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December 17, 2019

Via E-Mail (shareholderproposals@sec.gov)

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

Ladies and Gentlemen:

On behalf of our client, NorthWestern Corporation, a Delaware corporation (the "Company"), we are submitting this letter pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in reference to the Company's intention to omit the shareholder proposal (the "Proposal") submitted by Thomas Tosdal (the "Proponent") from the Company's 2020 proxy statement and form of proxy (the "2020 Proxy Materials") relating to its 2020 Annual Meeting of Shareholders (the "2020 Annual Meeting"), tentatively scheduled for April 23, 2020. The Company intends to file, pursuant to Rule 14a-6, the 2020 Proxy Materials for the 2020 Annual Meeting on or about March 6, 2020. The Company hereby respectfully requests confirmation that the staff of the Division of Corporation Finance (the "Staff") will not recommend that enforcement action be taken by the Securities and Exchange Commission (the "Commission") if, in reliance on the analysis set forth below, the Company excludes the Proposal from its 2020 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), the Company is submitting this request for no-action relief under Rule 14a-8 of the Exchange Act by use of the Commission email address, shareholderproposals@sec.gov (in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j)(2)), and the undersigned has included his name, email address and telephone number in this letter. We are simultaneously forwarding by certified mail a copy of this letter to the Proponent as notice of the Company's intent to exclude the Proposal from the 2020 Proxy Materials. Also pursuant to Rule 14a-8(j), this letter is being filed no later than 80 calendar days before the Company intends to file its 2020 Proxy Materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, the Company is taking this opportunity to remind the Proponent that if he submits correspondence to the Commission or the Staff with



***FISMA & OMB Memorandum M-07-16

respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company.

The Company respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7) and/or Rule 14a-8(i)(3) of the Exchange Act for the reasons set forth below.

## THE PROPOSAL

On September 24, 2019, the Company received the Proposal from the Proponent. The Proposal sets forth the following resolution to be voted on by the Company's shareholders at the 2020 Annual Meeting:

> WHEREAS the evidence of human-caused climate change is overwhelming, the impacts of climate change are intensifying across the country, and unless prompt action is taken climate change will cause increasing harm to Montana's agriculture, tourism, and infrastructure by severe wildfires, drought, flooding, and decreased flows for hydroelectric generation;
>
> WHEREAS carbon dioxide emissions are the largest contributor to climate change, and coal mining and coal fired plants emit carbon dioxide and other greenhouse gases;
>
> WHEREAS 39% of Northwestern Energy Company's (NWE) Montana electricity generation comes from plants that emit carbon dioxide and other greenhouse gases from coal and natural gas combustion;
>
> WHEREAS NWE projects its carbon emission rates through 2038 to be very close to those in 2020, about 800 pounds of carbon dioxide per megawatt hour, most of which will come from the Colstrip Unit 4 coal fired plant located in Montana;
>
> WHEREAS the plant's age, departure of other owners, remediation costs, uncertain regulatory environment, and the dim future of the coal industry make NWE's 30% investment in Unit 4 and reliance on coal fired electricity an increasingly risky investment, posing a danger Colstrip may become a stranded asset;
>
> WHEREAS Talen Energy, Colstrip's operator, will permanently shut down Units 1 and 2 in 2019 because they are uneconomical and, apart from Talen's 30% interest in Unit 3, the other partial owners of Colstrip Units 3 and 4 (Puget Sound Energy, Inc.,

Portland General Electric Co., Avista Corporation and PacifiCorp) are required by their home state laws to eliminate coal fired electricity by 2025 and 2030 respectively;

WHEREAS the present remediation cost for groundwater contamination by Colstrip coal ash approaches $700 million, of which NWE must pay its part, and NWE's future remediation costs will increase out of present proportion as other owners of Colstrip depart;

WHEREAS Units 3 and 4, now 35 years old, continue to emit unlawful levels of hazardous air pollutants, requiring temporary shutdown in 2018, and an enforcement action by Montana DEQ is pending;

WHEREAS the Montana Legislature rejected NWE's effort to expand ownership of Colstrip and pass increased decommissioning and remediation costs to consumers, and the future federal regulatory scheme is uncertain, with candidates extolling a "Green New Deal;"

WHEREAS the coal supply for Colstrip is uncertain given the collapse of the coal mining industry;

WHEREAS non-carbon emitting renewable energy sources such as improved hydroelectric generation, wind, and solar are less expensive and increasingly available in Montana;

THEREFORE, BE IT RESOLVED the shareholders request Northwestern Corporation plan for the Northwestern Energy Company to cease coal fired generation of electricity from the Colstrip plant and replace that electricity with non-carbon emitting renewable energy and 21st century storage technologies with its own assets or from the market no later than the end of the year 2025, and to share that plan with the shareholders no later than the 2021 annual meeting.

Documents supporting this proposal are found at 350montana.org.

A copy of the Proposal, including the supporting statement, is attached to this letter as Exhibit A. Copies of additional correspondence with the Proponent are attached to this letter as Exhibit B.

**BACKGROUND**

The Company, doing business as NorthWestern Energy, is a public utility company providing electricity and natural gas to approximately 762,400 customers in Montana, South Dakota and Nebraska as well as to the Yellowstone National Park. The Company strives to balance legal requirements to provide cost-effective, reliable and stably priced energy with being good stewards of natural resources, with a diligent focus on sustainability. The Company owns a mix of clean and carbon-free energy resources balanced with traditional energy sources to help the Company deliver both affordable and reliable electricity and natural gas to its customers. The Company supports cost-effective energy efficiency programs and low or carbon-free resources as part of its diverse supply portfolio. In 2018, approximately 55% of the Company's retail needs originated from carbon-free resources, and the Company's electricity generation portfolio for Montana in 2018 consisted of 61% carbon-free generation.

The Proposal relates to the Company's partial ownership in Colstrip Unit 4 ("Unit 4"), a coal-fired electricity-generating unit at the Colstrip Power Plant ("Colstrip") in Montana. The Proposal requests that the Company cease generating electricity from Unit 4 and replace that electricity generation with non-carbon emitting electricity generation by the end of 2025. The Proposal also requests the Company share its plan to meet this requirement with shareholders no later than the Company's 2021 annual meeting.

The Company acquired a 30% ownership interest in Unit 4 in 2002 when it bought the Montana Power Co. electric and natural gas transmission and distribution system. Unit 4 is part of a larger operation consisting of four coal-fired electricity-generating units at Colstrip. The Company recently announced that it entered into an agreement to acquire an additional 25% interest in Unit 4 from one of the other co-owners. Closing of the acquisition of the additional 25% interest is subject to a number of conditions, including regulatory approval.

The remaining depreciable life of the Company's investment in Unit 4 is through 2042. Recovery of costs associated with a shut-down of the Company's operations at Unit 4 prior to the end of its useful life, currently slated for 2042, would be subject to Montana Public Service Commission ("MPSC") approval.

As part of this recent announcement relating to the additional 25% interest, the Company also unveiled its carbon reduction vision statement for Montana pursuant to which the Company committed to reduce the carbon intensity of its energy generation in Montana by 90% (compared to 2010) by 2045. Over the last decade, the Company reduced the carbon intensity of its energy generation in Montana by more than 50%. In the last five years alone, it invested more than $1

billion in clean energy projects, including hydro, wind and solar facilities. With the announcement of the carbon reduction vision statement, the Company has committed to going even further in supplying carbon-free energy to its Montana customers.

## ANALYSIS

### I. THE PROPOSAL MAY BE PROPERLY EXCLUDED UNDER RULE 14A-8(I)(7) BECAUSE THE PROPOSAL DEALS WITH A MATTER RELATING TO THE COMPANY'S ORDINARY BUSINESS OPERATIONS, SPECIFICALLY, THE PROPOSAL MAY BE PROPERLY EXCLUDED BECAUSE IT SEEKS TO MICROMANAGE THE COMPANY BY PROBING TOO DEEPLY INTO MATTERS OF A COMPLEX NATURE UPON WHICH SHAREHOLDERS, AS A GROUP, ARE NOT IN A POSITION TO MAKE AN INFORMED JUDGMENT.

Under Rule 14a-8(i)(7), a proposal is excludable if it "deals with a matter relating to the company's ordinary business operations." The Commission has explained that two central considerations determine whether a proposal is excludable under Rule 14a-8(i)(7). *See* SEC Release No. 34-40018 (May 21, 1998) (the "1998 Release"). The first relates to the subject matter of the proposal and whether the subject of the proposal concerns tasks "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* The second "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* A proposal likely crosses the micromanagement line if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.*

In the 1998 Release, the Commission stated that proposals "relating to [ordinary business] matters but focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." However, the Staff has repeatedly allowed the exclusion of proposals that focus on significant social policy issues where the proposal seeks to micromanage the company by specifying in detail the manner or method in which the company should address the significant social policy issue. *See, e.g.*, *MGE Energy, Inc.* (Mar. 13, 2019) ("MGE Energy")

(concurring in the exclusion of a proposal requesting the company to publish a report describing how the company can provide a secure, low cost energy future for its customers and shareholders by eliminating coal and moving to 100% renewable energy by 2050 or sooner even though the proposal concerned greenhouse gas emission reduction); *Apple, Inc.* (Dec. 5, 2016) ("Apple 2016") (concurring in the exclusion of a proposal requesting the company to reach net-zero greenhouse gas emissions by 2030 for all aspects of its business and those of its major suppliers despite the proposal's aim to reduce the company's greenhouse gas emissions); *Marriott International Inc.* (Mar. 17, 2010) (concurring in the exclusion of a proposal limiting showerhead flow to no more than 1.6 gallons per minute and requiring the installation of mechanical switches to control the level of water flow despite a recognition that global warming, which the proposal sought to address, is a significant social policy issue); *Ford Motor Company* (Mar. 2, 2004) (concurring in the exclusion of a proposal requesting the preparation and publication of a detailed report regarding the existence of global warming or cooling despite the company's acknowledgment that global warming is a significant social policy issue).

In Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("SLB 14K"), the Staff elaborated on the micromanagement prong of the ordinary business operations exception, stating that whether a proposal micromanages turns on the prescriptiveness of the proposal. *Id.* The Staff stated they look "to whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board." *Id.* If the method or strategy for implementing the action requested by the proposal is too prescriptive, and therefore puts limits on the judgment and discretion the board and management may use in implementing the proposal, then such proposal may be viewed as micromanaging. *Id.*

In SLB 14K, the Staff contrasted two similar proposals, finding one to be too prescriptive such that it could be excluded under the micromanagement prong of Rule 14a-8(i)(7) while the other was not too prescriptive and, thus, could not be excluded under the micromanagement prong. The first proposal sought annual reporting on "short-, medium- and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement to keep the increase in global average temperature to well below 2 degrees Celsius and to pursue efforts to limit the increase to 1.5 degrees Celsius." There, the Staff concluded the proposal "micromanaged the company by prescribing the method for addressing reduction of greenhouse gas emissions" and "effectively require[ed] the adoption of time-bound targets (short, medium and long) that the company would measure itself against and changes in operations to meet those goals, thereby imposing a specific method for implementing a complex policy." SLB 14K. On the other hand, the Staff found a proposal that sought a report "describing if, and how, [a company] plans to reduce its total contribution to climate change and align its

operations and investments with the Paris [Climate] Agreement's goal of maintaining global temperatures well below 2 degrees Celsius" did not "micromanage the company to such a degree that exclusion would be appropriate" because the proposal "deferred to management's discretion to consider if and how the company plans to reduce its carbon footprint and asked the company to consider the relative benefits and drawbacks of several actions." *Id.* The Staff further clarified that when a proposal "prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted." *Id.*

The Staff has permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals similar to the Proposal that attempt to micromanage a company by "seek[ing] to impose specific time-frames or methods for implementing complex policies." 1998 Release. In a no-action letter granted to EOG Resources, Inc. ("EOG") on February 26, 2018 (recon. denied Mar. 12, 2018), the Commission allowed exclusion of a proposal requesting that EOG "adopt company-wide, quantitative, time-bound targets for reducing greenhouse gas (GHG) emissions" and issue a report discussing the company's plans and progress toward achieving such targets. There, EOG argued the proposal sought to micromanage the company because it would have required the company's management to "subjugate its real-time operational decisions to company-wide, rigid, time-bound quantitative targets." EOG further argued that its management would be forced to focus on the required greenhouse gas emissions targets instead of other factors that would influence management's operational decisions. The Staff concurred with EOG, stating that the proposal "seeks to micromanage the Company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

In MGE Energy, the Commission permitted exclusion of a proposal requesting the company to "prepare a public report no later than October 1, 2020, describing how they can provide a secure, low cost energy future for their customers and shareholders by eliminating coal and moving to 100% renewable energy by 2050 or sooner." In its no-action request letter, MGE Energy argued that the proposal at issue micromanaged the company because it pertained to the fundamental management function of choosing which electric generation supply sources the company could use to supply electricity to its customers and the timeframe within which the company had to move to renewable electricity generation. MGE Energy argued the proposal was excludable under the micromanagement prong of Rule 14a-8(i)(7) because it set forth a specific emissions target (100% renewable electricity) to be achieved within a specific timeframe (by 2050 or sooner). The Staff allowed exclusion, stating in its response letter that the proposal sought to micromanage the company by "seeking to impose specific methods for implementing

complex policies in place of the ongoing judgments of management as overseen by its board of directors."

In Apple 2016, the Commission concurred in Apple's exclusion of a proposal that requested the board of directors to generate a feasible plan for the company to reach net-zero greenhouse gas emissions by the year 2030 "for all aspects of the business which are owned directly" by Apple as well as for its major suppliers. Apple argued that this proposal went too far in micromanaging the company because it would require management to replace its own judgment in making sound operational decisions with the judgment of shareholders requiring the company and its suppliers to meet an arbitrary emissions target by a specified date. The Commission agreed with Apple, stating the proposal could be excluded under Rule 14a-8(i)(7) because it sought to micromanage the company. Notably, the same proponent submitted a similar proposal the following year, which requested Apple to prepare a report that evaluated the potential for the company to achieve net-zero greenhouse gas emissions in its operations and the operations of its suppliers. The Commission once again concurred with Apple's exclusion of the proposal on micromanagement grounds, even though the 2017 proposal differed from the 2016 proposal in that, instead of requiring the implementation of a plan to achieve net-zero emissions, the 2017 proposal simply asked the company to prepare a report evaluating the potential for the company to achieve net-zero emissions.

Here, the Proposal requests that the Company discontinue generating electricity from Unit 4 and replace such electricity generation with non-carbon emitting electricity generation by the end of the year 2025. The Proposal specifies the precise electricity generating unit the company must discontinue use of (Unit 4), the precise type of electricity generation with which the Company must replace Unit 4's electricity generation (non-carbon emitting renewable energy) and the precise time frame in which the company must do so (no later than the end of the year 2025). In doing this, the Proposal seeks to impose a specific time frame and a specific method for addressing a complex policy and limits the judgment and discretion of management, which is precisely what the 1998 Release disallowed, as confirmed in SLB 14K. Similar to the proposal addressed in MGE Energy, the Proposal relates to the fundamental management function of determining which electricity generation supply resources the company may use to supply electricity to its customers and the timeline on which the Company must begin utilizing those resources.

Company management, and the Company's board of directors, must take into account a vast range of complex factors when deciding what supply resources to utilize in generating electricity in order to provide electricity to its customers that is affordable, reliable, and sustainable as required by the MPSC, including:

- The Company's commitment to the sustainability and long-term quality of the environment;
- Operational considerations;
- Cost and reliability of supply resources;
- Cost, availability and feasibility of future or replacement supply resources and the ability of the Company to connect such resources into the Company's transmission and distribution systems;
- New and emerging technologies;
- Impacts to customers including rates, reliability, and transmission and distribution availability and system constraints;
- Availability of back-up supply resources;
- Technical issues and limitations, including start-up time, capacity, and minimum and maximum generation limits;
- Ability to adjust generation output to match electricity demand as it changes throughout the day;
- Laws, regulations and policies applicable to the Company;
- The needs and desires of the communities in which the Company operates;
- Resource and capital expenditure planning considerations, including projected electricity demand, electrical generation unit development and construction planning timelines and costs; and
- Shareholder impact and value.

These complex factors, and certain other factors, were considered by Company management and the Company's board of directors when, as mentioned above, the Company recently agreed to purchase an additional 25% interest in Unit 4 and when the Company committed to its carbon reduction vision statement for Montana.

The Proposal would require management to subjugate its judgment on operational decisions regarding supply resources for electricity generation (including its recent decision to increase its ownership interest in Unit 4) to the judgment of shareholders instead, in a time-bound manner, similar to the proposal in EOG. Management would be required to arbitrarily shut down its operations at Unit 4 without taking into account the multitude of other factors that would, and should, otherwise influence management's decisions of where, how and when to supply fuel to the Company's electricity generating units. It is important to note that the

Company also owns interests in other coal-fired generating units, but the Proposal does not seek to shut down all of the Company's coal-fired generating units – only Unit 4. As prohibited by the 1998 Release and SLB 14K, the Proposal would afford the Company zero flexibility in deciding timing and the best supply resources to use in order to continue to provide electricity to the Company's Montana customers in a safe, reliable and cost-effective manner.

Further, the decision of whether to discontinue operations at Unit 4 prior to the end of Unit 4's useful life is even more complex than other business decisions management makes because the prudency of the Company's supply procurement activities, including whether the Company continues to generate electricity from coal at Unit 4 or replaces such electricity generation with non-carbon emitting renewable energy as required by the Proposal, is subject to the MPSC's review and approval.

The Company's profitability is dependent on its ability to recover the costs of providing energy and utility services to its customers and earn a return on its capital investment in its utility operations. The Company provides service at rates established by several regulatory commissions including the MPSC and the Federal Energy Regulatory Commission. The Company's Montana operations are subject to the jurisdiction of the MPSC with respect to rates, terms and conditions of service, accounting records, electric service territorial issues and other aspects of the Company's operations. The rates the Company may charge are generally set based on an analysis of the Company's costs incurred in a historical test year. In addition, each regulatory commission to which the Company is subject sets rates based in part upon their acceptance of an allocated share of total utility costs.

Early closure of the Company's generation facilities could result in regulatory impairments or increased cost of operations. The Company is obligated to pay for the costs of closure of its share of generation facilities, including its share of the costs of reclamation of the mines that supply coal to the coal-fired power plants. Likewise, other owners or participants are responsible for their shares of the decommissioning and reclamation obligations. If recovery of the Company's remaining investment in such facilities and the costs associated with early closure, including decommissioning, remediation, reclamation, and restoration, are not recovered from customers, it could have a material adverse impact on the Company's results of operations. Moreover, with the recent announcement of the proposed acquisition of an additional 25% interest in Unit 4, the Company also announced that it would enter into a power purchase agreement to sell power for approximately five years to the seller of the 25% interest. As announced, the Company will use the proceeds from those power sales to fund future remediation costs of Unit 4.

The determination of which supply sources the Company utilizes to generate electricity is a complex decision that requires management expertise and regulatory review and approval (including from the MPSC) in order to ensure that customers have continued access to utility services that are affordable, reliable, and sustainable for the long-term.

The Proposal fundamentally interferes with management's decision-making and its ability to run the Company on a day-to-day basis by subjecting to shareholder oversight an aspect of the Company's business that is simply too complex to be subject to the oversight of shareholders.

## II. THE PROPOSAL MAY BE PROPERLY EXCLUDED UNDER RULE 14A-8(I)(3) BECAUSE IT IS CONTRARY TO THE COMMISSION'S PROXY RULES, INCLUDING RULE 14A-9, WHICH PROHIBITS MATERIALLY FALSE OR MISLEADING STATEMENTS IN PROXY SOLICITING MATERIALS.

If the Staff does not concur that the Proposal may be excluded pursuant to Rule 14a-8(i)(7), then the Proposal should be excluded pursuant Rule 14a-8(i)(3), which permits a company to exclude a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. Rule 14a-9 provides that no solicitation subject to Rule 14a-9 shall be made by means of any proxy statement "containing a statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading . . . ." As noted in Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"), unlike the other bases for exclusion under Rule 14a-8, Rule 14a-8(i)(3) explicitly references the supporting statement, in addition to the proposal as a whole.

The following statements in the Proposal are false and misleading:

a. The Proposal states, "*[The Company] projects its carbon emission rates through 2038 to be very close to those in 2020, about 800 pounds of carbon dioxide per megawatt hour, most of which will come from [Unit 4].*"

That statement is false and misleading. The Company's 2019 Electricity Supply Resource Procurement Plan ("Resource Plan")[1] indicates that the Company's carbon emission rate in 2020 is estimated to be about 840 pounds of carbon dioxide per megawatt hour, declining in 2038 to approximately 750 pounds of carbon dioxide per megawatt hour, a decline of over 10%.

Additionally, on December 10, 2019, the Company announced its carbon reduction vision statement for Montana, indicating it would reduce carbon emissions 90% by 2045 from 2010 levels.[2] As part of that announcement, the Company estimates its: 2020 carbon emissions in Montana will be 840 pounds; 2030 carbon emissions will be 740 pounds; 2040 carbon emissions will be 600 pounds; and 2045 emissions will be 280 pounds.[3]

b. The Proposal states, "*the present remediation cost for groundwater contamination by Colstrip coal ash approaches $700 million, of which [the Company] must pay its part, and [the Company's] future remediation costs will increase out of present proportion as other owners of Colstrip depart.*"

That statement is false and misleading. The Company's share of future remediation costs will not increase as other owners of Colstrip depart. Pursuant to the existing owner and operator agreements among the owners, when an owner departs, it retains its future remediation obligations. Those obligations do not shift to any remaining owners simply because of a departure.

In addition, the $700 million to which the Proposal refers is a misleading figure for several reasons. First, the Proposal portrays $700 million as "the present remediation cost." However, $700 million is only an estimate of *future* remediation costs. Second, $700 million represents the high end of an estimated range. Finally, $700 million does not relate to the Company's share of future remediation costs. Instead, it is an

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1 See Figure 1-4 on p. 1-8 of the 2019 Electricity Supply Resource Procurement Plan, available at http://www.northwesternenergy.com/docs/default-source/documents/defaultsupply/plan19/ch-2019-vol-1-final.pdf.

2 See announcement, available at http://northwesternenergy.com/our-company/media-center/current/news-article/2019/12/10/NorthWestern-Energy-to-acquire-25-share-of-Colstrip-Unit-4-from-Puget-Sound-Energy.

3 See p. 29 of the Company's presentation at the Wells Fargo Energy Symposium, available at http://www.northwesternenergy.com/docs/default-source/documents/investor/PresentationWellsFargo12102019.pdf.

estimate of future remediation costs for the entire Colstrip site and for all owners collectively.

There are three areas of the Colstrip site that will require future remediation: (1) the Units 1 and 2 effluent holding ponds; (2) the Units 3 and 4 effluent holding ponds; and (3) the plant site which is common to all four units. The misleading $700 million estimate includes all three of these areas.

The Company does not own any share of Units 1 and 2 at Colstrip and thus has no remediation obligations related to those units. The Company currently owns only 30% of Unit 4, and as a result of sharing arrangements between the owners of Unit 3 and Unit 4, that results in an obligation of 15% of the remediation costs associated with Unit 3 and Unit 4 combined. Thus, the Company has a 15% share of the remediation costs associated with the Units 3 and 4 effluent holding ponds and a 15% share of Unit 3 and 4's share of the remediation costs associated with the common plant site. In addition, as previously mentioned, the Company will use the proceeds from the sale of power to the seller of the 25% interest in Unit 4 to fund the Company's associated future remediation costs.

While the precise amount of those remediation obligations is difficult to quantify today based on estimates of the future, it is easy to understand that a $700 million estimate for future remediation costs for the entire Colstrip site (including all four units) is a misleading figure with respect to the Company's 30% ownership interest in just Unit 4.

c. The Proposal states, "*Units 3 and 4, now 35 years old, continue to emit unlawful levels of hazardous air pollutants, requiring temporary shutdown in 2018, and an enforcement action by Montana DEQ is pending.*"

That statement is false and misleading. Unit 4 does not continue to emit unlawful levels of hazardous air pollutants. As stated in the Proposal, the shutdown in 2018 was *temporary*. Since December 2018, the operator has performed monthly compliance testing which has continued to demonstrate compliance with emission requirements. And, while an enforcement action by Montana DEQ is pending against the operator, that action was filed, along with a consent decree settling the matter for a $450,000 penalty. On November 29, 2019, the court approved the consent decree, resolving the violation.

d. The Proposal states, "*non-carbon emitting renewable energy sources such as improved hydroelectric generation, wind, and solar are less expensive and increasingly available in Montana.*"

That statement is false and misleading. Presumably, the Proposal intended to say that renewable energy sources are less expensive than thermal generation sources such as coal and natural gas. However, renewable energy sources are not less expensive than thermal resources. The Resource Plan, which is backed up by extensive modeling, concluded that meeting customers' future needs with carbon free resources would cost $523 million more than natural gas fired resources.[4] As stated in the Resource Plan:

> [T]hermal resources provide the best value (lowest cost) to meet our customers' future needs for peak capacity. Renewable resources and energy storage technologies are projected to continue to decline in cost, but are still more expensive than natural gas fired resources … A portfolio which meets our customers' future resource needs without the addition of any new carbon producing resources would lower carbon emissions, but at a cost. Meeting our customers' future needs by adding carbon free resources is projected to cost $523,000,000 more than meeting their needs using natural gas fired resources.

In addition, the Staff has made clear that references to external sources, such as a website, in a proposal may violate Rule 14a-9, and thus may be excludable under Rule 14a-8(i)(3). In Staff Legal Bulletin No. 14 (July 13, 2001), the Staff explained that a company may exclude from a proposal a website address under Rule 14a-8(i)(3) if information contained on the website is materially false or misleading. There, the Staff stated:

> 1. May a reference to a website address in the proposal or supporting statement be subject to exclusion under the rule?
>
> Yes. In some circumstances, we may concur in a company's view that it may exclude a website address under [R]ule 14a-8(i)(3) because

[4] See pp. 1-12 and 1-13 of the 2019 Electricity Supply Resource Procurement Plan, available at http://www.northwesternenergy.com/docs/default-source/documents/defaultsupply/plan19/ch-2019-vol-1-final.pdf

> information contained on the website may be materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules. Companies seeking to exclude a website address under [R]ule 14a-8(i)(3) should specifically indicate why they believe information contained on the particular website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules.

In *Freeport-McMoRan Copper & Gold Inc.* (Feb. 22, 1999), the Staff concurred in exclusion of certain quotations from newspaper articles in the supporting statement of a proposal under Rule 14a-8(i)(3) because such quotations were false and misleading.

In the supporting statement, the Proponent states, "Documents supporting this proposal are found at 350montana.org." However, it is not clear to the Company what those documents are. In fact, most of the information on the website is quite dated (from 2017 or earlier) and makes no reference to the Proposal. Even where the website attempts to reference the Company's resource procurement plan, the website contains a link to the Company's 2015 version of the plan. The Company had subsequently prepared and published an August 2019 version, which is cited above.

In SLB 14B, the Staff reiterated that modification or exclusion of all or a portion of a proposal or supporting statement is consistent with Rule 14a-8(i)(3) if the company "demonstrates objectively that a factual statement is materially false or misleading." *See, e.g.*, *Ferro Corp.* (Mar. 17, 2015) (concurring in the exclusion of a proposal requesting the company to reincorporate in Delaware from Ohio because the proposal's supporting statement included false and misleading statements regarding Ohio law); *AT&T Inc.* (Feb. 2, 2009) (concurring in the exclusion of a proposal requesting an amendment to the company bylaws to implement a lead independent director position because the proposal's supporting statement misstated the independence standard of the Council of Institutional Investors). As indicated above, a number of the statements in the supporting statement (including specifically the statements that the Company's share of remediation costs will increase as owners depart Colstrip, that the Company's projected emissions rate will be the same in 2038, that Colstrip Units 3 and 4 continue to emit unlawful levels of hazardous air pollutants and that non-carbon emitting renewable energy sources are less expensive than thermal resources) are factually inaccurate and placed out of context such that it renders the supporting statement and the Proposal false and misleading.

At times, the Staff will permit shareholders to make minor revisions to proposals that do not alter the substance of the proposal in order to eliminate the false or misleading statements. However, revision is appropriate only for "proposals that comply generally with the substantive requirements of [R]ule 14a-8, but contain some minor defects that could be corrected easily." SLB 14B. In SLB 14B, the Staff noted that its "intent to limit this practice to minor defects was evidenced by [its] statement in SLB No. 14 that [they] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both as materially false or misleading if a proposal or supporting statement would require detailed and extensive editing in order to bring it into compliance with the proxy rules." As indicated above, more than one-third (4 out of eleven) paragraphs in the supporting statement contain misleading and inaccurate statements.

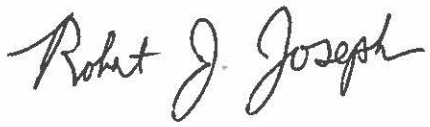
In SLB 14B, the Staff also stated that modification or exclusion of a proposal or supporting statement is consistent with Rule 14a-8(i)(3) where such proposal or supporting statement "directly or indirectly impugn[s] character, integrity, or personal reputation, or directly or indirectly make[s] charges concerning improper, illegal, or immoral conduct or association, without factual foundation." *See, e.g.*, *General Magic, Inc.* (May 1, 2000) (concurring in the exclusion of a proposal requesting the company make "no more false statements" to shareholders because the proposal created the false impression that the company had previously tolerated dishonesty when the company had corporate policies in place to the contrary). In the present case, the Proponent impugns the integrity of the Company by stating that the Company plant "continue[s] to emit unlawful levels of hazardous air pollutants." This is false and intended to present the Company in a negative and harmful light and damage its reputation.

## CONCLUSION

On the basis of the foregoing, the Company respectfully requests that the Staff concur that it will not recommend enforcement action if the Company excludes the Proposal from its 2020 Proxy Materials for the 2020 Annual Meeting.

If you have any questions regarding this request or need additional information, please contact me via phone at (312) 269-4176 or via email at rjjoseph@jonesday.com.

Sincerely,



Robert J. Joseph

Attachments

Cc: Timothy P. Olson, Senior Corporate Counsel and Corporate Secretary, NorthWestern Corporation
Thomas Tosdal

Exhibit A

Thomas Tosdal

***

Timothy P. Olson

Corporate Secretary

Northwestern Corporation

3010 West 69th St.

Sioux Falls, SD 57108

September 20, 2019

Certified Mail/Return Receipt Requested

Re: NWE Shareholder Proposal

Dear Mr. Olson:

Please find attached a shareholder proposal for presentation to the shareholders in your next annual proxy statement and annual meeting.

This proposal is in full compliance with 17 C.F.R. section 240.14a-8.

You will find attached a letter from my broker, Muriel Siebert & Co., Inc., attesting to the fact I have continuously held the requisite number of NWE shares for over one year and the stock price during that time confirms the value of those shares are sufficient to qualify this proposal for presentation in the 2020 proxy statement and annual meeting.

Pursuant to section 240.14a-8(b), I certify I intend to continue to hold these shares through the date of the shareholders' meeting and beyond.

You may reach me at the above mailing address.

Sincerely yours,

Tom Tosdal

Thomas Tosdal

SIEBERT MURIEL SIEBERT & CO., INC.
MEMBER NYSE, FINRA & SIPC

*15 Exchange Place | 6th Floor | Suite 615 | Jersey City, NJ 07302*
*Toll Free: (800) 872-0444 | Local: (212) 644-2400 | Fax: (212) 486-2784*
*www.SiebertNet.com*

September 19, 2019

Mr. Thomas L. Tosdal
***

Re: Shares of Northwestern Corp.

Dear Mr. Tosdal,

Please let this letter serve as verification that you purchased 40 shares of NWE stock on August 31st 2018 at a price of $59.86 per share.

As of this date the shares have been held continuously.

Thank you,

James Burzynski
Director of Operations
Muriel Siebert & Co. Inc.

**SHAREHOLDER PROPOSAL**

WHEREAS the evidence of human-caused climate change is overwhelming, the impacts of climate change are intensifying across the country, and unless prompt action is taken climate change will cause increasing harm to Montana's agriculture, tourism, and infrastructure by severe wildfires, drought, flooding, and decreased flows for hydroelectric generation;

WHEREAS carbon dioxide emissions are the largest contributor to climate change, and coal mining and coal fired plants emit carbon dioxide and other greenhouse gases;

WHEREAS 39% of Northwestern Energy Company's (NWE) Montana electricity generation comes from plants that emit carbon dioxide and other greenhouse gases from coal and natural gas combustion;

WHEREAS NWE projects its carbon emission rates through 2038 to be very close to those in 2020, about 800 pounds of carbon dioxide per megawatt hour, most of which will come from the Colstrip Unit 4 coal fired plant located in Montana;

WHEREAS the plant's age, departure of other owners, remediation costs, uncertain regulatory environment, and the dim future of the coal industry make NWE's 30% investment in Unit 4 and reliance on coal fired electricity an increasingly risky investment, posing a danger Colstrip may become a stranded asset;

WHEREAS Talen Energy, Colstrip's operator, will permanently shut down Units 1 and 2 in 2019 because they are uneconomical and, apart from Talen's 30% interest in Unit 3, the other partial owners of Colstrip Units 3 and 4, (Puget Sound Energy, Inc., Portland General Electric Co., Avista Corporation and PacifiCorp) are required by their home state laws to eliminate coal fired electricity by 2025 and 2030 respectively;



RLT

WHEREAS the present remediation cost for groundwater contamination by Colstrip coal ash approaches $700 million, of which NWE must pay its part, and NWE's future remediation costs will increase out of present proportion as other owners of Colstrip depart;

WHEREAS Units 3 and 4, now 35 years old, continue to emit unlawful levels of hazardous air pollutants, requiring temporary shutdown in 2018, and an enforcement action by Montana DEQ is pending;

WHEREAS the Montana Legislature rejected NWE's effort to expand ownership of Colstrip and pass increased decommissioning and remediation costs to consumers, and the future federal regulatory scheme is uncertain, with candidates extolling a "Green New Deal;"

WHEREAS the coal supply for Colstrip is uncertain given the collapse of the coal mining industry;

WHEREAS non-carbon emitting renewable energy sources such as improved hydroelectric generation, wind, and solar are less expensive and increasingly available in Montana;

THEREFORE, BE IT RESOLVED the shareholders request Northwestern Corporation plan for the Northwestern Energy Company to cease coal fired generation of electricity from the Colstrip plant and replace that electricity with non-carbon emitting renewable energy and 21st century storage technologies with its own assets or from the market no later than the end of the year 2025, and to share that plan with the shareholders no later than the 2021 annual meeting.

Documents supporting this proposal are found at 350montana.org.



RT

Exhibit B

NorthWestern® Energy

October 4, 2019

*via certified mail*

Mr. Thomas Tosdal
***

*Re: Notice of Defects Concerning Shareholder Proposal to NorthWestern Corporation*

Dear Mr. Tosdal:

On September 24, 2019, NorthWestern Corporation ("**NorthWestern**") received your shareholder proposal concerning the Colstrip plant (the "**Proposal**"). This letter is notice that the Proposal does not comply with Rule 14a-8 under the Securities Exchange Act of 1934, which I have enclosed for your reference.

First, contrary to Rule 14a-8(b)(2)(i), your proof of ownership of the securities does not include a written statement from the "record" holder of your securities. In Staff Legal Bulletin No. 14F (which I also have enclosed for your reference), the Securities and Exchange Commission ("**SEC**") has advised that proof of ownership for securities held at a securities intermediary that is not a Depository Trust Company ("**DTC**") participant or an affiliate of a DTC participant also requires a proof of ownership letter from a DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary. We have reviewed the most recently available DTC participant listing (month ending August 31, 2019), and Muriel Siebert & Co., Inc. ("**Siebert**") is not listed. To cure this defect, you (or Siebert) should also obtain a proof of ownership letter from a DTC participant or an affiliate of a DTC participant that complies with Rule 14a-8 and that can verify the holdings of Siebert.

Also, contrary to Rule 14a-8(b)(2)(i), the proof of ownership that you submitted from Siebert does not cover the one-year period preceding and including the date you submitted the proposal. Your proof of ownership is defective because your proposal is dated and postmarked September 20, 2019, yet your proof of ownership is dated September 19, 2019. To cure this defect, you must obtain a new proof of ownership letter from Siebert and a DTC participant verifying your continuous ownership of the requisite amount of securities for the one-year period preceding and including September 20, 2019.

Rule 14a-8(f) requires your response to this notice of defects to be sent to NorthWestern and postmarked, or transmitted electronically, no later than 14 days from the date you received this

notice of defects. If you fail to cure these defects as required by Rule 14a-8, NorthWestern will exclude your proposal from its proxy statement.

Sincerely,

**Timothy P. Olson**
*Senior Corporate Counsel & Corporate Secretary*
tim.olson@northwestern.com
**O** 605-978-2924

Encs.

information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

NOTE 1 TO §240.14A–7. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

NOTE 2 TO §240.14A–7 When providing the information required by §240.14a–7(a)(1)(ii), if the registrant has received affirmative written or implied consent to delivery of a single copy of proxy materials to a shared address in accordance with §240.14a–3(e)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.

[57 FR 48292, Oct. 22, 1992, as amended at 59 FR 63684, Dec. 8, 1994; 61 FR 24657, May 15, 1996; 65 FR 65750, Nov. 2, 2000; 72 FR 4167, Jan. 29, 2007; 72 FR 42238, Aug. 1, 2007]

### §240.14a–8 Shareholder proposals.

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

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

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

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

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

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d–101), Schedule 13G (§240.13d–102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this

chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

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

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

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

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

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

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

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

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

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

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

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

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant

to Item 402 of Regulation S–K (§ 229.402 of this chapter) or any successor to Item 402 (a ''say-on-pay vote'') or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a–21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a–21(b) of this chapter.

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

express your own point of view in your proposal's supporting statement.

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

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

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

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

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

### §240.14a–9 False or misleading statements.

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

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

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

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

a. Predictions as to specific future market values.

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

U.S. Securities and Exchange Commission

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

# Shareholder Proposals

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

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

**Date:** October 18, 2011

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

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

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

### 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-8[7] 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.

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[1] *See* Rule 14a-8(b).

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

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

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

[5] *See* Exchange Act Rule 17Ad-8.

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

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

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

[8] *Techne Corp.* (Sept. 20, 1988).

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

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

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

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

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

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

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

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

*http://www.sec.gov/interps/legal/cfslb14f.htm*

Thomas Tosdal

***

Timothy P. Olson

Corporate Secretary

Northwestern Corporation

3010 West 69th St.

Sioux Falls, SD 57108

Certified Mail/Return Receipt Requested

October 17, 2019

Re: NWE Shareholder Proposal

Dear Mr. Olson:

This letter responds to yours dated October 4, 2019, which I received on October 10, 2019. In that letter you allege two defects in the shareholder proposal filed with Northwestern Corporation in September.

The first alleged defect was the fact the letter transmitting the proposal was dated September 20, 2019, and the letter from Siebert confirming my ownership of the requisite shares was dated the day before, on September 19, 2019. While not a defect, and certainly none of consequence, the alleged defect is cured by the attached letter from Siebert confirming my requisite ownership of shares continuously from August 31, 2018, to October 14, 2019.

The second alleged defect was my not submitting a second letter confirming ownership of the requisite shares from a Depository Trust Company participant. Your claim of defect is incorrect, and any failure to supply a second letter stating the same thing as the Siebert letter is not a defect warranting rejection of the proposal.

You rely on a SEC Staff Legal Bulletin No. 14 F (CF), which states the bulletin is of no binding legal effect:

> "The statements in this bulletin represent the views of the Division of Corporate 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."

The case law regarding governmental staff opinions such as the legal bulletin upon which you rely is abundantly clear that such letters offer a court guidance at most and are not legally binding on either the corporation, the shareholder, or the court.

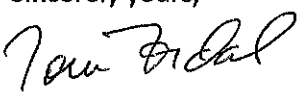
The applicable regulation governing shareholder proposals provides the acceptable means for establishing the requisite holding of shares:

> "The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or a bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year."
>
> (17 C.F.R. section 240.14a-8)

Siebert is a broker registered with the SEC (No. 8-14900), files periodic reports with the SEC, and is regulated by FINRA. Siebert operates in 52 states and territories. Siebert has been a member of the New York Stock Exchange since 1967. Siebert is the only "record" holder of my securities I have known, which provides me with a record every month of the securities I hold and how they are doing on the market. My monthly report from Siebert indicates "account carried with National Financial Services LLC," which is a DTC participant (no. 0226). I called National Financial Services, which advised me that the company could not respond to my request and I had to go through Siebert, which implies Siebert is its agent in this regard.

More importantly, your reliance on a staff opinion with no binding effect to disqualify a shareholder proposal exalts form over substance. There is no meaningful dispute about whether I have held the requisite amount of securities for the requisite amount of time to qualify to file the proposal. Should Northwestern Corporation seek to disqualify the proposal based on this non-existent technicality a United States District Court judge will decide the propriety of that decision.

Sincerely yours,



Thomas Tosdal

SIEBERT MURIEL SIEBERT & CO., INC.
MEMBER NYSE, FINRA & SIPC

*15 Exchange Place | 6th Floor | Suite 615 | Jersey City, NJ 07302*
*Toll Free: (800) 872-0444 | Local. (212) 644-2400 | Fax. (212) 486-2784*
*www.SiebertNet.com*

October 14, 2019

Mr. Thomas L. Tosdal
***

Re: Shares of Northwestern Corp.

Dear Mr. Tosdal,

Please let this letter serve as verification that you purchased 40 shares of NWE stock on August 31st, 2018 at a price of $59.86 per share.

As of this date the shares have been held continuously.

Thank you,

James Burzynski
Director of Operations
Muriel Siebert & Co.

Thomas Tosdal

***

Timothy P. Olson

Corporate Secretary

Northwestern Corporation

3010 West 69th St.

Sioux Falls, SD 57108

Overnight Mail

October 22, 2019

Re: NWE Shareholder Proposal

Dear Mr. Olson:

Please find attached a letter just received from Fidelity verifying my holding of the requisite amount of securities for over a year and as of the time of filing with you the shareholder proposal.

This letter now removes the second and last of the alleged defects to inclusion of the proposal in the next proxy statement of Northwestern Corporation for vote at the annual meeting.

Sincerely yours,

Thomas Tosdal

Fidelity INVESTMENTS

FIDELITY CLEARING & CUSTODY SOLUTIONS

October 18, 2019

To Whom it may Concern:

Please let this letter serve as verification that account *** registered in the name of Mr. Thomas L. Tosdal purchased 40 shares of Northwestern Corp symbol NWE on August 31st 2018 at a price of $59.86 per share. As of this date the shares have been held continuously.

Sincerely,

National Financial Services, LLC

870410.1.0

200 Seaport Boulevard, Boston, MA 02210