. A shareholder vote is the best form of shareholder engagement because every shareholder has an opportunity to be heard.

Please vote to improve shareholder engagement:

**Let Shareholders Vote on Bylaw and Charter Amendments – Proposal [4]”**

**II. The Proposal May be Excluded Under Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal**

The essential objective of the Proposal is to give stockholders the opportunity to opine on any proposed amendment to the Company's charter or bylaws in the form of a non-binding shareholder vote. As discussed below, the Company's Restated Certificate

of Incorporation, as amended (the “Charter”)<sup>1</sup> and the Company’s Amended and Restated Bylaws (the “Bylaws”), in addressing the relevant provisions of Delaware corporate law, substantially implement the Proposal’s essential objective. Moreover, the Charter and Bylaws, in conjunction with Delaware law, compare favorably with the Proposal by requiring a binding stockholder vote on all proposed Charter amendments and granting stockholders an independent right to amend the Bylaws.

*A. Rule 14a-8(i)(10) Background*

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal. The Commission adopted the “substantially implemented” standard in 1983 after determining that the “previous formalistic application of this provision defeated its purpose,” which is to “avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by management.” See 48 Fed. Reg. 38221 (Aug. 23, 1983). Instead, under the “substantially implemented” standard, the Commission no longer requires that a proposal be “fully effected” by the company. *Id.* Moreover, a company need not implement a proposal in exactly the same manner set forth in the proponent’s proposal in order to be excludable under Rule 14a-8(i)(10). See, e.g., *General Motors Corp.* (Mar. 4, 1996).

Accordingly, “substantial implementation” under Rule 14a-8(i)(10) in its current form requires that a company’s actions satisfactorily address the “essential objective” of the proposal, even if by means other than those suggested by the stockholder proponent. See, e.g., *Amazon.com, Inc.* (Mar. 3, 2016); *Exxon Mobil Corp.* (Mar. 19, 2010) (granting no-action relief where the company’s charter and relevant New Jersey corporate law substantially implemented the proposal to permit shareholders to act by the written consent of a majority of outstanding shares); *Proctor & Gamble Co.* (Aug. 4, 2010) (granting no-action relief where the company’s revised water policy compared favorably with, and therefore substantially implemented, the UN guidelines recommended by the proposal); *Wal-Mart Stores, Inc.* (Mar. 30, 2010). Thus, when a company can demonstrate that it has already taken action to address the underlying concerns and essential objectives of a stockholder proposal, the Staff has consistently concurred that the proposal has been “substantially implemented” and may be excluded from the company’s proxy as moot. See, e.g., *Occidental Petroleum Corp.* (Jan. 30, 2018); *Bank of America Corp.* (Jan. 19, 2018); *Apple Inc.* (Dec. 12, 2017); *Exelon Corp.* (Feb. 26, 2010); *Exxon Mobile Corp.* (Mar. 23, 2009). Notably, the Staff has stated that “a determination that the [c]ompany has substantially implemented the proposal depends

---

<sup>1</sup> Because a company’s certificate of incorporation is often referred to as the company’s “charter,” and because such terminology is used in the Proposal, references to the “Charter” as defined in this letter refer to the Company’s Restated Certificate of Incorporation, as amended.

upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991).

*B. The Company's Charter, Bylaws and the DGCL Substantially Implement the Proposal*

The Proposal may be properly excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(10) because (a) the Charter as currently in effect and the Delaware General Corporation Law ("DGCL") already require a stockholder vote on substantially all Charter amendments and (b) the Charter and Bylaws as currently in effect permit stockholders to unilaterally and independently alter, amend or repeal the Bylaws, or adopt new Bylaws, pursuant to a vote at a stockholder meeting or by written consent.

a. Charter Amendments

Section 242(a) of the DGCL provides that a corporation "may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of filing the amendment." Further, Section 242(b)(1) of the DGCL provides that "[e]very amendment authorized by subsection (a) of this section shall be made and effected in the following manner: If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders..." In line with these provisions, Article 11 of the Charter reserves the right of the Company "to alter, change or repeal any provision contained in this [Charter] to the extent now or hereafter permitted or prescribed by law."

The Proposal seeks to submit any amendment to the Charter or Bylaws that is approved by the Company's Board of Directors (the "Board") to a non-binding stockholder vote. Importantly, the Proposal distinguishes as outside of its scope circumstances where an amendment would already be subject to a binding shareholder vote. With the exception of a limited class of ministerial amendments specified by statute pursuant Section 242(b)(1) of the DGCL that do not implicate the rights of stockholders,<sup>2</sup> all amendments to the Company's Charter that are proposed by the Board

---

<sup>2</sup> The amendments for which no stockholder approval is required pursuant to Section 242(b)(1) of are amendments that change the corporate name; delete either the original named incorporator, board of directors or subscribers for shares; or delete any provisions that were necessary to effect a change, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective.

require stockholder approval in order to be effective. This statutory obligation to submit Board-proposed Charter amendments to a stockholder vote is supported by the text of the Company's Charter, which provides that any right to amend the Charter is only "to the extent now or hereafter permitted or prescribed by law." Therefore, the essential objective of the Proposal—that the Board submit any proposed amendment to the Charter not otherwise subject to a binding shareholder vote to a non-binding stockholder vote—is already satisfactorily addressed by the Company because a binding stockholder vote is required for all but a handful of excepted amendments under Delaware law and the Charter. Accordingly, the Company has met the standard to establish "substantial implementation" of the Proposal in accordance with Rule 14a-8(i)(10) with respect to amendments to the Company's Charter.

b. Bylaw Amendments

Section 109 of the DGCL provides that "the power to adopt, amend or repeal bylaws shall be in the stockholders entitled to vote." However, Section 109 also provides that, "[n]otwithstanding the foregoing, any corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors" but "the fact that such power has been so conferred upon the directors...shall not divest the stockholders...of the power, nor limit their power to adopt, amend or repeal bylaws." Article 6(a) of the Company's Charter includes such a delegation to the Board, providing "in furtherance and not in limitation of the powers conferred by the laws of the State of Delaware" that the Company's Board "is expressly authorized to make, alter and repeal the by-laws of the [Company]." The Bylaws also give the Board, as well as stockholders, authority to amend the Bylaws in Article 9, Section 1, which provides that the Bylaws "may be amended, altered and repealed, and new By-Laws may be adopted at any time, either by action of the stockholders or (except as otherwise provided by law or these By-Laws) by action of the Board of Directors."

That the Proposal seeks a non-binding stockholder vote makes it clear that the Proposal's essential objective is that the Board permit stockholders an opportunity to opine and be heard on any proposed amendment to the Bylaws. This objective is further evidenced in the two arguments proffered in the Proposal's supporting statement and set forth below:

- the importance that bylaw and charter amendments consider the impact that such amendments can have on limiting the rights of shareholders and/or reducing the accountability of directors and managers (for example, a narrowly crafted exclusive forum bylaw); and
- that a shareholder vote is the best form of shareholder engagement.

Here, although the Charter and Bylaws each grant the Board authority to amend the Bylaws, this power is not delegated solely to the Board. In fact, pursuant to Section 109 of the DGCL, the ability of the stockholders to independently amend, alter or repeal the Bylaws, or to adopt new Bylaws, cannot be limited or divested by the Company's delegation of similar authority to the Board, and the Company has granted this power to amend, alter or repeal the Bylaws to its stockholders in Article 9, Section 1 of the Bylaws. Therefore, any amendment to the Bylaws effected by the Board would be subject to the independent power of the stockholders to amend, repeal or replace such amendment. Moreover, the authority provided to stockholders in the Bylaws and the DGCL empowers stockholders to influence Bylaw amendments to an even greater extent than the vote requested by the Proposal, which in all circumstances, is non-binding and advisory in nature. For this reason, the Company's current policies and procedures not only compare favorably with, but are more favorable than, the Proposal in accomplishing the Proposal's objective.

Notably, per the proposal presented to the Company's stockholders at the Company's 2019 Annual Meeting of Stockholders, stockholders adopted an amendment to the Charter that reduces the standard for stockholder action to be taken by written consent. As a result of this amendment, stockholders representing at least the minimum number of stockholder votes that would be necessary to take any action required or permitted to be taken by stockholders at a meeting of stockholders may now take such action by written consent, subject to the requirements set forth in Article 10 of the Charter. Accordingly, stockholders who wish to respond to a Board-effected change to the Bylaws have the option to act pursuant to a stockholder vote at a meeting or by written consent.

As a result, the Company has addressed the Proposal's principal concern that stockholders have an opportunity to opine on Bylaw amendments proposed by the Board because stockholders have a unilateral and independent right to amend, alter or repeal the Bylaws, or to enact new Bylaws, pursuant to a stockholder vote or by written consent. By granting stockholders the independent ability to change the Bylaws in a binding way, including in response to amendments proposed by the Board, the Company has "substantially implemented" the Proposal and the Proposal should be excludable under Rule 14a-8(i)(10).

Although there are procedural requirements placed upon the right of stockholders to call a special meeting or act by written consent which are not part of the Proposal, these procedural requirements serve important stockholder interests. For example, action by stockholders holding at least 20% of the Company's stock is required to call a special meeting or to initiate action by written consent, whereas under the Proposal, a smaller number of stockholders would have the opportunity to voice their opinion on a given bylaw amendment. However, as the Company explained in its proxy statement and form of proxy for its 2019 Annual Meeting of Stockholders, this requirement strikes a suitable

balance between enhancing the ability of stockholders to initiate stockholder action while limiting the risk of subjecting stockholders to numerous written consent solicitations or special meeting requests that may only be relevant to particular constituencies. Moreover, Rule 14a-8(i)(10) does not require that a company have implemented a proposal's objectives in exactly the same manner as a proposal to demonstrate substantial implementation. Indeed, the Staff has consistently agreed that stockholder proposals have been substantially implemented when companies' actions address aspects of implementation on which a proposal is silent or purports to treat differently, including by addressing collateral issues in a different manner from the stockholder proposal (e.g., imposing procedural requirements or restrictions when adopting written consent or special meeting rights). *See, e.g., Omnicom Group Inc.* (Mar. 29, 2011) (concurring with the exclusion of a proposal requesting that stockholders be permitted to act by written consent as substantially implemented where the right of stockholders to act by written consent included certain procedures to be followed); *General Dynamics Corp.* (Feb. 6, 2009) (concurring that the company had substantially implemented a proposal for an unrestricted stockholder right to a special meeting with a 10% ownership interest where the company's adopted bylaw included an ownership threshold of 10% if called by one shareholder and 25% if called by a group of shareholders and several additional procedural and informational requirements); *Hewlett-Packard Co.* (Dec. 12, 2007) (concurring that the company had substantially implemented a proposal requesting a rule in the charter and bylaws requiring stockholder approval of any poison pill adoption where the bylaw actually adopted permitted the board to approve the poison pill in certain circumstances without stockholder approval). Similarly here, the ability of stockholders to unilaterally amend the Bylaws pursuant to a special meeting or written consent, subject to the proscribed procedures and requirements, still satisfies the Proposal's essential objective of permitting stockholders an opportunity to opine and be heard on any proposed amendment to the Bylaws.

Accordingly, based on the foregoing, the Company believes that the Proposal may be excluded from the 2020 Proxy Materials under Rule 14a-8(i)(10) of the Exchange Act because the Board has in place provisions in the Charter that, in concert with Delaware Law, require stockholder approval before any amendment to the Charter is effective and because the Company's stockholders have the independent and unilateral power to amend, repeal, replace or alter any amendment or change to the Bylaws that is taken by the Board.

**III. The Proposal May Be Excluded Under Rule 14a-8(b) and Rule 14a-8(f)(1) Because the Proponent Failed to Provide Sufficient Delegation of Authority to Mr. Chevedden to Submit the Proposal by Proxy**

In addition, the Proposal may be excluded from the 2020 Proxy Materials for failing to satisfy the eligibility requirements set forth in Section 14a-8(b) by not

providing sufficient documentation to evidence the requisite delegation of authority from the Proponent to Mr. Chevedden to submit the Proposal to the Company.

*A. Background on the Proposal*

Mr. Chevedden submitted the Proposal via email on November 9, 2019, accompanied by a letter from the Proponent purporting to authorize Mr. Chevedden to submit the Proposal and act on the Proponent's behalf regarding the proposal (the "Authorization Letter"). The Authorization Letter does not identify the Proposal (which is titled "Let Shareholders Vote on Bylaw and Charter Amendments"), but instead refers only generally to the "Rule 14a-8 proposal". Moreover, the Proposal and Authorization Letter were not accompanied by documentary evidence of the Proponent's ownership of Company shares. See Exhibit A. The Company reviewed its stock records, which did not indicate that the Proponent was a record owner of Company shares.

Accordingly, Company sent a letter to the Proponent via [overnight] Federal Express and to Mr. Chevedden via email on November 14, 2019, which was within 14 calendar days of the Company's receipt of the Proposal, identifying the above described deficiencies, and notifying the Proponent of the requirements of Rule 14a-8 and explaining how the Proponents could cure the procedural deficiencies (the "Deficiency Notice"). The Deficiency Notice, the full text of which and all attachments is included in Exhibit A hereto, provided detailed information regarding "proposals by proxy" and "record" holder requirements, as clarified by Staff Legal Bulletin No. 14I (November 1, 2017) ("SLB 14I"), Staff Legal Bulletin No. 14F (October 18, 2011) ("SLB 14F") and Staff Legal Bulletin No. 14G (October 16, 2012) ("SLB 14G"), as well as copies of Rule 14a-8, SLB 14I, SLB 14F and SLB 14G. Specifically, the Deficiency Notice stated:

- the eligibility requirements of Rule 14a-8(b) and the guidance of SLB 14I regarding proposals by proxy, including the list of requirements that the Staff indicated sufficient documentation should include;
- that the documentation submitted by the Proponent purporting to authorize Mr. Chevedden to act on the Proponent's behalf was insufficient because the documentation did not identify the Proposal as the specific proposal to be submitted;
- that in order to comply with the requirements of Rule 14a-8(b) and SLB 14I the Proponent should provide documentation that confirms that as of the date Mr. Chevedden submitted the Proposal, the Proponent had instructed or authorized Mr. Chevedden to submit the specific proposal to the Company on the Proponent's behalf, identifying the Proposal with specificity and signed and dated by the Proponent;

- the share ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of any shares of the Company's common stock;
- the type of statement or documentation necessary to demonstrate proof of shareholder ownership of the requisite number of securities during the requisite period of time; and
- that any response to the Deficiency Notice, including to remedy the deficiencies described therein, must be postmarked, or transmitted electronically, no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

On November 16, 2019, Mr. Chevedden sent the Company an email containing a letter from TD Ameritrade to the Proponent confirming that the Proponent has continuously held no less than 500 shares of the Company's stock since October 1, 2018. However, the Proponent did not provide any new documentation purporting to authorize Mr. Chevedden to submit the Proposal on his behalf.

On November 22, 2019, Mr. Chevedden sent the Company an email containing the original letter accompanying the Proposal, except modified to add "Proposal [4] – Let Shareholders Vote on Bylaw and Charter Amendments" to the bottom of the page, with such change signed and dated by the Proponent.

*B. The Proponent Failed to Provide Documentation Evidencing Sufficient Delegation of Authority to Mr. Chevedden to Submit the Proposal by Proxy*

Rule 14a-8(b) provides guidance regarding what information must be provided to demonstrate that a person is eligible to submit a stockholder proposal. Rule 14a-8(f)(1) permits a company to exclude a stockholder proposal from the company's proxy materials if a stockholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, provided that the company has timely notified the proponent of any eligibility or procedural deficiencies, and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice.

In SLB 14I, the Staff provided additional guidance as to what information should be supplied to satisfy the eligibility requirements of Rule 14a-8 where, as is the case with the Proposal, a stockholder submits a proposal through a representative (*i.e.*, a "proposal by proxy"). Pursuant to SLB 14I, the Staff indicated that such submission by proxy is consistent with Rule 14a-8 if the stockholder who submits a proposal by proxy provides documentation describing the stockholder's delegation of authority to the proxy. According to the Staff, such documentation would be expected to:

- identify the stockholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the stockholder.

As noted in SLB 14I, the provision of such information is intended to “alleviate concerns about proposals by proxy,” including concerns that stockholders may not know that proposals are being submitted on their behalf.” Accordingly, where this information is not provided, SLB 14I provides that “there may be a basis to exclude the proposal under Rule 14a-8(b).”

As explained in the Deficiency Notice, the documentation submitted by the Proponent was insufficient to demonstrate a proper delegation of authority to Mr. Chevedden to submit the Proposal to the Company on behalf of the Proponent. By referring only generally to “this Rule 14a-8 proposal,” and not to the Proposal “Let Shareholders Vote on Bylaw and Charter Amendments,” the Authorization Letter does not clearly identify, and therefore, does not delegate authority with respect to, the Proposal. The Deficiency Notice informed the Proponent that, to remedy this defect, the Proponent should provide documentation that he authorized Mr. Chevedden to submit the specific proposal to the Company on the Proponent’s behalf, and that such documentation “should identify the proposal to be submitted with specificity and be signed and dated by the shareholder.” See Exhibit A. Moreover, although the November 22, 2019 email attachment modified the Proponent’s letter to include the title of the proposal, the title is included as a floating headline at the bottom of the page following signature, completely disconnected from the text of the letter, which otherwise remains unchanged from its original version. The content of the letter does not refer to the Proposal, or indicate in any way that this disconnected recitation of the Proposal’s title at the bottom of the page is a means of delegating authority to Mr. Chevedden to act on the Proponent’s behalf. Therefore, this submission is inadequate to remedy the Proponent’s failure to submit evidence of the requisite delegation of authority to Mr. Chevedden to act by proxy with respect to the Proposal.

Despite the clear instructions in the Deficiency Notice, the Proponent has not provided any responsive documentation to substantiate this delegation. Accordingly, consistent with the guidance in SLB 14I, the Proposal is excludable because, despite receiving a timely and proper Deficiency Notice pursuant to Rule 14a-8(f)(1), the

Securities and Exchange Commission  
December 13, 2019  
Page 11

Proponent has not provided sufficient documentation to establish Mr. Chevedden's requisite eligibility to submit the Proposal by proxy on the Proponent's behalf as required by Rule 14a-8(b).

\*\*\*

If you have any questions with respect to the foregoing, please contact me at (212) 635-1828. You may address any response to me at the address on the letterhead of this letter, by facsimile at (212) 635-7254 or by e-mail at james.killerlane@bnymellon.com or to my colleague Blair Petrillo at (412) 234-9383 or by email at blair.petrillo@bnymellon.com.

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. Petrillo". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

cc: Kenneth Steiner (via Federal Express)  
John Chevedden (via email)

**EXHIBIT A**

Kenneth Steiner

\*\*\*

Mr. J. Kevin McCarthy  
Corporate Secretary  
The Bank of New York Mellon Corporation (BK)  
225 Liberty Street  
New York, NY 10286  
PH: 212-495-1784  
PH: 212 495-1784  
FX: 212 809-9528

Dear Mr. McCarthy,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

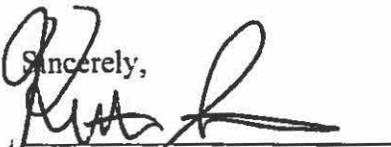
My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

\*\*\*

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to

\*\*\*

Sincerely,  
  
Kenneth Steiner

10-9-19  
Date

cc: Blair F. Petrillo <Blair.Petrillo@bnymellon.com>  
Bennett Josselson <bennett.josselson@bnymellon.com>  
Patricia A. Bicket <pbicket@bankofny.com>  
Assistant Secretary  
FX: 212-635-1269  
FX: 412-234-1813

[BK: Rule 14a-8 Proposal, November 9, 2019]

[This line and any line above it – *Not* for publication.]

**Proposal [4] – Let Shareholders Vote on Bylaw and Charter Amendments**

Shareholders request that the Board of Directors take the steps necessary to adopt a bylaw that requires any amendment to the bylaws or charter, that is approved by the board, shall be subject to a non-binding shareholder vote as soon as practical unless such amendment is already subject to a binding vote.

It is important that bylaw and charter amendments take into consideration the impact that such amendments can have on limiting the rights of shareholders and/or on reducing the accountability of directors and managers. For example, Directors could adopt a narrowly crafted exclusive forum bylaw to suit the unique circumstances facing the company.

A proxy advisor recently adopted a policy to vote against directors who unilaterally adopt bylaw provisions or amendments to the articles of incorporation that materially diminish shareholder rights. This proposal is consistent with, “BNY Mellon regularly engages with and solicits the feedback of its stockholders and is proud of its track record of responsiveness to stockholders.” A shareholder vote is the best form of shareholder engagement.

If our directors are opposed to this proposal then it would be useful for our directors to give recent examples of companies whose directors took the initiative and adopted bylaws that primarily benefitted shareholders. A shareholder vote is the best form of shareholder engagement because every shareholder has an opportunity to be heard.

Please vote to improve shareholder engagement:

**Let Shareholders Vote on Bylaw and Charter Amendments – Proposal [4]**

[The above line – *Is* for publication.]

Kenneth Steiner,

\*\*\*

sponsors this proposal.

Notes:

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

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

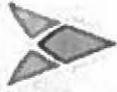
- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders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

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

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

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

\*\*\*



**BNY MELLON**

**James J. Killefer III**  
Corporate Secretary, Managing Director and  
Deputy General Counsel  
240 Greenwich Street, 18<sup>th</sup> Floor  
New York, NY 10286

November 14, 2019

Via Electronic Mail  
John Chevedden

\*\*\*

\*\*\*

Re: The Bank of New York Mellon Corporation (the "Company")

Dear Mr. Chevedden:

On November 9, 2019, we received a shareholder proposal (the "Proposal") from Kenneth Steiner (the "Proponent"), which you submitted. In his letter accompanying the Proposal, the Proponent authorized you to act on his behalf regarding the Proposal and instructed the Company to direct all future communications regarding the Proposal to you. A copy of the Proponent's letter and the Proposal are attached.

This letter is being sent to you in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, pursuant to which we must notify you of any procedural or eligibility deficiencies in the Proposal, as well as of the time frame for your response to this letter. We are hereby notifying you of the following procedural deficiencies with respect to the Proposal.

1. Proposals by Proxy

We do not believe that your correspondence included sufficient documentation demonstrating that you had the legal authority to submit the Proposal on behalf of the Proponent as of the date the Proposal was submitted (November 9, 2019). In Staff Legal Bulletin No. 141 (November 1, 2017) ("SLB 141"), the staff (the "Staff") of the Securities and Exchange Commission (the "SEC") Division of Corporation Finance noted that proposals submitted by proxy, such as the Proposal, may present challenges and concerns, including "concerns raised that shareholders may not know that proposals are being submitted on their behalf." Accordingly, in evaluating whether there is a basis to exclude a proposal under the eligibility requirements of Rule 14a-8(b), as addressed below, SLB 141 states that in general the Division would expect any shareholder who submits a proposal by proxy to provide documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

We believe that the documentation that you provided with the Proposal raises the concerns referred to in SLB 14I because the authorization documentation from the Proponent does not identify the Proposal to be submitted. Specifically, the Proposal submitted is entitled "Let Shareholders Vote on Bylaw and Charter Amendments" but the authorization documentation from the Proponent refers only generally to "this Rule 14a-8 proposal." To remedy this defect, the Proponent should provide documentation that confirms that as of the date you submitted the Proposal, the Proponent had instructed or authorized you to submit the specific proposal to the Company on the Proponent's behalf. The documentation should identify the proposal to be submitted with specificity and be signed and dated by the shareholder.

## 2. Proof of Continuous Ownership

To the extent that the Proponent authorized you to submit the Proposal to the Company, please note the following. Rule 14a-8(b)(2) provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of the company's shares entitled to vote on the proposal for at least one year prior to the date the shareholder proposal was submitted. The Company's stock records do not indicate that the Proponent is the record owner of any shares of common stock. The Proponent did not submit to the Company any proof of ownership contemplated by Rule 14a-8(b)(2). See Section C of Staff Legal Bulletin No. 14G ("SLB 14G"), dated October 16, 2012, published by the Staff of the SEC, a copy of which is attached for your reference.

As noted in SLB 14G, Rule 14a-8(b) provides that, to be eligible to submit a proposal under Rule 14a-8, a shareholder must provide sufficient proof of the shareholder proponent's ownership of the requisite number of securities for the entire one-year period preceding and including the date the shareholder proposal was submitted.

For this reason, we believe that the Proposal may be excluded from our proxy statement for our upcoming 2020 Annual Meeting of Shareholders unless this deficiency is cured within 14 days of your receipt of this letter.

To remedy this deficiency, you must provide sufficient proof of the Proponent's continuous ownership of the requisite number of shares of the Company's common stock

for the one-year period preceding and including November 9, 2019, the date the Proposal was submitted to us. As explained in Rule 14a-8(b), sufficient proof may be in the form of:

- a written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that, as of the date the Proposal was submitted, the Proponent continuously held the requisite number of shares for at least one year; or
- if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting the Proponent’s ownership of the requisite number of shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the Proponent’s ownership level and a written statement that the Proponent has continuously held the requisite number of shares for the one-year period.

In SEC Staff Legal Bulletin No. 14F (“SLB 14F”), dated October 18, 2011, the Staff provided guidance on the definition of “record” holder for purposes of Rule 14a-8(b). SLB 14F, a copy of which is attached for your reference, provides that for securities held through The Depository Trust Company (“DTC”), only DTC participants should be viewed as “record” holders. If the Proponent holds shares through a bank, broker or other securities intermediary that is not a DTC participant, the Proponent will need to obtain proof of ownership from the DTC participant through which the bank, broker or other securities intermediary holds the shares. As indicated in SLB 14F, this may require the Proponent to provide two proof of ownership statements – one from his bank, broker or other securities intermediary confirming your ownership, and the other from the DTC participant confirming the bank’s, broker’s or other securities intermediary’s ownership. In SLB 14G, the Staff clarified that 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. A list of DTC participants can be found at

<http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf>.

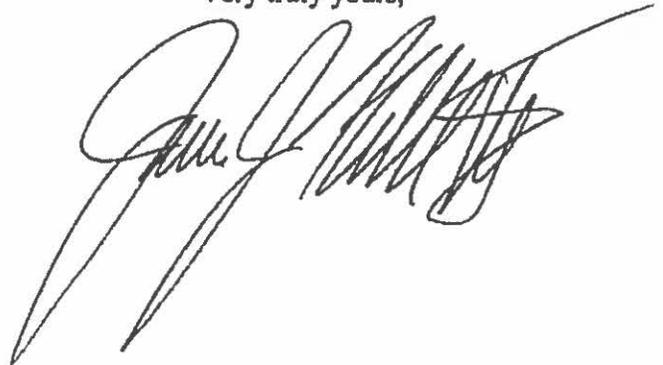
Under Rule 14a-8(f), we are required to inform you that if you would like to respond to this letter or remedy the deficiencies described above, your response must be postmarked, or transmitted electronically, no later than 14 days from the date that you first received this letter. We have attached for your reference copies of Rule 14a-8, SLB 14I, SLB 14F and SLB 14G. We urge you to review the SEC rule and Staff guidance carefully before submitting (1) documentation that confirms that as of the date you submitted the Proposal, the Proponent had instructed or authorized you to submit the Proposal to the Company on the Proponent’s behalf and (2) proof of the Proponent’s ownership to ensure it is compliant. Please note that if these deficiencies are remedied, the Company reserves the right to raise any substantive objections to the Proponent’s Proposal at a later date.

### 3. Revised Proposal Submitted After November 10, 2019 Deadline

On November 11, 2019, we received a revised version of the Proposal (the "Revised Proposal") from the Proponent, which you submitted on his behalf. In his letter accompanying the Revised Proposal, the Proponent instructed the Company to direct all future communications regarding the Revised Proposal to you. A copy of the Proponent's letter and the Revised Proposal are attached. As disclosed in the Company's proxy statement for our 2019 Annual Meeting of Shareholders, any shareholder proposals intended to be presented at our 2020 Annual Meeting of Shareholders and considered for inclusion in the proxy materials must have been received by the Company on or before November 10, 2019. The Revised Proposal was transmitted in the form of an electronic mail submission, with a time and date stamp of November 11, 2019, 2:39 PM. As such, because it was submitted past the November 10, 2019 deadline, we are unable to consider the Revised Proposal for the Company's 2020 Annual Meeting. Accordingly, we ask that you formally withdraw the Revised Proposal. If you do not agree and confirm to the Company that you are withdrawing the Revised Proposal, we will notify the SEC of our reasons for excluding it from our 2020 Proxy Statement.

If you have any questions with respect to the foregoing, please contact me at (212) 635-1828. You may address any response to me at the address on the letterhead of this letter, by facsimile at (212) 635-7254 or by e-mail at [james.killerlane@bnymellon.com](mailto:james.killerlane@bnymellon.com).

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. Killarney", written over a white background.

cc: Kenneth Steiner (via Federal Express)















































11/15/2019

Kenneth Steiner

\*\*\*

Re: Your TD Ameritrade Account Ending in \*\*\* in TD Ameritrade Clearing Inc DTC #0188

Dear Kenneth Steiner,

Thank you for allowing me to assist you today. As you requested, this letter confirms that as of the date of this letter, you have continuously held no less than 500 shares of each of the following stocks in the above referenced account since October 1, 2018:

The Bank of New York Mellon Corporation (BK)  
American Express Company (AXP)  
Verizon Communications Inc. (VZ)  
The Interpublic Group of Companies, Inc. (IPG)  
PepsiCo, Inc. (PEP)  
Zynga Inc (ZNGA)

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

Jennifer Hickman  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

TD Ameritrade, Inc., member FINRA/SIPC ([www.finra.org](http://www.finra.org), [www.sipc.org](http://www.sipc.org)). TD Ameritrade is a trademark jointly owned by TD Ameritrade IP Company, Inc. and The Toronto-Dominion Bank. © 2015 TD Ameritrade IP Company, Inc. All rights reserved. Used with permission.

Kenneth Steiner

\*\*\*

Mr. J. Kevin McCarthy  
Corporate Secretary  
The Bank of New York Mellon Corporation (BK)  
225 Liberty Street  
New York, NY 10286  
PH: 212-495-1784  
PH: 212 495-1784  
FX: 212 809-9528

Dear Mr. McCarthy,

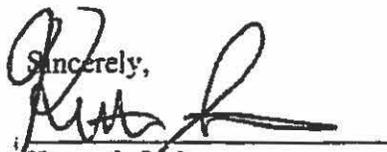
I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden  
(PH: \*\*\*

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to \*\*\*

Sincerely,

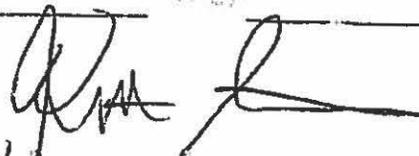
  
Kenneth Steiner

10-9-19

Date

**Proposal [4] – Let Shareholders Vote on Bylaw and Charter Amendments**

cc: Blair F. Petrillo <Blair.Petrillo@bnymellon.com>  
Bennett Josselson <bennett.josselson@bnymellon.com>  
Patricia A. Bicket <pbicket@bankofny.com>  
Assistant Secretary  
FX: 212-635-1269  
FX: 412-234-1813

  
11-21-19