



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

DIVISION OF  
CORPORATION FINANCE

February 28, 2019

Jessica H. Paik  
Abbott Laboratories  
jessica.paik@abbott.com

Re: Abbott Laboratories  
Incoming letter dated December 21, 2018

Dear Ms. Paik:

This letter is in response to your correspondence dated December 21, 2018 and January 29, 2019 concerning the shareholder proposals submitted to Abbott Laboratories (the “Company”) by Kenneth Steiner (the “Steiner Proposal”) and John Chevedden (the “Chevedden Proposal,” collectively with the Steiner Proposal, the “Proposals”) for inclusion in the Company’s proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from John Chevedden pertaining to the Proposals dated December 23, 2018, January 6, 2019, January 16, 2019, February 4, 2019, February 5, 2019, February 11, 2019 and February 24, 2019. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division’s informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates  
Special Counsel

Enclosure

cc: John Chevedden  
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February 28, 2019

**Response of the Office of Chief Counsel  
Division of Corporation Finance**

Re: Abbott Laboratories  
Incoming letter dated December 21, 2018

The Proposals relate to an independent chairman of the board and majority voting.

We are unable to concur in your view that the Company may exclude the Proposals under rule 14a-8(c). Accordingly, we do not believe that the Company may omit the Proposals from its proxy materials in reliance on rule 14a-8(c).

There appears to be some basis for your view that the Company may exclude the Chevedden Proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's policies, practices and procedures compare favorably with the guidelines of the Chevedden Proposal and that the Company has, therefore, substantially implemented the Chevedden Proposal. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Chevedden Proposal from its proxy materials in reliance on rule 14a-8(i)(10). In reaching this position, we have not found it necessary to address the alternative bases for omission of the Chevedden Proposal upon which the Company relies.

Sincerely,

Courtney Haseley  
Special Counsel

**DIVISION OF CORPORATION FINANCE  
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

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

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

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

**JOHN CHEVEDDEN**

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February 24, 2019

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

**# 6 Rule 14a-8 Proposal  
Abbott Laboratories (ABT)  
Simple Majority Vote  
John Chevedden**

Ladies and Gentlemen:

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

The Company seems to be in the awkward position of claiming that it had already implemented this rule 14a-8 proposal (that has a carve out for the Illinois Business Corporation Act) before this proposal was even submitted and that this proposal would require the Company to take addition action that would violate the Illinois Business Corporation Act.

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

Sincerely,



John Chevedden

cc: Jessica Paik <jessica.paik@abbott.com>

JOHN CHEVEDDEN

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February 11, 2019

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

**# 5 Rule 14a-8 Proposal**  
**Abbott Laboratories (ABT)**  
**Simple Majority Vote**  
**John Chevedden**

Ladies and Gentlemen:

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

This proposal was drafted in accordance with *Abbott Laboratories* (January 29, 2016).

In *Abbott Laboratories* (January 29, 2016) the text of the rule 14a-8 proposal was:

[ABT: Rule 14a-8 Proposal, November 7, 2015]  
**Proposal [4] – Simple Majority Vote**

RESOLVED, Shareholders request that our board take the steps necessary so that each voting requirement in our charter and bylaws that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes the laws of the state in which our company is incorporated and all applicable rules in regard to abstentions.

As a result of *Abbott Laboratories* (January 29, 2016) this rule 14a-8 proposal text was changed to:

[ABT: Rule 14a-8 Proposal, October 24, 2018 | Revised November 15, 2018]  
[This line and any line above it – *Not* for publication.]  
**Proposal [4] – Simple Majority Vote**

RESOLVED, Shareholders request that our board take each step necessary so that each 66.67% voting requirement in our charter and/or bylaws that is explicit or implicit (due to default to state law) be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

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

Sincerely,

  
John Chevedden

cc: Jessica Paik <jessica.paik@abbott.com>

**JOHN CHEVEDDEN**

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February 5, 2019

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

**# 4 Rule 14a-8 Proposal**  
**Abbott Laboratories (ABT)**  
**Simple Majority Vote**  
**John Chevedden**

Ladies and Gentlemen:

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

Rule 14a-8 has no referral to Rule 14a-4(a)(3) or Rule 14a-4(b)(1) in regard to the bottom of page 8 of the original company letter. The company has no precedent to back up its opinion here.

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

Sincerely,



John Chevedden  
John Chevedden

cc: Jessica Paik <jessica.paik@abbott.com>

**JOHN CHEVEDDEN**

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February 4, 2019

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

**# 2 Rule 14a-8 Proposal**  
**Abbott Laboratories (ABT)**  
**Independent Board Chairman**  
**Kenneth Steiner**

Ladies and Gentlemen:

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

The company January 29, 2019 letter makes the incredible claim that when a proponent signs a letter according to SLB 14I (in the attached exhibit) that it diminishes the standing of the proponent who signs the letter.

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

Sincerely,



John Chevedden

cc: Kenneth Steiner

Jessica Paik <jessica.paik@abbott.com>

Kenneth Steiner

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Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
Abbott Park IL 60064  
PH: 224-667-6100

REVISED 04 NOV 2018

Dear Mr. Allen,

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

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at:

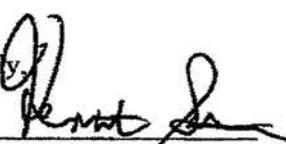
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to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

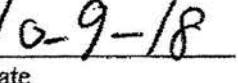
This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly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

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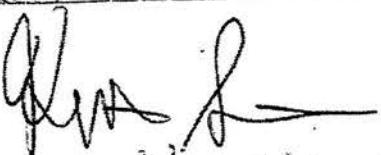
Sincerely,

  
Kenneth Steiner

cc: John A. Berry <John.Berry@abbott.com>  
Jessica Paik <jessica.paik@abbott.com>  
Senior Counsel Securities & Benefits  
Heather Teliga <heather.teliga@abbott.com>  
PH: 224-668-6039  
FX: 224-668-9492

  
Date

Proposal [4] – Independent Board Chairman

  
11-14-18



**Abbott**

**Jessica H. Paik**  
Divisional Vice President  
Associate General Counsel  
and Assistant Secretary

Abbott Laboratories  
Securities and Benefits  
Dept. 032L; Bldg. AP6A-1  
100 Abbott Park Road  
Abbott Park, IL 60064-6092

T: +1 224-667-5550  
F: +1 224-668-9492  
jessica.paik@abbott.com

January 29, 2019

Via Email

[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. 20549

**Re: Abbott Laboratories—Shareholder Proposals Submitted by John Chevedden**

Ladies and Gentlemen:

By letter dated December 21, 2018 (“Abbott’s No-Action Request”), Abbott Laboratories (“Abbott,” the “Company,” “we,” or “our”) requested confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) will not recommend enforcement action if, in reliance on Rule 14a-8, we exclude from the proxy materials for Abbott’s 2019 annual shareholders’ meeting (i) a proposal entitled “Independent Board Chairman,” submitted by Kenneth Steiner and John Chevedden (the “Independent Chair Proposal”) and (ii) a proposal entitled “Simple Majority Vote,” submitted by John Chevedden (the “Simple Majority Proposal”). John Chevedden subsequently submitted one response to Abbott’s No-Action Request with respect to the Independent Chair Proposal and three responses to Abbott’s No-Action Request with respect to the Simple Majority Proposal. This letter responds to the points made by Mr. Chevedden in such correspondence.

*Abbott has already substantially implemented “the closest standard to a majority of the votes cast for and against...consistent with applicable laws.”*

Mr. Chevedden claims that Abbott failed to address the following sentence in Section II of Abbott’s No-Action Request: “If necessary, this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.” (*Chevedden Letter dated January 16, 2019*) Abbott’s No-Action Request explains that this standard has already been implemented (see Section III) and that the standard is subject to multiple interpretations and therefore materially false and misleading (see Section IV). It is not necessary for all discussions regarding the “closest standard” sentence to be contained in a particular section of Abbott’s No-Action Request.

***Abbott presented ample precedent for comparable simple majority vote shareholder proposals for which the SEC has granted no-action letters.***

Mr. Chevedden asserts that Abbott did not cite any precedent for its substantial implementation argument where the proposal contained the words “that is explicit or implicit due to default to state law.” (*Chevedden Letter dated January 6, 2019*) However, variations in wording do not preclude a finding that a proposal has been substantially implemented, and Abbott presented ample precedent for comparable proposals in Section III of Abbott’s No-Action Request.

***Mr. Chevedden’s submission of a revised authorization letter from Mr. Steiner strengthened Abbott’s argument that Mr. Chevedden is also a proponent of the Independent Chair Proposal.***

As explained in Abbott’s No-Action Request, Mr. Steiner’s initial generic authorization gave Mr. Chevedden blanket authority with respect to any shareholder proposal. Only after Abbott notified Mr. Chevedden that he had submitted multiple proposals (by submitting the Simple Majority Proposal) did he submit a revised letter narrowing the scope of the authorization to the Independent Chair Proposal, which reinforced Abbott’s argument that Mr. Steiner is only a nominal proponent of the Independent Chair Proposal and that Mr. Chevedden is also a proponent of the Independent Chair Proposal.

Mr. Chevedden argues that he submitted the revised authorization letter in response to Abbott’s deficiency notice referencing Staff Legal Bulletin 14I (“SLB 14I”). (*Chevedden Letter dated December 23, 2018 Re: Independent Board Chairman*) However, Abbott’s reference to SLB 14I was unrelated to the Independent Chair Proposal – Abbott referenced SLB 14I when requesting proof of Mr. Chevedden’s ownership of Abbott shares relating to the Simple Majority Proposal he submitted individually.

***Abbott advised Mr. Chevedden that he had submitted multiple proposals before the deadline established by Rule 14a-8.***

Mr. Chevedden argues that Abbott did not follow the notification rules regarding multiple proposals. (*Chevedden Letter dated December 23, 2018 Re: Simple Majority Vote*) In fact, Abbott sent a deficiency letter advising him of the violation of Rule 14a-8(c) seven days after receiving the second proposal, well within Rule 14a-8’s 14-day deadline.

## **Conclusion**

For the foregoing reasons and the reasons set forth in Abbott’s No-Action Request, I request your confirmation that the Staff will not recommend any enforcement action to the Commission (i) if the Independent Chair Proposal and the Simple Majority Proposal are omitted from Abbott’s 2019 proxy materials pursuant to Rule 14a-8(c) as described in Section I of Abbott’s No-Action Request or (ii) if the Staff does not concur that the Independent Chair Proposal and the Simple Majority Proposal may be omitted from Abbott’s 2019 proxy materials under Rule 14a-8(c), if the Simple Majority Proposal is omitted from Abbott’s 2019 proxy materials for any of the reasons described in Sections II through V of Abbott’s No-Action Request. To the extent that the reasons set forth in this letter are based on matters of law, pursuant to Rule 14a-8(j)(2)(iii) this letter also constitutes an opinion of counsel of the undersigned as an attorney licensed and admitted to practice in the State of Illinois.

If the Staff has any questions, or if for any reason the Staff does not agree that Abbott may omit the Independent Chair Proposal or the Simple Majority Proposal from its 2019 proxy materials, please contact me at (224) 667-5550 or [jessica.paik@abbott.com](mailto:jessica.paik@abbott.com). We may also be reached by facsimile at

(224) 668-9492. We would appreciate it if you would send your response by email or facsimile. Mr. Chevedden may be reached at \*\*\*

Very truly yours,



Jessica Paik  
Abbott Laboratories  
Divisional Vice President and  
Associate General Counsel,  
Securities and Benefits

Enclosures

cc: John Chevedden

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**JOHN CHEVEDDEN**

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January 16, 2019

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

**# 3 Rule 14a-8 Proposal**  
**Abbott Laboratories (ABT)**  
**Simple Majority Vote**  
**John Chevedden**

Ladies and Gentlemen:

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

The company fails to address this sentence in the resolved statement:  
“If necessary this means the *closest standard* to a majority of the votes cast for and against such proposals consistent with applicable laws.” (emphasis added)

This is in regard to page 4 under “law.”

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

Sincerely,



John Chevedden

cc: Jessica Paik <jessica.paik@abbott.com>

**JOHN CHEVEDDEN**

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January 6, 2019

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

**# 2 Rule 14a-8 Proposal**  
**Abbott Laboratories (ABT)**  
**Simple Majority Vote**  
**John Chevedden**

Ladies and Gentlemen:

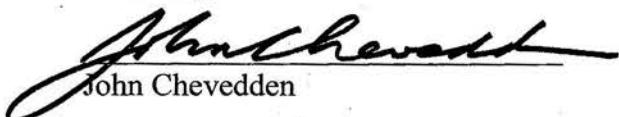
This is in regard to the December 21, 2018 no-action request.

The company claim that the proposal is already implemented is not backed up by any precedent of a proposal that contained the highlighted words that are contained in this proposal:

RESOLVED, Shareholders request that our board take each step necessary so that each 66.67% voting requirement in our charter and/or bylaws *that is explicit or implicit (due to default to state law)* be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws.

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

Sincerely,

  
John Chevedden

cc: Jessica Paik <jessica.paik@abbott.com>

**JOHN CHEVEDDEN**

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December 23, 2018

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

**# 1 Rule 14a-8 Proposal**  
**Abbott Laboratories (ABT)**  
**Simple Majority Vote**  
**John Chevedden**

Ladies and Gentlemen:

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

The company failed to address the following rule in regard to its belated claim of multiple proposals within the Simple Majority Vote proposal (starting with the bold text on its page 8):

(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.

(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j)

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

Sincerely,



John Chevedden

cc: Jessica Paik <jessica.paik@abbott.com>

**Proposal [4] – Simple Majority Vote**

RESOLVED, Shareholders request that our board take each step necessary so that each 66.67% voting requirement in our charter and/or bylaws that is explicit or implicit (due to default to state law) be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

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

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy’s. The proponents of these proposals included Ray T. Chevedden and William Steiner. The votes would have been higher than 74% to 88% if all shareholders had ready access to independent proxy voting advice.

Currently a 1%-minority can frustrate the will of our 66%-shareholder majority in an election in which 67% of shares cast ballots. In other words a 1%-minority could have the power to prevent shareholders from making an important change. This can be particularly important during periods of management underperformance and/or an economic downturn.

Please vote yes:

**Simple Majority Vote – Proposal [4]**

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

**JOHN CHEVEDDEN**

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December 23, 2018

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

**# 1 Rule 14a-8 Proposal**  
**Abbott Laboratories (ABT)**  
**Independent Board Chairman**  
**Kenneth Steiner**

Ladies and Gentlemen:

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

The company November 1, 2018 letter cited SLB 14I (p. 76-77 in the company no action request).

In response the company was provided with a letter with the topic of Mr. Kenneth Steiner's proposal and Mr. Steiner's signature (p.65 in the company no action request).

The company did not find any objection in meeting the requirement of SLB 14I.

Mr. Steiner is clearly the sole sponsor of the Independent Board Chairman proposal.

It was a clever move by the company to include this evidence in reveres order and to disconnect it by 10 pages.

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

Sincerely,



John Chevedden

cc: Kenneth Steiner

Jessica Paik <jessica.paik@abbott.com>



Abbott Laboratories  
Dept. 032L, Bldg. AP6A-2  
100 Abbott Park Road  
Abbott Park, IL 60064-6092

Tel: (224) 667-5550  
Fax: (224) 668-9492  
[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)

# Abbott

November 1, 2018

Via Federal Express and Email

Mr. John Chevedden

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Dear Mr. Chevedden:

This letter acknowledges receipt of the shareholder proposal you submitted to Abbott on October 25, 2018. Our 2019 Annual Meeting of Shareholders (the "2019 Annual Meeting") is currently scheduled to be held on Friday, April 26, 2019.

Rule 14a-8 under the Securities Exchange Act of 1934 (the "Exchange Act") requires that a proponent submit verification of stock ownership. We await a proof of ownership letter verifying that you have continuously owned at least \$2,000 in market value, or 1%, of Abbott's securities entitled to be voted on the proposal at Abbott's annual meeting for at least one year preceding and including the date that you submitted your proposal. Because you are not listed on Abbott's share register as a registered owner of Abbott common shares, we are unable to confirm whether you have met these requirements.

If you are an unregistered (or beneficial) owner, pursuant to Exchange Act Rule 14a-8(b)(2), you must provide a written statement from the record holder of the shares, verifying that you have owned the required amount of Abbott common shares continuously for at least one year preceding and including October 25, 2018 – the date on which you submitted your proposal as determined in accordance with the Securities and Exchange Commission ("SEC") Staff Legal Bulletin No. 14G ("SLB 14G").

Please be aware that in accordance with the SEC's Staff Legal Bulletin No. 14F ("SLB 14F") and SLB 14G, when the shareholder is a beneficial owner of securities, an ownership verification statement must come from a DTC participant or its affiliate. The Depository Trust Company (DTC a/k/a Cede & Co.) is a registered clearing agency that acts as a securities depository. You can confirm whether your broker or bank is a DTC participant by asking them, or by checking DTC's participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. If your bank or broker is not a DTC participant, you may need to satisfy the proof of ownership requirements by obtaining multiple statements, for example (1) one from your bank or broker confirming its ownership and (2) another from the DTC participant confirming the bank or broker's ownership.

To the extent that the Abbott common shares identified in the proof of ownership are not directly held in your name (i.e., such as shares held in a trust or by an affiliated entity), please provide written evidence of (1) your authority to act on behalf of the shareholder named in the proof of ownership with respect to such shares as of October 25, 2018, including with respect to submitting the proposal, and (2) such shareholder intention to hold the required amount of shares through the 2019 Annual Meeting date. Any such written evidence should be signed and dated by the shareholder named in the proof of ownership. See the SEC's Staff Legal Bulletin No. 14I ("SLB 14I").

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P. 76

If you do not provide the proof of ownership as described in this letter, Abbott intends to seek omission of the proposal that you submitted to Abbott on October 25, 2018 from Abbott's proxy materials for the 2019 Annual Meeting in accordance with SEC rules.

In addition, Abbott believes that you have submitted more than one shareholder proposal for consideration at its 2019 Annual Meeting. Under Rule 14a-8(c), a shareholder may submit no more than one proposal for inclusion in a company's proxy materials for a particular meeting. In addition to submitting your proposal entitled "Simple Majority Vote" on October 25, 2018 (the "Second Proposal"), you also submitted a proposal entitled "Independent Board Chairman" on October 18, 2018 (the "First Proposal"). While the First Proposal purports to come from Kenneth Steiner, Abbott believes that you, collectively with Kenneth Steiner, are the proponent of the First Proposal and have submitted more than one proposal. Pursuant to Rule 14a-8 please advise Abbott which of these two proposals you wish to withdraw. If you do not timely advise Abbott which of these proposals you wish to withdraw, Abbott intends to seek omission of both the First Proposal and the Second Proposal from Abbott's proxy materials for the 2019 Annual Meeting in accordance with SEC rules.

Rule 14a-8 requires that any response to this letter, including the proof of ownership and the indication of which proposal you wish to withdraw, be postmarked or transmitted electronically no later than 14 calendar days from the day you receive this letter. Please address any response to my attention at the above address, email address or facsimile number.

Abbott has not yet reviewed the First Proposal or the Second Proposal to determine if they comply with the requirements for shareholder proposals found in Rules 14a-8 and 14a-9 under the Securities Exchange Act of 1934, other than as set forth herein and in the letter dated October 24, 2018 with respect to the First Proposal. Abbott reserves the right to take appropriate action to the extent that either the First Proposal or the Second Proposal does not comply with such rules.

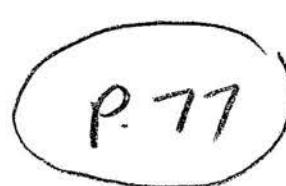
For your convenience, we have enclosed copies of Rule 14a-8, SLB 14F, SLB 14G and SLB 14I.

Sincerely,



Jessica H. Paik  
Divisional Vice President,  
Assistant General Counsel and  
Assistant Secretary

Cc: Kenneth Steiner



P.77

Kenneth Steiner

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Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
Abbott Park IL 60064  
PH: 224-667-6100

REVISED 04 NOV 2018

Dear Mr. Allen,

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

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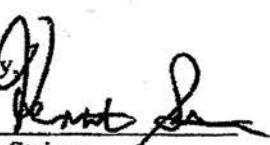
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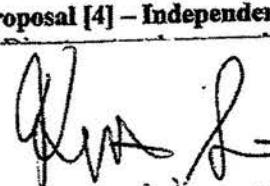
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to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

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 \*\*\*

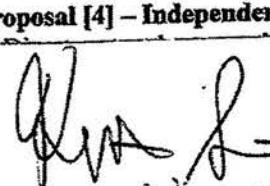
Sincerely,

  
Kenneth Steiner

  
Date

Proposal [4] – Independent Board Chairman

cc: John A. Berry <John.Berry@abbott.com>  
Jessica Paik <jessica.paik@abbott.com>  
Senior Counsel Securities & Benefits  
Heather Teliga <heather.teliga@abbott.com>  
PH: 224-668-6039  
FX: 224-668-9492

  
11-14-18

P. 65



**Abbott**

**Jessica H. Paik**  
Divisional Vice President  
Associate General Counsel  
and Assistant Secretary

Abbott Laboratories  
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T: +1 224-667-5550  
F: +1 224-668-9492  
jessica.paik@abbott.com

December 21, 2018

Via Email

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

**Re: Abbott Laboratories—Shareholder Proposals Submitted by John Chevedden**

Ladies and Gentlemen:

On behalf of Abbott Laboratories (“Abbott,” the “Company,” “we,” or “our”) and pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, I hereby request confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) will not recommend enforcement action if, in reliance on Rule 14a-8, we exclude the following proposals from the proxy materials for Abbott’s 2019 annual shareholders’ meeting, which we expect to file in definitive form with the Commission on or about March 15, 2019:

- (i) a proposal entitled “Independent Board Chairman,” submitted by Kenneth Steiner and John Chevedden (with Mr. Steiner also designating Mr. Chevedden as his proxy) on October 9, 2018 and revised on October 18, 2018 and November 14, 2018 (together with the supporting statement, the “Independent Chair Proposal”); and
- (ii) a proposal entitled “Simple Majority Vote,” submitted by John Chevedden on October 25, 2018 and revised on November 15, 2018 (together with the supporting statement, the “Simple Majority Vote Proposal”).

Pursuant to Rule 14a-8(j),

- (a) a copy of the Independent Chair Proposal is attached hereto as Exhibit A;
- (b) a copy of all relevant correspondence exchanged with Mr. Chevedden with respect to the Independent Chair Proposal is attached hereto as Exhibit B;
- (c) a copy of the Simple Majority Vote Proposal is attached hereto as Exhibit C;

- (d) a copy of all relevant correspondence exchanged with Mr. Chevedden with respect to the Simple Majority Vote Proposal is attached hereto Exhibit D; and
- (e) a copy of this letter is being sent to notify Mr. Chevedden of our intention to omit the Independent Chair Proposal and the Simple Majority Vote Proposal from our 2019 proxy materials.

We believe that the Independent Chair Proposal and the Simple Majority Vote Proposal may each be properly omitted from Abbott's 2019 proxy materials pursuant to Rule 14a-8 for the reasons set forth in Section I of this letter. In addition, we believe that the Simple Majority Vote Proposal may also be properly omitted from Abbott's 2019 proxy materials pursuant to Rule 14a-8 for the reasons set forth in Sections II through V of this letter.

**I. The Independent Chair Proposal and the Simple Majority Vote Proposal may each be properly omitted from Abbott's proxy materials under Rule 14a-8(c) because Mr. Chevedden submitted multiple proposals.**

Rule 14a-8(c) provides that “[e]ach shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.” Abbott believes that Mr. Steiner is only a nominal proponent of the Independent Chair Proposal, and that Mr. Chevedden is also a proponent of the Independent Chair Proposal, in addition to Mr. Chevedden being the proponent of the Simple Majority Vote Proposal. Abbott advised Mr. Chevedden of this issue in a notice of deficiency on November 1, 2018, seven days after receipt of Simple Majority Vote Proposal, and instructed Mr. Chevedden to advise Abbott within 14 days which proposal he wished to withdraw to avoid violation of Rule 14a-8(c), or Abbott would seek omission of both proposals from Abbott's 2019 Proxy Statement. Mr. Chevedden did not withdraw either proposal. Therefore, Abbott requests that the Staff concur in its view that Abbott may exclude both proposals from its 2019 proxy materials in accordance with Rule 14a-8(c).

Abbott is aware that the Staff views submission of a shareholder proposal by proxy as consistent with Rule 14a-8 and is not challenging Mr. Steiner's right to submit a proposal by designated proxy. However, Abbott asserts that under these circumstances, Mr. Chevedden is not only a proxy but also a proponent of the Independent Chair Proposal.

Abbott is also aware that in a number of 2009 no-action letters, the Staff did not concur with exclusion of multiple shareholder proposals under Rule 14a-8(c) that were submitted by Mr. Chevedden individually and as designated proxy. See e.g., *Bank of America Corporation* (avail. Feb. 26, 2009) and *The Dow Chemical Company* (avail. Mar. 9, 2009). However, with the passage of time and increasing number of multiple proposals submitted by Mr. Chevedden in recent years, Abbott respectfully requests reconsideration of this issue. To our knowledge, in the last 8 years, there have been more than 50 instances where Mr. Chevedden submitted multiple proposals to a company, through a combination of acting individually and/or as a proxy, for consideration at such company's annual meeting.

When the Commission first adopted a shareholder proposal limit, it acknowledged that “some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit two proposals each in their own names. The

Commission wishes to make it clear that such tactics may result in measures such as granting of request by the affected managements for a “no-action” letter concerning the omission from their proxy materials of the proposals at issue.” See Release No. 34-12999 (Nov. 22, 1976). When the Commission later reduced the limit to one shareholder proposal, it did so in part due to “the susceptibility of certain provisions of the rule and the staff’s interpretations thereunder to abuse by a few proponents...” Release No. 34-19135 (Oct. 14, 1982).

The Staff has previously permitted exclusion of multiple proposals under Rule 14a-8(c) (and its predecessor provision) where facts and circumstances demonstrate that persons nominally submitting the proposals are acting on behalf, under the control, or as the alter ego of another person who is a proponent in an attempt to circumvent the one-proposal limitation. See e.g., *BankAmerica Corp.* (avail. Feb. 8, 1996), *American Power Conversion Corp.* (avail. Mar. 27, 1996), *Peregrine Pharmaceuticals, Inc.* (avail. July 29, 2006), and *General Electric Company* (avail. Jan. 10, 2008). Similarly, the Staff has permitted exclusion of a proposal pursuant to Rule 14a-8(c) based on the breadth and discretion granted to the proxy. See e.g., *Alaska Air Group, Inc.* (avail. Mar. 5, 2009, *recon. denied*).

These precedents describe precisely the circumstances surrounding Mr. Chevedden’s submission of both the Independent Chair Proposal and the Simple Majority Vote Proposal. Mr. Chevedden appears to have been given blanket authority by Mr. Steiner with respect to any proposal Mr. Chevedden decided to submit to Abbott. Mr. Chevedden emailed the Independent Chair Proposal to Abbott on October 18, 2018, with no copy to Mr. Steiner or other indication that Mr. Steiner directed or was even aware of the type of proposal submitted. That submission contained only a generic form of authorization from Mr. Steiner, dated October 9, 2018, giving Mr. Chevedden the authority to act as proxy for “the attached Rule 14a-8 proposal,” “this Rule 14a-9 proposal,” and “this proposal.” Mr. Chevedden submitted a revised proposal on November 4, 2018, again with no indication of Mr. Steiner’s direction or knowledge.

Moreover, the Independent Chair Proposal follows the same template as the Simple Majority Vote proposal submitted individually by Mr. Chevedden. Even the unique headers and footers and the lengthy, detailed “Notes” sections following the supporting statements in the two proposals are identical. All communications, including the initial submissions of both proposals, have come directly through Mr. Chevedden.

Only after Abbott notified Mr. Chevedden of its intent to exclude both proposals under Rule 14a-8(c) did Mr. Chevedden submit a revised authorization letter specifying that the authorization pertained to the Independent Chair Proposal and adding another signature from Mr. Steiner with a November 14, 2018 date stamp. These after-the-fact revisions are an attempt to obscure the fact that Mr. Chevedden is not solely a proxy but also a proponent, with Mr. Steiner being a nominal proponent whose purpose is just to provide the share ownership for the submission of the Independent Chair Proposal.

Mr. Chevedden’s submission of two proposals is a manipulation of the Commission’s rules and the Staff’s interpretations and is precisely what Rule 14a-8(c) is designed to prohibit.

**II. The Simple Majority Vote Proposal may be properly omitted from Abbott's proxy materials under Rule 14a-8(i)(2) because it would cause Abbott to violate Illinois corporate law.**

The proposal reads as follows:

RESOLVED, Shareholders request that our board take each step necessary so that each 66.67% voting requirement in our charter and/or bylaws that is explicit or implicit (due to a default to state law) be eliminated, and replaced by ***a requirement for a majority of the votes cast for and against applicable proposals***, or a simple majority in compliance with applicable laws. If necessary this means the ***closest standard to a majority of the votes cast for and against such proposals*** consistent with applicable laws. (emphasis added)

Section 7.60 of the Illinois Business Corporation Act ("IBCA") states:

the affirmative vote of the majority of the votes of the shares ***represented at the meeting and entitled to vote on a matter*** shall be the act of the shareholders, unless a greater number of votes or voting by classes is required by this Act or the articles of incorporation. (emphasis added)

As a result, Illinois law requires abstentions, as well as against votes, to be counted toward a majority determination. The Proposal's simple majority voting standard is a "majority of the votes cast for and against." Implementing this standard, which ignores abstentions, could result in a matter submitted for a shareholder vote being approved by less than the minimum standard allowed by Illinois law.

In *Abbott Laboratories* (avail. Feb. 1, 2013), the Staff permitted the exclusion of a proposal that requested the identical voting standard as the current Simple Majority Vote Proposal. The Staff also permitted the exclusion from Abbott's 2011 proxy materials of a substantially similar proposal concerning voting standards from the same proponent on this basis. See *Abbott Laboratories* (avail. Feb. 2, 2011). A more complete discussion of Illinois law is contained in Abbott's request in connection with the 2011 no-action letter.

Additionally, the proposal may be omitted because Illinois law does not permit its statutory 66.67% voting requirements to be reduced to a simple majority of votes cast for and against, as required by the proposal.

The following IBCA provisions require a two-thirds shareholder vote of outstanding shares:

- Section 10.20 of the IBCA for amendments to the articles of incorporation,
- Section 11.20 of the IBCA with respect to mergers,
- Section 11.60 of the IBCA with respect to sales, leases or exchanges of all, or substantially all, of the company's assets, other than in the usual and regular course of business, and
- Section 12.15 of the IBCA with respect to voluntary dissolution by vote of shareholders.

See Exhibit E for the full text of these provisions. Section 2.10(b)(2)(v) of the IBCA permits a company's articles of incorporation to supersede these two-thirds shareholder vote requirements,

but specifies that the minimum vote requirement cannot be less than a majority of the outstanding shares entitled to vote on the matter. Consequently, implementing the proposal's requested standard for a majority of votes cast for and against would cause Abbott to violate Illinois corporate law.

### **III. The Simple Majority Vote Proposal may be properly omitted from Abbott's proxy materials under Rule 14a-8(i)(10) because it has been substantially implemented.**

Rule 14a-8(i)(10) permits a company to omit a proposal from its proxy materials if the company has substantially implemented the proposal, so as "to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management." Release No. 34-12598 (July 7, 1976).

The proposal reads as follows:

RESOLVED, Shareholders request that our board take each step necessary so that each 66.67% voting requirement in our charter and/or bylaws that is explicit or implicit (due to a default to state law) be ***eliminated, and replaced*** by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. (emphasis added)

Mr. Chevedden and Mr. Steiner submitted a substantially similar simple majority vote proposal in 2016. In 2016, the Staff agreed that Abbott had substantially implemented the proposal and could exclude the proposal from its proxy statement. See *Abbott Laboratories* (avail. Jan. 29, 2016).

As in 2016, this proposal has been substantially implemented because Abbott's Restated Articles of Incorporation (the "Articles") and By-laws (the "By-laws") do not contain (explicitly or implicitly) any shareholder or director voting provisions that call for greater than a majority vote – there are no provisions in Abbott's Articles or By-laws to eliminate and replace as requested by the proposal. The Articles do not contain any voting requirements at all, and none of the voting provisions of the By-laws require anything above the lowest voting threshold permitted by the IBCA.

The Staff has previously concurred that similar proposals have been substantially implemented where, as is the current situation, the company's articles of incorporation or by-laws contained only simple majority voting provisions, but referenced exceptions for statutory supermajority voting provisions. In addition to *Abbott Laboratories* (avail. Jan. 29, 2016), the Staff reached a similar conclusion in *Starbucks Corporation* (avail. Dec. 1, 2011) where the by-laws of Starbucks in effect at the time expressly specified that the majority vote standard set forth in the by-laws did not apply if "the question is one upon which by express provision of the Washington Business Corporation Act. . . a different vote is required."<sup>1</sup> See also *Whole Foods Market, Inc.* (avail. Dec. 21, 2010) and *Time Warner Inc.* (avail. Mar. 10, 2011).

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<sup>1</sup> See Section 1.6(b) of Starbuck's by-laws at

**Articles of Incorporation.** As noted above, Abbott's Articles do not contain any voting requirements at all – there are no provisions to eliminate and replace as requested by the proposal. The IBCA contains statutory voting requirements that govern the voting rights of Abbott's shareholders. However, statutory provisions are not part of a corporation's articles of incorporation; rather, they apply independently by operation of state law. Therefore, the proposal is substantially implemented with respect to the Articles.

**By-laws.** Abbott's By-laws likewise do not impose any 66.67% voting requirements. Rather, the By-laws contain the lowest majority shareholder voting standard permitted by Illinois law.

Article II, Section 7 of the By-laws states that if a quorum is present at a shareholder meeting,

“the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on a matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by The Business Corporation Act of 1983 or the Articles of Incorporation, as in effect on the date of such determination.”

This is the only shareholder voting provision in the By-laws. As noted in Section II above, the simple majority voting standard requested by Mr. Chevedden is a “majority of the votes cast for and against,” which could result in a matter submitted for a shareholder vote being approved by less than the minimum shareholder vote required by the IBCA because it does not include abstentions in the calculation to determine if a majority has been reached. The proposal alternatively permits “a simple majority in compliance with applicable laws” and states that “[i]f necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.” The majority voting provision for shareholders contained in Abbott's By-laws satisfies this alternative requirement of the proposal by calling for the lowest majority shareholder voting standard permitted by state law.

While the By-laws acknowledge the possibility of different voting standards in the IBCA and the Articles, this is nothing more than a factual statement of law. This By-law provision does not, and cannot, establish or imply a 66.67% voting requirement because by-law provisions cannot supersede IBCA requirements. Article II, Section 7 of the By-laws would have the same effect even if the reference to the IBCA and Articles were deleted entirely. As noted above, pursuant to Section 2.01(b)(v) of the IBCA, certain provisions requiring a two-thirds vote of outstanding shares can be superseded by a majority vote of outstanding shares requirement but can only be done through the articles of incorporation, not the by-laws.

**Articles and By-laws – Director Action.** Neither the Articles or the By-laws contain any 66.67% voting requirement relating to director action. Therefore, the proposal is substantially implemented with respect to director actions.

Based on the above, Abbott has substantially implemented the Simple Majority Vote Proposal.

**IV. The Simple Majority Vote Proposal may be properly omitted from Abbott's proxy materials under Rule 14a-8(i)(3) and Rule 14a-9 because it is materially false and misleading.**

Rule 14a-8(i)(3) permits a registrant to omit a proposal from its proxy materials where the proposal is “so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. . . .” Staff Legal Bulletin No. 14B (Sept. 15, 2004).

The Staff has repeatedly permitted exclusion of proposals that were sufficiently vague and indefinite that the company and its shareholders would be unable to determine what the proposal entails or might interpret the proposal differently. For example, in *Fuqua Industries, Inc.* (avail. Mar. 12, 1991), the Staff concluded that a shareholder proposal may be excluded where the company and the shareholders could interpret the proposal differently such that “any action ultimately taken by the Company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal.” See also *Walgreens Boots Alliance, Inc.* (avail. Oct. 7, 2016) (permitting exclusion of a proposal restricting the ability of the board of directors to “[take] any action whose primary purpose is to prevent the effectiveness of shareholder vote”); *Alaska Air Group, Inc.* (avail. Mar. 10, 2016) (permitting exclusion of a proposal to amend bylaws and any other appropriate governing documents to require that the management of the company “shall strictly honor shareholders rights to disclosure identification and contact information to the fullest extent possible by technology”); *Motorola, Inc.* (avail. Jan. 12, 2011) (allowing exclusion of a proposal requesting that the board negotiate “with senior executives to request that they relinquish . . . preexisting executive pay rights” as vague and indefinite because “the proposal [did] not sufficiently explain the meaning of ‘executive pay rights’”); *Prudential Financial, Inc.* (avail. Feb. 16, 2007) (allowing exclusion of a proposal urging the board to seek shareholder approval for certain senior management incentive compensation programs because the proposal failed to define key terms and was subject to differing interpretations); and *Puget Energy, Inc.* (avail. Mar. 7, 2002) (allowing exclusion of a proposal requesting that the company’s board of directors “take the necessary steps to implement a policy of improved corporate governance” where the proposal did not specify what was meant by “improved corporate governance”).

The Simple Majority Vote Proposal may be omitted because neither the shareholders nor Abbott can tell with any certainty what it requires with respect to the current provisions of Abbott’s Articles and By-laws.

First, the proposal is false and misleading, as it implies that Abbott’s Articles and By-laws contain 66.67% shareholder voting provisions. Statutory provisions are not part of Abbott’s Articles and By-laws. Rather, IBCA provisions operate independently as a matter of law. As discussed above, Abbott’s Articles and By-laws do not contain any provisions calling for a 66.67% vote. The proposal asks Abbott’s shareholders to vote to remove provisions in the Articles and By-laws that do not exist. If passed, Abbott’s Board would have no provisions to eliminate or replace.

In addition, the proposal is inherently vague and indefinite because it fails to provide any meaningful guidance on how to interpret the phrase “a requirement for a majority of the votes cast for and against applicable proposals, *or a simple majority in compliance with applicable laws*” (emphasis added). The final sentence unsuccessfully attempts to clarify that this means “the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.” But Abbott and its shareholders are still left without an understanding of how to determine the “closest standard” in the face of multiple available alternatives.

A shareholder could understand the proposal to request that Abbott’s board implement shareholder voting standards allowing for approval by a “majority of the votes cast for and against” or by the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the matter to be the act of the shareholders, including abstentions.

If the proposal seeks a “majority of the votes cast for and against” standard, it is materially false and misleading because it implies that Illinois law permits such a voting standard; as discussed at length above, it does not. If the proposal is attempting to recognize that Illinois law requires abstentions be included in calculating a majority, it misleads shareholders into believing that the Articles and By-laws do not already contain the requested standard – again as discussed at length above, this standard is already implemented. The fact that multiple interpretations are possible demonstrates that the proposal is vague and indefinite.

In addition, Section 11.75 of the IBCA prohibits a business combination with an interested shareholder within three years of the time such shareholder became an interested shareholder unless one of three conditions are met, one of which is approval by at least 66 2/3% of the outstanding voting shares which are not owned by the interested shareholder. The IBCA does not provide a mechanism for the voting requirements of Section 11.75 to be lowered. However, the IBCA does allow corporations to opt-out of such statutory provisions entirely. It is not clear what, if anything, the shareholders are being asked to vote upon with respect to such statutory provisions.

Based on the above, the proposal is so inherently vague and indefinite, and subject to multiple interpretations, such that neither Abbott nor its shareholders would be able to determine with any reasonable certainty exactly what actions or measures it requires.

**V. The Simple Majority Vote Proposal may be properly omitted from Abbott’s proxy materials under Rule 14a-8(i)(3) because it violates Rules 14a-4(i)(3) and 14a-4(b)(1) and is therefore contrary to proxy rules.**

As discussed above, Abbott’s Articles and By-laws do not contain any 66.67% voting requirements. If, nevertheless, the Staff interprets the proposal as requesting shareholders to vote on whether to revise each of the IBCA’s various 66.67% statutory voting requirements to provide for a lower voting standard, the proposal violates the SEC’s requirement that proposals on separate material matters be unbundled for voting.

Rule 14a-4(a)(3) provides that a form of proxy must “identify clearly and impartially each separate matter intended to be acted upon.” In addition, under Rule 14a-4(b)(1), a form of proxy

must provide a means for shareholders “to specify by boxes a choice . . . with respect to each separate matter referred to therein as intended to be acted upon.”

In the context of charter amendments, the Staff issued a compliance and disclosure interpretation on Rule 14a-4(a)(3) on January 24, 2014, stating in Question 101.02 that:

if management knows or has reason to believe that a particular amendment . . . is one on which shareholders could reasonably be expected to wish to express a view separate from their views on the other amendments that are part of the restatement, the amendment should be unbundled.

The Staff noted that this analysis under Rule 14a-4(a)(3) is not governed by the fact that, for state law purposes, these amendments could be presented to shareholders as a single restatement proposal. As an example, the Staff stated that if a restatement proposal involving the declassification of a board of directors “also included an amendment to the charter to add a provision allowing shareholders representing 40% of the outstanding shares to call a special meeting, the staff would view the special meeting amendment as material and therefore required to be presented to shareholders separately from the similarly material declassification amendment.”

The Staff emphasized the importance of unbundling proposals in its October 27, 2015 compliance and disclosure interpretation regarding Rule 14a-4(a)(3) in the merger and acquisition context. Specifically, this interpretation stated that:

if a material amendment to the acquiror’s organizational documents would require the approval of its shareholders under state law, the rules of a national securities exchange, or its organizational documents if presented on a standalone basis, the acquiror’s form of proxy must present any such amendment separately from any other material proposal.

The IBCA contains many distinct sections that require a 66.67% vote, each addressing a different concern. For example, as discussed above, the affirmative vote of at least two-thirds of the outstanding shares entitled to vote is required by:

- Section 10.20 of the IBCA for amendments to the articles of incorporation,
- Section 11.20 of the IBCA with respect to mergers,
- Section 11.60 of the IBCA with respect to sales, leases or exchanges of all, or substantially all, of the company’s assets, other than in the usual and regular course of business, and
- Section 12.15 of the IBCA with respect to voluntary dissolution by vote of shareholders.

In addition, Section 11.75 of the IBCA prohibits business combinations with an interested shareholder in certain circumstances unless approved by the affirmative vote of at least 66 2/3% of the outstanding voting shares which are not owned by the interested shareholder.

If the proposal is interpreted to implicate each of the two-thirds voting requirements specified by the IBCA, it really consists of multiple requests that the Company take several different actions. Each such statutory provision raises distinct considerations and they are not so inextricably

intertwined as to effectively constitute a single matter. For example, business combination provisions present materially different issues than amendments to the articles of incorporation. Shareholders could reasonably be expected to wish to express their views separately on these topics. Accordingly, the proposal may be omitted from Abbott's proxy statement because it is contrary to Rule 14a-4.

The current situation is distinguishable from *BB&T Corporation* (avail. Jan. 3, 2017) because, unlike Abbott, the proposal in *BB&T* addressed reducing supermajority provisions contained in *BB&T*'s charter and by-laws – specifically charter provisions regarding the rights of preferred stockholders to approve charter amendments that would materially and adversely impact their rights or authorize securities with priority over them, and by-laws provisions regarding amendment of director-related by-law sections, such as director terms, removal and vacancies. These provisions in the *BB&T* proposal, which all dealt with the threshold required to make amendments to organizational documents, were more closely related than the separate and distinct statutory matters potentially impacted by the Simple Majority Vote Proposal. If the Staff were to interpret the Simple Majority Vote Proposal as requesting shareholders to vote on whether to modify each 66.67% statutory voting requirements, the Simple Majority Vote Proposal would need to be unbundled because the implicated IBCA provisions address a variety of matters, as indicated above. Abbott's shareholders would have to be allowed to vote separately on each topic. Accordingly, as submitted, the Simple Majority Vote Proposal violates Rule 14a-4(a)(3).

## **VI. Conclusion**

For the foregoing reasons, I request your confirmation that the Staff will not recommend any enforcement action to the Commission (i) if the Independent Chair Proposal and the Simple Majority Vote Proposal are omitted from Abbott's 2019 proxy materials pursuant to Rule 14a-8(c) as described in Section I of this letter or (ii) if the Staff does not concur that the Independent Chair Proposal and the Simple Majority Vote Proposal may be omitted from Abbott's 2019 proxy materials under Rule 14a-8(c), if the Simple Majority Vote Proposal is omitted from Abbott's 2019 proxy materials for any of the reasons described in Sections II through V of this letter. To the extent that the reasons set forth in this letter are based on matters of law, pursuant to Rule 14a-8(j)(2)(iii) this letter also constitutes an opinion of counsel of the undersigned as an attorney licensed and admitted to practice in the State of Illinois.

If the Staff has any questions, or if for any reason the Staff does not agree that Abbott may omit the Independent Chair Proposal or the Simple Majority Vote Proposal from its 2019 proxy materials, please contact me at (224) 667-5550 or [jessica.paik@abbott.com](mailto:jessica.paik@abbott.com). We may also be reached by facsimile at (224) 668-9492. We would appreciate it if you would send your response by email or facsimile. Mr. Chevedden may be reached at \*\*\* or \*\*\*

Very truly yours,



Jessica Paik  
Abbott Laboratories  
Divisional Vice President and  
Associate General Counsel,  
Securities and Benefits

Enclosures

cc: John Chevedden

\*\*\*

**Exhibit A**

**Independent Chair Proposal**

Kenneth Steiner

\*\*\*

Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
Abbott Park IL 60064  
PH: 224-667-6100

REVISED 04 NOV 2018

Dear Mr. Allen,

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

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at:

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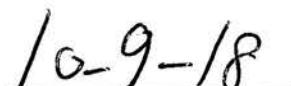
to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

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

  
Date

cc: John A. Berry <John.Berry@abbott.com>  
Jessica Paik <jessica.paik@abbott.com>  
Senior Counsel Securities & Benefits  
Heather Teliga <heather.teliga@abbott.com>  
PH: 224-668-6039  
FX: 224-668-9492

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

**Proposal [4] – Independent Board Chairman**

Shareholders request our Board of Directors to adopt as policy, and amend our governing documents as necessary, to require henceforth that the Chair of the Board of Directors, whenever possible, to be an independent member of the Board. The Board would have the discretion to phase in this policy for the next Chief Executive Officer transition, implemented so it does not violate any existing agreement.

If the Board determines that a Chairman who was independent when selected is no longer independent, the Board shall select a new Chairman who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chairman. This proposal requests that all the necessary steps be taken to accomplish the above.

Caterpillar and Wells Fargo are examples of companies changing course and naming an independent board chairman. Caterpillar had even opposed a shareholder proposal for an independent board chairman at its annual meeting.

Now is a good time to take the first step to transition to an independent board chairman given the following concerns at Abbott:

Criticism over alleged tax evasion through shifting profits into tax havens, Oxfam America Report  
September 2018

PediaSure Vanilla with Fiber – 356,424 cans recalled  
July 2018

Consumer Fraud/Abuse – Consumers seek revival of dismissed lawsuit over organic claims of baby formula,  
New York  
June 2018

Product Concerns – HeartMate 3 Left Ventricular Assist System recall: 4,878 units; malfunction in device's  
outflow graft assembly  
May 2018

Negligent Behavior – Alere \$33 million settlement of false claims act violations related to Triage.  
March 2018

Consumer Fraud/Abuse – Marketing of infant formula  
February 2018

Consumer Fraud/Abuse – Blood glucose tester: proposed class action suit alleging excessive pricing  
January 2018

Consumer Fraud/Abuse – Lawsuit over alleged misleading claims on the Non-GMO label of Similac infant care product, California  
January 2018

Negligent Behavior – lawsuits filed by local governments against alleged illegal distribution of opioid drugs  
December 2017

Product Concerns – Lawsuit filed by Philadelphia Federation of Teachers Health and Welfare Fund over deceptive marketing of opioid benefits  
December 2017

Anti-Competitive Behavior – Vildagliptin/Zomelis: NPPA investigation over alleged price collusion, India  
December 2017

Product Concerns – Architect c4000, c8000 and c16000 Clinical Chemistry Diagnostic System: Recall due to potential leak in tubing connector, Chicago  
November 2017

Product Concerns – Lawsuit filed by ASEA Health Trust over alleged concealment of product defects in cardiac defibrillators  
November 2017

Lawsuit over potential injuries or death due to inaccurate readings from Alere INRatio blood monitoring devices, San Diego  
September 2017

DoJ Investigation into Alere's INRatio product performance due to alleged defects  
September 2017

DoJ Investigation into Alere's suspected Medicare and Medicaid fraud  
September 2017

Adoption of this proposal will cost our company virtually nothing – yet it can contribute to a more effective Board of Directors.

Please vote yes:

**Independent Board Chairman – Proposal [4]**  
[The line above – *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

\*\*\*

**Exhibit B**

**Additional Correspondence Regarding  
Independent Chair Proposal**

---

**Subject:** FW: Rule 14a-8 Proposal (ABT)``  
**Attachments:** CCE18102018\_3.pdf

**From:** \*\*\*  
**Sent:** Thursday, October 18, 2018 2:15 PM  
**To:** John A. Berry <[John.Berry@abbott.com](mailto:John.Berry@abbott.com)>  
**Cc:** Paik, Jessica <[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)>; Teliga, Heather A <[heather.teliga@abbott.com](mailto:heather.teliga@abbott.com)>  
**Subject:** Rule 14a-8 Proposal (ABT)``

Dear Mr. Berry,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,  
John Chevedden

Kenneth Steiner

\*\*\*

Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
Abbott Park IL 60064  
PH: 224-667-6100

Dear Mr. Allen,

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

\*\*\*

at:

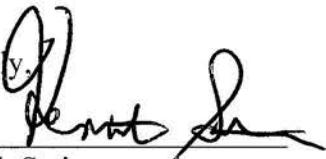
\*\*\*

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

10-9-18

Date

cc: John A. Berry <John.Berry@abbott.com>  
Jessica Paik <jessica.paik@abbott.com>  
Senior Counsel Securities & Benefits  
Heather Teliga <heather.teliga@abbott.com>  
PH: 224-668-6039  
FX: 224-668-9492

[ABT – Rule 14a-8 Proposal, October 18, 2018]  
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Independent Board Chairman**

Shareholders request our Board of Directors to adopt as policy, and amend our governing documents as necessary, to require henceforth that the Chair of the Board of Directors, whenever possible, to be an independent member of the Board. The Board would have the discretion to phase in this policy for the next Chief Executive Officer transition, implemented so it does not violate any existing agreement.

If the Board determines that a Chairman who was independent when selected is no longer independent, the Board shall select a new Chairman who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chairman. This proposal requests that all the necessary steps be taken to accomplish the above.

Caterpillar is an example of a company changing course and naming an independent board chairman. Caterpillar had opposed a shareholder proposal for an independent board chairman at its annual meeting. Wells Fargo also changed course and named an independent board chairman.

Now is a good time to take the first step to transition to an independent board chairman given the following concerns at Abbott:

Taxes – Oxfam America Report: Criticism over alleged tax evasion through shifting profits into tax havens  
September 2018

Product Concerns – PediaSure Vanilla with Fiber, 8 ounce can recall: 356,424 cans  
July 2018

Consumer Fraud/Abuse – Consumers seek revival of dismissed lawsuit over organic claims of baby formula, New York  
June 2018

Product Concerns – HeartMate 3 Left Ventricular Assist System (product recall): 4,878 units; malfunction in device's outflow graft assembly  
May 2018

Negligent Behavior – Alere \$33 million settlement of false claims act violations related to Triage product  
March 2018

Consumer Fraud/Abuse – Marketing of infant formula  
February 2018

Consumer Fraud/Abuse – Blood glucose tester: proposed class action suit alleging excessive pricing  
January 2018

Consumer Fraud/Abuse – Lawsuit over alleged misleading claims on the Non-GMO label of Similac infant care product, California  
January 2018

Negligent Behavior – lawsuits filed by local governments against alleged illegal distribution of opioid drugs  
December 2017

Product Concerns – Lawsuit filed by Philadelphia Federation of Teachers Health and Welfare Fund over deceptive marketing of opioid benefits, Pennsylvania  
December 2017

Anti-Competitive Behavior – Vildagliptin/Zomelis: NPPA investigation over alleged price collusion, India  
December 2017

Product Concerns – Architect c4000, c8000 and c16000 Clinical Chemistry Diagnostic System: Recall due to potential leak in tubing connector, Chicago  
November 2017

Product Concerns – Lawsuit filed by ASEA Health Trust over alleged concealment of product defects in cardiac defibrillators  
November 2017

Product Concerns – Lawsuit over potential injuries or death due to inaccurate readings from Alere INRatio blood monitoring devices, San Diego  
September 2017

Product Concerns – DoJ Investigation into Alere's INRatio product performance due to alleged defects  
September 2017

Negligent Behavior – DoJ Investigation into Alere's suspected Medicare and Medicaid fraud  
September 2017

Adoption of this proposal will cost our company virtually nothing – yet it can contribute to a more effective Board of Directors.

Please vote yes:

**Independent Board Chairman – Proposal [4]**  
[The line above – 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

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---

**Subject:** FW: Rule 14a-8 Proposal (ABT) blb  
**Attachments:** CCE23102018\_4.pdf

From: \*\*\*  
Sent: Tuesday, October 23, 2018 3:24 PM  
To: John A. Berry <John.Berry@abbott.com>  
Cc: Paik, Jessica <jessica.paik@abbott.com>; Teliga, Heather A <heather.teliga@abbott.com>  
Subject: Rule 14a-8 Proposal (ABT) blb

Mr. Berry,  
Please see the attached broker letter.  
Sincerely,  
John Chevedden



10/23/2018

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 300 shares of each of the following stocks in the above referenced account since June 1, 2017.

Abbott Laboratories (ABT)  
Bank of New York Mellon Corporation (BK)  
Bristol-Myers Squibb Company (BMY)  
General Electric Company (GE)  
Sotheby's (BID)

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 Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads "Matt Beckman".

Matt Beckman  
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.

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**Subject:** FW: Rule 14a-8 Proposal (ABT)`  
**Attachments:** Independent Chair Proposal - Acknowledgment Letter (10-24-18).pdf; SLB 14.pdf; Rule 14a-8.pdf

---

**From:** Paik, Jessica  
**Sent:** Wednesday, October 24, 2018 2:54 PM  
\*\*\*  
**To:**  
**Cc:** Teliga, Heather A <[heather.teliga@abbott.com](mailto:heather.teliga@abbott.com)>  
**Subject:** RE: Rule 14a-8 Proposal (ABT)`

Dear Mr. Chevedden,

Please find attached a letter acknowledging Abbott's receipt of the shareholder proposal submitted by Mr. Steiner. The attachments referenced in the letter are also attached. The original letter and hard copies of the attachments are being sent to your attention via Federal Express.

Kind regards,  
Jessica



**Jessica Paik**  
Divisional Vice President and  
Associate General Counsel  
Securities and Benefits

Abbott  
100 Abbott Park Road  
Dept. 32L/Bldg. AP6A-2  
Abbott Park, IL 60064-6092

O: +1 224-667-5550  
F: +1 224-668-9492  
M: +1 224-330-7923  
[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)

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This communication may contain information that is proprietary, confidential, or exempt from disclosure. If you are not the intended recipient, please note that any other dissemination, distribution, use or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

---

**From:** \*\*\*  
**Sent:** Thursday, October 18, 2018 2:15 PM  
**To:** John A. Berry <[John.Berry@abbott.com](mailto:John.Berry@abbott.com)>  
**Cc:** Paik, Jessica <[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)>; Teliga, Heather A <[heather.teliga@abbott.com](mailto:heather.teliga@abbott.com)>  
**Subject:** Rule 14a-8 Proposal (ABT)`

Dear Mr. Berry,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,  
John Chevedden



Abbott Laboratories  
Dept. 032L, Bldg. AP6A-2  
100 Abbott Park Road  
Abbott Park, IL 60064-6092

Tel: (224) 667-5550  
Fax: (224) 668-9492  
[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)

## Abbott

October 24, 2018

Via Federal Express and Email

Mr. John Chevedden

\*\*\*

Dear Mr. Chevedden:

This letter acknowledges receipt of the shareholder proposal submitted by Kenneth Steiner, who has designated you as his proxy (collectively the “Proponent”) and instructed that we direct all communications to your attention. Our 2019 Annual Meeting of Shareholders is currently scheduled to be held on Friday, April 26, 2019.

Rule 14a-8(d) of the Securities Exchange Act of 1934, as amended, requires that any shareholder proposal, including any accompanying supporting statement, not exceed 500 words. The proposal submitted by the Proponent, including the supporting statement, (the “Proposal”) exceeds 500 words. In reaching this conclusion, we have counted symbols such as dollar signs as words and have counted acronyms and terms that are separated by a “/” as multiple words. To remedy this defect, the Proponent must revise the Proposal so that it does not exceed 500 words. We have included a copy of Rule 14a-8 and Staff Legal Bulletin No. 14 for your reference.

Rule 14a-8 requires that any response to this letter, including a revised Proposal that does not exceed 500 words, be postmarked or transmitted electronically no later than 14 calendar days from the day you receive this letter. Please address any response to my attention at the above address, email address or facsimile number.

Abbott has not yet reviewed the Proposal to determine if it complies with the other requirements for shareholder proposals found in Rules 14a-8 and 14a-9 under the Securities Exchange Act of 1934, as amended. Abbott reserves the right to take appropriate action to the extent that the Proposal does not comply with such rules.

Please let me know if you have any questions. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "jessica paik".

Jessica H. Paik  
Divisional Vice President,  
Assistant General Counsel and  
Assistant Secretary

cc: Kenneth Steiner

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

**Shareholder Proposals**

**Staff Legal Bulletin No. 14 (CF)**

**Action:** Publication of CF Staff Legal Bulletin

**Date:** July 13, 2001

**Summary:** This staff legal bulletin provides information for companies and shareholders on rule 14a-8 of the Securities Exchange Act of 1934.

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

**Contact Person:** For further information, please contact Jonathan Ingram, Michael Coco, Lillian Cummins or Keir Gumbs at (202) 942-2900.

**A. What is the purpose of this bulletin?**

The Division of Corporation Finance processes hundreds of rule 14a-8 no-action requests each year. We believe that companies and shareholders may benefit from information that we can provide based on our experience in processing these requests. Therefore, we prepared this bulletin in order to

- explain the rule 14a-8 no-action process, as well as our role in this process;
- provide guidance to companies and shareholders by expressing our views on some issues and questions that commonly arise under rule 14a-8; and
- suggest ways in which both companies and shareholders can facilitate our review of no-action requests.

Because the substance of each proposal and no-action request differs, this bulletin primarily addresses procedural matters that are common to companies and shareholders. However, we also discuss some substantive matters that are of interest to companies and shareholders alike.

We structured this bulletin in a question and answer format so that it is easier to understand and we can more easily respond to inquiries regarding its contents. The references to “we,” “our” and “us” are to the Division of Corporation Finance. You can find a copy of rule 14a-8 in Release No. 34-40018, dated May 21, 1998, which is located on the Commission’s website at [www.sec.gov/rules/final/34-40018.htm](http://www.sec.gov/rules/final/34-40018.htm).

## **B. Rule 14a-8 and the no-action process.**

### **1. What is rule 14a-8?**

Rule 14a-8 provides an opportunity for a shareholder owning a relatively small amount of a company’s securities to have his or her proposal placed alongside management’s proposals in that company’s proxy materials for presentation to a vote at an annual or special meeting of shareholders. It has become increasingly popular because it provides an avenue for communication between shareholders and companies, as well as among shareholders themselves. The rule generally requires the company to include the proposal unless the shareholder has not complied with the rule’s procedural requirements or the proposal falls within one of the 13 substantive bases for exclusion described in the table below.

<b>Substantive Basis</b>	<b>Description</b>
Rule 14a-8(i)(1)	The proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization.
Rule 14a-8(i)(2)	The proposal would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject.
Rule 14a-8(i)(3)	The proposal or supporting statement is contrary to any of the Commission’s proxy rules, including rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.
Rule 14a-8(i)(4)	The proposal relates to the redress of a personal claim or grievance against the company or any other person, or is designed to result in a benefit to the shareholder, or to further a personal interest, which is not shared by the other shareholders at large.

Rule 14a-8(i)(5)	The proposal relates to operations that account for less than 5% of the company's total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business.
Rule 14a-8(i)(6)	The company would lack the power or authority to implement the proposal.
Rule 14a-8(i)(7)	The proposal deals with a matter relating to the company's ordinary business operations.
Rule 14a-8(i)(8)	The proposal relates to an election for membership on the company's board of directors or analogous governing body.
Rule 14a-8(i)(9)	The proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.
Rule 14a-8(i)(10)	The company has already substantially implemented the proposal.
Rule 14a-8(i)(11)	The proposal substantially duplicates another proposal previously submitted to the company by another shareholder that will be included in the company's proxy materials for the same meeting.
Rule 14a-8(i)(12)	The proposal deals with substantially the same subject matter as another proposal or proposals that previously has or have been included in the company's proxy materials within a specified time frame and did not receive a specified percentage of the vote. Please refer to questions and answers F.2, F.3 and F.4 for more complete descriptions of this basis.
Rule 14a-8(i)(13)	The proposal relates to specific amounts of cash or stock dividends.

## **2. How does rule 14a-8 operate?**

The rule operates as follows:

- the shareholder must provide a copy of his or her proposal to the company by the deadline imposed by the rule;
- if the company intends to exclude the proposal from its proxy materials, it must submit its reason(s) for doing so to the Commission and simultaneously provide the shareholder with a copy of that submission. This submission to the Commission of reasons for excluding the proposal is commonly referred to as a no-action request;
- the shareholder may, but is not required to, submit a reply to us with a copy to the company; and
- we issue a no-action response that either concurs or does not concur in the company's view regarding exclusion of the proposal.

## **3. What are the deadlines contained in rule 14a-8?**

Rule 14a-8 establishes specific deadlines for the shareholder proposal process. The following table briefly describes those deadlines.

120 days before the release date disclosed in the previous year's proxy statement	Proposals for a regularly scheduled annual meeting must be received at the company's principal executive offices not less than 120 calendar days before the release date of the previous year's annual meeting proxy statement. Both the release date and the deadline for receiving rule 14a-8 proposals for the next annual meeting should be identified in that proxy statement.
14-day notice of defect(s)/response to notice of defect(s)	If a company seeks to exclude a proposal because the shareholder has not complied with an eligibility or procedural requirement of rule 14a-8, generally, it must notify the shareholder of the alleged defect(s) within 14 calendar days of receiving the proposal. The shareholder then has 14 calendar days after receiving the notification to respond. Failure to cure the defect(s) or respond in a timely manner may result in exclusion of the proposal.

80 days before the company files its definitive proxy statement and form of proxy	If a company intends to exclude a proposal from its proxy materials, it must submit its no-action request to the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission unless it demonstrates “good cause” for missing the deadline. In addition, a company must simultaneously provide the shareholder with a copy of its no-action request.
30 days before the company files its definitive proxy statement and form of proxy	If a proposal appears in a company’s proxy materials, the company may elect to include its reasons as to why shareholders should vote against the proposal. This statement of reasons for voting against the proposal is commonly referred to as a statement in opposition. Except as explained in the box immediately below, the company is required to provide the shareholder with a copy of its statement in opposition no later than 30 calendar days before it files its definitive proxy statement and form of proxy.
Five days after the company has received a revised proposal	If our no-action response provides for shareholder revision to the proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, the company must provide the shareholder with a copy of its statement in opposition no later than five calendar days after it receives a copy of the revised proposal.

In addition to the specific deadlines in rule 14a-8, our informal procedures often rely on timely action. For example, if our no-action response requires that the shareholder revise the proposal or supporting statement, our response will afford the shareholder seven calendar days from the date of receiving our response to provide the company with the revisions. In this regard, please refer to questions and answers B.12.a and B.12.b.

#### **4. What is our role in the no-action process?**

Our role begins when we receive a no-action request from a company. In these no-action requests, companies often assert that a proposal is excludable under one or more parts of rule 14a-8. We analyze each of the bases for exclusion that a company asserts, as well as any arguments that the shareholder chooses to set forth, and determine whether we concur in the company’s view.

The Division of Investment Management processes rule 14a-8 no-action requests submitted by registered investment companies and business development companies.

**Rule 14a-8 no-action requests submitted by registered investment companies and business development companies, as well as shareholder responses to those requests, should be sent to**

U.S. Securities and Exchange Commission  
Division of Investment Management  
Office of Chief Counsel  
450 Fifth Street, N.W.  
Washington, D.C. 20549

**All other rule 14a-8 no-action requests and shareholder responses to those requests should be sent to**

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
450 Fifth Street, N.W.  
Washington, D.C. 20549

**5. What factors do we consider in determining whether to concur in a company's view regarding exclusion of a proposal from the proxy statement?**

The company has the burden of demonstrating that it is entitled to exclude a proposal, and we will not consider any basis for exclusion that is not advanced by the company. We analyze the prior no-action letters that a company and a shareholder cite in support of their arguments and, where appropriate, any applicable case law. We also may conduct our own research to determine whether we have issued additional letters that support or do not support the company's and shareholder's positions. Unless a company has demonstrated that it is entitled to exclude a proposal, we will not concur in its view that it may exclude that proposal from its proxy materials.

**6. Do we base our determinations solely on the subject matter of the proposal?**

No. We consider the specific arguments asserted by the company and the shareholder, the way in which the proposal is drafted and how the arguments and our prior no-action responses apply to the specific proposal and company at issue. Based on these considerations, we may determine that company X may exclude a proposal but company Y cannot exclude a proposal that addresses the same or similar subject matter. The following chart illustrates this point by showing that variations in the language of a proposal, or different bases cited by a company, may result in different responses. As shown below, the first and second examples deal with virtually identical proposals,

but the different company arguments resulted in different responses. In the second and third examples, the companies made similar arguments, but differing language in the proposals resulted in different responses.

<b>Company</b>	<b>Proposal</b>	<b>Bases for exclusion that the company cited</b>	<b>Date of our response</b>	<b>Our response</b>
PG&E Corp.	Adopt a policy that independent directors are appointed to the audit, compensation and nomination committees.	Rule 14a-8(b) only	Feb. 21, 2000	We did not concur in PG&E's view that it could exclude the proposal. PG&E did not demonstrate that the shareholder failed to satisfy the rule's minimum ownership requirements. PG&E included the proposal in its proxy materials.
PG&E Corp.	Adopt a bylaw that independent directors are appointed for all future openings on the audit, compensation and nomination committees.	Rule 14a-8(i)(6) only	Jan. 22, 2001	We concurred in PG&E's view that it could exclude the proposal. PG&E demonstrated that it lacked the power or authority to implement the proposal. PG&E did not include the proposal in its proxy materials.
General Motors Corp.	Adopt a bylaw requiring a <i>transition to</i> independent directors for each seat on the audit, compensation and nominating committees as openings occur (emphasis added).	Rules 14a-8(i)(6) and 14a-8(i)(10)	Mar. 22, 2001	We did not concur in GM's view that it could exclude the proposal. GM did not demonstrate that it lacked the power or authority to implement the proposal or that it had substantially implemented the proposal. GM included the proposal in its proxy materials.

**7. Do we judge the merits of proposals?**

No. We have no interest in the merits of a particular proposal. Our concern is that shareholders receive full and accurate information about all proposals that are, or should be, submitted to them under rule 14a-8.

**8. Are we required to respond to no-action requests?**

No. Although we are not required to respond, we have, as a convenience to both companies and shareholders, engaged in the informal practice of expressing our enforcement position on these submissions through the issuance of no-action responses. We do this to assist both companies and shareholders in complying with the proxy rules.

**9. Will we comment on the subject matter of pending litigation?**

No. Where the arguments raised in the company's no-action request are before a court of law, our policy is not to comment on those arguments. Accordingly, our no-action response will express no view with respect to the company's intention to exclude the proposal from its proxy materials.

**10. How do we respond to no-action requests?**

We indicate either that there appears to be some basis for the company's view that it may exclude the proposal or that we are unable to concur in the company's view that it may exclude the proposal. Because the company submits the no-action request, our response is addressed to the company. However, at the time we respond to a no-action request, we provide all related correspondence to both the company and the shareholder. These materials are available in the Commission's Public Reference Room and on commercially available, external databases.

**11. What is the effect of our no-action response?**

Our no-action responses only reflect our informal views regarding the application of rule 14a-8. We do not claim to issue "rulings" or "decisions" on proposals that companies indicate they intend to exclude, and our determinations do not and cannot adjudicate the merits of a company's position with respect to a proposal. For example, our decision not to recommend enforcement action does not prohibit a shareholder from pursuing rights that he or she may have against the company in court should management exclude a proposal from the company's proxy materials.

## **12. What is our role after we issue our no-action response?**

Under rule 14a-8, we have a limited role after we issue our no-action response. In addition, due to the large number of no-action requests that we receive between the months of December and February, the no-action process must be efficient. As described in answer B.2, above, rule 14a-8 envisions a structured process under which the company submits the request, the shareholder may reply and we issue our response. When shareholders and companies deviate from this structure or are unable to resolve differences, our time and resources are diverted and the process breaks down. Based on our experience, this most often occurs as a result of friction between companies and shareholders and their inability to compromise. While we are always available to facilitate the fair and efficient application of the rule, the operation of the rule, as well as the no-action process, suffers when our role changes from an issuer of responses to an arbiter of disputes. The following questions and answers are examples of how we view our limited role after issuance of our no-action response.

- a. If our no-action response affords the shareholder additional time to provide documentation of ownership or revise the proposal, but the company does not believe that the documentation or revisions comply with our no-action response, should the company submit a new no-action request?**

No. For example, our no-action response may afford the shareholder seven days to provide documentation demonstrating that he or she satisfies the minimum ownership requirements contained in rule 14a-8(b). If the shareholder provides the required documentation eight days after receiving our no-action response, the company should not submit a new no-action request in order to exclude the proposal. Similarly, if we indicate in our response that the shareholder must provide factual support for a sentence in the supporting statement, the company and the shareholder should work together to determine whether the revised sentence contains appropriate factual support.

- b. If our no-action response affords the shareholder an additional seven days to provide documentation of ownership or revise the proposal, who should keep track of when the seven-day period begins to run?**

When our no-action response gives a shareholder time, it is measured from the date the shareholder receives our response. As previously noted in answer B.10, we send our response to both the company and the shareholder. However, the company is responsible for determining when the seven-day period begins to run. In order to avoid controversy, the company should forward a copy of our response to the shareholder by a means that permits the company to prove the date of receipt.

**13. Does rule 14a-8 contemplate any other involvement by us after we issue a no-action response?**

Yes. If a shareholder believes that a company's statement in opposition is materially false or misleading, the shareholder may promptly send a letter to us and the company explaining the reasons for his or her view, as well as a copy of the proposal and statement in opposition. Just as a company has the burden of demonstrating that it is entitled to exclude a proposal, a shareholder should, to the extent possible, provide us with specific factual information that demonstrates the inaccuracy of the company's statement in opposition. We encourage shareholders and companies to work out these differences before contacting us.

**14. What must a company do if, before we have issued a no-action response, the shareholder withdraws the proposal or the company decides to include the proposal in its proxy materials?**

If the company no longer wishes to pursue its no-action request, the company should provide us with a letter as soon as possible withdrawing its no-action request. This allows us to allocate our resources to other pending requests. The company should also provide the shareholder with a copy of the withdrawal letter.

**15. If a company wishes to withdraw a no-action request, what information should its withdrawal letter contain?**

In order for us to process withdrawals efficiently, the company's letter should contain

- a statement that either the shareholder has withdrawn the proposal or the company has decided to include the proposal in its proxy materials;
- if the shareholder has withdrawn the proposal, a copy of the shareholder's signed letter of withdrawal, or some other indication that the shareholder has withdrawn the proposal;
- if there is more than one eligible shareholder, the company must provide documentation that all of the eligible shareholders have agreed to withdraw the proposal;
- if the company has agreed to include a revised version of the proposal in its proxy materials, a statement from the shareholder that he or she accepts the revisions; and
- an affirmative statement that the company is withdrawing its no-action request.

### **C. Questions regarding the eligibility and procedural requirements of the rule.**

Rule 14a-8 contains eligibility and procedural requirements for shareholders who wish to include a proposal in a company's proxy materials. Below, we address some of the common questions that arise regarding these requirements.

- 1. To be eligible to submit a proposal, rule 14a-8(b) requires the shareholder to have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date of submitting the proposal. Also, the shareholder must continue to hold those securities through the date of the meeting. The following questions and answers address issues regarding shareholder eligibility.**
  - a. How do you calculate the market value of the shareholder's securities?**

Due to market fluctuations, the value of a shareholder's investment in the company may vary throughout the year before he or she submits the proposal. In order to determine whether the shareholder satisfies the \$2,000 threshold, we look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at \$2,000 or greater, based on the average of the bid and ask prices. Depending on where the company is listed, bid and ask prices may not always be available. For example, bid and ask prices are not provided for companies listed on the New York Stock Exchange. Under these circumstances, companies and shareholders should determine the market value by multiplying the number of securities the shareholder held for the one-year period by the highest *selling* price during the 60 calendar days before the shareholder submitted the proposal. For purposes of this calculation, it is important to note that a security's highest selling price is not necessarily the same as its highest closing price.

- b. What type of security must a shareholder own to be eligible to submit a proposal?**

A shareholder must own company securities entitled to be voted on the proposal at the meeting.

**Example**

**A company receives a proposal relating to executive compensation from a shareholder who owns only shares of the company's class B common stock. The company's class B common stock is entitled to vote only on the election of directors. Does the shareholder's ownership of only class B stock provide a basis for the company to exclude the proposal?**

Yes. This would provide a basis for the company to exclude the proposal because the shareholder does not own securities entitled to be voted on the proposal at the meeting.

**c. How should a shareholder's ownership be substantiated?**

Under rule 14a-8(b), there are several ways to determine whether a shareholder has owned the minimum amount of company securities entitled to be voted on the proposal at the meeting for the required time period. If the shareholder appears in the company's records as a registered holder, the company can verify the shareholder's eligibility independently. However, many shareholders hold their securities indirectly through a broker or bank. In the event that the shareholder is not the registered holder, the shareholder is responsible for proving his or her eligibility to submit a proposal to the company. To do so, the shareholder must do one of two things. He or she can submit a written statement from the record holder of the securities verifying that the shareholder has owned the securities continuously for one year as of the time the shareholder submits the proposal. Alternatively, a shareholder who has filed a Schedule 13D, Schedule 13G, Form 4 or Form 5 reflecting ownership of the securities as of or before the date on which the one-year eligibility period begins may submit copies of these forms and any subsequent amendments reporting a change in ownership level, along with a written statement that he or she has owned the required number of securities continuously for one year as of the time the shareholder submits the proposal.

- (1) Does a written statement from the shareholder's investment adviser verifying that the shareholder held the securities continuously for at least one year before submitting the proposal demonstrate sufficiently continuous ownership of the securities?**

The written statement must be from the record holder of the shareholder's securities, which is usually a broker or bank. Therefore, unless the investment adviser is also the record holder, the statement would be insufficient under the rule.

**(2) Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?**

No. A shareholder 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.

**(3) If a shareholder submits his or her proposal to the company on June 1, does a statement from the record holder verifying that the shareholder owned the securities continuously for one year as of May 30 of the same year demonstrate sufficiently continuous ownership of the securities as of the time he or she submitted the proposal?**

No. A shareholder must submit proof from the record holder that the shareholder continuously owned the securities for a period of one year as of the time the shareholder submits the proposal.

**d. Should a shareholder provide the company with a written statement that he or she intends to continue holding the securities through the date of the shareholder meeting?**

Yes. The shareholder must provide this written statement regardless of the method the shareholder uses to prove that he or she continuously owned the securities for a period of one year as of the time the shareholder submits the proposal.

**2. In order for a proposal to be eligible for inclusion in a company's proxy materials, rule 14a-8(d) requires that the proposal, including any accompanying supporting statement, not exceed 500 words. The following questions and answers address issues regarding the 500-word limitation.**

**a. May a company count the words in a proposal's "title" or "heading" in determining whether the proposal exceeds the 500-word limitation?**

Any statements that are, in effect, arguments in support of the proposal constitute part of the supporting statement. Therefore, any "title" or "heading" that meets this test may be counted toward the 500-word limitation.

**b. Does referencing a website address in the proposal or supporting statement violate the 500-word limitation of rule 14a-8(d)?**

No. Because we count a website address as one word for purposes of the 500-word limitation, we do not believe that a website address raises the concern that rule 14a-8(d) is intended to address. However, a website address could be subject to exclusion if it refers readers to information that may be materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules. In this regard, please refer to question and answer F.1.

**3. Rule 14a-8(e)(2) requires that proposals for a regularly scheduled annual meeting be received at the company's principal executive offices by a date 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. The following questions and answers address a number of issues that come up in applying this provision.**

**a. How do we interpret the phrase "before the date of the company's proxy statement released to shareholders?"**

We interpret this phrase as meaning the approximate date on which the proxy statement and form of proxy were first sent or given to shareholders. For example, if a company having a regularly scheduled annual meeting files its definitive proxy statement and form of proxy with the Commission dated April 1, 2001, but first sends or gives the proxy statement to shareholders on April 15, 2001, as disclosed in its proxy statement, we will refer to the April 15, 2001 date as the release date. The company and shareholders should use April 15, 2001 for purposes of calculating the 120-day deadline in rule 14a-8(e)(2).

**b. How should a company that is planning to have a regularly scheduled annual meeting calculate the deadline for submitting proposals?**

The company should calculate the deadline for submitting proposals as follows:

- start with the release date disclosed in the previous year's proxy statement;
- increase the year by one; and
- count back 120 calendar days.

## **Examples**

**If a company is planning to have a regularly scheduled annual meeting in May of 2003 and the company disclosed that the release date for its 2002 proxy statement was April 14, 2002, how should the company calculate the deadline for submitting rule 14a-8 proposals for the company's 2003 annual meeting?**

- The release date disclosed in the company's 2002 proxy statement was April 14, 2002.
- Increasing the year by one, the day to begin the calculation is April 14, 2003.
- "Day one" for purposes of the calculation is April 13, 2003.
- "Day 120" is December 15, 2002.
- The 120-day deadline for the 2003 annual meeting is December 15, 2002.
- A rule 14a-8 proposal received after December 15, 2002 would be untimely.

**If the 120<sup>th</sup> calendar day before the release date disclosed in the previous year's proxy statement is a Saturday, Sunday or federal holiday, does this change the deadline for receiving rule 14a-8 proposals?**

No. The deadline for receiving rule 14a-8 proposals is always the 120<sup>th</sup> calendar day before the release date disclosed in the previous year's proxy statement. Therefore, if the deadline falls on a Saturday, Sunday or federal holiday, the company must disclose this date in its proxy statement, and rule 14a-8 proposals received after business reopens would be untimely.

### **c. How does a shareholder know where to send his or her proposal?**

The proposal must be received at the company's principal executive offices. Shareholders can find this address in the company's proxy statement. If a shareholder sends a proposal to any other location, even if it is to an agent of the company or to another company location, this would not satisfy the requirement.

### **d. How does a shareholder know if his or her proposal has been received by the deadline?**

A shareholder should submit a proposal by a means that allows him or her to determine when the proposal was received at the company's principal executive offices.

4. **Rule 14a-8(h)(1) requires that the shareholder or his or her qualified representative attend the shareholders' meeting to present the proposal. Rule 14a-8(h)(3) provides that a company may exclude a shareholder's proposals for two calendar years if the company**

**included one of the shareholder’s proposals in its proxy materials for a shareholder meeting, neither the shareholder nor the shareholder’s qualified representative appeared and presented the proposal and the shareholder did not demonstrate “good cause” for failing to attend the meeting or present the proposal. The following questions and answers address issues regarding these provisions.**

**a. Does rule 14a-8 require a shareholder to represent in writing before the meeting that he or she, or a qualified representative, will attend the shareholders’ meeting to present the proposal?**

No. The Commission stated in Release No. 34-20091 that shareholders are no longer required to provide the company with a written statement of intent to appear and present a shareholder proposal. The Commission eliminated this requirement because it “serve[d] little purpose” and only encumbered shareholders. We, therefore, view it as inappropriate for companies to solicit this type of written statement from shareholders for purposes of rule 14a-8. In particular, we note that shareholders who are unfamiliar with the proxy rules may be misled, even unintentionally, into believing that a written statement of intent is required.

**b. What if a shareholder provides an unsolicited, written statement that neither the shareholder nor his or her qualified representative will attend the meeting to present the proposal? May the company exclude the proposal under this circumstance?**

Yes. Rule 14a-8(i)(3) allows companies to exclude proposals that are contrary to the proxy rules, including rule 14a-8(h)(1). If a shareholder voluntarily provides a written statement evidencing his or her intent to act contrary to rule 14a-8(h)(1), rule 14a-8(i)(3) may serve as a basis for the company to exclude the proposal.

**c. If a company demonstrates that it is entitled to exclude a proposal under rule 14a-8(h)(3), can the company request that we issue a no-action response that covers both calendar years?**

Yes. For example, assume that, without “good cause,” neither the shareholder nor the shareholder’s representative attended the company’s 2001 annual meeting to present the shareholder’s proposal, and the shareholder then submits a proposal for inclusion in the company’s 2002 proxy materials. If the company seeks to exclude the 2002 proposal under rule 14a-8(h)(3), it may concurrently request forward-looking relief for any proposal(s) that the shareholder may submit for inclusion in the company’s 2003 proxy materials. If we grant the company’s request and the company receives a proposal from the shareholder in connection with the 2003 annual meeting, the company still has an

obligation under rule 14a-8(j) to notify us and the shareholder of its intention to exclude the shareholder's proposal from its proxy materials for that meeting. Although we will retain that notice in our records, we will not issue a no-action response.

**5. In addition to rule 14a-8(h)(3), are there any other circumstances in which we will grant forward-looking relief to a company under rule 14a-8?**

Yes. Rule 14a-8(i)(4) allows companies to exclude a proposal if it relates to the redress of a personal claim or grievance against the company or any other person or is designed to result in a benefit to the shareholder, or to further a personal interest, that is not shared by the other shareholders at large. In rare circumstances, we may grant forward-looking relief if a company satisfies its burden of demonstrating that the shareholder is abusing rule 14a-8 by continually submitting similar proposals that relate to a particular personal claim or grievance. As in answer C.4.c, above, if we grant this relief, the company still has an obligation under rule 14a-8(j) to notify us and the shareholder of its intention to exclude the shareholder's proposal(s) from its proxy materials. Although we will retain that notice in our records, we will not issue a no-action response.

**6. What must a company do in order to exclude a proposal that fails to comply with the eligibility or procedural requirements of the rule?**

If a shareholder fails to follow the eligibility or procedural requirements of rule 14a-8, the rule provides procedures for the company to follow if it wishes to exclude the proposal. For example, rule 14a-8(f) provides that a company may exclude a proposal from its proxy materials due to eligibility or procedural defects if

- within 14 calendar days of receiving the proposal, it provides the shareholder with written notice of the defect(s), including the time frame for responding; and
- the shareholder fails to respond to this notice within 14 calendar days of receiving the notice of the defect(s) or the shareholder timely responds but does not cure the eligibility or procedural defect(s).

Section G.3 – Eligibility and Procedural Issues, below, contains information that companies may want to consider in drafting these notices. If the shareholder does not timely respond or remedy the defect(s) and the company intends to exclude the proposal, the company still must submit, to us and to the shareholder, a copy of the proposal and its reasons for excluding the proposal.

**a. Should a company's notices of defect(s) give different levels of information to different shareholders depending on the company's perception of the shareholder's sophistication in rule 14a-8?**

No. Companies should not assume that any shareholder is familiar with the proxy rules or give different levels of information to different shareholders based on the fact that the shareholder may or may not be a frequent or “experienced” shareholder proponent.

**b. Should companies instruct shareholders to respond to the notice of defect(s) by a specified date rather than indicating that shareholders have 14 calendar days after receiving the notice to respond?**

No. Rule 14a-8(f) provides that shareholders must respond within 14 calendar days of receiving notice of the alleged eligibility or procedural defect(s). If the company provides a specific date by which the shareholder must submit his or her response, it is possible that the deadline set by the company will be shorter than the 14-day period required by rule 14a-8(f). For example, events could delay the shareholder’s receipt of the notice. As such, if a company sets a specific date for the shareholder to respond and that date does not result in the shareholder having 14 calendar days after receiving the notice to respond, we do not believe that the company may rely on rule 14a-8(f) to exclude the proposal.

**c. Are there any circumstances under which a company does not have to provide the shareholder with a notice of defect(s)? For example, what should the company do if the shareholder indicates that he or she does not own at least \$2,000 in market value, or 1%, of the company’s securities?**

The company does not need to provide the shareholder with a notice of defect(s) if the defect(s) cannot be remedied. In the example provided in the question, because the shareholder cannot remedy this defect after the fact, no notice of the defect would be required. The same would apply, for example, if

- the shareholder indicated that he or she had owned securities entitled to be voted on the proposal for a period of less than one year before submitting the proposal;
- the shareholder indicated that he or she did not own securities entitled to be voted on the proposal at the meeting;
- the shareholder failed to submit a proposal by the company’s properly determined deadline; or

- the shareholder, or his or her qualified representative, failed to attend the meeting or present one of the shareholder's proposals that was included in the company's proxy materials during the past two calendar years.

In all of these circumstances, the company must still submit its reasons regarding exclusion of the proposal to us and the shareholder. The shareholder may, but is not required to, submit a reply to us with a copy to the company.

#### **D. Questions regarding the inclusion of shareholder names in proxy statements.**

- 1. If the shareholder's proposal will appear in the company's proxy statement, is the company required to disclose the shareholder's name?**

No. A company is not required to disclose the identity of a shareholder proponent in its proxy statement. Rather, a company can indicate that it will provide the information to shareholders promptly upon receiving an oral or written request.

- 2. May a shareholder request that the company not disclose his or her name in the proxy statement?**

Yes. However, the company has the discretion not to honor the request. In this regard, if the company chooses to include the shareholder proponent's name in the proxy statement, rule 14a-8(l)(1) requires that the company also include that shareholder proponent's address and the number of the company's voting securities that the shareholder proponent holds.

- 3. If a shareholder includes his or her e-mail address in the proposal or supporting statement, may the company exclude the e-mail address?**

Yes. We view an e-mail address as equivalent to the shareholder proponent's name and address and, under rule 14a-8(l)(1), a company may exclude the shareholder's name and address from the proxy statement.

#### **E. Questions regarding revisions to proposals and supporting statements.**

In this section, we first discuss the purpose for allowing shareholders to revise portions of a proposal and supporting statement. Second, we express our views with regard to revisions that a shareholder makes to his or her proposal before we receive a company's no-action request, as well as during the course of our review of a no-action

request. Finally, we address the circumstances under which our responses may allow shareholders to make revisions to their proposals and supporting statements.

**1. Why do our no-action responses sometimes permit shareholders to make revisions to their proposals and supporting statements?**

There is no provision in rule 14a-8 that allows a shareholder to revise his or her proposal and supporting statement. However, we have a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal. We adopted this practice to deal with proposals that generally comply with the substantive requirements of the rule, but contain some relatively minor defects that are easily corrected. In these circumstances, we believe that the concepts underlying Exchange Act section 14(a) are best served by affording an opportunity to correct these kinds of defects.

Despite the intentions underlying our revisions practice, we spend an increasingly large portion of our time and resources each proxy season responding to no-action requests regarding proposals or supporting statements that have obvious deficiencies in terms of accuracy, clarity or relevance. This is not beneficial to all participants in the process and diverts resources away from analyzing core issues arising under rule 14a-8 that are matters of interest to companies and shareholders alike. Therefore, when a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, we may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading.

**2. If a company has received a timely proposal and the shareholder makes revisions to the proposal before the company submits its no-action request, must the company accept those revisions?**

No, but it *may* accept the shareholder's revisions. If the changes are such that the revised proposal is actually a different proposal from the original, the revised proposal could be subject to exclusion under

- rule 14a-8(c), which provides that a shareholder may submit no more than one proposal to a company for a particular shareholders' meeting; and
- rule 14a-8(e), which imposes a deadline for submitting shareholder proposals.

**3. If the shareholder decides to make revisions to his or her proposal after the company has submitted its no-action request, must the company address those revisions?**

No, but it *may* address the shareholder's revisions. We base our no-action response on the proposal included in the company's no-action request. Therefore, if the company indicates in a letter to us and the shareholder that it acknowledges and accepts the shareholder's changes, we will base our response on the revised proposal. Otherwise, we will base our response on the proposal contained in the company's original no-action request. Again, it is important for shareholders to note that, depending on the nature and timing of the changes, a revised proposal could be subject to exclusion under rule 14a-8(c), rule 14a-8(e), or both.

**4. If the shareholder decides to make revisions to his or her proposal after the company has submitted its no-action request, should the shareholder provide a copy of the revisions to us?**

Yes. All shareholder correspondence relating to the no-action request should be sent to us and the company. However, under rule 14a-8, no-action requests and shareholder responses to those requests are submitted to us. The proposals themselves are not submitted to us. Because proposals are submitted to companies for inclusion in their proxy materials, we will not address revised proposals unless the company chooses to acknowledge the changes.

**5. When do our responses afford shareholders an opportunity to revise their proposals and supporting statements?**

We may, under limited circumstances, permit shareholders to revise their proposals and supporting statements. The following table provides examples of the rule 14a-8 bases under which we typically allow revisions, as well as the types of permissible changes:

Basis	Type of revision that we may permit
Rule 14a-8(i)(1)	When a proposal would be binding on the company if approved by shareholders, we may permit the shareholder to revise the proposal to a recommendation or request that the board of directors take the action specified in the proposal.

Rule 14a-8(i)(2)	If implementing the proposal would require the company to breach existing contractual obligations, we may permit the shareholder to revise the proposal so that it applies only to the company's future contractual obligations.
Rule 14a-8(i)(3)	If the proposal contains specific statements that may be materially false or misleading or irrelevant to the subject matter of the proposal, we may permit the shareholder to revise or delete these statements. Also, if the proposal or supporting statement contains vague terms, we may, in rare circumstances, permit the shareholder to clarify these terms.
Rule 14a-8(i)(6)	Same as rule 14a-8(i)(2), above.
Rule 14a-8(i)(7)	If it is unclear whether the proposal focuses on senior executive compensation or director compensation, as opposed to general employee compensation, we may permit the shareholder to make this clarification.
Rule 14a-8(i)(8)	If implementing the proposal would disqualify directors previously elected from completing their terms on the board or disqualify nominees for directors at the upcoming shareholder meeting, we may permit the shareholder to revise the proposal so that it will not affect the unexpired terms of directors elected to the board at or prior to the upcoming shareholder meeting.
Rule 14a-8(i)(9)	Same as rule 14a-8(i)(8), above.

## F. Other questions that arise under rule 14a-8.

### 1. May a reference to a website address in the proposal or supporting statement be subject to exclusion under the rule?

Yes. In some circumstances, we may concur in a company's view that it may exclude a website address under rule 14a-8(i)(3) because information contained on the website may be materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules. Companies seeking to exclude a website address under rule 14a-8(i)(3) should specifically indicate why they believe information contained on the particular website is materially false or misleading,

irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules.

**2. Rule 14a-8(i)(12) provides a basis for a company to exclude a proposal dealing with substantially the same subject matter as another proposal or proposals that previously has or have been included in the company's proxy materials. How does rule 14a-8(i)(12) operate?**

Rule 14a-8(i)(12) operates as follows:

- a. First, the company should look back three calendar years to see if it previously included a proposal or proposals dealing with substantially the same subject matter. If it has not, rule 14a-8(i)(12) is not available as a basis to exclude a proposal from this year's proxy materials.
- b. If it has, the company should then count the number of times that a proposal or proposals dealing with substantially the same subject matter was or were included over the preceding five calendar years.
- c. Finally, the company should look at the percentage of the shareholder vote that a proposal dealing with substantially the same subject matter received the last time it was included.
  - If the company included a proposal dealing with substantially the same subject matter only once in the preceding five calendar years, the company may exclude a proposal from this year's proxy materials under rule 14a-8(i)(12)(i) if it received less than 3% of the vote the last time that it was voted on.
  - If the company included a proposal or proposals dealing with substantially the same subject matter twice in the preceding five calendar years, the company may exclude a proposal from this year's proxy materials under rule 14a-8(i)(12)(ii) if it received less than 6% of the vote the last time that it was voted on.
  - If the company included a proposal or proposals dealing with substantially the same subject matter three or more times in the preceding five calendar years, the company may exclude a proposal from this year's proxy materials under rule 14a-8(i)(12)(iii) if it received less than 10% of the vote the last time that it was voted on.

**3. Rule 14a-8(i)(12) refers to calendar years. How do we interpret calendar years for this purpose?**

Because a calendar year runs from January 1 through December 31, we do not look at the specific dates of company meetings. Instead, we look at the calendar year in which a meeting was held. For example, a company scheduled a meeting for April 25, 2002. In looking back three calendar years to determine if it previously had included a proposal or proposals dealing with substantially the same subject matter, any meeting held in calendar years 1999, 2000 or 2001 – which would include any meetings held between January 1, 1999 and December 31, 2001 – would be relevant under rule 14a-8(i)(12).

**Examples**

**A company receives a proposal for inclusion in its 2002 proxy materials dealing with substantially the same subject matter as proposals that were voted on at the following shareholder meetings:**

Calendar Year	1997	1998	1999	2000	2001	2002	2003
Voted on?	Yes	No	No	Yes	No	-	-
Percentage	4%	N/A	N/A	4%	N/A	-	-

**May the company exclude the proposal from its 2002 proxy materials in reliance on rule 14a-8(i)(12)?**

Yes. The company would be entitled to exclude the proposal under rule 14a-8(i)(12)(ii). First, calendar year 2000, the last time the company included a proposal dealing with substantially the same subject matter, is within the prescribed three calendar years. Second, the company included proposals dealing with substantially the same subject matter twice within the preceding five calendar years, specifically, in 1997 and 2000. Finally, the proposal received less than 6% of the vote on its last submission to shareholders in 2000. Therefore, rule 14a-8(i)(12)(ii), which permits exclusion when a company has included a proposal or proposals dealing with substantially the same subject matter twice in the preceding five calendar years and that proposal received less than 6% of the shareholder vote the last time it was voted on, would serve as a basis for excluding the proposal.

**If the company excluded the proposal from its 2002 proxy materials and then received an identical proposal for inclusion in its 2003 proxy materials, may the company exclude the proposal from its 2003 proxy materials in reliance on rule 14a-8(i)(12)?**

No. Calendar year 2000, the last time the company included a proposal dealing with substantially the same subject matter, is still within the prescribed three calendar years. However, 2000 was the only time within the preceding five calendar years that the company included a proposal dealing with substantially the same subject matter, and it received more than 3% of the vote at the 2000 meeting. Therefore, the company would not be entitled to exclude the proposal under rule 14a-8(i)(12)(i).

#### **4. How do we count votes under rule 14a-8(i)(12)?**

Only votes for and against a proposal are included in the calculation of the shareholder vote of that proposal. Abstentions and broker non-votes are not included in this calculation.

##### **Example**

**A proposal received the following votes at the company's last annual meeting:**

- **5,000 votes for the proposal;**
- **3,000 votes against the proposal;**
- **1,000 broker non-votes; and**
- **1,000 abstentions.**

**How is the shareholder vote of this proposal calculated for purposes of rule 14a-8(i)(12)?**

This percentage is calculated as follows:

$$\frac{\text{Votes For the Proposal}}{(\text{Votes Against the Proposal} + \text{Votes For the Proposal})} = \text{Voting Percentage}$$

Applying this formula to the facts above, the proposal received 62.5% of the vote.

$$\frac{5,000}{3,000 + 5,000} = .625$$

**G. How can companies and shareholders facilitate our processing of no-action requests or take steps to avoid the submission of no-action requests?**

**Eligibility and Procedural Issues**

1. Before submitting a proposal to a company, a shareholder should look in the company's most recent proxy statement to find the deadline for submitting rule 14a-8 proposals. To avoid exclusion on the basis of untimeliness, a shareholder should submit his or her proposal well in advance of the deadline and by a means that allows the shareholder to demonstrate the date the proposal was received at the company's principal executive offices.
2. A shareholder who intends to submit a written statement from the record holder of the shareholder's securities to verify continuous ownership of the securities should contact the record holder before submitting a proposal to ensure that the record holder will provide the written statement and knows how to provide a written statement that will satisfy the requirements of rule 14a-8(b).
3. Companies should consider the following guidelines when drafting a letter to notify a shareholder of perceived eligibility or procedural defects:
  - provide adequate detail about what the shareholder must do to remedy all eligibility or procedural defects;
  - although not required, consider including a copy of rule 14a-8 with the notice of defect(s);
  - explicitly state that the shareholder must respond to the company's notice within 14 calendar days of receiving the notice of defect(s); and
  - send the notification by a means that allows the company to determine when the shareholder received the letter.
4. Rule 14a-8(f) provides that a shareholder's response to a company's notice of defect(s) must be postmarked, or transmitted electronically, no later than 14 days from the date the shareholder received the notice of defect(s). Therefore, a shareholder should respond to the company's notice of defect(s) by a means that allows the shareholder to demonstrate when he or she responded to the notice.
5. Rather than waiting until the deadline for submitting a no-action request, a company should submit a no-action request as soon as possible after it receives a proposal and determines that it will seek a no-action response.
6. Companies that will be submitting multiple no-action requests should submit their requests individually or in small groups rather than waiting and

sending them all at once. We receive the heaviest volume of no-action requests between December and February of each year. Therefore, we are not able to process no-action requests as quickly during this period. Our experience shows that we often receive 70 to 80 no-action requests a week during our peak period and, at most, we can respond to 30 to 40 requests in any given week. Therefore, companies that wait until December through February to submit all of their requests will have to wait longer for a response.

7. Companies should provide us with all relevant correspondence when submitting the no-action request, including the shareholder proposal, any cover letter that the shareholder provided with the proposal, the shareholder's address and any other correspondence the company has exchanged with the shareholder relating to the proposal. If the company provided the shareholder with notice of a perceived eligibility or procedural defect, the company should include a copy of the notice, documentation demonstrating when the company notified the shareholder, documentation demonstrating when the shareholder received the notice and any shareholder response to the notice.
8. If a shareholder intends to reply to the company's no-action request, he or she should try to send the reply as soon as possible after the company submits its no-action request.
9. Both companies and shareholders should promptly forward to each other copies of all correspondence that is provided to us in connection with no-action requests.
10. Due to the significant volume of no-action requests and phone calls we receive during the proxy season, companies should limit their calls to us regarding the status of their no-action request.
11. Shareholders who write to us to object to a company's statement in opposition to the shareholder's proposal also should provide us with copies of the proposal as it will be printed in the company's proxy statement and the company's proposed statement in opposition.

### **Substantive Issues**

1. When drafting a proposal, shareholders should consider whether the proposal, if approved by shareholders, would be binding on the company. In our experience, we have found that proposals that are binding on the company face a much greater likelihood of being improper under state law and, therefore, excludable under rule 14a-8(i)(1).

2. When drafting a proposal, shareholders should consider what actions are within a company's power or authority. Proposals often request or require action by the company that would violate law or would not be within the power or authority of the company to implement.
3. When drafting a proposal, shareholders should consider whether the proposal would require the company to breach existing contracts. In our experience, we have found that proposals that would result in the company breaching existing contractual obligations face a much greater likelihood of being excludable under rule 14a-8(i)(2), rule 14a-8(i)(6), or both. This is because implementing the proposals may require the company to violate law or may not be within the power or authority of the company to implement.
4. In drafting a proposal and supporting statement, shareholders should avoid making unsupported assertions of fact. To this end, shareholders should provide factual support for statements in the proposal and supporting statement or phrase statements as their opinion where appropriate.
5. Companies should provide a supporting opinion of counsel when the reasons for exclusion are based on matters of state or foreign law. In determining how much weight to afford these opinions, one factor we consider is whether counsel is licensed to practice law in the jurisdiction where the law is at issue. Shareholders who wish to contest a company's reliance on a legal opinion as to matters of state or foreign law should, but are not required to, submit an opinion of counsel supporting their position.

## **H. Conclusion**

Whether or not you are familiar with rule 14a-8, we hope that this bulletin helps you gain a better understanding of the rule, the no-action request process and our views on some issues and questions that commonly arise during our review of no-action requests. While not exhaustive, we believe that the bulletin contains information that will assist both companies and shareholders in ensuring that the rule operates more effectively. Please contact us with any questions that you may have regarding information contained in the bulletin.

**ELECTRONIC CODE OF FEDERAL REGULATIONS****e-CFR data is current as of October 18, 2018**

Title 17 → Chapter II → Part 240 → §240.14a-8

Title 17: Commodity and Securities Exchanges

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

**§240.14a-8 Shareholder proposals.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Need assistance?

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**Subject:** FW: Rule 14a-8 Proposal (ABT)``  
**Attachments:** CCE04112018\_2.pdf

**From:** \*\*\*  
**Sent:** Sunday, November 4, 2018 11:34 AM  
**To:** Paik, Jessica <[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)>  
**Cc:** Teliga, Heather A <[heather.teliga@abbott.com](mailto:heather.teliga@abbott.com)>  
**Subject:** Rule 14a-8 Proposal (ABT)``

Dear Ms. Paik,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,  
John Chevedden

Kenneth Steiner

\*\*\*

Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
Abbott Park IL 60064  
PH: 224-667-6100

REVISED 04 NOV 2018

Dear Mr. Allen,

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

\*\*\*

at:

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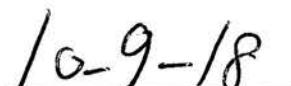
to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

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

  
Date

cc: John A. Berry <John.Berry@abbott.com>  
Jessica Paik <jessica.paik@abbott.com>  
Senior Counsel Securities & Benefits  
Heather Teliga <heather.teliga@abbott.com>  
PH: 224-668-6039  
FX: 224-668-9492

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

**Proposal [4] – Independent Board Chairman**

Shareholders request our Board of Directors to adopt as policy, and amend our governing documents as necessary, to require henceforth that the Chair of the Board of Directors, whenever possible, to be an independent member of the Board. The Board would have the discretion to phase in this policy for the next Chief Executive Officer transition, implemented so it does not violate any existing agreement.

If the Board determines that a Chairman who was independent when selected is no longer independent, the Board shall select a new Chairman who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chairman. This proposal requests that all the necessary steps be taken to accomplish the above.

Caterpillar and Wells Fargo are examples of companies changing course and naming an independent board chairman. Caterpillar had even opposed a shareholder proposal for an independent board chairman at its annual meeting.

Now is a good time to take the first step to transition to an independent board chairman given the following concerns at Abbott:

Criticism over alleged tax evasion through shifting profits into tax havens, Oxfam America Report  
September 2018

PediaSure Vanilla with Fiber – 356,424 cans recalled  
July 2018

Consumer Fraud/Abuse – Consumers seek revival of dismissed lawsuit over organic claims of baby formula,  
New York  
June 2018

Product Concerns – HeartMate 3 Left Ventricular Assist System recall: 4,878 units; malfunction in device's  
outflow graft assembly  
May 2018

Negligent Behavior – Alere \$33 million settlement of false claims act violations related to Triage.  
March 2018

Consumer Fraud/Abuse – Marketing of infant formula  
February 2018

Consumer Fraud/Abuse – Blood glucose tester: proposed class action suit alleging excessive pricing  
January 2018

Consumer Fraud/Abuse – Lawsuit over alleged misleading claims on the Non-GMO label of Similac infant care product, California  
January 2018

Negligent Behavior – lawsuits filed by local governments against alleged illegal distribution of opioid drugs  
December 2017

Product Concerns – Lawsuit filed by Philadelphia Federation of Teachers Health and Welfare Fund over deceptive marketing of opioid benefits  
December 2017

Anti-Competitive Behavior – Vildagliptin/Zomelis: NPPA investigation over alleged price collusion, India  
December 2017

Product Concerns – Architect c4000, c8000 and c16000 Clinical Chemistry Diagnostic System: Recall due to potential leak in tubing connector, Chicago  
November 2017

Product Concerns – Lawsuit filed by ASEA Health Trust over alleged concealment of product defects in cardiac defibrillators  
November 2017

Lawsuit over potential injuries or death due to inaccurate readings from Alere INRatio blood monitoring devices, San Diego  
September 2017

DoJ Investigation into Alere's INRatio product performance due to alleged defects  
September 2017

DoJ Investigation into Alere's suspected Medicare and Medicaid fraud  
September 2017

Adoption of this proposal will cost our company virtually nothing – yet it can contribute to a more effective Board of Directors.

Please vote yes:

**Independent Board Chairman – Proposal [4]**  
[The line above – *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

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**Subject:** FW: Rule 14a-8 Proposal (ABT) blb  
**Attachments:** CCE14112018\_8.pdf

From: \*\*\*  
Sent: Wednesday, November 14, 2018 8:37 PM  
To: Paik, Jessica <jessica.paik@abbott.com>  
Cc: Teliga, Heather A <heather.teliga@abbott.com>  
Subject: Rule 14a-8 Proposal (ABT) blb

Dear Ms. Paik,  
Please see the attached letter.  
Sincerely,  
John Chevedden

Kenneth Steiner

\*\*\*

Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
Abbott Park IL 60064  
PH: 224-667-6100

REVISED 04 NOV 2018

Dear Mr. Allen,

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

\*\*\*

at:

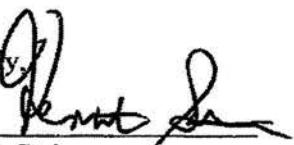
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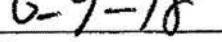
This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly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

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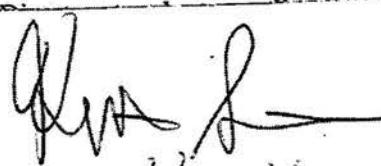
Sincerely,

  
Kenneth Steiner

cc: John A. Berry <John.Berry@abbott.com>  
Jessica Paik <jessica.paik@abbott.com>  
Senior Counsel Securities & Benefits  
Heather Teliga <heather.teliga@abbott.com>  
PH: 224-668-6039  
FX: 224-668-9492

  
Date

Proposal [4] – Independent Board Chairman

  
11-14-18

**Exhibit C**

**Simple Majority Vote Proposal**

**JOHN CHEVEDDEN**

---

\*\*\*

\*\*\*

Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
Abbott Park IL 60064  
PH: 224-667-6100

REVISED 15 NOV 2018

Dear Mr. Allen,

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

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

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

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

\*\*\*

Sincerely,

  
John Chevedden

October 25, 2018  
Date

cc: John A. Berry <John.Berry@abbott.com>  
Jessica Paik <jessica.paik@abbott.com>  
Senior Counsel Securities & Benefits  
Heather Teliga <heather.teliga@abbott.com>  
PH: 224-668-6039  
FX: 224-668-9492

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

**Proposal [4] – Simple Majority Vote**

RESOLVED, Shareholders request that our board take each step necessary so that each 66.67% voting requirement in our charter and/or bylaws that is explicit or implicit (due to default to state law) be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

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

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy’s. The proponents of these proposals included Ray T. Chevedden and William Steiner. The votes would have been higher than 74% to 88% if all shareholders had ready access to independent proxy voting advice.

Currently a 1%-minority can frustrate the will of our 66%-shareholder majority in an election in which 67% of shares cast ballots. In other words a 1%-minority could have the power to prevent shareholders from making an important change. This can be particularly important during periods of management underperformance and/or an economic downturn.

Please vote yes:

**Simple Majority Vote – Proposal [4]**

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

Notes:

John Chevedden,

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sponsored this proposal.

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

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

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

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

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

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

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

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

\*\*\*

**Exhibit D**

**Additional Correspondence Regarding  
Simple Majority Vote Proposal**

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**Subject:** FW: Rule 14a-8 Proposal (ABT)``  
**Attachments:** CCE25102018\_2.pdf

**From:** \*\*\*  
**Sent:** Thursday, October 25, 2018 4:36 PM  
**To:** John A. Berry <[John.Berry@abbott.com](mailto:John.Berry@abbott.com)>  
**Cc:** Paik, Jessica <[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)>; Teliga, Heather A <[heather.teliga@abbott.com](mailto:heather.teliga@abbott.com)>  
**Subject:** Rule 14a-8 Proposal (ABT)``

Dear Mr. Berry,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,  
John Chevedden

**JOHN CHEVEDDEN**

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\*\*\*

\*\*\*

Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
Abbott Park IL 60064  
PH: 224-667-6100

Dear Mr. Allen,

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

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

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

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

Sincerely,

  
John Chevedden

October 25, 2018  
Date

cc: John A. Berry <John.Berry@abbott.com>  
Jessica Paik <jessica.paik@abbott.com>  
Senior Counsel Securities & Benefits  
Heather Teliga <heather.teliga@abbott.com>  
PH: 224-668-6039  
FX: 224-668-9492

[ABT: Rule 14a-8 Proposal, October 24, 2018]  
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Simple Majority Vote**

RESOLVED, Shareholders request that our board take each step necessary so that each 66.67% voting requirement in our charter and/or bylaws that is implicit due to default to state law be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

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Please vote yes:

**Simple Majority Vote – Proposal [4]**  
[The above line – *Is* for publication.]

John Chevedden,  
proposal.

\*\*\*

sponsors this

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

\*\*\*

---

**From:** Paik, Jessica <jessica.paik@abbott.com>  
**Sent:** Thursday, November 01, 2018 3:10 PM  
\*\*\*  
**To:** Teliga, Heather A  
**Cc:**  
**Subject:** RE: Rule 14a-8 Proposal (ABT)``  
**Attachments:** Rule 14a-8.pdf; Slb 14G.PDF; SLB 14F.PDF; 14I.PDF; Simple Majority Vote - Acknowledgment Letter 11-1-18.pdf

Dear Mr. Chevedden,

Please find attached a letter acknowledging Abbott's receipt of the Simple Majority Vote shareholder proposal. The attachments referenced in the letter are also attached. The original letter and hard copies of the attachments are being sent to your attention via Federal Express.

Kind regards,  
Jessica Paik



**Jessica Paik**  
Divisional Vice President and  
Associate General Counsel  
Securities and Benefits

Abbott  
100 Abbott Park Road  
Dept. 32L/Bldg. AP6A-2  
Abbott Park, IL 60064-6092

O: +1 224-667-5550  
F: +1 224-668-9492  
M: +1 224-330-7923  
[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)

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This communication may contain information that is proprietary, confidential, or exempt from disclosure. If you are not the intended recipient, please note that any other dissemination, distribution, use or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

---

**From:** \*\*\*  
**Sent:** Thursday, October 25, 2018 4:36 PM  
**To:** John A. Berry <John.Berry@abbott.com>  
**Cc:** Paik, Jessica <jessica.paik@abbott.com>; Teliga, Heather A <heather.teliga@abbott.com>  
**Subject:** Rule 14a-8 Proposal (ABT)``

Dear Mr. Berry,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,  
John Chevedden



Abbott Laboratories  
Dept. 032L, Bldg. AP6A-2  
100 Abbott Park Road  
Abbott Park, IL 60064-6092

Tel: (224) 667-5550  
Fax: (224) 668-9492  
[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)

**Abbott**

November 1, 2018

Via Federal Express and Email

Mr. John Chevedden

\*\*\*

Dear Mr. Chevedden:

This letter acknowledges receipt of the shareholder proposal you submitted to Abbott on October 25, 2018. Our 2019 Annual Meeting of Shareholders (the “2019 Annual Meeting”) is currently scheduled to be held on Friday, April 26, 2019.

Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”) requires that a proponent submit verification of stock ownership. We await a proof of ownership letter verifying that you have continuously owned at least \$2,000 in market value, or 1%, of Abbott’s securities entitled to be voted on the proposal at Abbott’s annual meeting for at least one year preceding and including the date that you submitted your proposal. Because you are not listed on Abbott’s share register as a registered owner of Abbott common shares, we are unable to confirm whether you have met these requirements.

If you are an unregistered (or beneficial) owner, pursuant to Exchange Act Rule 14a-8(b)(2), you must provide a written statement from the record holder of the shares, verifying that you have owned the required amount of Abbott common shares continuously for at least one year preceding and including October 25, 2018 – the date on which you submitted your proposal as determined in accordance with the Securities and Exchange Commission (“SEC”) Staff Legal Bulletin No. 14G (“SLB 14G”).

Please be aware that in accordance with the SEC’s Staff Legal Bulletin No. 14F (“SLB 14F”) and SLB 14G, when the shareholder is a beneficial owner of securities, an ownership verification statement must come from a DTC participant or its affiliate. The Depository Trust Company (DTC a/k/a Cede & Co.) is a registered clearing agency that acts as a securities depository. You can confirm whether your broker or bank is a DTC participant by asking them, or by checking DTC’s participant list, which is available at <http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx>. If your bank or broker is not a DTC participant, you may need to satisfy the proof of ownership requirements by obtaining multiple statements, for example (1) one from your bank or broker confirming its ownership and (2) another from the DTC participant confirming the bank or broker’s ownership.

To the extent that the Abbott common shares identified in the proof of ownership are not directly held in your name (i.e., such as shares held in a trust or by an affiliated entity), please provide written evidence of (1) your authority to act on behalf of the shareholder named in the proof of ownership with respect to such shares as of October 25, 2018, including with respect to submitting the proposal, and (2) such shareholder intention to hold the required amount of shares through the 2019 Annual Meeting date. Any such written evidence should be signed and dated by the shareholder named in the proof of ownership. See the SEC’s Staff Legal Bulletin No. 14I (“SLB 14I”).

If you do not provide the proof of ownership as described in this letter, Abbott intends to seek omission of the proposal that you submitted to Abbott on October 25, 2018 from Abbott's proxy materials for the 2019 Annual Meeting in accordance with SEC rules.

In addition, Abbott believes that you have submitted more than one shareholder proposal for consideration at its 2019 Annual Meeting. Under Rule 14a-8(c), a shareholder may submit no more than one proposal for inclusion in a company's proxy materials for a particular meeting. In addition to submitting your proposal entitled "Simple Majority Vote" on October 25, 2018 (the "Second Proposal"), you also submitted a proposal entitled "Independent Board Chairman" on October 18, 2018 (the "First Proposal"). While the First Proposal purports to come from Kenneth Steiner, Abbott believes that you, collectively with Kenneth Steiner, are the proponent of the First Proposal and have submitted more than one proposal. Pursuant to Rule 14a-8 please advise Abbott which of these two proposals you wish to withdraw. If you do not timely advise Abbott which of these proposals you wish to withdraw, Abbott intends to seek omission of both the First Proposal and the Second Proposal from Abbott's proxy materials for the 2019 Annual Meeting in accordance with SEC rules.

Rule 14a-8 requires that any response to this letter, including the proof of ownership and the indication of which proposal you wish to withdraw, be postmarked or transmitted electronically no later than 14 calendar days from the day you receive this letter. Please address any response to my attention at the above address, email address or facsimile number.

Abbott has not yet reviewed the First Proposal or the Second Proposal to determine if they comply with the requirements for shareholder proposals found in Rules 14a-8 and 14a-9 under the Securities Exchange Act of 1934, other than as set forth herein and in the letter dated October 24, 2018 with respect to the First Proposal. Abbott reserves the right to take appropriate action to the extent that either the First Proposal or the Second Proposal does not comply with such rules.

For your convenience, we have enclosed copies of Rule 14a-8, SLB 14F, SLB 14G and SLB 14I.

Sincerely,



Jessica H. Paik  
Divisional Vice President,  
Assistant General Counsel and  
Assistant Secretary

Cc: Kenneth Steiner

**ELECTRONIC CODE OF FEDERAL REGULATIONS****e-CFR data is current as of October 18, 2018**

Title 17 → Chapter II → Part 240 → §240.14a-8

Title 17: Commodity and Securities Exchanges

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

**§240.14a-8 Shareholder proposals.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Need assistance?



## U.S. Securities and Exchange Commission

### 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](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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

**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.<sup>4</sup> 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.<sup>5</sup>

**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.<sup>6</sup> 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<sup>7</sup> 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,<sup>8</sup> 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.<sup>9</sup>

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).<sup>10</sup> 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]."<sup>11</sup>

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).<sup>12</sup> 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.<sup>13</sup>

##### **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,<sup>14</sup> 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.<sup>15</sup>

**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.<sup>16</sup>

**F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents**

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission’s website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission’s website copies of this correspondence at the same time that we post our staff no-action response.

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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> 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.”).

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

<sup>6</sup> See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] (“Net Capital Rule Release”), at Section II.C.

<sup>7</sup> 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.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> See, e.g., Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

<sup>15</sup> 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.

<sup>16</sup> Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

<http://www.sec.gov/interp/legal/cfslb14f.htm>



## U.S. Securities and Exchange Commission

### Division of Corporation Finance Securities and Exchange Commission

#### Shareholder Proposals

##### Staff Legal Bulletin No. 14G (CF)

**Action:** Publication of CF Staff Legal Bulletin

**Date:** October 16, 2012

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

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

**Contacts:** For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at [https://www.sec.gov/forms/corp\\_fin\\_interpretive](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.<sup>1</sup> 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.<sup>2</sup> If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

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

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

date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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

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

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

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

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

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

website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.<sup>3</sup>

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.<sup>4</sup>

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

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

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

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

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

operational at, or prior to, the time the company files its definitive proxy materials.

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

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

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<sup>1</sup> 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.

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

<sup>3</sup> 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.

<sup>4</sup> 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/legal/cfslb14g.htm>*



## U.S. Securities and Exchange Commission

### Division of Corporation Finance Securities and Exchange Commission

#### Shareholder Proposals

##### Staff Legal Bulletin No. 14I (CF)

**Action:** Publication of CF Staff Legal Bulletin

**Date:** November 1, 2017

**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 submitting a web-based request form at [https://www.sec.gov/forms/corp\\_fin\\_interpretive](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 about the Division’s views on:

- the scope and application of Rule 14a-8(i)(7);
- the scope and application of Rule 14a-8(i)(5);
- proposals submitted on behalf of shareholders; and
- the use of graphs and images consistent with Rule 14a-8(d).

You can find additional guidance about 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](#), [SLB No. 14F](#), [SLB No. 14G](#) and [SLB No. 14H](#).

#### B. Rule 14a-8(i)(7)

##### 1. Background

Rule 14a-8(i)(7), the “ordinary business” exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations.” The purpose of the

exception is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”<sup>[1]</sup>

## **2. The Division’s application of Rule 14a-8(i)(7)**

The Commission has stated that the policy underlying the “ordinary business” exception rests on two central considerations.<sup>[2]</sup> The first relates to the proposal’s subject matter; the second, the degree to which the proposal “micromanages” the company. Under the first consideration, proposals that raise matters that are “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight” may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote.<sup>[3]</sup> Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.<sup>[4]</sup>

At issue in many Rule 14a-8(i)(7) no-action requests is whether a proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant. These determinations often raise difficult judgment calls that the Division believes are in the first instance matters that the board of directors is generally in a better position to determine. A board of directors, acting as steward with fiduciary duties to a company’s shareholders, generally has significant duties of loyalty and care in overseeing management and the strategic direction of the company. A board acting in this capacity and with the knowledge of the company’s business and the implications for a particular proposal on that company’s business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.

Accordingly, going forward, we would expect a company’s no-action request to include a discussion that reflects the board’s analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned. We believe that a well-developed discussion of the board’s analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7).

## **C. Rule 14a-8(i)(5)**

### **1. Background**

Rule 14a-8(i)(5), the “economic relevance” exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “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.”

## **2. History of Rule 14a-8(i)(5)**

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that “deals with a matter that is not significantly related to the issuer’s business.” In proposing changes to that version of the rule in 1982, the Commission noted that the staff’s practice had been to agree with exclusion of proposals that bore no economic relationship to a company’s business, but that “where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer’s business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal.”<sup>[5]</sup> The Commission stated that this interpretation of the rule may have “unduly limit[ed] the exclusion,” and proposed adopting the economic tests that appear in the rule today.<sup>[6]</sup> In adopting the rule, the Commission characterized it as relating “to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders’ rights, e.g., cumulative voting.”<sup>[7]</sup>

Shortly after the 1983 amendments, however, the District Court for the District of Columbia in *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985) preliminarily enjoined a company from excluding a proposal regarding sales of a product line that represented only 0.05% of assets, \$79,000 in sales and a net loss of (\$3,121), compared to the company’s total assets of \$78 million, annual revenues of \$141 million and net earnings of \$6 million. The court based its decision to grant the injunction “in light of the ethical and social significance” of the proposal and on “the fact that it implicates significant levels of sales.” Since that time, the Division has interpreted *Lovenheim* in a manner that has significantly narrowed the scope of Rule 14a-8(i)(5).

## **3. The Division’s application of Rule 14a-8(i)(5)**

Over the years, the Division has only infrequently agreed with exclusion under the “economic relevance” exception. Under its historical application, the Division has not agreed with exclusion under Rule 14a-8(i)(5), even where a proposal has related to operations that accounted for less than 5% of total assets, net earnings and gross sales, where the company conducted business, no matter how small, related to the issue raised in the proposal. The Division’s analysis has not focused on a proposal’s significance to the company’s business. As a result, the Division’s analysis has been similar to its analysis prior to 1983, with which the Commission expressed concern.

That analysis simply considered whether a company conducted any amount of business related to the issue in the proposal and whether that issue was of broad social or ethical concern. We believe the Division’s application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal “deals with a matter that is not significantly related to the issuer’s business” and is therefore excludable. Accordingly, going forward, the Division’s analysis will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application

and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business.

Because the test only allows exclusion when the matter is not "otherwise significantly related to the company," we view the analysis as dependent upon the particular circumstances of the company to which the proposal is submitted. That is, a matter significant to one company may not be significant to another. On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.

Where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is "otherwise significantly related to the company's business."<sup>[8]</sup> For example, the proponent can provide information demonstrating that the proposal "may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities."<sup>[9]</sup> The proponent could continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company's business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the "total mix" of information about the issuer.

As with the "ordinary business" exception in Rule 14a-8(i)(7), determining whether a proposal is "otherwise significantly related to the company's business" can raise difficult judgment calls. Similarly, we believe that the board of directors is generally in a better position to determine these matters in the first instance. A board acting with the knowledge of the company's business and the implications for a particular proposal on that company's business is better situated than the staff to determine whether a particular proposal is "otherwise significantly related to the company's business." Accordingly, we would expect a company's Rule 14a-8(i)(5) no-action request to include a discussion that reflects the board's analysis of the proposal's significance to the company. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.

In addition, the Division's analysis of whether a proposal is "otherwise significantly related" under Rule 14a-8(i)(5) has historically been informed by its analysis under the "ordinary business" exception, Rule 14a-8(i)(7). As a result, the availability or unavailability of Rule 14a-8(i)(7) has been largely determinative of the availability or unavailability of Rule 14a-8(i)(5). Going forward, the Division will no longer look to its analysis under Rule 14a-8(i)(7) when evaluating arguments under Rule 14a-8(i)(5). In our view, applying separate analytical frameworks will ensure that each basis for exclusion serves its intended purpose.

We believe the approach going forward is more appropriately rooted in the intended purpose and language of Rule 14a-8(i)(5), and better helps companies, proponents and the staff determine whether a proposal is "otherwise significantly related to the company's business."

#### **D. Proposals submitted on behalf of shareholders**

While Rule 14a-8 does not address shareholders' ability to submit proposals through a representative, shareholders frequently elect to do so, a practice commonly referred to as "proposal by proxy." The Division has been, and

continues to be, of the view that a shareholder's submission by proxy is consistent with Rule 14a-8.[\[10\]](#)

The Division is nevertheless mindful of challenges and concerns that proposals by proxy may present. For example, there may be questions about whether the eligibility requirements of Rule 14a-8(b) have been satisfied. There have also been concerns raised that shareholders may not know that proposals are being submitted on their behalf. In light of these challenges and concerns, and to help the staff and companies better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied, going forward, the staff will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder's delegation of authority to the proxy.[\[11\]](#) In general, we would expect this 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 this documentation will help alleviate concerns about proposals by proxy, and will also help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal's submission by proxy. Where this information is not provided, there may be a basis to exclude the proposal under Rule 14a-8(b).[\[12\]](#)

## **E. Rule 14a-8(d)**

### **1. Background**

Rule 14a-8(d) is one of the procedural bases for exclusion of a shareholder proposal in Rule 14a-8. It provides that a "proposal, including any accompanying supporting statement, may not exceed 500 words."

### **2. The use of images in shareholder proposals**

Questions have recently arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.[\[13\]](#) In two recent no-action decisions,[\[14\]](#) the Division expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.[\[15\]](#) Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.[\[16\]](#)

The Division recognizes the potential for abuse in this area. The Division believes, however, that these potential abuses can be addressed through other provisions of Rule 14a-8. For example, exclusion of graphs and/or images would be appropriate under Rule 14a-8(i)(3) where they:

- make the proposal materially false or misleading;
- render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
- directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
- are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.<sup>[17]</sup>

Exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphics, exceeds 500.

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<sup>[1]</sup> Release No. 34-40018 (May 21, 1998).

<sup>[2]</sup> *Id.*

<sup>[3]</sup> *Id.*

<sup>[4]</sup> See Staff Legal Bulletin No. 14H (Oct. 22, 2015), *citing* Staff Legal Bulletin No. 14E (Oct. 27, 2009) (stating that a proposal generally will not be excludable “as long as a sufficient nexus exists between the nature of the proposal and the company”).

<sup>[5]</sup> Release No. 34-19135 (Oct. 14, 1982).

<sup>[6]</sup> *Id.*

<sup>[7]</sup> Release No. 34-20091 (Aug. 16, 1983).

<sup>[8]</sup> Proponents bear the burden of demonstrating that a proposal is “otherwise significantly related to the company’s business.” See Release No. 34-39093 (Sep. 18, 1997), *citing* Release No. 34-19135.

<sup>[9]</sup> Release No. 34-19135.

<sup>[10]</sup> We view a shareholder’s ability to submit a proposal by proxy as largely a function of state agency law provided it is consistent with Rule 14a-8.

<sup>[11]</sup> This guidance applies only to proposals submitted by proxy after the date on which this staff legal bulletin is published.

<sup>[12]</sup> Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder’s failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. See Rule 14a-8(f)(1).

[\[13\]](#) Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. See Release No. 34-12999 (Nov. 22, 1976).

[\[14\]](#) *General Electric Co.* (Feb. 3, 2017, recon. granted Feb. 23, 2017); *General Electric Co.* (Feb. 23, 2016).

[\[15\]](#) These decisions were consistent with a longstanding Division position. See *Ferrofluidics Corp.* (Sep. 18, 1992).

[\[16\]](#) Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

[\[17\]](#) See *General Electric Co.* (Feb. 23, 2017).

<http://www.sec.gov/interp/legal/cfslb14i.htm>

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**Subject:** FW: Unsupported interpretation ABT)

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**From:** \*\*\*

**Sent:** Sunday, November 4, 2018 1:32 PM

**To:** Paik, Jessica <[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)>

**Cc:** Teliga, Heather A <[heather.teliga@abbott.com](mailto:heather.teliga@abbott.com)>

**Subject:** Unsupported interpretation ABT)

Dear Ms. Paik,

In regard to part of the company November 1. 2018 letter, Mr. Steiner and I submitted separate proposals based on our separate holdings of company stock.

Please advise whether the company has a precedent in regard to its unsupported interpretation.

Sincerely,

John Chevedden

cc: Kenneth Steiner

---

**Subject:** FW: Rule 14a-8 Proposal (ABT) blb  
**Attachments:** CCE12112018\_4.pdf

From: \*\*\*  
Sent: Monday, November 12, 2018 3:56 PM  
To: Paik, Jessica <jessica.paik@abbott.com>  
Cc: Teliga, Heather A <heather.teliga@abbott.com>  
Subject: Rule 14a-8 Proposal (ABT) blb

Dear Ms. Paik,  
Please see the attached letter.  
Sincerely,  
John Chevedden

**Personal Investing**

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



November 12, 2018

**John R Chevedden**

\*\*\*

**To Whom It May Concern:**

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

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

<b>Security Name</b>	<b>CUSIP</b>	<b>Symbol</b>	<b>Share Quantity</b>
Abbott Laboratories	002824100	ABT	50
AT&T	00206R102	T	100
Timken Co	887389104	TKR	100
AutoNation Inc.	05329W102	AN	250
PPG Industries Inc.	693506107	PPG	100

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Stormy Delehaney".

Stormy Delehaney  
Personal Investing Operations

Our File: W077564-09NOV18

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**Subject:** FW: Rule 14a-8 Proposal (ABT)``  
**Attachments:** CCE15112018\_4.pdf

**From:** \*\*\*  
**Sent:** Thursday, November 15, 2018 11:05 AM  
**To:** Paik, Jessica <[jessica.paik@abbott.com](mailto:jessica.paik@abbott.com)>  
**Cc:** Teliga, Heather A <[heather.teliga@abbott.com](mailto:heather.teliga@abbott.com)>  
**Subject:** Rule 14a-8 Proposal (ABT)``

Dear Ms. Paik,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,  
John Chevedden

**JOHN CHEVEDDEN**

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Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
Abbott Park IL 60064  
PH: 224-667-6100

REVISED 15 NOV 2018

Dear Mr. Allen,

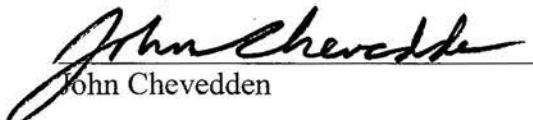
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

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

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

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

Sincerely,

  
John Chevedden

October 25, 2018  
Date

cc: John A. Berry <John.Berry@abbott.com>  
Jessica Paik <jessica.paik@abbott.com>  
Senior Counsel Securities & Benefits  
Heather Teliga <heather.teliga@abbott.com>  
PH: 224-668-6039  
FX: 224-668-9492

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

**Proposal [4] – Simple Majority Vote**

RESOLVED, Shareholders request that our board take each step necessary so that each 66.67% voting requirement in our charter and/or bylaws that is explicit or implicit (due to default to state law) be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

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

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy’s. The proponents of these proposals included Ray T. Chevedden and William Steiner. The votes would have been higher than 74% to 88% if all shareholders had ready access to independent proxy voting advice.

Currently a 1%-minority can frustrate the will of our 66%-shareholder majority in an election in which 67% of shares cast ballots. In other words a 1%-minority could have the power to prevent shareholders from making an important change. This can be particularly important during periods of management underperformance and/or an economic downturn.

Please vote yes:

**Simple Majority Vote – Proposal [4]**

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

Notes:

John Chevedden,

\*\*\*

sponsored this proposal.

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

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

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

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

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

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

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

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

\*\*\*

**Exhibit E**

**Illinois Business Corporation Act Provisions**

### **Sec. 2.10(b). Articles of Incorporation**

- (b) The articles of incorporation may set forth:
- (1) the names and addresses of the individuals who are to serve as the initial directors;
  - (2) provisions not inconsistent with law with respect to:
    - (i) managing the business and regulating the affairs of the corporation;
    - (ii) defining, limiting, and regulating the rights, powers and duties of the corporation, its officers, directors and shareholders;
    - (iii) authorizing and limiting the preemptive right of a shareholder to acquire shares, whether then or thereafter authorized;
    - (iv) an estimate, expressed in dollars, of the value of all the property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property to be located within this State during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by it during such year and an estimate of the gross amount thereof which will be transacted by it at or from places of business in this State during such year; or
    - (v) superseding any provision of this Act that requires for approval of corporate action a two-thirds vote of the shareholders by specifying any smaller or larger vote requirement not less than a majority of the outstanding shares entitled to vote on the matter and not less than a majority of the outstanding shares of each class of shares entitled to vote as a class on the matter.
  - (3) a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 8.65 of this Act, or (iv) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring before the date when the provision becomes effective.
  - (4) any provision that under this Act is required or permitted to be set forth in the articles of incorporation or by-laws.

(Source: P.A. 92-33, eff. 7-1-01; 93-59, eff. 7-1-03.)

### **Sec. 7.60. Quorum of Shareholders**

Unless otherwise provided in the articles of incorporation, a majority of votes of the shares, entitled to vote on a matter, represented in person or by proxy, shall constitute a quorum for consideration of such matter at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the votes of the shares entitled so to vote. If a quorum is present, the affirmative vote of the majority of the votes of the shares represented at the meeting and entitled to vote on a matter shall be the act of the shareholders, unless a greater number of votes or voting by classes is required by this Act or the articles of incorporation. The articles of incorporation may require any number or percent greater than a majority of votes up to and including a requirement of unanimity to constitute a quorum.

(Source: P.A. 89-48, eff. 6-23-95.)

### **Sec. 7.85. Vote Required for Certain Business Combinations (Fair Price)**

A. This Section shall apply to any domestic corporation that (i) has any equity securities registered under Section 12 of the Securities Exchange Act of 1934 or is subject to Section 15(d) of that Act (a “reporting company”) and (ii) any domestic corporation other than one described in (i) that either specifically adopts this Section 7.85 in its original articles of incorporation or amends its articles of incorporation to specifically adopt this Section 7.85, however, the restrictions contained in this Section shall not apply in the event of any of the following:

(1) In case of a reporting company, the corporation’s articles of incorporation immediately prior to the time it becomes a reporting company contains a provision expressly electing not to be governed by this Section.

(2) The corporation, by action of its board of directors, adopts an amendment to its by-laws within 90 days after the effective date of this amendatory Act of 1997 expressly electing not to be governed by this Section, which amendment shall not be further amended by the board of directors.

(3) In the case of a reporting company, the corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or by-laws expressly electing not to be governed by this Section, provided that, in addition to any other vote required by law, such amendment to the articles of incorporation or by-laws must be approved by the affirmative vote of a majority of the voting shares (as defined in paragraph B of this Section 7.85). An amendment adopted under this paragraph shall not be effective until 12 months after the adoption of the amendment and shall not apply to a business combination between the corporation and a person who became an interested shareholder of the corporation at the same time as or before the adoption of the amendment. A by-law amendment adopted under this paragraph shall not be further amended by the board of directors.

(4) A shareholder becomes an interested shareholder inadvertently and (i) as soon as practical divests sufficient shares so that the shareholder ceases to be an interested shareholder and (ii) would not, at any time within the 3 year period immediately before a business combination between the corporation and the shareholder, have been an interested shareholder but for the inadvertent acquisition.

In the case of circumstances described in subparagraphs (1), (2), and (3) of this paragraph A, the election not to be governed may be in whole or in part, generally, or generally by types, or as to specifically identified or unidentified interested shareholders.

B. Higher vote for certain business combinations. In addition to any affirmative vote required by law or the articles of incorporation, except as otherwise expressly provided in paragraph C of this Section 7.85, any business combination shall require (i) the affirmative vote of the holders of at least 80% of the combined voting power of the then outstanding shares of all classes and series of the corporation entitled to vote generally in the election of directors, voting together as a single class (the “voting shares”) (it being understood that, for the purposes of this Section 7.85, each voting share shall have the number of votes granted to it pursuant to the corporation’s articles of incorporation) and (ii) the affirmative vote of a majority of the voting shares held by disinterested shareholders.

C. When higher vote is not required. The provisions of paragraph B of this Section 7.85 shall not be applicable to any particular business combination, and such business combination shall require only such affirmative vote as is required by law and any other provision of the corporation’s article of incorporation and any resolutions of the board of directors adopted

pursuant to Section 6.10 if all of the conditions specified in either of the following subparagraphs (1) and (2) of this paragraph C are met:

(1) Approval by disinterested directors. The business combination shall have been approved by two-thirds of the disinterested directors (as hereinafter defined).

(2) Price and procedure requirements. All of the following conditions shall have been met:

(a) The business combination shall provide for consideration to be received by all holders of common shares in exchange for all their shares, and the aggregate amount of the cash and the fair market value as of the date of consummation of the business combination of consideration other than cash to be received per share by holders of common shares in such business combination shall be at least equal to the higher of the following:

(i) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the interested shareholder or any affiliate or associate of the interested shareholder to acquire any common shares beneficially owned by the interested shareholder which were acquired (a) within the two year period immediately prior to the first public announcement of the proposal of the business combination (the "announcement date") or (b) in the transaction in which it became an interested shareholder, whichever is higher; and

(ii) the fair market value per common share on the first trading date after the announcement date or on the first trading date after the date of the first public announcement that the interested shareholder became an interested shareholder (the "Determination Date"), whichever is higher.

(b) The business combination shall provide for consideration to be received by all holders of outstanding shares other than common shares in exchange for all such shares, and the aggregate amount of the cash and the fair market value as of the date of the consummation of the business combination of consideration other than cash to be received per share by holders of outstanding shares other than common shares shall be at least equal to the highest of the following (it being intended that the requirements of this subparagraph (2)(b) shall be required to be met with respect to every class and series of outstanding shares other than common shares whether or not the interested shareholder or any affiliate or associate of the interested shareholder has previously acquired any shares of a particular class or series):

(i) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the interested shareholder or any affiliate or associate of the interested shareholder to acquire any shares of such class or series beneficially owned by the interested shareholder which were acquired (a) within the 2-year period immediately prior to the announcement date or (b) in the transaction in which it became an interested shareholder, whichever is higher;

(ii) (if applicable) the highest preferential amount per share to which the holders of shares of such class or series are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation;

(iii) the fair market value per share of such class or series on the first trading date after the announcement date or on the determination date, whichever is higher; and

(iv) an amount equal to the fair market value per share of such class or series determined pursuant to clause (iii) times the highest value obtained in calculating the following quotient for each class or series of which the interested shareholder has acquired shares within the 2-year period ending on the announcement date: (x) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the interested

shareholder or any affiliate or associate of the interested Shareholder for any shares of such class or series acquired within such 2-year period divided by (y) the market value per share of such class or series on the first day in such 2-year period on which the interested shareholder or any affiliate or associate of the interested shareholder acquired any shares of such class or series.

(c) The consideration to be received by holders of a particular class or series of outstanding shares shall be in cash or in the same form as the interested shareholder or any affiliate or associate of the interested shareholder has previously paid to acquire shares of such class or series beneficially owned by the interested shareholder. If the interested shareholder and any affiliates or associates of the interested shareholder have paid for shares of any class or series with varying forms of consideration, the form of consideration for such class or series shall be either cash or the form used to acquire the largest number of shares of such class or series beneficially owned by the interested shareholder.

(d) After such interested shareholder has become an interested shareholder and prior to the consummation of such business combination: (1) except as approved by two-thirds of the disinterested directors, there shall have been no failure to declare and pay at the regular date therefor any full periodic dividends (whether or not cumulative) on any outstanding shares of the corporation other than the common shares; (2) there shall have been (a) no reduction in the annual rate of dividends paid on the common shares (except as necessary to reflect any subdivision of the common shares), except as approved by two-thirds of the disinterested directors, and (b) an increase in such annual rate of dividends (as necessary to prevent any such reduction) in the event of any reclassification (including any reverse share split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding common shares; and (3) such interested shareholder shall not have become the beneficial owner of any additional Voting Shares except as part of the transaction which results in such interested shareholder becoming an interested shareholder or as a result of action taken by the corporation not caused, directly or indirectly, by such interested shareholder.

(e) After such interested shareholder has become an interested shareholder, such interested shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the corporation or any Subsidiary, whether in anticipation of or in connection with such business combination or otherwise.

(f) A proxy or information statement describing the proposed business combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to public shareholders of the corporation at least 30 days prior to the consummation of such business combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

D. Certain definitions. For the purposes of this Section 7.85:

- (1) "Person" means an individual, firm, corporation, partnership, trust or other entity.
- (2) "Interested shareholder" means (i) a person (other than the corporation and a direct or indirect majority-owned subsidiary of the corporation) that (a) is the owner of 15% or more of the outstanding voting shares of the corporation or (b) is an affiliate or associate of the corporation and was the owner of 15% or more of the outstanding voting shares of the corporation at any time within the 3 year period immediately before the date on which it is sought to be determined whether the person is an interested shareholder and (ii) the affiliates and associates of that person, provided, however, that the term "interested shareholder" shall not

include (x) a person who (A) owned shares in excess of the 15% limitation as of January 1, 1997 and either (I) continued to own shares in excess of the 15% limitation or would have but for action by the corporation or (II) is an affiliate or associate of the corporation and so continued (or so would have continued but for action by the corporation) to be the owner of 15% or more of the outstanding voting shares of the corporation at any time within the 3-year period immediately prior to the date on which it is sought to be determined whether such a person is an interested shareholder or (B) acquired the shares from a person described in clause (A) by gift, inheritance, or in a transaction in which no consideration was exchanged or (y) a person whose ownership of shares in excess of the 15% limitation is the result of action taken solely by the corporation, provided that the person shall be an interested shareholder if thereafter the person acquires additional shares of the corporation, except as a result of further corporate action not caused, directly or indirectly, by the person or if the person acquires additional shares in transactions approved by the board of directors, which approval shall include a majority of the disinterested directors. For the purpose of determining whether a person is an interested shareholder, the voting shares of the corporation deemed to be outstanding shall include shares deemed to be owned by the person through application of subparagraph (3) of this paragraph, but shall not include any other unissued shares of the corporation that may be issuable pursuant to any agreement, arrangement, or understanding, upon exercise of conversion rights, warrants, or options, or otherwise.

(3) “Owner”, including the terms “own” and “owned”, when used with respect to shares means a person that individually or with or through any of its affiliates or associates:

(a) beneficially owns the shares, directly or indirectly; or

(b) has (i) the right to acquire the shares (whether the right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement, or understanding, upon exercise of conversion rights, exchange rights, warrants, or options, or otherwise; provided, however, that a person shall not be deemed the owner of shares tendered pursuant to a tender or exchange offer made by the person or any of the person’s affiliates or associates until the tendered shares are accepted for purchase or exchange or (ii) the right to vote the shares pursuant to an agreement, arrangement, or understanding; provided, however, that a person shall not be deemed the owner of any shares because of the person’s right to vote the shares if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

(c) has an agreement, arrangement, or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in clause (ii) of item (b) of this subparagraph), or disposing of the shares with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

(4) “Affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person.

(5) “Associate”, when used to indicate a relationship with a person, means (i) a corporation, partnership, unincorporated association, or other entity of which the person is a director, officer, or partner or is, directly or indirectly, the owner of 20% or more of a class of voting shares, (ii) a trust or other estate in which the person has at least a 20% beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity, and (iii) a relative or spouse of the person, or a relative of that spouse who has the same residence as the person.

(6) "Subsidiary" means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the corporation; provided, however, that for the purposes of the definition of interested shareholder set forth in subparagraph (2) of this paragraph D, the term "subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the corporation.

(7) "Disinterested director" means any member of the board of directors of the corporation who: (a) is neither the interested shareholder nor an affiliate or associate of the interested shareholder; (b) was a member of the board of directors prior to the time that the interested shareholder became an interested shareholder or was a director of the corporation before January 1, 1997, or was recommended to succeed a disinterested director by a majority of the disinterested directors then in office; and (c) was not nominated for election as a director by the interested shareholder or any affiliate or associate of the interested shareholder.

(8) "Fair market value" means: (a) in the case of shares, the highest closing sale price during the 30-day period immediately preceding the date in question of a share on the New York Stock Exchange Composite Tape, or, if such shares are not quoted on the Composite Tape, on the New York Stock Exchange, or, if such shares are not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such shares are listed, or, if such shares are not listed on any such exchange, the highest closing sale price or bid quotation with respect to a share during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share as determined by a majority of the disinterested directors in good faith; and (b) in the case of property other than cash or shares, the fair market value of such property on the date in question as determined by a majority of the disinterested directors in good faith.

(9) "Disinterested shareholder" shall mean a shareholder of the corporation who is not an interested shareholder or an affiliate or an associate of an interested shareholder.

(10) "Business combination" has the meaning set forth in Section 11.75 of this Act (regardless of the case of the word "only" in that Section).

(11) In the event of any business combination in which the corporation survives, the phrase "consideration other than cash" as used in subparagraphs (2)(a) and (2)(b) of paragraph C of this Section 7.85 shall include the common shares and the shares of any other class or series retained by the holders of such shares.

(12) "Shares" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(13) "Voting shares" means, with respect to any corporation, shares of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in its election of the governing body of the entity.

E. Determinations by disinterested directors. A majority of the disinterested directors shall have the power to determine, for the purposes of this Section 7.85, (a) whether a person is an interested shareholder, (b) the number of voting shares beneficially owned by any person, (c) whether a person is an affiliate or associate of another, and (d) whether the transaction is the subject of any business combination.

(Source: P.A. 90-461, eff. 1-1-98.)

### **Sec. 10.20. Amendment by Directors and Shareholders.**

Any amendment authorized by Section 10.05 may be adopted by the action of the directors and shareholders in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, the proposed amendment, or such summary as aforesaid, may be included in the notice of such annual meeting. If the adoption of the amendment would give any class or series of shares the right to dissent, the notice shall also enclose a copy of Section 11.70 of this Act or otherwise provide adequate notice of the right to dissent and the procedures therefor.

(c) At such meeting a vote of the shareholders entitled to vote on the proposed amendment shall be taken. The proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds of the votes of the shares entitled to vote on such amendment, unless any class or series of shares is entitled to vote as a class in respect thereof, in which event the proposed amendment shall be adopted upon receiving the affirmative votes of at least two-thirds of the votes of the shares of each class or series of shares entitled to vote as a class in respect thereof and of the total votes of the shares entitled to vote on such amendment.

(d) The articles of incorporation of a corporation may supersede the two-thirds vote requirement of subsection (c) by specifying any smaller or larger vote requirement not less than a majority of the votes of the shares entitled to vote on the amendment and not less than a majority of the votes of the shares of each class or series of shares entitled to vote as a class on the amendment.

(e) Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

(Source: P.A. 89-48, eff. 6-23-95.)

### **Sec. 11.20. Approval by Shareholders.**

(a) A vote of the shareholders entitled to vote on the proposed plan of merger, consolidation or exchange shall be taken. The plan of merger, consolidation or exchange shall be approved upon receiving by each corporation the affirmative votes of at least two-thirds of the votes of the shares entitled to vote on the plan unless any class or series of shares of any of such corporations is entitled to vote as a class on the plan in which event, as to such corporation, the plan of merger, consolidation or exchange shall be approved upon receiving the affirmative votes of at least two-thirds of the votes of the shares of each such class or series of shares entitled to vote as a class on the plan and of the votes of the total shares entitled to vote on the plan. Any class of shares of any such corporation shall be entitled to vote as a class if the articles of incorporation so provide or if the plan of merger, consolidation or exchange, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

(b) The articles of incorporation of any corporation may supersede the two-thirds vote requirement of this Section as to that corporation by specifying any smaller or larger vote requirement not less than a majority of the votes of the shares entitled to vote on the issue and

not less than a majority of the votes of the shares of each class or series of shares entitled to vote as a class on the issue.

(c) No vote by the shareholders of a corporation that is a surviving party to a plan of merger or that is the acquiring corporation in a plan of exchange shall be required, unless its articles of incorporation provide to the contrary, if:

(1) the plan of merger or exchange does not amend in any respect the articles of incorporation of such corporation;

(2) each share of such corporation outstanding immediately prior to the effective date of the merger or exchange has the identical designations, preferences, qualifications, limitations, restrictions and special or relative rights immediately after the effective date thereof; and

(3) either no common shares of the surviving or acquiring corporation and no shares, securities or obligations convertible into such shares are to be issued or delivered under the plan of merger or exchange, or the authorized unissued common shares of the surviving or acquiring corporation to be issued or delivered under the plan of merger or plan of exchange, plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan, do not exceed 20 per cent of the common shares of such corporation outstanding immediately prior to the effective date of the merger or exchange.

(Source: P.A. 89-48, eff. 6-23-95.)

#### **Sec. 11.60. Sale, Lease or Exchange of Assets, Other than in Usual and Regular Course of Business.**

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each shareholder of record within the time and in the manner provided by this Act for the giving of notice of meetings of shareholders and shall also inform the shareholders of their right to dissent and either enclose a copy of Section 11.70 or otherwise provide adequate notice of the procedure to dissent. If such meeting be an annual meeting, such purpose may be included in the notice of such annual meeting.

(c) At such meeting the shareholders entitled to vote on such matter may authorize such sale, lease, exchange, or other disposition and fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote on such matter unless any class or series of shares is entitled to vote as a class in respect thereof, in which event such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class or series of shares entitled to vote as a class on such matter, and of the total outstanding shares entitled to vote on such matter.

(d) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

(e) The articles of incorporation of a corporation may supersede the two-thirds vote requirement of this Section by specifying any smaller or larger vote requirement, not less than a majority of the outstanding shares entitled to vote on the matter and not less than a majority of the outstanding shares of each class of shares entitled to vote as a class on the matter.

(Source: P.A. 83-1025.)

### **Sec. 11.75. Business Combinations with Interested Shareholders**

(a) Notwithstanding any other provisions of this Act, a corporation (as defined in this Section 11.75) shall not engage in any business combination with any interested shareholder for a period of 3 years following the time that such shareholder became an interested shareholder, unless (1) prior to such time the board of directors of the corporation approved either the business combination or the transaction which resulted in the shareholder becoming an interested shareholder, or (2) upon consummation of the transaction which resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of the voting shares of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or (3) at or subsequent to such time the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting shares which are not owned by the interested shareholder.

(b) The restrictions contained in this Section shall not apply if:

(1) the corporation's original articles of incorporation contains a provision expressly electing not to be governed by this Section;

(2) the corporation, by action of its board of directors, adopts an amendment to its by-laws within 90 days of the effective date of this amending Act of 1989, expressly electing not to be governed by this Section, which amendment shall not be further amended by the board of directors;

(3) the corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or by-laws expressly electing not to be governed by this Section, provided that, in addition to any other vote required by law, such amendment to the articles of incorporation or by-laws must be approved by the affirmative vote of a majority of the shares entitled to vote. An amendment adopted pursuant to this paragraph shall be effective immediately in the case of a corporation that both (i) has never had a class of voting shares that falls within any of the categories set out in paragraph (4) of this subsection (b) and (ii) has not elected by a provision in its original articles of incorporation or any amendment thereto to be governed by this Section. In all other cases, an amendment adopted pursuant to this paragraph shall not be effective until 12 months after the adoption of such amendment and shall not apply to any business combination between such corporation and any person who became an interested shareholder of such corporation on or prior to such adoption. A by-law amendment adopted pursuant to this paragraph shall not be further amended by the board of directors;

(4) the corporation does not have a class of voting shares that is (i) listed on a national securities exchange, (ii) authorized for quotation on the NASDAQ Stock Market or (iii) held of record by more than 2,000 shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder;

(5) a shareholder becomes an interested shareholder inadvertently and (i) as soon as practicable divests itself of ownership of sufficient shares so that the shareholder ceases to be an interested shareholder and (ii) would not, at any time within the 3 year period immediately prior to a business combination between the corporation and such shareholder, have been an interested shareholder but for the inadvertent acquisition of ownership;

(6) the business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (i) constitutes one of the transactions described in the second sentence of this paragraph; (ii) is with or by a person who either was not an interested shareholder during the previous 3 years or who became an interested shareholder with the approval of the corporation's board of directors or during the period described in paragraph (7) of this subsection (b); and (iii) is approved or not opposed by a majority of the members of the board of directors then in office (but not less than 1) who were directors prior to any person becoming an interested shareholder during the previous 3 years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the corporation (except for a merger in respect of which, pursuant to subsection (c) of Section 11.20 of this Act, no vote of the shareholders of the corporation is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation (other than to any direct or indirect wholly-owned subsidiary or to the corporation) having an aggregate market value equal to 50% or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding shares of the corporation; or (z) a proposed tender or exchange offer for 50% or more of the outstanding voting shares of the corporation. The corporation shall give not less than 20 days notice to all interested shareholders prior to the consummation of any of the transactions described in clauses (x) or (y) of the second sentence of this paragraph; or

(7) The business combination is with an interested shareholder who became an interested shareholder at a time when the restrictions contained in this Section did not apply by reason of any of the paragraphs (1) through (4) of this subsection (b), provided, however, that this paragraph (7) shall not apply if, at the time the interested shareholder became an interested shareholder, the corporation's articles of incorporation contained a provision authorized by the last sentence of this subsection (b). Notwithstanding paragraphs (1), (2), (3) and (4) of this subsection and subparagraph (A) of paragraph (5) of subsection (c), any domestic corporation may elect by a provision of its original articles of incorporation or any amendment thereto to be governed by this Section, provided that any such amendment to the articles of incorporation shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became such prior to the effective date of the amendment.

(c) As used in this Section 11.75 only, the term:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(2) "Associate" when used to indicate a relationship with any person, means (i) any corporation, partnership, unincorporated association, or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting shares, (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(3) "Business combination" when used in reference to any corporation and any interested shareholder of such corporation, means:

(A) any merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with (i) the interested shareholder, or (ii) with any other corporation if the merger or consolidation is caused by the interested shareholder and as a result of such merger or consolidation subsection (a) of this Section is not applicable to the surviving corporation;

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a shareholder of such corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding shares of the corporation;

(C) any transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any shares of the corporation or of such subsidiary to the interested shareholder, except (i) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into shares of such corporation or any such subsidiary which securities were outstanding prior to the time that the interested shareholder became such, (ii) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into shares of such corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of shares of such corporation subsequent to the time the interested shareholder became such, (iii) pursuant to an exchange offer by the corporation to purchase shares made on the same terms to all holders of said shares, or (iv) any issuance or transfer of shares by the corporation, provided however, that in no case under clauses (ii), (iii) and (iv) above shall there be an increase in the interested shareholder's proportionate share of the shares of any class or series of the corporation or of the voting shares of the corporation;

(D) any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the shares of any class or series, or securities convertible into the shares of any class or series, of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of any class or series not caused, directly or indirectly, by the interested shareholder; or

(E) any receipt by the interested shareholder of the benefit, directly or indirectly (except proportionately as a shareholder of such corporation) of any loans, advances, guarantees, pledges,

or other financial benefits (other than those expressly permitted in subparagraphs (A) through (D) of this paragraph (3)) provided by or through the corporation or any direct or indirect majority owned subsidiary; or

(F) any receipt by the interested shareholder of the benefit, directly or indirectly, (except proportionately as a shareholder of such corporation) of any assets, loans, advances, guarantees, pledges or other financial benefits (other than those expressly permitted in subparagraphs (A) through (D) of this paragraph (3)) provided by or through any "defined benefit pension plan" (as defined in Section 3 of the Employee Retirement Income Security Act) of the corporation or any direct or indirect majority owned subsidiary.

(4) "Control", including the term "controlling", "controlled by" and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract or otherwise. A person who is the owner of 20% or more of the outstanding voting shares of any corporation, partnership, unincorporated association, or other entity shall be presumed to have control of such entity, in the absence of proof by preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting shares, in good faith and not for the purpose of circumventing this Section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(5) "Corporation" means a domestic corporation that:

(A) has any equity securities registered under Section 12 of the Securities Exchange Act of 1934 or is subject to Section 15(d) of that Act; and

(B) either

(i) has its principal place of business or its principal executive office located in Illinois; or

(ii) owns or controls assets located within Illinois that have a fair market value of at least \$1,000,000, and

(C) either

(i) has more than 10% of its shareholders resident in Illinois;

(ii) has more than 10% of its shares owned by Illinois residents; or

(iii) has 2,000 shareholders resident in Illinois. The residence of a shareholder is presumed to be the address appearing in the records of the corporation. Shares held by banks (except as trustee, executor or guardian), securities dealers or nominees are disregarded for purposes of calculating the percentages and numbers in this paragraph (5).

(6) "Interested shareholder" means any person (other than the corporation and any direct or indirect majority-owned subsidiary of the corporation) that (i) is the owner of 15% or more of the outstanding voting shares of the corporation, or (ii) is an affiliate or associate of the corporation and was the owner of 15% or more of the outstanding voting shares of the corporation at any time within the 3 year period immediately prior to the date on which it is sought to be determined whether such person is an interested shareholder; and the affiliates and associates of such person, provided, however, that the term "interested shareholder" shall not include (x) any person who (A) owned shares in excess of the 15% limitation set forth herein as of, or acquired such shares pursuant to a tender offer commenced prior to the effective date of this amendatory Act of 1989 or pursuant to an exchange offer announced prior to the aforesaid date and commenced within 90 days thereafter and either (I) continued to own shares in excess of such 15% limitation or would have but for action by the corporation or (II) is an affiliate or associate of the corporation and so

continued (or so would have continued but for action by the corporation) to be the owner of 15% or more of the outstanding voting shares of the corporation at any time within the 3-year period immediately prior to the date on which it is sought to be determined whether such a person is an interested shareholder or (B) acquired said shares from a person described in (A) above by gift, inheritance or in a transaction in which no consideration was exchanged; or (y) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of action taken solely by the corporation, provided that such person shall be an interested shareholder if thereafter such person acquires additional shares of voting shares of the corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested shareholder, the voting shares of the corporation deemed to be outstanding shall include shares deemed to be owned by the person through application of paragraph (9) of this subsection, but shall not include any other unissued shares of such corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(7) "Person" means any individual, corporation, partnership, unincorporated association or other entity.

(7.5) "Shares" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(8) "Voting shares" means, with respect to any corporation, shares of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in its election of the governing body of the entity.

(9) "Owner" including the terms "own" and "owned" when used with respect to any shares means a person that individually or with or through any of its affiliates or associates:

(A) beneficially owns such shares, directly or indirectly; or

(B) has (i) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the owner of shares tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered shares is accepted for purchase or exchange; or (ii) the right to vote such shares pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any shares because of such person's right to vote such shares if the agreement, arrangement or understanding to vote such shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

(C) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in clause (ii) of subparagraph (B) of this paragraph), or disposing of such shares with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such shares.

(d) No provision of a certificate of incorporation or by-law shall require, for any vote of shareholders required by this Section a greater vote of shareholders than that specified in this Section.

(e) The provisions of this Section 11.75 are severable and any provision held invalid shall not affect or impair any of the remaining provisions of this Section.

(Source: P.A. 93-59, eff. 7-1-03.)

### **Sec. 12.15. Voluntary Dissolution by Vote of Shareholders.**

Dissolution of a corporation may be authorized by a vote of shareholders, in the following manner:

(a) Either:

(1) The board of directors shall adopt a resolution, which may be with or without their recommendation, proposing that the corporation be dissolved voluntarily, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or special meeting, or

(2) Holders of not less than one-fifth of the votes of the shares entitled to vote on dissolution may, in writing, propose the dissolution of the corporation to the board of directors; if the directors fail or refuse to call a meeting of shareholders to consider such proposal for more than one year after delivery thereof, the shareholders proposing dissolution may call a meeting of the shareholders to consider such proposal.

(b) Written notice stating that the purpose, or one of the purposes, of the shareholders' meeting is to consider the voluntary dissolution of the corporation, shall be given to each shareholder whether or not entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, such purpose may be included in the notice of such annual meeting.

(c) At such meeting a vote of the shareholders entitled to vote on dissolution shall be taken on the resolution to dissolve voluntarily the corporation, which shall require for its adoption the affirmative votes of at least two-thirds of the votes of the shares entitled to vote on dissolution, unless any class of shares is entitled to vote as a class in respect thereof, in which event the resolution shall require for its adoption the affirmative votes of at least two-thirds of the votes of the shares of each class of shares entitled to vote as a class in respect thereof and of the votes of the total shares entitled to vote on dissolution.

(d) The articles of incorporation of any corporation may supersede the two thirds vote requirement of subsection (c) as to that corporation by specifying any smaller or larger vote requirement not less than a majority of the votes of the shares entitled to vote on dissolution and not less than a majority of the votes of the shares of any class entitled to vote as a class on dissolution.

(Source: P.A. 89-48, eff. 6-23-95.)