



DIVISION OF
CORPORATION FINANCE

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

October 30, 2019

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: Visa Inc.
Incoming letter dated September 16, 2019

Dear Ms. Ising:

This letter is in response to your correspondence dated September 16, 2019 concerning the shareholder proposal (the "Proposal") submitted to Visa Inc. (the "Company") by Terry Corbin et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/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: Katie Reilly
SumOfUs
katie@sumofus.org

October 30, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Visa Inc.
Incoming letter dated September 16, 2019

The Proposal relates to a report.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(f). Among other things, rule 14a-8(b) requires a proponent to provide a written statement that the proponent intends to hold his or her company stock through the date of the shareholder meeting. It appears that the Proponents failed to provide this statement within 14 calendar days from the date the Proponents received the Company's request under rule 14a-8(f). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Lisa Krestynick
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

September 16, 2019

VIA E-MAIL

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

Re: *Visa Inc.*
Proposal Sponsored by SumOfUs
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Visa Inc. (the “Company”) intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Stockholders (collectively, the “2020 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof sponsored by SumOfUs purportedly on behalf of three Company stockholders, Terry Corbin, Wynne R. Corson, and Dara Mark (the “Purported Proponents”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to SumOfUs.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Purported Proponents and SumOfUs that if they elect to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

BASES FOR EXCLUSION

We hereby respectfully request that, to the extent that the Proposal was submitted under Rule 14a-8, the Staff concur in our view that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(e)(2) because, as described below, the

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Company did not receive the Proposal at its principal executive offices before the deadline for submitting stockholder proposals for inclusion in the Company's 2020 Proxy Materials.

In addition, we request that the Staff concur in our view that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because SumOfUs and the Purported Proponents did not satisfy numerous eligibility and procedural requirements in Rule 14a-8 in response to the Company's proper request for that information. Specifically, none of SumOfUs and the Purported Proponents provided:

- a statement of intent to hold the requisite Company shares through the date of the 2020 Annual Meeting of Stockholders;
- documentation establishing that the Purported Proponents authorized SumOfUs to submit the Proposal; and
- requisite proof of continuous ownership of the Company's stock.

BACKGROUND

On December 6, 2018, the Company filed with the Commission, and commenced distribution to its stockholders, a proxy statement and form of proxy for its 2019 Annual Meeting of Stockholders ("2019 Proxy Statement").¹ As required by Rule 14a-5(e), the Company included in the 2019 Proxy Statement the deadline for receiving stockholder proposals submitted for inclusion in the Company's proxy statement and form of proxy for the Company's next annual meeting, calculated in the manner prescribed in Rule 14a-8(e) and Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14"). Specifically, the following disclosure appeared on page 90 of the 2019 Proxy Statement:

Stockholder Nomination of Director Candidates and Other Stockholder Proposals for 2020 Annual Meeting

The submission deadline for stockholder proposals to be included in our proxy materials for the 2020 annual meeting of stockholders pursuant to Rule 14a-8 of the Exchange Act is August 8, 2019. All such proposals must be in writing and received by our Corporate Secretary at Visa Inc., P.O. Box 193243, San Francisco, CA 94119 by the close of business on the required deadline in order to be considered for inclusion in our proxy materials for the 2020 annual meeting of stockholders. Submission of a proposal before the deadline does not

¹ See <https://www.sec.gov/Archives/edgar/data/1403161/000119312518343216/d635500ddef14a.htm>.

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guarantee its inclusion in our proxy materials.

See Exhibit A. The address above is the correct mailing address for the Company's Corporate Secretary. The proxy statement also included an email address for the Corporate Secretary.

The Company did not receive the Proposal from SumOfUs at its principal executive offices before the Company's stockholder proposal deadline. As a result of seeing media reports about SumOfUs and the Proposal—and given that, after searching its records, the Company did not have information regarding whether it had actually been submitted and the Company stockholder(s) who had purportedly submitted or authorized the submission of the Proposal—the Company sent a letter via email and FedEx to SumOfUs on August 19, 2019. The letter inquired about the submission of the Proposal and requested a copy of any stockholder proposal that was submitted to the Company and, if it was submitted under Rule 14a-8, documentation demonstrating that it was received at the Company's principal executive offices by the deadline. *See Exhibit B.*

On August 20, 2019—12 days after the Company's deadline for receiving stockholder proposals—SumOfUs responded to the Company's email. *See Exhibit C.* SumOfUs attached to its email what it described as “confirmation of receipt of the shareholder resolution on August 8 at 11:52 am local time” by the Company and included a hyperlink to the Proposal posted on the SumOfUs website. The “confirmation of receipt” sent by SumOfUs indicates that an item was sent via the United States Postal Service (“USPS”) and provided a tracking number.

Upon review of the attachment, the Company determined that USPS actually verified that the item was received and signed for by someone at “2443 Fillmore Street” in San Francisco, California—which is the address for SumOfUs, not the Company.² The Company then used the USPS tracking information in the attachment and obtained the history of the SumOfUs shipment. *See Exhibit D.* It reflected that on August 6, 2019, a shipment was accepted by USPS and that on August 7, 2019—the day before the Company's Rule 14a-8 deadline—USPS reported that it was unable to deliver the SumOfUs shipment because the addressee was unknown and that the item was returned to SumOfUs on the morning of August 8, 2019 (the date of Company's stockholder proposal deadline).

Thus, in a letter dated August 21, 2019, the Company again notified SumOfUs that the Proposal was not timely received by the Company. In addition, because the Company had not received any communication from or information regarding the Purported Proponents,

² *See* Contact Us, SumOfUs, available at <https://www.sumofus.org/contact>.

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the letter notified SumOfUs and any Company stockholders that intended to submit the Proposal that, to the extent SumOfUs or any Company stockholder working with SumOfUs was able to demonstrate that the Proposal was properly received by the Company under Rule 14a-8, certain procedural deficiencies needed to be addressed (the “Deficiency Notice”). *See Exhibit E.*

On August 23, 2019, SumOfUs sent an additional email providing photographs of a USPS envelope that the email states contained the Proposal and “the details regarding the [Company] shareholders who submitted it” and inquiring about its delivery. *See Exhibit F.* On August 28, 2019, the Company received another email from SumOfUs. *See Exhibit G.* Despite proper notice in the Deficiency Notice, neither email included, nor has SumOfUs or any Purported Proponent provided: (1) written documentation that the Purported Proponents had instructed or authorized SumOfUs to submit the Proposal to the Company on behalf of the Purported Proponents; or (2) a statement from the Purported Proponents confirming their intent to hold the requisite number of shares through the date of the 2020 Annual Meeting of Stockholders. In addition, while the August 28, 2019 email included four broker letters addressing the stock ownership of the three Purported Proponents, none of the letters satisfy Rule 14a-8. *See Exhibit G.* Each of these broker letters is dated after August 6, 2019, and SumOfUs has never provided to the Company “the details regarding the [Company] shareholders who submitted” the Proposal that the August 23, 2019 email asserts was included in the August 6, 2019 USPS shipment.

ANALYSIS

I. The Proposal May Be Excluded From The Company’s 2020 Proxy Materials Pursuant To Rule 14a-8(e)(2) Because The Company Did Not Receive The Proposal At Its Principal Executive Offices Before The Deadline For Submitting Stockholder Proposals For Inclusion In The Company’s 2020 Proxy Materials

Under Rule 14a-8(f)(1) a company may exclude a stockholder proposal if the proponent fails to follow one of the eligibility or procedural requirements contained in Rule 14a-8. One of the eligibility or procedural requirements contained in Rule 14a-8 is timeliness, the requirement to submit a proposal by the applicable deadline. If a proponent is submitting a proposal “for the company’s annual meeting, [the proponent] can in most cases find the deadline in [the prior] year’s proxy statement.” *See* Rule 14a-8(e)(1). Under Rule 14a-8(e)(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

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connection with the previous year's annual meeting.³

SLB 14, Section C.3.b indicates that, to calculate the deadline, a company should “[i] start with the release date disclosed in the previous year’s proxy statement; [ii] increase the year by one; and [iii] count back 120 calendar days.” Consistent with this guidance, to calculate the deadline for receiving stockholder proposals submitted for the Company’s 2020 Annual Meeting of Stockholders, the Company (i) started with the release date of its 2019 Proxy Statement (*i.e.*, December 6, 2018), (ii) increased the year by one (*i.e.*, December 6, 2019), and (iii) counted back 120 calendar days. As per SLB 14, Section C.3.b, “day one” for purposes of this calculation was December 5, 2019, resulting in a deadline for receiving stockholder proposals submitted for inclusion in the Company’s 2020 Proxy Materials of August 8, 2019, as disclosed on page 90 of the 2019 Proxy Statement. *See Exhibit A.* As noted above and in *Exhibit C* to this letter, the Company received from SumOfUs a hyperlink to the Proposal 12 days after this deadline, on August 20, 2019.

The Staff strictly construes the deadline for stockholder proposals under Rule 14a-8, permitting companies to exclude from proxy materials those proposals received at companies’ principal executive offices after the deadline. *See, e.g., Wal-Mart Stores, Inc.* (avail. Feb. 13, 2017) (proposal received six days after company’s deadline); *Whole Foods Market, Inc.* (avail. Oct. 30, 2014) (proposal received two weeks after company’s deadline); *BioMarin Pharmaceutical Inc.* (avail. Mar. 14, 2014) (proposal received five days after company’s deadline); *Dean Foods Co.* (avail. Jan. 27, 2014) (proposal received three days after company’s deadline); *PepsiCo, Inc.* (avail. Jan. 3, 2014) (proposal received three days after company’s deadline); *Tootsie Roll Industries, Inc.* (avail. Jan. 14, 2008) (proposal received two days after company’s deadline, even when deadline fell on a Saturday).

In addition, the Staff has granted no-action relief where delivery issues have caused a stockholder proposal to miss a company’s stockholder proposal deadline. For example, in *Fisher Communications, Inc.* (avail. Dec. 19, 2007), the Staff concurred with exclusion of a stockholder proposal where the delivery courier failed to attempt delivery prior to the company’s submission deadline. *See also Amphenol Corp.* (avail. Apr. 15, 2016) (concurring with exclusion where the proponent had provided tracking evidence that the proposal was sent to the company with a timely expected delivery date but no proof that the proposal had actually been received by the company); *Alpha Natural Resources, Inc.* (avail.

³ Also under Rule 14a-8(e)(2), “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.” This portion of Rule 14a-8(e)(2) is not applicable because the Company’s 2019 Annual Meeting of Stockholders was held on January 29, 2019, and the Company intends to hold the 2020 Annual Meeting of Stockholders within 30 days of January 29, 2020.

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Mar. 5, 2012) (concurring with exclusion where, three days prior to the deadline, the proposal was sent to the company's P.O. Box address but it was not received at the company's principal executive offices until one day after the deadline); *Datastream Systems, Inc.* (avail. Mar. 9, 2005) (concurring with exclusion where a proposal was delivered after the company's deadline due to a snowstorm); *JPMorgan Chase & Co.* (avail. Feb. 8, 2005) (same).

Here, SumOfUs sent a hyperlink to the Proposal by email on August 20, 2019, which means the hyperlink was received from SumOfUs at the Company's principal executive offices 12 days after the Company's deadline for stockholder proposals submitted for inclusion in the Company's 2020 Proxy Materials. The Company learned from the August 20, 2019 correspondence that SumOfUs had sent the Proposal via USPS earlier on August 6, 2019, but it was not received by the Company at its principal executive offices. As the Company notified SumOfUs, the Company has received other mail at the mailing address provided on page 90 of the 2019 Proxy Statement. *See Exhibit E.* After receiving from SumOfUs the relevant tracking number for the Proposal, representatives of the Company communicated with USPS and learned that the Proposal was not delivered to the Company due to a USPS error.

Rule 14a-8(e)(1) states that, "[i]n order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery." Moreover, as noted in SLB 14, "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." Here, SumOfUs did not send the Proposal "well in advance of the deadline"—rather it was sent only two days prior to the deadline. Moreover, the USPS tracking history makes clear that on August 7, 2019—one day before the Company's deadline for receiving stockholder proposals—the Proposal was not delivered to the Company's principal executive offices. *See Exhibit D.* If SumOfUs had either tracked its submission via USPS to "determine when the proposal was received at the company's principal executive offices" or reviewed the return USPS shipment that it received on the morning of August 8, 2019, it would have been put on notice in advance of the deadline that the Proposal had not in fact been received by the Company. SumOfUs would have then had other means before the deadline to communicate with the Corporate Secretary and the Company about any delivery issues and deliver the Proposal to the Company's Corporate Secretary.⁴

As emphasized by SLB 14 and demonstrated by *Fisher Communications* and the other

⁴ For example, the email address for the Company's Corporate Secretary, corporatesecretary@visa.com, was included on page 14 of the 2019 Proxy Statement.

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precedents cited above, even if the failure to make timely delivery is due to the manner in which a delivery service handled a stockholder proposal, the burden is on the proponent to deliver the proposal in a timely manner. Accordingly, here, the Proposal is properly excludable from the Company's 2020 Proxy Materials under Rule 14a-8(e)(2) because it was not received at the Company's principal executive offices before the deadline for stockholder proposals for the 2020 Annual Meeting of Stockholders.

II. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Purported Proponents Failed To Satisfy Numerous Eligibility And Procedural Requirements Despite Proper Notice

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

The Company provided such proper notice via the Deficiency Notice sent to SumOfUs (as SumOfUs had not provided information regarding any Company stockholders involved with the Proposal). *See Exhibit E.* The Deficiency Notice addressed both SumOfUs and any Company stockholders who submitted the Proposal as potential "Proponents" and provided notice of:

- the ownership requirements of Rule 14a-8(b);
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b) by each Proponent, including "a written statement from the 'record' holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including the Submission Date";
- that each Proponent must submit a written statement of their intent to hold the requisite number or amount of Company shares through the date of the Company's 2020 Annual Meeting of Stockholders under Rule 14a-8(b);
- that in order to comply with the requirements of Rule 14a-8(b) and Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB 14I"), each Proponent should provide

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documentation that confirms the Proponent had instructed or authorized SumOfUs to submit the Proposal to the Company on behalf of the Proponent; and

- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date SumOfUs received the Deficiency Notice.

The Deficiency Notice also included a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F (Oct. 18, 2011). The Deficiency Notice was delivered to SumOfUs via email on August 21, 2019⁵—the day after SumOfUs emailed the Company a hyperlink to the Proposal—and via FedEx on August 22, 2019. *See Exhibit E.* Accordingly, SumOfUs' response to the Deficiency Notice was required to be postmarked or transmitted electronically on or before September 4, 2019 (*i.e.*, 14 calendar days from SumOfUs's receipt of the Deficiency Notice via email).

As discussed below, neither SumOfUs nor the Purported Proponents satisfied these eligibility and procedural requirements in Rule 14a-8 in response to the Company's proper notice of these deficiencies. Thus, the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) for the reasons set forth below.

A. *SumOfUs And The Purported Proponents Failed To Provide A Statement Of Intent To Hold The Requisite Shares Through The Date Of The Company's 2020 Annual Meeting of Stockholders*

Rule 14a-8(b)(2) requires stockholder proponents to provide companies with a written statement of their intent to comply with this requirement. *See also* SLB 14 ("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."). The Company's Deficiency Notice alerted SumOfUs and any Company stockholders who submitted the Proposal to this requirement, informed them that they failed to satisfy the requirement, and stated how they could cure the deficiency. However, despite the Company's timely and detailed Deficiency Notice, SumOfUs and the Purported Proponents have not provided the Company with a written statement of their intent to hold the requisite number or amount of Company shares through the date of the 2020 Annual Meeting of Stockholders.

The Staff has consistently concurred with the exclusion of stockholder proposals submitted by proponents who have failed to provide the requisite written statement of intent to continue

⁵ Even if the Proposal had been delivered by USPS to the Company on the day that delivery was attempted (August 7, 2019), the Company notified SumOfUs of the deficiencies via the Deficiency Notice within 14 calendar days of that date and, as discussed below, SumOfUs failed to correct the deficiencies.

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holding the requisite amount of shares through the date of the stockholder meeting at which the proposal will be voted on by stockholders. For example, in *McDonald's Corp.* (avail. Feb. 9, 2017), the Staff concurred with the exclusion of a stockholder proposal where the proponent's submission did not include a statement of intent to hold sufficient company stock through the date of the applicable annual meeting and the proponent failed to cure the deficiency, noting that "the proponent failed to provide this statement within 14 calendar days from the date the proponent received [the company's] request under rule 14a-8(f)." *See also AT&T Corp.* (avail. Jan. 3, 2013); *International Business Machines Corp.* (avail. Dec. 28, 2010); *Fortune Brands, Inc.* (avail. Apr. 7, 2009); *Rite Aid Corp.* (avail. Mar. 26, 2009); *Exelon Corp.* (avail. Feb. 23, 2009); *Fortune Brands, Inc.* (avail. Feb. 12, 2009); *Sempra Energy* (avail. Jan. 21, 2009); *SBC Communications Inc.* (avail. Jan. 2, 2004); *IVAX Corp.* (avail. Mar. 20, 2003); *Avaya, Inc.* (avail. July 19, 2002); *Exxon Mobil Corp.* (avail. Jan. 16, 2001); *McDonnell Douglas Corp.* (avail. Feb. 4, 1997) (in each case, the Staff concurred with the exclusion of a stockholder proposal where the proponent did not provide a written statement of intent to hold the requisite number of company shares through the date of the meeting at which the proposal would be voted on by stockholders).

As with the precedents cited above, SumOfUs and the Purported Proponents failed to provide the Company with a written statement of their intent to hold a sufficient number or amount of Company shares through the date of the Company's 2020 Annual Meeting of Stockholders, as required by Rule 14a-8(b), despite the Company's timely and detailed Deficiency Notice. Thus, the Proposal is properly excludable under Rules 14a-8(b) and 14a-8(f)(1).

B. SumOfUs Failed To Provide Documentation Of The Purported Proponents' Delegation Of Authority To SumOfUs To Submit The Proposal On Their Behalf

In SLB 14I, the Staff provided additional guidance as to what information must be provided under Rule 14a-8(b) where, as is the case with the Proposal, a stockholder submits a proposal through a representative (*i.e.*, a "proposal by proxy"). The Staff indicated that such submission by proxy is consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b) if the stockholder who submits a proposal by proxy provides sufficient documentation describing the stockholder's delegation of authority to the proxy. The Staff stated that where such sufficient documentation has not been provided, there "may be a basis to exclude the proposal under Rule 14a-8(b)." *See* Section D, SLB 14I. The Staff indicated it "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;

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- 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.”

The Staff indicated that such documentation is intended to address concerns about proposals by proxy, including whether stockholders “know that proposals are being submitted on their behalf.” *Id.* In addition, the Staff instructed companies seeking exclusion of a proposal under Rule 14a-8(b) based on a stockholder’s failure to provide some or all of the information described above that the company “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.” *Id.* n.12.

Here, SumOfUs and the Purported Proponents failed to submit any written documentation evidencing the Purported Proponents’ delegation of authority to SumOfUs to submit the Proposal on behalf of the Purported Proponents. The Deficiency Notice clearly explained that, “[t]o the extent that SumOfUs is not a Company stockholder and instead purports to have submitted the Proposal on behalf of one or more Proponents,” then “each Proponent should provide documentation that confirms that such Proponent had instructed or authorized [SumOfUs] to submit the specific proposal to the Company on the Proponent’s behalf.” The Deficiency Notice then clearly explained that “[s]uch documentation should address each of the bullet points listed” in SLB 14I. *See Exhibit E.*

Despite proper notice by the Company, neither SumOfUs nor the Purported Proponents provided any documentation confirming that the Purported Proponents had instructed or authorized SumOfUs to submit the Proposal to the Company on their behalf. Accordingly, the Proposal is excludable because SumOfUs and the Purported Proponents have not established the requisite eligibility to submit the Proposal as required by Rule 14a-8(b) after receiving a timely and proper Deficiency Notice pursuant to Rule 14a-8(f)(1).

C. SumOfUs And The Purported Proponents Failed To Establish The Requisite Eligibility To Submit The Proposal

Rule 14a-8(b)(1) provides, in part, that “[i]n order to be eligible to submit a proposal, [a stockholder] must have continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date [the stockholder] submit[s] the proposal.” SLB 14 specifies that when the stockholder is not the registered holder, the stockholder “is responsible for proving his or her

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eligibility to submit a proposal to the company,” which the stockholder may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, SLB 14.

Rule 14a-8(f) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. The Company satisfied its obligation under Rule 14a-8 by transmitting to SumOfUs in a timely manner the Deficiency Notice, which specifically requested the information listed above and included a copy of both Rule 14a-8 and SLB 14F. *See* Exhibit E.

The Deficiency Notice also illustrated for SumOfUs and any stockholder proponent how to determine the submission date to be addressed in the proof of continuous ownership given that SumOfUs still had not provided proof that the Proposal had been submitted before the Company’s stockholder proposal deadline: “To the extent that the Proposal was properly submitted to the Company under Rule 14a-8 via the link in your August 20, 2019 email, the submission date is August 20, 2019; however, if SumOfUs or any Proponents are able to demonstrate that the Proposal was received by the Company before the Deadline, the submission date is the date such copy was properly transmitted to the Company (the ‘Submission Date’).” *Id.*

In a second response, SumOfUs transmitted broker letters for each of the Purported Proponents. However, despite the clear explanation in the Deficiency Notice of what was required for sufficient proof of ownership, none of the letters in Exhibit G addresses ownership as of a date the Proposal was submitted to the Company; instead, each letter addresses ownership as of a date that is after the deadline for submission of stockholder proposals for inclusion in the Company’s 2020 Proxy Materials. For example, the Charles Schwab letter for Terry Corbin addresses ownership for the one-year period preceding August 21, 2019. The Fidelity Investments letter for Wynne R. Corson addresses ownership for the one-year period preceding August 26, 2019. Finally, the two Fidelity Investment letters for Dara Mark address ownership for the one-year period preceding August 13, 2019. *See* Exhibit G. Given that neither SumOfUs nor any of the Purported Proponents demonstrated that they submitted the Proposal to the Company as of the date referenced in any of the Purported Proponents’ broker letters, these letters do not satisfy Rule 14a-8(b). *See* *Mondelēz International, Inc.* (avail. Feb. 11, 2014) (letter from broker stating ownership for one year as of November 27, 2013 was insufficient to prove continuous ownership for one year as of November 29, 2013); *Morgan Stanley* (avail. Jan. 15, 2013) (letter from broker stating ownership for one year as of November 6, 2012 was insufficient to prove continuous ownership for one year as of November 9, 2012, the date the proposal was submitted); *Comcast Corp.* (avail. Mar. 26, 2012) (letter from broker stating ownership for

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one year as of November 23, 2011 was insufficient to prove continuous ownership for one year as of November 30, 2011, the date the proposal was submitted); *The McGraw Hill Companies, Inc.* (avail. Jan. 28, 2008) (letter from broker stating ownership for one year as of November 16, 2007 was insufficient to prove continuous ownership for one year as of November 19, 2007).

Accordingly, consistent with the precedent cited above, the Proposal is excludable because, despite receiving a timely and proper Deficiency Notice pursuant to Rule 14a-8(f)(1), none of SumOfUs or the Purported Proponents sufficiently demonstrated that they continuously owned the required number or amount of Company shares for the requisite one-year period prior to and including the date the Proposal was submitted to the Company, as required by Rule 14a-8(b).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials. The Company also believes that there are substantive bases under Rule 14a-8 for excluding the Proposal from the 2020 Proxy Materials. The Company is addressing only the eligibility and procedural matters raised in this letter at this time. The Company reserves the right, should it be necessary, to raise additional bases for excluding the Proposal from the 2020 Proxy Materials if the Staff does not concur with the Company's no-action request.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Simona Katcher, the Company's Senior Counsel and Assistant Secretary, at (650) 432-7945.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Simona Katcher, Visa Inc.
Katie Reilly, SumOfUs

EXHIBIT A

OTHER INFORMATION

Stockholder Nomination of Director Candidates and Other Stockholder Proposals for 2020 Annual Meeting

The submission deadline for stockholder proposals to be included in our proxy materials for the 2020 annual meeting of stockholders pursuant to Rule 14a-8 of the Exchange Act is August 8, 2019. All such proposals must be in writing and received by our Corporate Secretary at Visa Inc., P.O. Box 193243, San Francisco, CA 94119 by the close of business on the required deadline in order to be considered for inclusion in our proxy materials for the 2020 annual meeting of stockholders. Submission of a proposal before the deadline does not guarantee its inclusion in our proxy materials.

Under our Bylaws, director nominations and other business may be brought before an annual meeting of stockholders only by or at the direction of the Board or by a stockholder entitled to vote who has submitted a proposal in accordance with the requirements of our Bylaws. To propose a candidate to be considered for nomination or a proposal for consideration at our 2020 annual meeting pursuant to our advance notice bylaw provisions or for a proposal to be timely under the Bylaws as now in effect, stockholders must deliver or mail their nomination submission or other stockholder notice of a proposal so that it is received by our Corporate Secretary no earlier than 120 days and no later than 90 days prior to the date of the annual meeting. However, if we provide stockholders less than 100 days' notice or other prior public disclosure of the date of our 2020 annual meeting, we must receive stockholder nomination submissions no later than the close of business on the 10th day following the earlier of the day on which we mailed or otherwise publicly disclosed notice of the meeting date.

In addition, the Company's Bylaws permit up to 20 stockholders owning 3% or more of our Class A common stock for a period of at least 3 years to nominate up to 20% of the Board and include these nominees in our proxy materials, subject to certain provisions included in our Bylaws. To propose a candidate to be considered for nomination at our 2020 annual meeting pursuant to our proxy access bylaw provisions, stockholders must deliver or mail their nomination submission so that it is received by our Corporate Secretary not earlier than the close of business on July 9, 2019 and not later than the close of business on August 8, 2019. However, if the 2020 annual meeting is more than 30 days before or after the anniversary of the date of the 2019 annual meeting, or if no annual meeting was held in the preceding year, stockholders must deliver or mail their nomination submission so that it is received by our Corporate Secretary no earlier than the close of business on the 150th day prior to the 2020 annual meeting date, and no later than the close of business on the later of the 120th day prior to the 2020 annual meeting date or the 10th day following the day we publicly disclose the 2020 annual meeting date.

The nomination submission or notice of a proposal must include all of the information specified in our Bylaws. For a nomination submission, the required information includes identifying and stockholding information about the nominee, information about the stockholder making the nomination, and the stockholder's ownership of and agreements related to our stock. It also must include the nominee's consent to serve if elected. Please refer to the advance notice provisions and proxy access provisions of our Bylaws for additional information and requirements regarding stockholder nominations or other stockholder proposals. A copy of our Bylaws may be obtained by visiting the Investor Relations page of our website at <http://investor.visa.com> under "Corporate Governance" or by writing to our Corporate Secretary at Visa Inc., P.O. Box 193243, San Francisco, CA 94119.

Stockholders Sharing the Same Address

The SEC has adopted rules that allow a company to deliver a single proxy statement or annual report to an address shared by two or more of its stockholders. This method of delivery, known as "householding," permits us to realize significant cost savings, reduces the amount of duplicate information stockholders receive, and reduces the environmental impact of printing and mailing documents to our stockholders. Under this process, certain stockholders will receive only one copy of our proxy materials and any additional proxy materials that are delivered until such time as one or more of these stockholders notifies us that they want to receive separate

EXHIBIT B

From: **Corporate Secretary** <corporatesecretary@visa.com>

Date: Mon, Aug 19, 2019 at 1:05 PM

Subject: Correspondence for Katie Reilly from Visa Inc. - press coverage of shareholder proposal

To: press@sumofus.org <press@sumofus.org>, corporate@sumofus.org <corporate@sumofus.org>

Ms. Reilly – please see the attached letter for your attention.

Thank you,

Tracey Heaton



August 19, 2019

VIA OVERNIGHT MAIL AND EMAIL

Katie Reilly
Campaign Manager
c/o SumOfUs
2443 Fillmore Street #380-1279
San Francisco, CA 94115

Dear Ms. Reilly:

I am writing on behalf of Visa Inc. (the "Company") regarding public statements made by SumOfUs that shareholders working with SumOfUs have submitted a shareholder proposal to the Company.

The Company's records do not reflect that the Company received from SumOfUs or Company shareholders working with SumOfUs a shareholder proposal for the Company's 2020 Annual Meeting of Stockholders. Moreover, as disclosed in the Company's proxy statement for its 2019 Annual Meeting of Stockholders, to the extent that any shareholder proposal was intended to be submitted to the Company under Rule 14a-8 of the Securities Exchange Act of 1934, as amended, the deadline for the Company to receive it was the close of business on August 8, 2019. As noted in Securities and Exchange Commission Staff Legal Bulletin No. 14 (July 13, 2001), "[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." Thus, please send a copy of any shareholder proposal that was submitted to the Company and, if it was submitted under Rule 14a-8, documentation demonstrating that it was received at the Company's principal executive offices by the deadline.

Please address any response to me at corporatesecretary@visa.com.

If you have any questions with respect to the foregoing, please contact me at (917) 369-3034.

Sincerely,

Tracey Heaton
Senior Vice President, Chief Counsel
Corporate and Assistant Secretary



776021610032 



Delivered
Tuesday 8/20/2019 at 9:23 am

DELIVERED

Signed for by: S.SOPHIA

[GET STATUS UPDATES](#)
[OBTAIN PROOF OF DELIVERY](#)

FROM
FOSTER CITY, CA US

TO
SAN FRANCISCO, CA US

Shipment Facts

TRACKING NUMBER
776021610032

SERVICE
FedEx Priority Overnight

WEIGHT
0.5 lbs / 0.23 kgs

SIGNATURE SERVICES
Direct signature required

DELIVERED TO
Receptionist/Front Desk

TOTAL PIECES
1

TOTAL SHIPMENT WEIGHT
0.5 lbs / 0.23 kgs

TERMS
Shipper

PURCHASE ORDER NUMBER
S. Katcher

DEPARTMENT NUMBER
18204

SHIPPER REFERENCE
SH proposal

PACKAGING
FedEx Envelope

SPECIAL HANDLING SECTION
Deliver Weekday, Direct Signature
Required

STANDARD TRANSIT
 8/20/2019 by 10:30 am

SHIP DATE
 Mon 8/19/2019

ACTUAL DELIVERY
Tue 8/20/2019 9:23 am

Travel History

Local Scan Time 

Tuesday , 8/20/2019		
9:23 am	SAN FRANCISCO, CA	Delivered
8:02 am	SAN FRANCISCO, CA	On FedEx vehicle for delivery

7:30 am	SAN FRANCISCO, CA	At local FedEx facility
3:20 am	SAN FRANCISCO, CA	At destination sort facility
2:33 am	OAKLAND, CA	Departed FedEx location

Monday, 8/19/2019

10:05 pm	OAKLAND, CA	Arrived at FedEx location
9:16 pm	SOUTH SAN FRANCISCO, CA	Left FedEx origin facility
4:50 pm	SOUTH SAN FRANCISCO, CA	Picked up
3:05 pm		Shipment information sent to FedEx

EXHIBIT C

From: Katie Reilly <katie@sumofus.org>

Sent: Tuesday, August 20, 2019 9:17:44 AM (UTC-08:00) Pacific Time (US & Canada)

To: Lisa Lindsley; Corporate Secretary

Subject: Re: TS (Katie, Lisa): Correspondence for Katie Reilly from Visa Inc. - press coverage of shareholder proposal

Dear Tracey,

Please see the attached confirmation of receipt of the shareholder resolution on August 8 at 11:52 am local time.

The shareholder resolution can also be found here: www.sumofus.org/visa.

Please let me know if you have any additional questions.

Thanks,

Katie

----- Forwarded message -----

From: Corporate Secretary <corporatesecretary@visa.com>

Date: Mon, Aug 19, 2019 at 1:05 PM

Subject: Correspondence for Katie Reilly from Visa Inc. - press coverage of shareholder proposal

To: press@sumofus.org <press@sumofus.org>, corporate@sumofus.org <corporate@sumofus.org>

Ms. Reilly – please see the attached letter for your attention.

Thank you,

Tracey Heaton

--

Katie Reilly

Campaign Manager, SumOfUs.org

Pronouns: ~~she~~/her/hers



August 19, 2019

Dear Lisa Lindsley:

The following is in response to your request for proof of delivery on your item with the tracking number: **EL12 4904 357U S.**

Item Details

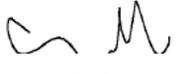
Status: Delivered
Status Date / Time: August 8, 2019, 11:52 am
Location: SAN FRANCISCO, CA 94115
Postal Product: Priority Mail Express 1-Day®
Extra Services: Insured
PO to Addressee
Up to \$100 insurance included
Actual Recipient Name: G SPRADLING

Note: Actual Recipient Name may vary if the intended recipient is not available at the time of delivery.

Shipment Details

Weight: 3.0oz

Recipient Signature

Signature of Recipient:	 SPRADLING
Address of Recipient:	2443 FLUNNE 323

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

RESOLVED: Shareholders of Visa Inc. (“Visa”) request the Board of Directors issue a report, at reasonable expense and excluding proprietary information, on the risks to Visa from mounting public scrutiny of the role played by credit card issuers and payment networks in enabling purchases of firearms, ammunition, and accessories used to commit crimes, including mass shootings, and the steps Visa is taking to mitigate those risks.

Supporting Statement:

Gun violence has become one of the highest-profile public policy issues in the U.S. Increasingly, efforts to stem gun violence are focusing on the roles played by intermediaries, including banks and payment networks, in the firearms business. Following the mass shooting at Marjory Stoneman Douglas High School, banks faced pressure to use their leverage to promote limits on gun sales. Citigroup announced a policy that banking, credit card, lending and underwriting clients could not sell firearms to anyone under 21 or who has not passed a background check. (<https://www.nytimes.com/2018/03/22/business/citigroup-gun-control-policy.html>) Bank of America stopped lending to companies that manufacture “military-inspired firearms,” such as AR-15-style rifles used by many mass shooters, for sale to civilians. (<https://www.nytimes.com/2018/04/10/business/bank-of-america-guns.html?module=inline>)

A 2018 investigation by The New York Times found that mass shooters often use credit cards, in some cases obtaining multiple new credit cards, to finance large, unusual purchases of weapons, ammunition and accessories in the days and weeks leading up to the shooting.

(<https://www.nytimes.com/interactive/2018/12/24/business/dealbook/mass-shootings-credit-cards.html>) The Times article asserted that payment networks are “uniquely positioned to see, if [they] chose to do so, a potential killer’s behavior in a way that retailers, law enforcement officials, concerned family members or mental health professionals cannot,” pointing out that they have systems in place to quickly identify fraudulent transactions and crimes such as money laundering and financing terrorism.

Reports indicate that preliminary discussions have taken place among banks and credit card companies about identifying gun purchases. One large bank, according to The Wall Street Journal, said it had discussed with officials a law that would require retailers to report certain firearms-related purchases made with credit cards.

(<https://www.wsj.com/articles/banks-card-companies-explore-ways-to-monitor-gun-purchases-1525080600?ns=prod/accounts-wsj>; <https://thepointsguy.com/news/banks-credit-companies-monitoring-gun-purchases/>) New York State Comptroller Tom DiNapoli has urged banks and payment processors, including Visa, to reclassify firearms transactions as high-risk, arguing that continued association with such

purchases could lead to “widespread negative publicity and reputational harm.” (<https://www.timesunion.com/business/article/Comptroller-presses-credit-debit-card-companies-12805864.php>)

As well, there is a precedent for refusing to process payments for particular kinds of purchases. PayPal, Apple Pay, Square and Stripe do not permit their payment services to be used for gun sales, and payment companies do not process payments for online pornography. (<https://www.marketwatch.com/story/could-credit-card-companies-ban-gun-sales-2018-02-23>) Until 2014, Authorize.Net, a payment gateway owned by Visa and used exclusively for online purchases, refused to process payments for firearm sales. (<https://taskerpaymentgateways.com/authorize-net-and-on-line-firearms-sales/>)

Given the widespread public debate, we believe that shareholders would benefit from disclosure regarding how Visa is evaluating and managing the risks. Visa currently provides no disclosure on the issue in its SEC filings or Corporate Responsibility & Sustainability Report.

We urge shareholders to vote FOR this proposal.

EXHIBIT D

Track Another Package +

Tracking Number: EL124904357US

Remove X

Scheduled Delivery by

WEDNESDAY

7 AUGUST
2019 ⓘ

by
3:00pm ⓘ

 **Delivered**

August 8, 2019 at 11:52 am
Delivered
SAN FRANCISCO, CA 94115

Feedback

Text & Email Updates



Proof of Delivery



Tracking History



August 8, 2019, 11:52 am

Delivered

SAN FRANCISCO, CA 94115

Your item was delivered at 11:52 am on August 8, 2019 in SAN FRANCISCO, CA 94115. The item was signed for by G SPRADLING.

August 8, 2019, 12:45 am

Departed USPS Regional Facility

SAN FRANCISCO CA INTERNATIONAL DISTRIBUTION CENTER

August 7, 2019, 5:25 pm

Arrived at USPS Regional Facility
SAN FRANCISCO CA INTERNATIONAL DISTRIBUTION CENTER

August 7, 2019, 1:13 pm

Addressee Unknown
SAN FRANCISCO, CA 94105

August 7, 2019, 8:19 am

Arrived at Post Office
SAN FRANCISCO, CA 94105

August 7, 2019, 4:16 am

Arrived at USPS Regional Facility
SAN FRANCISCO CA DISTRIBUTION CENTER

August 7, 2019, 12:50 am

Departed USPS Regional Facility
SAN FRANCISCO CA INTERNATIONAL DISTRIBUTION CENTER

August 6, 2019, 5:10 pm

Arrived at USPS Regional Facility
SAN FRANCISCO CA INTERNATIONAL DISTRIBUTION CENTER

August 6, 2019, 1:05 pm

USPS in possession of item
SAN FRANCISCO, CA 94102

Feedback

Product Information



Postal

Product:
Priority Mail
Express 1-
Day®

Features:

Money Back Guarantee
Insured
PO to Addressee
Up to \$100 insurance included. Restrictions Apply ⓘ

Signed for By: G SPRADLING
// SAN FRANCISCO, CA
94115 // 11:52 am

EXHIBIT E

From: Corporate Secretary <corporatesecretary@visa.com>

Sent: Wednesday, August 21, 2019 2:27 PM

To: press@sumofus.org; corporate@sumofus.org

Subject: Correspondence for Katie Reilly from Visa Inc. - press coverage of shareholder proposal

Ms. Reilly – please see the attached letter for your attention.

Thank you,

Tracey Heaton



August 21, 2019

VIA OVERNIGHT MAIL AND EMAIL

Katie Reilly
Campaign Manager
c/o SumOfUs
2443 Fillmore Street #380-1279
San Francisco, CA 94115

Dear Ms. Reilly:

I am writing on behalf of Visa Inc. (the “Company”) regarding a proposal at a website link emailed to me by you on behalf of SumOfUs (the “Proposal”) on August 20, 2019. While the Proposal is referred to as a “shareholder” proposal, I note that the email and link do not contain any information about which, if any, Company stockholders purportedly intended to submit the Proposal to the Company.

Failure to Satisfy SEC Rule 14a-8 in Submitting the Proposal

To the extent that the Proposal was intended to be submitted to the Company under Rule 14a-8 of the Securities Exchange Act of 1934, as amended, for the Company’s 2020 Annual Meeting of Stockholders (the “2020 Annual Meeting”), the deadline for the Company to receive the Proposal was the close of business on August 8, 2019 (the “Deadline”). The Deadline was disclosed in the Company’s proxy statement for the 2019 Annual Meeting of Stockholders (the “2019 Proxy Statement”), which was publicly filed with the Securities and Exchange Commission (“SEC”) on December 6, 2018, and distributed to Company stockholders.

As noted in my August 19, 2019 letter to you, the Company’s records do not reflect that the Company received the Proposal before the Deadline, whether from SumOfUs or any Company stockholders (each a “Proponent” and collectively, the “Proponents”). Your August 20, 2019 response to my letter included what you describe as “confirmation of receipt” of the Proposal in the form of a letter from the United States Postal Service (“USPS”) (the “Proof of Delivery”) regarding the package associated with the tracking number EL124904357US (the “Package”). The Proof of Delivery indicates that the Package was delivered on August 8, 2019, at 11:52 a.m., to 2443 Fillmore Street, San Francisco, CA 94115 (the “Fillmore Address”). We note that the Fillmore Address is not a mailing address for the Company. Instead, as disclosed on the SumOfUs website, it is the mailing address for SumOfUs. In addition, the USPS tracking history for the Package does not otherwise show that the Package was delivered to the Company. Instead, it indicates that on August 7, 2019, at 1:30 p.m., the Package was flagged by USPS as “Addressee Unknown” before being returned to SumOfUs at the Fillmore Address.

Page 2

As noted in SEC Staff Legal Bulletin No. 14 (July 13, 2001), “[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.” I note that the address included in the 2019 Proxy Statement is the correct address and that the Company continues to regularly receive mail at that address. Thus, based on the Proof of Delivery, SumOfUs still has not demonstrated that the Proposal was received at the Company’s principal executive offices by the Deadline in compliance with SEC Rule 14a-8. Therefore, we respectfully request that SumOfUs withdraw the Proposal and confirm that you are authorized to withdraw the Proposal on behalf of any and all Proponents.

Other Failures to Satisfy SEC Rule 14a-8

To the extent that SumOfUs or any Proponents working with SumOfUs is able to demonstrate that the Proposal was properly submitted to the Company under Rule 14a-8, the Company is delivering this deficiency notice to preserve its rights with respect to any procedural bases to omit the Proposal from the Company’s proxy statement and form of proxy for the 2020 Annual Meeting. In this regard, the Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention.

1. *Proposals by Proxy*

To the extent that SumOfUs is not a Company stockholder and instead purports to have submitted the Proposal on behalf of one or more Proponents, your submission must include documentation demonstrating that you had the legal authority to submit the Proposal on behalf of each Proponent. In Staff Legal Bulletin No. 14I (Nov. 1, 2017) (“SLB 14I”), the SEC’s Division of Corporation Finance (“Division”) noted that proposals submitted by proxy, such as the Proposal, may present challenges and concerns, including “concerns raised that shareholders may not know that proposals are being submitted on their behalf.” Accordingly, in evaluating whether there is a basis to exclude a proposal under the eligibility requirements of Rule 14a-8(b), as addressed below, SLB 14I states that in general the Division would expect any stockholder who submits a proposal by proxy to provide documentation to:

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

As a result of the failure to provide evidence of each Proponent’s delegation of authority to you, the Proposal raises the concerns referred to in SLB 14I. To remedy this defect, each Proponent should provide documentation that confirms that such Proponent had instructed or authorized you to submit the specific proposal to the Company on the Proponent’s behalf. Such documentation should address each of the bullet points listed in the paragraph above.

2. Proof of Continuous Ownership

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that stockholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. Since SumOfUs has not identified any Proponent, the Company is unable to verify whether its stock records indicate that any Proponent is a record owner of sufficient shares to satisfy this requirement. Moreover, the Company has not been provided with any proof that any Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this defect, each Proponent must submit sufficient proof of such Proponent's continuous ownership of the required number or amount of Company shares for the one-year period preceding and including the date the Proposal was submitted to the Company. To the extent that the Proposal was properly submitted to the Company under Rule 14a-8 via the link in your August 20, 2019 email, the submission date is August 20, 2019; however, if SumOfUs or any Proponents are able to demonstrate that the Proposal was received by the Company before the Deadline, the submission date is the date such copy was properly transmitted to the Company (the "Submission Date"). As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including the Submission Date; or
- (2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the required number or amount of Company shares for the one-year period.

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

[center/DTC/alpha.ashx](#). In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

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

3. Intent to Hold Shares

As discussed above, under Rule 14a-8(b) of the Exchange Act, a stockholder 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 stockholders' meeting for at least one year as of the date the Proposal was submitted to the Company, and must provide to the Company a written statement of the stockholder's intent to continue to hold the required number or amount of shares through the date of the stockholders' meeting at which the Proposal will be voted on by the stockholders. Your submission did not include such a statement for any Proponent. To remedy this defect, each Proponent must submit a written statement that such Proponent intends to continue holding the required number or amount of Company shares through the date of the 2020 Annual Meeting.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Katie Reilly
SumOfUs
August 21, 2019

Page 5

Conclusion

Please address any response to me at P.O. Box 193243, San Francisco, CA 94119. Alternatively, you may transmit any response by email to me at corporatesecretary@visa.com. If you have any questions with respect to the foregoing, please contact me at (917) 369-3034.

Sincerely,

A handwritten signature in black ink that reads "Tracey Heaton". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Tracey Heaton
Senior Vice President, Chief Counsel
Corporate and Assistant Secretary

Enclosures

Rule 14a-8 – Shareholder Proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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



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

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

- Brokers and banks that constitute "record" holders under Rule 14a-8 (b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a “record” holder for purposes of

Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.⁶ Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8⁷ and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,⁸ under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.⁹

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).¹⁰ We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals.

Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

“As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities].”¹¹

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder’s securities are held if the shareholder’s broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company’s deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8 (c).¹² If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company’s deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.¹³

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company’s notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,¹⁴ it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder “fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder’s] proposals from its proxy materials for any meeting held in the following two calendar years.” With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.¹⁵

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company’s no-action request.¹⁶

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

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

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

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

¹ See Rule 14a-8(b).

² For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

³ If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

⁴ DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. See Proxy Mechanics Concept Release, at Section II.B.2.a.

⁵ See Exchange Act Rule 17Ad-8.

⁶ See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

⁷ See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the

company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

⁸ *Techne Corp.* (Sept. 20, 1988).

⁹ In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

¹⁰ For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

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

¹² As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

¹³ This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

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

¹⁵ Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

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

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FedEx Priority Overnight

WEIGHT
0.5 lbs / 0.23 kgs

SIGNATURE SERVICES
Direct signature required

DELIVERED TO
Receptionist/Front Desk

TOTAL PIECES
1

TOTAL SHIPMENT WEIGHT
0.5 lbs / 0.23 kgs

TERMS
Shipper

PURCHASE ORDER NUMBER
S.Katcher

DEPARTMENT NUMBER
18204

SHIPPER REFERENCE
Deficiency Notice

PACKAGING
FedEx Envelope

SPECIAL HANDLING SECTION
Deliver Weekday, Direct Signature Required

STANDARD TRANSIT
 8/22/2019 by 10:30 am

SHIP DATE
 Wed 8/21/2019

ACTUAL DELIVERY
Thu 8/22/2019 9:25 am

Travel History

Local Scan Time



Thursday, 8/22/2019

9:25 am	SAN FRANCISCO, CA	Delivered
8:04 am	SAN FRANCISCO, CA	On FedEx vehicle for delivery

6:49 am	SAN FRANCISCO, CA	At local FedEx facility
3:08 am	SAN FRANCISCO, CA	At destination sort facility
2:45 am	OAKLAND, CA	Departed FedEx location

Wednesday, 8/21/2019

9:49 pm	OAKLAND, CA	Arrived at FedEx location
9:02 pm	SOUTH SAN FRANCISCO, CA	Left FedEx origin facility
4:32 pm	SOUTH SAN FRANCISCO, CA	Picked up
3:33 pm		Shipment information sent to FedEx

EXHIBIT F

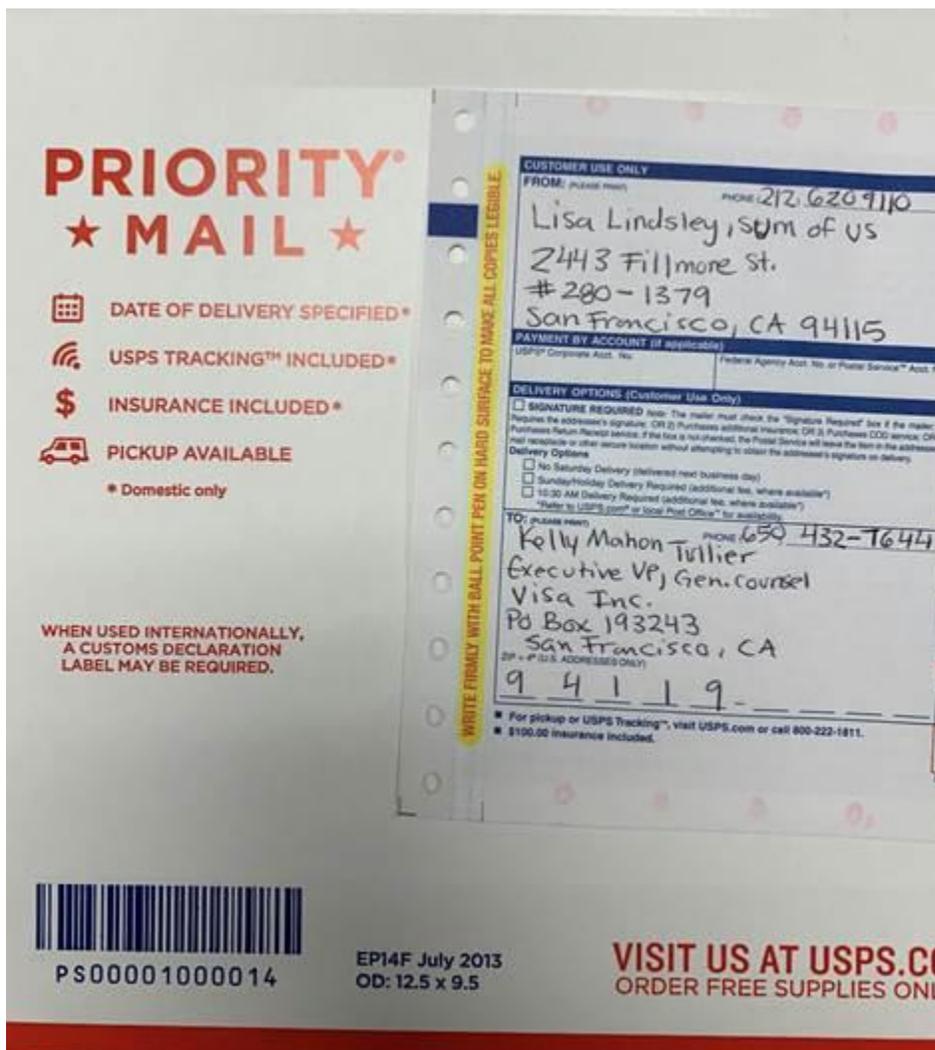
From: Katie Reilly <katie@sumofus.org>
Sent: Friday, August 23, 2019 12:07:58 PM (UTC-08:00) Pacific Time (US & Canada)
To: Lisa Lindsley; Corporate Secretary; Ivan Rosales
Subject: Re: TS (Katie, Lisa): Correspondence for Katie Reilly from Visa Inc. - press coverage of shareholder proposal

Dear Tracey,

In regards to your most recent correspondence, I am attaching a photo of the package that contains the shareholder proposal and the details regarding the Visa shareholders who submitted it.

The stamp says: Unknown at this PO Box, Name is not on Box application. As you can see we have the correct address given in your Proxy Statement and yet it was marked as address unknown. Are packages being declined if they include the name of Ms. Tullier?

Thanks.





On Tue, Aug 20, 2019 at 12:17 PM Katie Reilly <katie@sumofus.org> wrote:
Dear Tracey,

Please see the attached confirmation of receipt of the shareholder resolution on August 8 at 11:52 am local time.

The shareholder resolution can also be found here: www.sumofus.org/visa.

Please let me know if you have any additional questions.

Thanks,
Katie

----- Forwarded message -----

From: **Corporate Secretary** <corporatesecretary@visa.com>

Date: Mon, Aug 19, 2019 at 1:05 PM

Subject: Correspondence for Katie Reilly from Visa Inc. - press coverage of shareholder proposal

To: press@sumofus.org <press@sumofus.org>, corporate@sumofus.org <corporate@sumofus.org>

Ms. Reilly – please see the attached letter for your attention.

Thank you,

Tracey Heaton

--

Katie Reilly
Campaign Manager, SumOfUs.org
Pronouns: she/her/hers

--

Katie
Campaign Manager, SumOfUs.org
Pronouns: she/her/hers

EXHIBIT G

From: Katie Reilly <katie@sumofus.org>

Sent: Wednesday, August 28, 2019 11:37:49 AM (UTC-08:00) Pacific Time (US & Canada)

To: Corporate Secretary; Lisa Lindsley

Subject: Re: PR: Proof of ownership for Visa

Hi,

Please find proof of ownership attached as a follow up to our correspondence on our shareholder proposal.



August 21, 2019

Terry Corbin

Account #: ****_* **

Questions: +1 800-435-4000

x53545

Visa Share Ownership

Dear Terry Corbin,

This letter is in response to the request for information regarding holdings in the above referenced account.

As of 8/21/2019, account ****_* ** , registered as a Simplified Employee Plan, in the name of Terry Corbin, holds 700 shares of Visa Inc. These shares have been held in this account in excess of 12 rolling calendar months and have continuously held a value in excess of \$2,000.00.

Please note: This letter is for informational purposes only and is not an official record of the account.

Thank you for choosing Schwab. We appreciate your business and look forward to serving you in the future. If you have any questions, please call me or any Client Service Specialist at +1 800-435-4000 x53545.

Sincerely,

Kristi Butler

Kristi Butler

PARTNER SUPPORT TEAM

4600 Alliance Gateway Freeway

FORT WORTH, TX 76177



Fidelity Investments
Attn: Client Services
PO Box 77001
Cincinnati, OH 45277-0001
(800) 544-6666

August 26, 2019

WYNNE R CORSON

Dear Wynne Corson:

Thank you for your recent request in regard to your Fidelity IRA: Traditional account
XXX-XX *** .

Listed below is the information regarding the position you requested information about:

Position name:	Visa INC
Position symbol:	V
Position CUSIP:	92826C839
Shares currently held:	300
Holding period of shares:	In excess of one year

I hope this information is helpful. If you have any questions please contact Fidelity Investments anytime at (800) 544-6666. We appreciate your business and value our relationship with you.

Sincerely,

David Winfrey

Help Desk, Client Services

Our file: W620851-23AUG19

August 14, 2019

Dara Mark

Dear Mrs. Mark,

This letter is in response to your request for Fidelity to verify the position of Visa (V) in your Individual Transfer on Death (TOD) account ending in ***. I appreciate the opportunity to assist you with this matter.

Please see tables below for the information requested:

Number of Visa (V) shares owned as of close of trading on August 13, 2019	70.000
---	--------

History of Visa (V) in account ending ***

Trade Date	Transaction Type	Event Quantity	Event Amount	Price/Sh
04/26/2018	Buy	65	\$ 8,215.23	\$ 126.31
10/03/2018	Buy	5	\$ 758.50	\$ 150.71

Please note that this table contains information as of August 14, 2019 and can be subject to change pending any new and subsequent transactions in the same securities. They may not reflect impact from any previous corporate actions. This information is unaudited and is not intended to replace your monthly statement or official tax documents.

I hope this information is helpful. For any other issues or general inquiries, please contact your Registered Investment Advisor firm, Boston Private Wealth, at 561-630-4600.

Sincerely,



Ryan Morse
Client Services Manager

Our file: W628519-14AUG19

Fidelity Clearing & Custody
Solutions

Mail: 100 Crosby Parkway KC1J
Covington, KY 41015
Office: 500 Salem Street, OS2S
Smithfield, RI 02917



August 14, 2019

Dara Mark

To Whom it May Concern,

Fidelity Investments, a DTC participant, acts as the custodian and record owner for shares beneficially owned by Dara Mark. As of and including August 13, 2019, Fidelity Investments has continuously held 65 shares of Visa Inc. common stock, worth at least \$2,000, for over one year on behalf of Dara Mark.

If you have any questions or require additional assistance, please contact your Registered Investment Advisor firm, Boston Private Wealth, at 561-630-4600.

Sincerely,

A handwritten signature in black ink, appearing to read "R Morse", written over a horizontal line.

Ryan Morse
Client Services Manager

Our file: W628519-14AUG19