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January 6, 2020

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Hertz Global Holdings, Inc. - Omission of Shareholder Proposal Submitted by *As You Sow*

Ladies and Gentlemen:

On behalf of our client, Hertz Global Holdings, Inc., a Delaware corporation (the "**Company**" or "**Hertz**"), we hereby respectfully request confirmation that the staff (the "**Staff**") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "**Commission**" or the "**SEC**") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended ("**Rule 14a-8**"), the Company omits from its proxy statement and form of proxy for the 2020 annual meeting of its shareholders (the "**2020 Proxy Materials**") the shareholder proposal and supporting statement attached hereto as **Exhibit A** (the "**Proposal**") submitted by *As You Sow* (the "**Proponent**") for inclusion in the 2020 Proxy Materials, which was dated as of December 11, 2019 and received by the Company on December 12, 2019.

In accordance with Rule 14a-8(j), we are:

- submitting this letter not later than 80 days prior to the date on which the Company intends to file definitive 2020 Proxy Materials; and
- simultaneously providing a copy of this letter and its exhibits to the Proponent, thereby notifying the Proponent of the Company's intention to exclude the Proposal from its 2020 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D ("**SLAB 14D**"), we are submitting this request for no-action relief under Rule 14a-8 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)), and the undersigned has included his name and telephone number both in this letter and the cover email accompanying this letter.

Rule 14a-8(k) and SLAB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, the Company is taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLAB 14D.

Proposal

On December 12, 2019, the Company received the Proposal from the Proponent. The Proposal states, in relevant part:

"Whereas: The Intergovernmental Panel on Climate Change's 2018 report finds that "rapid, far-reaching" changes are necessary in the next 10 years to avoid disastrous levels of global warming. Specifically, it instructs that net emissions of carbon dioxide must reach "net zero" by 2050 to maintain warming below 1.5 degrees Celsius.

If warming is kept to 1.5 versus 2 degrees, studies report savings of $20 trillion to the global economy by 2100. Recently, 215 of the biggest global companies reported almost $1 trillion at risk from climate impacts, some within five years.

The transportation sector is the largest greenhouse gas-emitting sector in the United States. Transport-related companies like Hertz contribute significantly to climate change through emissions from gasoline combustion. Despite this, Hertz provides few specifics about plans to mitigate the climate change impact of its sizable fleet beyond citing to an existing average of 32 mpg in its fleet.

Assessing the feasibility of adopting clean transportation and energy goals will serve as a practical step towards aligning Hertz's business operations with global efforts to limit climate change. Fortuitously, greenhouse gas-reducing measures are not only impactful, but also feasible and often cost-effective. One promising strategy for lowering Hertz's significant fleet-related greenhouse gas emissions is through the increased adoption of electric vehicles.

The current capital cost difference between electric and gasoline vehicles is expected to drop as electric technology improves, more models become available, cars are produced at greater scale, and battery costs continue to decrease. From an environmental standpoint, the benefits of electric vehicles are clear: they have a smaller life-cycle greenhouse gas impact regardless of the fossil fuel intensity of the electricity source.

Hertz's standard rental car business currently has only three hybrid electric vehicle options at select locations for consumer rentals, with no all-electric vehicles. While Hertz has taken steps to improve energy efficiency for its operational facilities, the impact of the company's fleet remains insufficiently addressed. Investors seek to understand how the company is assessing the potential benefits of electric vehicle adoption from reputational gains to cost savings.

Resolved: Shareholders request that Hertz issue a report, at reasonable cost and omitting proprietary information, on potential climate change mitigation strategies available for reducing the significant carbon footprint of its vehicle fleet in alignment with Paris goals.

Supporting Statement: In the report, shareholders seek information, among other issues at board and management discretion, on the relative benefits and drawbacks of integrating the following actions:

- Adopting company-wide goals for growing the company's electric or other low or zero emission vehicle fleet;
- Adopting significantly greater fuel economy standards for its rental fleet;
- Adopting overall greenhouse gas emission reduction targets for the company's vehicle rental fleet greenhouse gas footprint."

A complete copy of the Proposal is attached hereto as **Exhibit A**.

Bases for Exclusion

On behalf of the Company, we respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from its 2020 Proxy Materials pursuant to:

- Rule 14a-8(b) and Rule 14a-8(f)(1), as the Proponent has failed to demonstrate that it is eligible to submit the Proposal; and
- Rule 14a-8(i)(7), as the Proposal relates to the Company's ordinary business operations.

Background

On December 12, 2019, the Company received the Proposal by overnight mail, accompanied by (i) a cover letter from *As You Sow* (the "**Cover Letter**") and (ii) an authorization and proof of ownership letter, which was on the letterhead of Amalgamated Bank and signed by the purported trustee of LongView Broad Market 3000 Index Fund, as shareholder (the "**Amalgamated Bank Letter**"). The Cover Letter was dated December 11, 2019, the Amalgamated Bank Letter was dated November 19, 2019 and the Proposal was postmarked as of December 12, 2019. In addition to authorizing *As You Sow* to submit and address the Proposal on behalf of the alleged shareholder, the Amalgamated Bank Letter stated as follows: "[t]he [s]tockholder has continuously owned over $2,000 of Company stock, with voting rights, for over a year. The [s]tockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2020." The Cover Letter and Amalgamated Bank Letter are included in **Exhibit A.**

On December 19, 2019, within 14 days of receiving the Proposal, the Company sent by email to the Proponent a deficiency notice (the "**Deficiency Notice**") citing certain procedural deficiencies under Rule 14a-8(b). The Deficiency Notice described the beneficial ownership requirements of Rule 14a-8(b) and the type of proof necessary to demonstrate beneficial ownership under Rule 14a-8(b). A copy of Rule 14a-8 and SEC Staff Legal Bulletin No. 14F (Oct. 18, 2011) and Staff Legal Bulletin No. 14G ("**SLAB 14G**") were also included with the Deficiency Notice. The Company emailed the Deficiency Notice on December 19, 2019 to the email address requested by the Cover Letter, lholzman@asyousow.org, with a copy to shareholderengagement@asyousow.com. On December 19, 2019, the Company received an automated message stating that the Deficiency Notice was received, but could not be delivered to shareholderengagement@asyousow.com. This message did not indicate that the Deficiency Notice was undeliverable to lholzman@asyousow.org. The Deficiency Notice, the related attachments, the email with which the Deficiency Notice was sent and the automated message regarding receipt of the Deficiency Notice are attached hereto as **Exhibit B.** As of the date of this letter, January 6, 2020, the Proponent has not responded to the Deficiency Notice.

Analysis

Rule 14a-8(b) and Rule 14a-8(f)(1)

The Company may exclude the Proposal under Rules 14a-8(b) and 14a-8(f)(1), because, after the Company delivered the Deficiency Notice to the Proponent, the Proponent did not substantiate the alleged shareholder's eligibility to submit the Proposal by showing its continuous ownership of the required amount of shares of Hertz common stock through and including the Proposal's submission date. Under Rule 14a-8(b), to be eligible to submit a proposal, among other requirements, the proponent must have continuously held, for at least one year as of and including the date the proponent submits the proposal, at least $2,000 in market value, or 1%, of the class of company securities entitled to be voted on the proposal at the annual meeting of the company's shareholders. SLAB 14G states that the submission date of a proposal is the date that the proposal is "postmarked or delivered electronically."

As set forth in Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that it meets the eligibility requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the deficiency and the proponent fails to correct the deficiency within 14 days of receiving such notice.

Rule 14a-8(f)(1) specifically requires a notice to the shareholder proponent or its authorized designee acting as proponent, stating that "[t]he 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." The preamble to Rule 14a-8 indicates that the rule is structured in a question-and-answer format and "[t]he references to 'you' are to a shareholder seeking to submit the proposal." Additionally, pursuant to SLAB 14G, the deficiency notice must (i) identify the specific date on which the proposal was submitted and (ii) explain that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of company securities for the one-year period preceding and including such proposal submission date.

The Staff has consistently permitted exclusion of proposals under Rule 14a-8(f)(1) when the proponent provided proof of ownership of the company's securities as of a date prior to the date of submission of the proposal, without providing proof of ownership of the company's securities through and including the date of submission. *See General Mills, Inc.* (June 17, 2016) (concurring in the exclusion of a proposal on the basis of Rule 14a-8(f), because the proposal was submitted on April 8, 2016 and the accompanying broker letter established ownership of company securities for one year as of April 7, 2016, and the proponent did not respond to the company's timely-sent deficiency notice); *3M Co.* (Dec. 31, 2014) (permitting exclusion under Rule 14a-8(f)(1) where the proponent established requisite ownership of the company's securities as of one day prior to the date of submission of the proposal); *PepsiCo, Inc.* (Jan. 10, 2013) (granting no-action relief on Rule 14a-8(f)(1) grounds, where the proposal was submitted on November 20, 2012 and the accompanying broker letter proved ownership of company securities for one year as of November 19, 2012, and the proponent did not respond to the company's timely-sent deficiency notice); and *Deere & Company* (Nov. 16, 2011) (permitting exclusion under Rule 14a-8(f)(1) where the proponent established requisite ownership of the company's securities as of three days prior to the date of submission of the proposal). In addition, in SLAB 14G, the Staff noted that "a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding *and including* the date the proposal was submitted, as required by Rule 14a-8(b)(1)" (emphasis added).

The Proponent did not provide proof of continuous ownership of the requisite amount of Hertz common stock for the one-year period preceding and including the submission date of the Proposal, because the Proposal's submission date was December 12, 2019 and the Amalgamated Bank Letter establishing its alleged ownership was dated November 19, 2019. Even if the Proposal's submission date was the date of the Cover Letter, December 11, 2019, the Amalgamated Bank Letter would have been insufficient due to the gap period between November 19, 2019 and December 11, 2019 covering ownership of the required amount of Company common stock under Rule 14a-8(b). The Company satisfied its obligation to notify the Proponent of the deficiency within the deadline of Rule 14a-8(f)(1), by sending the Deficiency Notice to the Proponent on December 19, 2019, within 14 days of receiving the Proposal on December 12, 2019. The Company met the requirements of Rule 14a-8(f)(1) to notify "you," or the Proponent, by emailing lholzman@asyousow.org, the email address identified by the Proponent in the Cover Letter, with respect to which it received proof of delivery on December 19, 2019 as discussed above under "Background." As shown in **Exhibit B**, in accordance with the requirements described in SLAB 14G, the Deficiency Notice identified the specific date on which the Proposal was submitted (i.e., December 12, 2019) and explained that, in order to cure the defect, the Proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of shares of Hertz common stock for the one-year period preceding and including such date. Although the Company attempted to send a courtesy copy of the Deficiency Notice to an incorrect email address, this ministerial issue is of no consequence, because the Deficiency Notice was clearly delivered to the Proponent at the email address identified by the Proponent.

More than 14 days have passed since December 19, 2019, the date on which the Proponent received the Deficiency Notice, and the Proponent has not responded to the Deficiency Notice, making the Proposal excludable in line with Rule 14a-8(f)(1). Even if the Proponent had received the Deficiency Notice as late as December 22, 2019, the Proposal would be excludable under Rule 14a-8(f)(1) due to the lack of the Proponent's response as of the date of this letter. In sum, consistent with the no-action letter precedent cited above, the Proposal is excludable because, despite receiving timely and proper notice pursuant to Rule 14a-8(f)(1), the Proponent has not demonstrated that the shareholder authorizing it to submit the Proposal continuously owned the requisite number of Company shares of common stock for the one-year period prior to the submission date of the Proposal, as mandated by Rule 14a-8(b).

Rule 14a-8(i)(7)

The Proposal is properly excludable from the Company's 2020 Proxy Materials, as the Proposal's underlying subject matter relates to the Company's ordinary business operations and the Proposal attempts to micromanage the Company by probing into matters of a complex nature that are the appropriate responsibility of the Company's management and Board of Directors (the "**Board**"). In its request for a report on fuel efficiency and greenhouse gas ("**GHG**") output strategies and targets for the Company's fleet, the Proposal effectively seeks to impose a substantive standard on, and thus regulate day-to-day managerial decisions about, the Company's core operations: the type and technical operation of the cars in its rental fleet. Through this required reporting, the Proposal also micro-manages the Company by looking to subject its fleet management to "company-wide" goals specifically stemming from the Paris Climate Agreement. While the Company remains committed to environmental sustainability and explores ways of offering low-emission rental vehicles based on market dynamics as part of its periodic fleet refreshment efforts, the specific and narrowly prescribed implementation of the Proposal could impact management's ability to make operational decisions based on various factors, including market supply and demand for energy-efficient cars, Hertz's multinational, multi-brand operations and its ongoing environmental sustainability efforts. As described below, this is supported by a review and assessment undertaken by the Nominating and Corporate Governance Committee of the Board (the "**Committee**") and past no-action letters of the Commission.

A. A Proposal May Be Excluded if It Involves Matters Relating to a Company's Ordinary Business Operations.

Pursuant to Rule 14a-8(i)(7), a proposal is excludable if it "deals with a matter relating to the company's ordinary business operations." In 1998, when the Commission adopted amendments to Rule 14a-8, the Commission explained that two central considerations determine whether a proposal is excludable under Rule 14a-8(i)(7). The first consideration relates to when a 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." The second consideration 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." *See SEC Release No. 34-40018* (May 21, 1998) (the "**1998 Release**"). In the 1998 Release, the Commission also explained that the second consideration may come into play in a number of circumstances, "such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *See PayPal Holdings, Inc.* (Mar. 6, 2018).

In Staff Legal Bulletin No. 14E (Oct. 27, 2009), the Staff explained that in the context of social issues, proposals would generally not be excludable in those cases in which a proposal's underlying subject matter "transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote." In Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("**SLAB 14I**"), the Staff further explained that a company's board of directors is "well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote." Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("**SLAB 14J**") re-emphasized the Staff's position set forth in SLAB 14I "that a well-developed discussion of the board's analysis of whether the particular policy issue raised by the proposal is otherwise significantly related to the company's business … or is sufficiently significant in relation to the company … can assist the staff in evaluating a company's no-action request…." SLAB 14J offered additional guidance on the types of board analyses that might be more useful to the Staff in evaluating, among other things, whether a 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. These may include, among others, (i) the extent to which the proposal relates to the company's core business activities, (ii) the extent of shareholder engagement on the issue, (iii) whether anyone other than the proponent has requested the type of information sought by the proposal, and (iv) whether the company has already addressed the issue in some manner, including "the delta … between the proposal's specific request and the actions the company has taken, and an analysis of whether the delta presents a significant policy issue for the company." SLAB 14J also reiterated that a proposal calling for a report could be excluded on micromanagement grounds if it sought an intricately detailed study or report and/or the underlying substance of the matters addressed by the study or report lay in the ordinary business operations of the company and the methods for implementing complex policies were too complex.

B. As Evaluated by the Committee, the Proposal Micro-manages the Company in Probing into Matters of Complex Nature on Which Shareholders, as a Group, Would Not Be in a Position to Make an Informed Decision.

In light of SLABs 14I and 14J, the Committee considered and analyzed the Proposal's significance in relation to the Company and determined that the Proposal touches on matters squarely within the realm of ordinary business operations best overseen by Company management. In a telephonic meeting held in January 2020, the Committee reviewed past discussions of the Committee and Board and sought input from management on various topics in order to assess the Proposal. In this meeting and over the course of its prior discussions, the members of the Committee considered the matters identified by SLAB 14J. Based on this analysis, the Committee concluded that, while the Company is committed to enhancing the environmental sustainability of its fleet, the Proposal micro-manages the Company in an area of ordinary business operations where the shareholders, as a group, would be ill-suited to make an informed decision.

i. The Proposal Effectively Seeks to Compel the Creation of Company-Wide Goals for the Rental Fleet, a Key Part of the Company's Business Which Requires Complex, Multifaceted Decision-Making.

The Committee determined that the report requested by the Proposal would encroach on day-to-day decisions about the Company's vehicle rental fleet, the heart of its operations and an area inappropriate for shareholder oversight. In particular, the Proposal requests that the Company "issue a report…on potential climate change mitigation strategies for reducing the significant carbon footprint of *its vehicle rental fleet* in alignment with Paris goals," which would be expected to discuss the "relative benefits and drawbacks of integrating…(i) [a]dopting company-wide goals for growing the company's electric or other low or zero emission *vehicle fleet*; (ii) [a]dopting significantly greater fuel economy standards for its rental fleet; [and] (iii) [a]dopting overall greenhouse gas emission reduction targets for the company's *vehicle rental fleet* greenhouse gas footprint (emphasis added)." The requirements of the Proposal effectively seek to dictate the Company's choice of product offerings and use of technologies based primarily on fuel efficiency and GHG emissions goals in alignment with the Paris Climate Agreement. These concerns would ignore other aspects of the Company's business, including the unique needs of the Company's brands and geographies as well as customer demand, electric/hybrid vehicle infrastructure and availability of vehicles, among other things.

The Company's management and the Committee believe that understanding and selecting company-wide low/zero emission, GHG output and fuel efficiency targets appropriate to the realities of the Company's international, multi-brand business is a complex matter underpinned by nuanced business concerns. The members of the Committee already possessed familiarity with these issues, because the Board regularly discusses issues of fleet size, composition and geographical breakdown from financial and strategic standpoints. Additionally, as the Company periodically refreshes its rental fleet, it reviews strategies for increasing the proportion of low-emission vehicles in the fleet to the extent favored by market dynamics and customer sentiment. In making the determination to seek to exclude the Proposal, the Committee and the Company's management considered, among other things, the following considerations:

- **Supply:**
  - *Manufacturer Production:* As a rental car provider that buys its vehicles from original equipment manufacturers ("**OEMs**"), Hertz considers ways to increase the proportion of electric and/or hybrid vehicles in its fleet largely based on the supply of such vehicles from OEMs. Given the slow pace of vehicle electrification by OEMs, these supply trends are difficult to project, underscoring the complexity of the issue. For instance, from 2009 to 2017, across the industry, electric vehicle technology accounted for only $9.8 billion of the $119.5 billion in investments made by automakers in North America, despite announced plans by manufacturers to bring down

their product portfolio to low/zero emissions.[1] In 2017, electric vehicles, including plug-in hybrid vehicles and battery electric vehicles, only accounted for 1.15% of all cars in the United States, [2] and in the past several years, certain large United States automakers focused production more heavily on SUVs and trucks, which use more fuel per mile than sedans/wagons.[3] Thus, while the Company is committed to mitigating the effects of climate change and seeks to introduce more hybrid vehicles into its fleet to the extent consistent with customer demand (as described in Section B.ii below), in order to set feasible goals for growing a low/zero emission fleet and lessening its fleet's GHG footprint, the Company must look to the real-world performance of its OEMs. This adds a layer of nuance to the analysis that renders it unfit for shareholder micro-management.

- *Manufacturer Goals:* OEMs have also set vastly different priorities and timelines for vehicle electrification. Thus, even assuming that OEMs will reach their stated emissions and GHG targets, the Company must explore changes to its purchase arrangements with these OEMs before setting objectives for its rental fleet. Coordinating this is a complicated exercise best left in management's hands at its own discretion. As an example, between 2012 and 2017, certain large U.S. automakers ranked lowest in product fuel economy, while the products of certain foreign automakers ranked the highest in average fuel economy.[4] Manufacturers' goals for reducing GHG emissions in their vehicle portfolios also vary widely; Nissan and Toyota have set goals to reduce carbon dioxide emissions by 90% by 2050,[5] while others like BMW and Ford have been less specific and stated that they remain committed to the goals of the Paris Climate Agreement.[6] Additionally, some automakers only establish targets for emissions from a combination of their products and overall operations, which makes it difficult for the Company to determine whether it can buy vehicles from that OEM in line with whatever goals the Company might adopt.[7] Thus, while the Company remains focused on reducing the environmental impact of its fleet, the goal-setting that would accompany the report requested by the Proposal requires intensive management analysis and discretion around arrangements with OEMs.

- **Infrastructure:** The Company faces difficulty projecting realistic goals for GHG emissions and fuel efficiency of its fleet due to the current infrastructure for low/zero emissions vehicles. For instance, as of 2017, out of 100 metropolitan areas in the United States, 88 had less than half of the total charging infrastructure needed for electric vehicles.[8] As Hertz is a rental car company, many of its consumers will charge electric or hybrid cars in public places rather than in their homes. While several cities and states have put in place programs to change this, the development has been slow, in part because the power grids

[1] Carla Bailo et al., *The Great Divide: What Consumers Are Buying vs. The Investments Automakers & Suppliers Are Making in Future Technologies, Products & Business Models*, Center for Automotive Research (Feb. 2018), https://www.cargroup.org/wp-content/uploads/2018/02/The-Great-Divide-What-Consumers-Are-Buying-vs-The-Investments-Automake....pdf.
[2] EV Adoption, *EV Statistics of the Week: Historical US EV Sales, Growth & Market Share* (Jan. 14, 2018), https://evadoption.com/ev-statistics-of-the-week-historical-us-ev-sales-growth-market-share/.
[3] Marianne Lavelle, *U.S. Automakers Double Down on Trucks & SUVS, Despite Talk of a Cleaner Future*, Inside Climate News (Oct. 15 2018), https://insideclimatenews.org/news/15102018/automakers-gm-ford-pickup-suv-electric-vehicle-emissions-standards-climate-change-industry-bailout; Environmental Protection Agency, *Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975*, The 2018 EPA Automotive Trends Report (Mar. 2019), https://nepis.epa.gov/Exe/ZyPDF.cgi/P100W5C2.PDF?Dockey=P100W5C2.PDF.
[4] Environmental Protection Agency, *Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975*, The 2018 EPA Automotive Trends Report (Mar. 2019), https://nepis.epa.gov/Exe/ZyPDF.cgi/P100W5C2.PDF?Dockey=P100W5C2.PDF
[5] Nissan Motor Corporation, *Zero-Emission Leadership*, https://www.nissan-global.com/EN/TECHNOLOGY/OVERVIEW/zero_emission.html; (last visited Jan. 6, 2020); Toyota, *Toyota Environmental Challenge 2050*, https://global.toyota/en/sustainability/esg/challenge2050/ (last visited Jan. 6, 2020).
[6] BMW Group, *BMW Group Statement on U.S. Withdrawal from the Paris Climate Agreement*, Press Release (Feb. 6, 2017), https://www.press.bmwgroup.com/usa/article/detail/T0271521EN_US/bmw-group-statement-on-u-s-withdrawal-from-the-paris-climate-agreement?language=en_US; Ford Motor Company, *Ford Motor Company – Climate Change 2019*, Carbon Disclosure Project (2019), https://corporate.ford.com/microsites/sustainability-report-2018-19/assets/files/ford-response-to-carbon-disclosure-project.pdf.
[7] *See, e.g.,* General Motors, *Task Force on Climate-Related Financial Disclosure*, https://www.gmsustainability.com/tcfd.html (last visited Jan. 6, 2020).
[8] Michael Nicholas et al., *Quantifying the Electric Vehicle Charging Infrastructure Gap Across U.S. Markets*, The International Council on Clean Transportation (Jan. 2019), https://theicct.org/sites/default/files/publications/US_charging_Gap_20190124.pdf.

may themselves not run on renewable energy.[9] This represents yet another factor in the calculus that makes the goal-setting exercise, called for the Proposal as part of the requested report, one of serious management discretion that cannot be subjected to an arbitrary outside standard or an unduly wide scope.

- **Customer Demand:** Hertz management must take into account consumer demand in determining energy efficiency goals in its fleet. Due to the relatively higher initial cost of hybrid and electric cars, the cost to Hertz of purchasing these cars may be passed on to Hertz's rental customers, who may be reluctant to rent them for a short period of time at an elevated price.[10] A 2018 Deloitte study also showed that only 18% and 28% of United States and Canadian respondents, respectively, preferred a hybrid electric or battery electric vehicle.[11] For fiscal 2018, the U.S. alone accounted for more than 50% of Hertz's revenues. Additionally, many of the Company's customers rent vehicles in locations that are unfamiliar to them when traveling for business or vacation. The potential lack of recharging infrastructure in such unfamiliar locations can be a significant deterrent against the rental of electric vehicles even for a customer who would otherwise prefer to rent an electric vehicle. Such customer preferences must be continually assessed by management to optimize fleet composition and are not an appropriate subject for the goal-setting and reporting required by the Proposal.

- **Geography:** The Company operates in the United States, Africa, Asia, Australia, Canada, the Caribbean, Europe, Latin America, the Middle East and New Zealand. It faces ranging levels of competition in each of these markets, and customer preferences and pricing options vary substantially within and among these markets due to cultural, economic and geographical factors. For instance, according to a 2018 Deloitte study, only 13% of South African respondents preferred a hybrid electric or battery electric vehicle, while 56% of Chinese respondents and 43% of Italian respondents preferred one.[12] The availability of public chargers also differs across countries depending on the acceptance of energy-efficient cars in that market. Determining the goals and methods for lowering the number of non-electric vehicles across these geographies in line with a sustainable and profitable financial plan demands a deep understanding of consumer preferences, supply and demand for energy-efficient vehicles and local infrastructures for such vehicles within these markets.

- **Brand:** The Company operates via multiple brands with substantially different price points. These include the top-tier Hertz brand, with specialty collections and premium vehicles, the "smart value" Dollar brand, tailored to financially-focused travelers looking for a dependable car at a price they can afford, and the "deep value" Thrifty brand, for savvy travelers who enjoy the "thrill of the hunt" to find a good deal. Internationally, the Company also offers the "deep value" Firefly brand for price conscious leisure travelers. Via its Donlen subsidiary, the Company provides vehicle leasing and fleet management services. Consumer budgets also vary based on whether a consumer is a corporate entity or an individual. To engage in a concerted program to decrease GHG output and enhance fuel efficiency in line with specific quantifiable goals set by the Company, the Company must consider consumer willingness to rent electric vehicles across different pricing models. For instance, higher-end automakers may produce electric vehicles more successfully than automakers known for moderate pricing, or vice-versa, which could put pressure on company-wide goals across different brands. Also, the Company is required to analyze potential competitive disadvantages against rental car companies not renting electric vehicles, which may be more appealing depending on a customer's budget.

- **Inventory:** The Company rents and does not manufacture vehicles, and so the Company's purchasing decisions depend largely on market demand in the rental market. If the Company does not accurately project demand and concentrates primarily on decreasing carbon emissions in its fleet based on certain

[9] Rebecca Bellan, *The Grim State of Electric Vehicle Adoption in the U.S.*, CityLab (Oct. 15, 2018), https://www.citylab.com/transportation/2018/10/where-americas-charge-towards-electric-vehicles-stands-today/572857/.
[10] *Id*.
[11] Carla Bailo et al., *The Great Divide: What Consumers Are Buying vs. The Investments Automakers & Suppliers Are Making in Future Technologies, Products & Business Models*, Center for Automotive Research (Feb. 2018), https://www.cargroup.org/wp-content/uploads/2018/02/The-Great-Divide-What-Consumers-Are-Buying-vs-The-Investments-Automake....pdf
[12] *Id*.

company-wide goals it is forced to set and then adopt, it could be faced with high levels of unused inventory. These could reduce its profitability, jeopardize employees' jobs and hurt shareholders' investment return.

- **Capital Expenditures and Disposal Costs:** In order to set and reach quantifiable goals for fleet fuel efficiency, which would accompany the report requested by the Proposal, the Company would need to consider complicated capital expenditure and disposal cost questions. The Company might need to raise debt to purchase and maintain electric cars in the attainment of such goals, and could have difficulty repaying the associated debt if the cash flows from the rental payments for these cars are insufficient. To increase the proportion of electric or hybrid cars in its fleet, the Company may also be required to reduce the number of non-electric cars. Developing a strategic plan for doing this in a cost-effective way would require complex modeling and analysis taking into account future disposal costs, capital needs and supply concerns, which are beyond the scope of shareholder oversight.

Having considered these issues, the Company's management and the Committee have determined that the Proposal, both in subject matter and scope, represents a fundamental misunderstanding of the Company's business. The detailed report called for by the Proposal would relate to the Company's fleet rather than its overall operations, and its request for fuel efficiency and GHG targets is the subject of intensive management analysis, which is not susceptible to investor supervision. Additionally, the one-size-fits-all request of the Proposal for "company-wide" goals on fleet GHG output, low/zero emission cars and fleet fuel efficiency does not take account of the complexity of the Company's business, which operates in multiple geographies and brands, each with its own nuances regarding supply, customer demand, infrastructure, competition and pricing that impact fleet sustainability initiatives. The Proposal's reporting requirement would ignore these multifaceted considerations in the interest of establishing one-dimensional, "company-wide" or "overall" objectives and could prevent the Company from developing suitable goals for its fleet in its business judgment.

ii. The Adoption of the Proposal Would Micro-Manage the Company's Operations by Imposing an Arbitrary Standard on Management's Fleet Sustainability Efforts.

As the Committee discussed, the Proposal's request that the Company report on strategies available for reducing the carbon footprint of its vehicle fleet "in alignment with Paris goals" and set related sub-goals effectively imposes an arbitrary standard on the Company. In its assessment of the Proposal, the Committee considered the goals of the Paris Climate Agreement, as approved by the Twenty-first Conference of the Parties to the United Nations Framework Convention on Climate Change on December 12, 2015 (the "**Paris Climate Agreement**"). This agreement aims to strengthen the global response to the threat of climate change, in the context of sustainable development and poverty eradication, including by taking three steps: (i) holding the increase in global average temperature to well below 2 degrees Celsius above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels; (ii) increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development; and (iii) making finance flows consistent with a pathway toward low GHG emissions and climate-resilient development. Additionally, in order to achieve the agreement's temperature goal, the Paris Climate Agreement aspires to reach global peaking of GHG emissions as soon as possible. The Paris Climate Agreement notes the importance of technology for climate change mitigation and adaptation. Guidance on technology development and transfer is to be provided by a technology framework that provides overarching guidance in promoting and facilitating enhanced action on technology development and transfer. The Paris Climate Agreement states that capacity-building should enhance the capacity and ability of developing countries to take effective climate change mitigation and adaptation action.[13]

Additionally, the Paris Climate Agreement requires countries to prepare, communicate and maintain successive "Nationally Determined Contributions" **("NDCs")**. NDCs are to be communicated every five years. Each country's

[13] United Nations Framework Convention on Climate Change, *Summary of the Paris Agreement*, https://unfccc.int/resource/bigpicture/#content-the-paris-agreemen (last visited Jan. 6, 2020); Conference of the Parties to the United Nations Framework Convention on Climate Change, Paris, Fr., Nov. 30-Dec. 11, 2015, Draft Decision -/CP.21, *Annex: Paris Agreement*, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015), *available at* http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf.

successive NDC will represent a progression beyond the country's prior NDC in light of different national circumstances. The substantive content of these NDCs is nationally determined rather than imposed by the parties to the Paris Climate Agreement. How any particular participating country chooses to formulate and attempt to meet its NDC is a matter of complex interplay among that country's legal and policy decisions as affected by local and global economic, technological and geopolitical objectives and developments. The Paris Climate Agreement also makes certain accommodations in implementing certain provisions of the agreement for developing countries.[14]

The Committee concluded that the Proposal micro-manages the Company by seeking to apply the standards of the Paris Climate Agreement, which may not be uniform across the market in which the Company operates, to the Company's fleet. The Paris Climate Agreement cannot be easily applied to the Company's global fleet without a nuanced, business-by-business assessment of all factors affecting decisions about fleet management. As detailed in Section B.i, these factors include the supply of electric and hybrid vehicles from OEMs and the pace of electrification by these OEMs, the infrastructure for the use of such vehicles and customer demand, all of which are compounded in complexity by the various geographies and brands across which the Company leases cars. The Committee considered that issuing a shareholder-mandated report on specific quantitative goals could even force the Company into targets it cannot reasonably reach, to the extent that OEMs do not supply vehicles to the Company at the required pace or the infrastructure for electric charging does not develop sufficiently quickly.

The Company's alignment with the goals of the Paris Climate Agreement will instead be addressed by effectively responding to the changes in energy source and product demand driven by country-specific policies and market dynamics. For instance, the Company's approach to the GHG emissions reduction in certain developing markets where it operates will necessarily differ from its approach in developed markets. Unilateral action by the Company that is inconsistent with or disconnected from changes in policy, regulation and infrastructure across different countries as well as consumer classes could make the Company less competitive and harm the Company's business. The Paris Climate Agreement also contains many different procedures and goals, including those relating to GHG peaking, technology and financial flows, and the Company's management would need to consider based on its deep knowledge of the Company how each of these would be implemented for the Company's fleet across different price points and geographies. While the Proposal does not dictate a timeline for action, it micro-manages the Company by effectively subjecting the Company to the climate mitigation goals of the Paris Climate Agreement, despite the complex factors at play around the Company's ongoing fleet sustainability efforts.

iii. The Company's Existing Environmental Sustainability and Fleet Fuel Efficiency Policies Are Tailored to its Fleet Management Strategy and Business.

In evaluating whether the Proposal micro-manages the Company, the Committee considered the steps taken by the Company as part of its overall climate change and carbon emissions reporting efforts and policies and overall sustainability initiatives consistent with management's analysis of its business, relationships with OEMs, electric/hybrid vehicle infrastructure, operating geographies and customers. The Company's management and the Committee determined that the Proposal effectively seeks to override management's judgment about the optimization of the Company's fleet.

The Committee reviewed the Company's 2017 Corporate Responsibility Report ("**2017 CSR**")[15] and discussed the topics in the 2017 CSR with management relating to environmental sustainability. The Committee noted the following examples of the Company's ongoing efforts regarding general and fleet-specific environmental sustainability in the 2017 CSR, as well as the annual report for the fiscal year ended December 31, 2018 (the "**2018 ARS**")[16] and the proxy statement for the 2019 annual meeting of shareholders (the "**2019 Proxy**")[17]:

[14] *Id*.
[15] Available at https://images.hertz.com/pdfs/2018-Living-Journey-Sustainability-Report.pdf.
[16] Available at http://ir.hertz.com/annual-meeting-and-proxy-information.
[17] Available at http://ir.hertz.com/annual-meeting-and-proxy-information.

- The Company's Ultimate Choice Program allows consumers to choose the vehicle they drive from within the class reserved at no additional cost rather than being assigned one, including low-emission vehicles.[18]

- The Company's new carbon offset program gives corporate customers worldwide the opportunity to reduce the carbon footprints linked to their vehicle rentals by purchasing carbon offsets. Customers receive carbon emission reporting for their rental cars and may buy carbon offsets to neutralize their environmental impact.[19]

- The Company has engaged in substantial resource conservation efforts for materials attributable to its fleet, disclosing the number of tires recycled, tons of waste recycled and gallons of oil and solvents recycled.[20]

- The Company highlights its fuel-efficient vehicles on its website by showing a vehicle's specific fuel economy, and partners with its business customers to create personalized green travel programs aimed at reducing carbon emissions and fuel costs associated with vehicle rentals.

- The Company reports having a fuel efficiency of more than 32 miles per gallon among 67% of its fleet and 8,000 hybrid vehicles in its fleet worldwide.[21]

The Committee's understanding of the various factors affecting fleet management informed its determination that management has taken a tailored approach to dealing with fleet GHG emissions and fuel efficiency. The Company rolled out the above-described fleet fuel efficiency projects in a targeted way, in select locations or among select consumers in optional programs, in order to predict accurately and test, given its varying geographies and brands and the nature of its business, the conversion of its fleet from non-electric to electric and/or hybrid. The Company is committed to making its fleet more fuel efficient over time and anticipates it will be able to do so as it periodically refreshes its fleet to meet changing customer sentiment and as acceptance of lower emission vehicles gains more traction. The Company also works continually to explore energy savings from its overall operations, as part of its commitment to efficient and cost-effective operations. But the Company has not publicly stated company-wide quantitative goals or otherwise similarly prescribed quantitative goals in line with a particular standard for the fuel efficiency or GHG emissions of its rental fleet (which would be the subject matter of the requested report) due to the complex issues raised above. As the Committee assessed, the Company would plan to determine the scope and nature of any objectives for the fuel efficiency, GHG output and/or overall environmental sustainability of its fleet in its discretion based on operational realities, which are part of the ordinary course of the Company's business.

iv. Lessons Learned from the Company's Shareholder Engagement Efforts Best Position Management and the Board to Determine and Carry Out Strategic Climate Change and Carbon Emissions Mitigation Priorities That Are Important to Shareholders.

The Committee considered that during the Company's recent shareholder engagement efforts, shareholders have not expressed significant concerns about the fuel efficiency of the Company's fleet or climate change initiatives. As a result, the Committee determined that the Company's management and Board are best-positioned to navigate strategic environmental priorities concerning its vehicle rental fleet based on its grasp of shareholders' interests. The Committee noted that in 2019, management spoke with shareholders representing approximately 75% of its total shares outstanding. During this time, no shareholders raised any environmental or other sustainability-related issues. Instead, shareholders during this period were generally focused on executive compensation, long-term business strategy and other matters relating to financial performance.

Moreover, as the Committee considered, the Company has not received other shareholder proposals on fleet sustainability. For the Company to follow the Proposal's mandate to report on measurable GHG output and fuel efficiency targets based on an arbitrary external standard would be to impose a burden and micro-manage operational decisions in an area which does not appear to be a current pressing concern among the Company's

[18] 2017 CSR, p. 25.
[19] *Id*.
[20] 2017 CSR, p. 21; 2018 ARS p. 14; Proxy Statement p. 16.
[21] 2017 CSR, p. 21.

shareholders. To the extent shareholder concerns become more focused on fuel efficiency and the proportion of electric or hybrid vehicles in its fleet, the Company can address those issues with shareholders.

v. Differences between the Proposal and the Company's Current Framework for Fleet Sustainability Do Not Amount to a Significant Policy Issue.

The Committee recognized that although sustainability and GHG emissions are significant policy matters for the Company, the delta between the Company's current efforts and desire to increase fleet fuel efficiency and decrease GHG output and the reporting and the goal-setting required by the Proposal is not a significant policy issue meriting the Proposal's inclusion in the 2020 Proxy Materials. The Commission has frequently allowed exclusion of proposals touching on what could be significant policy issues, where the proposals sought to micro-manage the company by detailing the means in which the company should address the policy issue. *See, e.g., Deere & Company* (Dec. 27, 2017) (allowing the exclusion of a proposal requesting that the company "prepare a report … that evaluates the potential for the [c]ompany to … achiev[e] 'net zero' emissions of greenhouse gases by a fixed future target date"); *EOG Resources, Inc.* (Feb. 26, 2018) (allowing the exclusion of a proposal requesting that the company "adopt company-wide, quantitative, time-bound targets for reducing [GHG] emissions and issue a report … discussing its plans and progress towards achieving these targets"); *PayPal Holdings, Inc.* (Mar. 6, 2018) (allowing the exclusion of a proposal requesting that the company "prepare a report to shareholders that evaluates the feasibility of the [c]ompany achieving by 2030 'net-zero' emissions of greenhouse gases from parts of the business directly owned and operated by the [c]ompany…."); and *Apple, Inc.* (Dec. 5, 2016) (allowing exclusion of a proposal to report within one year on a plan to reach "net-zero" GHG emissions by 2030). *See also J.B. Hunt Transport Services, Inc.* (Feb. 14, 2019) ("***J.B. Hunt***") (allowing the exclusion of a proposal that requested a report on the company's plan/progress in achieving company-wide, quantitative targets for lower GHG emissions, for which the company argued that the requested emissions goals and report were not a significant policy issue given the company's ongoing program for reducing emissions).

As described above, the Company has acknowledged the significant policy considerations relating to environmental sustainability by addressing sustainability issues, both in its overall business and its rental fleet, through strategies tailored to its industry and multinational, multi-brand operations. The periodic refreshment of Hertz's fleet well positions Hertz to respond to market dynamics, to the extent those dynamics favor fuel efficiency and electric and/or hybrid vehicles. Consequently, the issue raised by the Proposal—the use of "Paris goals" and whether and how the Company should set related sub-goals—does not differ so importantly from current efforts as to become a significant policy issue on which shareholders should vote.

C. The Proposal Seeks to Micro-manage the Company in Ways the Commission Has Previously Recognized as Grounds for Exclusion in its No-Action Letters.

The Company's management and the Committee believe the Proposal would effectively micro-manage the Company's operations consistent with Commission precedent on what constitutes excludable interference by shareholders in ordinary business operations. The Company should, consistent with the facts of past no-action letters, be permitted to omit the Proposal from its 2020 Proxy Materials.

i. The Subject Matter of the Proposal Is Fundamental to Management's Ability to Run Hertz's Day-to-Day Business.

The Committee's concern that the Proposal probes into the Company's fleet, an area of ordinary business operations, is consistent with past instances where the Staff granted no-action relief. Proposals that seek to direct management's decisions on the selection of product or service offerings have repeatedly been found excludable under Rule 14a-8(i)(7). *See Amazon.com, Inc.* (Mar. 11, 2016) (concurring in the exclusion of a shareholder proposal requesting that the company "issue a report addressing animal cruelty in the supply chain," since "the proposal relates to the products and services offered for sale by the company"); *JPMorgan Chase & Co.* (Mar. 7, 2013) (concurring in the exclusion of a proposal requesting that the board adopt public policy principles for national and international reforms to prevent illicit financial flows based upon principles specified in the proposal, noting that "the proposal relates to principles regarding the products and services that the company offers"); and *PetSmart, Inc.* (Apr. 8, 2009) (concurring that a proposal requesting that the board of directors "produce a report on the feasibility

of [the company] phasing out its sale of live animals by 2014" may be excluded under Rule 14a-8(i)(7), as it relates to the "sale of particular goods"). Likewise, the Staff has permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) concerning a company's choice of technologies for use in its operations. *See Dominion Resources, Inc.* (Feb. 22, 2011) (allowing exclusion of a proposal requesting that the company give customers the option to purchase electricity from 100% renewable sources by a certain date) ("***Dominion***"); and *FirstEnergy Corp.* (Mar. 8, 2013) (allowing the exclusion of proposal requesting a report on the effect of increasing the company's use of renewable energy sources, as it concerned the company's choice of technology in its operation). In *J.B. Hunt*, the Staff agreed to exclude a proposal similar to the one here, which asked the company to "adopt company-wide, quantitative targets to reduce total [GHG] emissions, taking into account the goals of the Paris Climate Accord, and to issue a report…discussing its plans and progress toward achieving these targets." J.B Hunt Transport Services successfully argued that the company primarily sold freight truck and/or rail services, and business decisions regarding GHG emissions would deeply impact decisions on choice of services.

As a rental car provider with a large, international fleet, Hertz makes its primary product-related decisions with regard to the makeup and means of operation, including internal technology, of its vehicles based on the market dynamics described in this letter. The Proposal looks to oversee management's decisions about the products and services it offers. As the company in *J.B. Hunt* asserted, the implementation of numerical objectives for GHG emissions would also result in direct shareholder oversight of Hertz's basic choices for its products and services, by forcing the company to set goals for the fuel efficiency and composition of its electric and/or hybrid vehicle fleet. Here, the Proposal is even more explicit in its control over Hertz's managerial product choices, because the Proposal speaks exclusively about objective emissions goals in the Company's *fleet* and the *J.B. Hunt* proposal was silent as to the aspect of the business it sought to regulate. The fixation of the Proposal on Hertz's fleet also differentiates it from instances where the Staff denied no-action relief for similarly-worded proposals. *See Anadarko Petroleum Corporation* (Mar. 4, 2019) (declining to permit the exclusion of a proposal to issue a report describing the company's plans to "align its *operations and investments* with the Paris Agreement's goal[s]," including "adopting overall [GHG] emissions reduction targets for the *company's full* carbon footprint, *inclusive of operational and product-related emissions* (emphasis added)" and not pinpointing any aspect of the company's business).

By finding that the Proposal treads on ordinary business operations in asking the Company to over-simplify the many factors affecting its fleet management decisions, the Committee also identified issues covered in prior no-action letters permitting exclusion. In *Exxon Mobil Corporation* (Apr. 2, 2019) ("***Exxon I***"), the Staff allowed the exclusion of a proposal that the board include in its annual reporting disclosure of short-, medium-, and long-term GHG emissions targets aligned with the GHG reduction goals established by the Paris Climate Agreement. The Staff made this decision based in part on the company's arguments that, for a multinational oil and gas producer and transporter, the imposition of specific GHG emissions goals would implicate a far greater number of business concerns, which cut across crucial aspects of the company's basic source of revenue (including customer demand, cross-border commerce, new development projects, and environmental and legal concerns), than they would for a retailer or apparel manufacturer. The Staff reached similar outcomes on targeted GHG or alternative energy proposals at companies that sold their main products in the form of certain power sources or operated their main products on those sources, and for whom the proposals' initiatives would have required complex determinations from various aspects of the business. *See Devon Energy Corporation* (March 4, 2019) (granting no-action relief on the same proposal involved in *Exxon I* due to the ordinary business issues raised for an oil producer) ("***Devon***"); and *Dominion.*

As discussed in the Committee's analysis in Section B.i, Hertz's selection of the vehicles in its fleet and their use of fuel depends on various factors, including type of car, customer preference, geographical considerations and the availability and economic efficiency of certain modes of transportation. As in the *Exxon I*, *Devon* and *Dominion* letters, for the Company to establish measurable goals on fuel efficiency, GHG output and the use of electric power in its fleet, it would thus need to consider all of these factors. The requested report goes to the very core of the Company's business and would impede management from balancing these factors in its ordinary course discretion.

ii. The Proposal Seeks to Micro-manage the Company by Seeking to Impose Specific Methods for Implementing Complex Policies in Place of Ongoing Judgments of Management and the Board.

In noting that the Proposal micro-manages Hertz by calling for fleet-specific climate change mitigation strategies "in alignment with Paris goals" (fleshed out in "company-wide goals for growing [Hertz's] … low or zero emission fleet" and "[GHG] reduction targets for the …fleet"), the Committee raised concerns similar to those of other companies who succeeded in obtaining no-action relief on Rule 14a-8(i)(7) grounds. The Staff has permitted companies to exclude proposals asking for quantitative targets on GHG emissions due to the micro-management wrought by external standards and goals on an issuer's environmental sustainability efforts. *See J.B. Hunt* (permitting exclusion of proposal that requested a report discussing its plan and progress towards achieving company-wide, quantitative targets for reducing GHG emissions); *Devon* (permitting exclusion of proposal that requested annual reporting to include disclosure of short-, medium-, and long-term GHG targets aligned with the GHG reduction goals established by the Paris Climate Agreement); *Exxon I* (same); *EOG Resources, Inc.* (Feb. 26, 2018) (permitting the exclusion of a proposal requesting that the company adopt company-wide, quantitative, time-bound targets for reducing greenhouse gas emissions and issue a report discussing its plans and progress in achieving them); and *Amazon.com, Inc.* (Mar. 6, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report evaluating the potential to achieve net-zero GHG emissions by a certain future target date, noting that the proposal "seeks to micromanage" the company by "probing too deeply into matters of a complex nature"). Additionally, where a proposal contains a specific, quantitative emissions target, such as the Paris Climate Agreement goals cited in the Proposal, the Staff has tended to grant no-action relief, unlike proposals that only call for a target without mentioning a number or standard or that merely set a range of targets. *Cf. FirstEnergy Corp.* (Mar. 4, 2015) (declining to concur in the exclusion of proposal that called for preparation of a plan to address carbon dioxide emissions but did not "mandate what quantitative goals should be adopted, or how the quantitative targets should be set") *and Exxon Mobil Corporation* (Mar. 12, 2007) (declining to concur in the exclusion of proposal requesting adoption of a policy, as opposed to a plan, to increase renewable energy sourcing, with "recommended goals" in the range of 15%-25% of all energy sourcing by 2015-2025) ("***Exxon II***") *with Exxon I* (granting no-action relief for a proposal calling for a report on "short-, medium- and long-term [GHG] targets aligned with the [GHG] reduction goals established by the Paris Climate Accord 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"). In addition, where proposals are silent on timing, the Staff has recognized assertions that proposals not setting a deadline for action still inherently require management to create specific, time-bound benchmarks against which the company's progress could be measured. *See J.B. Hunt*.

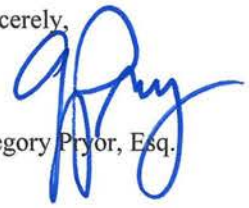
The Proposal's request for a report "in alignment with Paris goals" sets an objective outside standard for compliance, distinguishing this proposal from those involved in the *FirstEnergy* and *Exxon II* line of no-action letters and likening this proposal to the one deemed excludable in *Exxon I.* Like in *J.B. Hunt*, the Proposal does not require the attainment of specific emissions or fuel efficiency targets, but given that the metrics set forth in the Paris Climate Agreement are inherently quantitative, the mere request to reference such goals in the proposed report would obligate the Company's management to establish numerical and temporal objectives prioritizing specific courses of action directed at meeting such GHG emission targets. Mirroring arguments in *J.B. Hunt, Exxon I* and *Devon*, this transfer of responsibility and duties to shareholders is inapposite to the principles underlying the Rule 14a-8(i)(7) grounds for exclusion.

Conclusion

Based upon the foregoing analysis, we hereby respectfully request that the Staff concur with our view that the Company may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(i)(7). Should the Staff disagree with this conclusion, we would appreciate the opportunity to confer with the Staff prior to the issuance of the Staff's response.

If the Staff wishes to discuss the responses provided, please do not hesitate to contact the undersigned at (212) 819-8389.

Sincerely,



Gregory Pryor, Esq.

CC: Lilian Holzman, *As You Sow* (via email)
M. David Galainena, Executive Vice President, General Counsel and Secretary, Hertz Global Holdings, Inc.

Exhibit A

AS YOU SOW
2150 Kittredge St. Suite 450
Berkeley, CA 94704
www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

VIA OVERNIGHT MAIL

December 11, 2019

M. David Galainena
Executive Vice President,
General Counsel and Secretary
Hertz Global Holdings Inc.
8501 Williams Road
Estero, Florida 33928

Dear Mr. Galainena,

LongView Broad Market 3000 Index Fund is a shareholder of Hertz Global Holdings, Inc. We submit the enclosed shareholder proposal on behalf of LongView Broad Market 3000 Index Fund (Proponent) for inclusion in the company's 2020 proxy statement, and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent's concerns. To schedule a dialogue, please contact Lila Holzman, Energy Program Manager at lholzman@asyousow.org. Please send all correspondence to Ms. Holzman **with a copy to shareholderengagement@asyousow.org**. Also, please note that our address has changed. Our new address is set forth above.

Sincerely,

Danielle Fugere
President

Enclosures

- Shareholder Proposal
- Shareholder Authorization

100% Recycled • 100% Post-Consumer Waste • Soy Ink • Chlorine Free

Whereas:

The Intergovernmental Panel on Climate Change's 2018 report finds that "rapid, far-reaching" changes are necessary in the next 10 years to avoid disastrous levels of global warming.[1] Specifically, it instructs that net emissions of carbon dioxide must reach "net zero" by 2050 to maintain warming below 1.5 degrees Celsius.

If warming is kept to 1.5 versus 2 degrees, studies report savings of $20 trillion to the global economy by 2100.[2] Recently, 215 of the biggest global companies reported almost $1 trillion at risk from climate impacts, some within five years.[3]

The transportation sector is the largest greenhouse gas-emitting sector in the United States. Transport-related companies like Hertz contribute significantly to climate change through emissions from gasoline combustion. Despite this, Hertz provides few specifics about plans to mitigate the climate change impact of its sizeable fleet beyond citing to an existing average of 32 mpg in its fleet.

Assessing the feasibility of adopting clean transportation and energy goals will serve as a practical step towards aligning Hertz's business operations with global efforts to limit climate change. Fortuitously, greenhouse gas-reducing measures are not only impactful, but also feasible and often cost-effective. One promising strategy for lowering Hertz's significant fleet-related greenhouse gas emissions is through the increased adoption of electric vehicles.

The current capital cost difference between electric and gasoline vehicles is expected to drop as electric technology improves, more models become available, cars are produced at greater scale,[4] and battery costs continue to decrease.[5] From an environmental standpoint, the benefits of electric vehicles are clear: they have a smaller life-cycle greenhouse gas impact regardless of the fossil fuel intensity of the electricity source.[6]

Hertz' standard rental car business currently has only three hybrid electric vehicle options at select locations for consumer rentals, with no all-electric vehicles. While Hertz has taken steps

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[1] http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf

[2] https://www.nature.com/articles/s41586-018-0071-9.epdf?referrer_access_token=eELbUpZu30ES9BZ5nW-IO9RgN0jAjWel9jnR3ZoTv0OskypFEzLGji1pAcPpJpRUaGWQE4lx7PFk7egARc69rHFdME6PJOQVMoys1HbEajGubYyh-cFm3MRhg2s_I4sq46QiSTTapLjDvV_ZfQ9KGWA8erEPxeWaOCy4qkvcpBhNc54Z8P42aBjGNCzAlbvv5yke0J5kD-SmaMHFGX5BldaEIsLdP99o9n2q_t7mKL6bo-HzTh6kQ7MsxZ2fBRfoJOUWNOr9sPf0BIa_bvKByEeRaGlJGmvTt7OhAlFSl4IPK9yTGpptmAc2gdnMSzTNYhlU5LjqY5JMkXschCdYMQ%3D%3D&tracking_referrer=www.theguardian.com

[3] https://www.cdp.net/en/articles/media/worlds-biggest-companies-face-1-trillion-in-climate-change-risks

[4] https://www.ucsusa.org/sites/default/files/attach/2015/11/Cleaner-Cars-from-Cradle-to-Grave-full-report.pdf

[5] https://www.bloomberg.com/news/articles/2019-04-03/battery-reality-there-s-nothing-better-than-lithium-ion-coming-soon

[6] https://www.ucsusa.org/sites/default/files/attach/2015/11/Cleaner-Cars-from-Cradle-to-Grave-full-report.pdf

to improve energy efficiency for its operational facilities, the impact of the company's fleet remains insufficiently addressed. Investors seek to understand how the company is assessing the potential benefits of electric vehicle adoption from reputational gains to cost savings.

Resolved: Shareholders request that Herz issue a report, at reasonable cost and omitting proprietary information, on potential climate change mitigation strategies available for reducing the significant carbon footprint of its vehicle rental fleet in alignment with Paris goals.

Supporting Statement: In the report, shareholders seek information, among other issues at board and management discretion, on the relative benefits and drawbacks of integrating the following actions:

- Adopting company-wide goals for growing the company's electric or other low or zero emission vehicle fleet;
- Adopting significantly greater fuel economy standards for its rental fleet;
- Adopting overall greenhouse gas emission reduction targets for the company's vehicle rental fleet greenhouse gas footprint.

amalgamated bank

Andrew Behar
CEO
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704

November 19, 2019

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned ("Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with **Hertz Global Holdings, Inc** (the "Company) for inclusion in the Company's 2020 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to **climate change risk reporting**.

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2020.

The Stockholder gives As You Sow the authority to address, on Stockholder's behalf, any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution and that the media may mention the Stockholder's name in relation to the resolution.

The shareholder alternatively authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf concerning the resolution.

Sincerely,

Deborah Silodor
Executive Vice President & General Counsel
Trustee for LongView Broad Market 3000 Index Fund

Exhibit B

From: Galainena, Dave
Sent: Thursday, December 19, 2019 2:50 PM
To: 'lholzman@asyousow.org' <lholzman@asyousow.org>
Cc: 'shareholderengagement@asyousow.com' <shareholderengagement@asyoushow.com>
Subject: Hertz Global Holdings, Inc. Rule 14a-8 Proposal

December 19, 2019

VIA EMAIL

As You Sow, Inc.
2150 Kittredge St. Suite 450
Berkeley, CA 94704
lholzman@asyousow.org (CC: shareholderengagement@asyousow.com)

Attn: Lila Holzman, Energy Program

Re: Hertz Global Holdings, Inc. Rule 14a-8 Proposal

Dear Ms. Holzman,

Reference is made to your letter (the "Letter") addressed to the undersigned, Executive Vice President, General Counsel and Secretary of Hertz Global Holdings, Inc. (the "Company," "we" or "us"), received by the Company on December 12, 2019,[1] including a stockholder proposal submitted by you on behalf of LongView Broad Market 3000 Fund, as proponent (the "Proponent").

The Letter contains deficiencies that Rule 14a-8 under the Securities Exchange Act of 1934 ("Rule 14a-8") requires us to bring to your attention. Under Rule 14a-8, to be eligible to submit a proposal, among other requirements, the Proponent must have continuously held, for at least one year as of and including the date the Proponent submits the proposal, at least $2,000 in market value, or 1%, of the class of Company securities entitled to be voted on the proposal at the annual meeting of its stockholders, which is here the Company's common stock, par value $0.01 per share (the "common stock"). According to Staff Legal Bulletin No. 14F ("SLB 14F"), issued by the staff of the Division of Corporation Finance of the Securities and Exchange Commission ("SEC"), the date that the proposal was submitted is the date that the Proponent's proposal was postmarked or transmitted electronically. Furthermore, the Proponent must continue to hold the requisite amount of Company common stock through the date of the Company's annual meeting and state in writing its intention to do so. To demonstrate the Proponent's eligibility, if the Proponent is not a registered holder, at the time you submit the Proponent's proposal, you are required to submit to the Company a written statement from the registered holder of the Proponent's common stock in the Company verifying that, as of and including the date you submitted the proposal, the Proponent continuously held the requisite amount of the Company's common stock for at least one year.

Your Letter fails to comply with the foregoing procedural requirements of Rule 14a-8 due to the following defects in the Proponent's proof of ownership statement verifying its ownership of the Company's common stock.

1. Our records indicate that the Proponent, LongView Broad Market 3000 Index Fund, is not a registered holder of our common stock. As such, you will need to provide us with a written statement by the registered holder of the Proponent's common stock verifying that as of and including December 12, 2019, the date that you submitted the proposal for the Proponent, the Proponent continuously held the requisite number of shares of Company common stock for at least one year.

   SLB 14F and Staff Legal Bulletin No. 14G ("SLB 14G") provide that for securities held through the Depository Trust Company ("DTC"), only DTC participants should be viewed as "record" holders for purposes of Rule 14a-8. If the Proponent's broker or bank is a DTC participant or an affiliate of a DTC participant, then you should submit a written statement proving the Proponent's ownership as set forth above, which is clearly sent by that broker or bank. If the Proponent holds its shares through a broker or bank that is not a DTC participant or an affiliate, then you should provide proof of the Proponent's ownership from the DTC participant or affiliate that can verify the requisite holdings as set forth above of the Proponent's broker or bank. If the DTC participant or affiliate holding the Proponent's shares is not able to confirm the Proponent's ownership but is able to confirm the holdings in Company common stock of the Proponent's bank or broker, you should provide two proof of ownership statements confirming the Proponent's requisite ownership as set forth above—one from the Proponent's broker or bank confirming the Proponent's ownership, and the other from the DTC participant or affiliate confirming that broker or bank's ownership. We have attached to this letter copies of Rule 14a-8, SLB 14F and SLB 14G for your convenience.

2. The Letter with the proposal was submitted on December 12, 2019[2] and the proof of ownership statement provided by the Proponent verifying its ownership was dated November 19, 2019. Because of the gap between the date in the proof of ownership statement and the date of submission of the Letter, the proof of ownership statement you provided is not sufficient to verify the Proponent's ownership for the entire one-year period preceding and including December 12, 2019. To remedy this defect, the new proof of ownership statement from the Proponent should verify its continuous ownership of common stock in the Company for the one-year period as of and including December 12, 2019.

If you fail to adequately correct these procedural deficiencies and provide the requisite proof of ownership statement no later than 14 calendar days from the date you receive this notification, the Company may exclude your proposal from its proxy materials for the upcoming annual meeting of stockholders.

Please do not hesitate to contact me if you have any questions regarding the foregoing.

Sincerely,

M. David Galainena
Executive Vice President, General Counsel and Secretary

---------- This message (including attachments) may contain information that is privileged, confidential or protected from disclosure. If you are not the intended recipient, you are hereby notified that dissemination, disclosure, copying, distribution or use of this message or any information contained in it is strictly prohibited. If you have received this message in error, please immediately notify the sender by reply e-mail and delete this message from your computer. Although we have taken steps to ensure that this e-mail and attachments are free from any virus, we advise that in keeping with good computing practice the recipient should ensure they are actually virus free. ----------

M. David Galainena
Executive Vice President
General Counsel and Secretary

(239) 301-7600
Dave.galainena@hertz.com

December 19, 2019

VIA EMAIL

As You Sow, Inc.
2150 Kittredge St. Suite 450
Berkeley, CA 94704
lholzman@asyousow.org (CC: shareholderengagement@asyousow.com)

Attn: Lila Holzman, Energy Program

Re: Hertz Global Holdings, Inc. Rule 14a-8 Proposal

Dear Ms. Holzman,

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If you fail to adequately correct these procedural deficiencies and provide the requisite proof of ownership statement no later than 14 calendar days from the date you receive this notification, the Company may exclude your proposal from its proxy materials for the upcoming annual meeting of stockholders.

Please do not hesitate to contact me if you have any questions regarding the foregoing.

Sincerely,

M. David Galainena
Executive Vice President, General Counsel and Secretary

The Hertz Corporation
8501 Williams Road
Estero, FL 33928

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 anti-fraud rule, § 240.14a–9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

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

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

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

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

§ 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

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

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

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

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

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

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

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.[1] By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

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

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.[2] If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

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

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

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to

correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

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

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

D. Use of website addresses in proposals and supporting statements

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

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

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

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

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the

exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

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

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

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

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

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

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[1] An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

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

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

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

http://www.sec.gov/interps/legal/cfslb14g.htm

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Modified: 10/16/2012

From: Mail Delivery Subsystem <MAILER-DAEMON@mx0a-00034201.pphosted.com>
Sent: Thursday, December 19, 2019 6:52 PM
To: Galainena, Dave
Subject: Delivery delayed:Hertz Global Holdings, Inc. Rule 14a-8 Proposal

****
** THIS IS A WARNING MESSAGE ONLY **
** YOU DO NOT NEED TO RESEND YOUR MESSAGE **
****

The original message was received at Thu, 19 Dec 2019 13:50:23 -0600
from m0081205.ppops.net [127.0.0.1]

----- Transcript of session follows -----
<shareholderengagement@asyousow.com>... Deferred: Connection timed out with asyousow.com.
Warning: message still undelivered after 4 hours
Will keep trying until message is 5 days old

---------- This message (including attachments) may contain information that is privileged, confidential or protected from disclosure. If you are not the intended recipient, you are hereby notified that dissemination, disclosure, copying, distribution or use of this message or any information contained in it is strictly prohibited. If you have received this message in error, please immediately notify the sender by reply e-mail and delete this message from your computer. Although we have taken steps to ensure that this e-mail and attachments are free from any virus, we advise that in keeping with good computing practice the recipient should ensure they are actually virus free. ----------

From: Mail Delivery Subsystem <MAILER-DAEMON@mx0a-00034201.pphosted.com>
Sent: Tuesday, December 24, 2019 2:51 PM
To: Galainena, Dave
Subject: Undeliverable: Hertz Global Holdings, Inc. Rule 14a-8 Proposal

The original message was received at Thu, 19 Dec 2019 13:50:23 -0600 from m0081205.ppops.net [127.0.0.1]

----- The following addresses had permanent fatal errors ----- <shareholderengagement@asyousow.com>

----- Transcript of session follows ----- <shareholderengagement@asyousow.com>... Deferred: Connection timed out with asyousow.com.
Message could not be delivered for 5 days Message will be deleted from queue
---------- This message (including attachments) may contain information that is privileged, confidential or protected from disclosure. If you are not the intended recipient, you are hereby notified that dissemination, disclosure, copying, distribution or use of this message or any information contained in it is strictly prohibited. If you have received this message in error, please immediately notify the sender by reply e-mail and delete this message from your computer. Although we have taken steps to ensure that this e-mail and attachments are free from any virus, we advise that in keeping with good computing practice the recipient should ensure they are actually virus free. ----------