March 13, 2020

VIA EMAIL (SHAREHOLDERPROPOSALS@SEC.GOV)

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

Re:  Withdrawal of No-Action Request Dated January 21, 2020 Regarding Shareholder Proposal to The Progressive Corporation by As You Sow

Ladies and Gentlemen:

We refer to our letter dated January 21, 2020 (the “No-Action Request”), pursuant to which we requested that the Staff of the Division of Corporation Finance of the U.S. Securities and Exchange Commission concur with our view that The Progressive Corporation (“Progressive”) may exclude the shareholder proposal and the statement in support thereof (collectively, the “Proposal”) received from As You Sow on behalf of Lutra Living Trust (“Lutra”) and the Hazen Foundation (“Hazen”, and together with Lutra and As You Sow, the “Proponent”) from our proxy statement and form of proxy for Progressive’s 2020 Annual Meeting of Shareholders (collectively, the “2020 Proxy Materials”). Attached as Exhibit A is an e-mail sent to the Commission on March 12, 2020 by Sanford Lewis, who we have been informed by As You Sow was authorized by it to submit the e-mail on its behalf, withdrawing the shareholder proposal. In reliance on the e-mails and the assurance from As You Sow that Mr. Lewis was authorized to act on its behalf, we hereby withdraw the No-Action Request.

If we can be of any further assistance in this matter, please do not hesitate to contact the undersigned at (440) 395-3796 or LAURIE_F_HUMPHREY@progressive.com. Thank you for your attention to this matter.

Very truly yours,

THE PROGRESSIVE CORPORATION

By:  
Laurie F. Humphrey  
Deputy General Counsel - Business

Enclosures

cc:  Andrew Behar, As You Sow  
Jeff Colin, Baker Street Advisors, LLC  
Lori Hazen, Hazen Foundation  
Sabastian Niles, Wachtell, Lipton, Rosen & Katz
Ladies and Gentlemen:
This is to advise you that the Lutra Living Trust has reached agreement with the Company on withdrawal terms for the shareholder proposal at Progressive Corporation and is therefore withdrawing the proposal. I understand that a formal withdrawal of the no action request from the Company will follow.

Sanford Lewis
413-549-7333
January 21, 2020

VIA EMAIL (SHAREHOLDERPROPOSALS@SEC.GOV)

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

Re: Shareholder Proposal to The Progressive Corporation by As You Sow

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), I am writing on behalf of The Progressive Corporation, an Ohio corporation (“Progressive” or the “Company”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Progressive’s view that, for the reasons stated below, it may exclude the shareholder proposal (the “Proposal”) and the statement in support thereof (the “Supporting Statement”) received from As You Sow on behalf of Lutra Living Trust and the Hazen Foundation (collectively with As You Sow, the “Proponent”) from Progressive’s proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (collectively, the “2020 Proxy Materials”). This submission also constitutes the Company’s statement of explanation outlining the reasons the Company believes it may omit the Proposal and Supporting Statement and notice of the Company’s current intention to so omit.

This letter is being sent to the Staff and the Proponent pursuant to Rule 14a-8(j) under the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”).

Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that proponents elect to submit to the Commission or the Staff. Accordingly, we are 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 be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.
THE PROPOSAL

The Proponent has submitted the Proposal, dated December 2, 2019, setting forth the following proposed resolution for the vote of the Company’s shareholders at the Annual Meeting of Shareholders in 2020:

Shareholders request that The Progressive Corporation issue a public report to shareholders, employees, customers, and public policy leaders, omitting confidential information and at a reasonable expense, by December 1, 2020, detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

Shareholders recommend that the report evaluate any risks and costs including, but not limited to effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contribution policies, and human resources or educational strategies.

Copies of the Proposal and the Supporting Statement are attached to this letter as Exhibit A. In addition, pursuant to Staff Legal Bulletin No. 14C (June 28, 2005), relevant correspondence exchanged with the Proponent is attached as Exhibit B hereto.

BASES FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal and the Supporting Statement may be excluded from the 2020 Proxy Materials pursuant to (i) Rule 14a-8(i)(7) because the Proposal involves matters that relate to the ordinary business operations of the Company, (ii) Rule 14a-8(i)(3) because the Proposal is inherently vague and indefinite that neither the Company nor its shareholders would be able to determine with any reasonable certainty exactly what actions or measures the resolution requires in violation of Rule 14a-9 under the Exchange Act, and/or (iii) Rule 14a-8(b) because the Proposal is an impermissible “proposal by proxy.”

ANALYSIS

I. The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(7) Because the Proposal Involves Matters that Relate to the Company’s Ordinary Business Operations.

A. Rule 14a-8(i)(7) Background.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal from its proxy materials “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” According to the Commission, the “general underlying policy” of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such

The Commission has identified two central considerations that underlie this policy: First, that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight,” and second, “the degree to which the proposal seeks to ‘micromanage’ the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment.” Id. (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

B. The Proposal Is Excludable Because It Relates to the Ordinary Business Matter of Managing the Company’s Workforce.

By way of context, the Company appreciates that the Proponent has indicated (as set forth in the related correspondence and Supporting Statement) that this Proposal is designed to “begin a conversation with Progressive about this issue, as we are hopeful that the company’s strong record in workplace equity indicates a willingness to lead its peers in addressing employee reproductive health needs” and that the Proponent seeks through the Proposal to facilitate their desire to “better understand the company’s positions and policies related to insurance for sexual and reproductive healthcare” and the “company’s benefits policies to support employees in their role as parents (such as paid parental and family leave, flexible hours, lactation accommodations, and child care options).” See correspondence in Exhibit B. The Company also takes note of the study and survey (not related or specific to Progressive) referenced by the Proponent in their Supporting Statement that “denying female employees full coverage of contraceptives increases unexpected pregnancies and terminations and increases employer costs associated with employee absenteeism, decreased productivity, employee replacement, maternity leave, and sick leave” and that “nearly one in three millennial workers has turned down a job offer due to insufficient health insurance [and] Progressive may find it difficult to recruit the highest quality employees within states viewed as inhospitable to women’s reproductive rights; this may harm Progressive’s ability to meet diversity and inclusion goals, with negative consequences to brand and reputation.”

However, the Proposal is excludable under Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations because it addresses the Company’s management of its workforce, a core function of management’s day-to-day business operations, which cannot, as a practical matter, be subject to direct shareholder oversight. In fact, the 1998 Release explains that “the management of the workforce, such as the hiring, promotion, and termination of employees,” is a matter that is “so fundamental to management’s ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight.” Similarly, in United Technologies Corporation (Feb. 19, 1993), the Staff stated:

As a general rule the staff views proposals directed at a company’s employment policies and practices with respect to its non-executive workforce to be uniquely matters relating to the conduct of the company’s ordinary business operations. Examples of the categories of proposals that have been deemed to be excludable on this basis are: employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring
and firing, conditions of the employment and employee training and motivation. (Emphasis added.)

The Staff has long recognized that proposals that attempt to manage internal operating policies and practices, such as benefit plans, may be excluded pursuant to Rule 14a-8(i)(7) because they infringe on management's core functions in overseeing the day-to-day ordinary business operations of a company. See, e.g., FedEx Corp. (Jul. 7, 2016) (concurring in the exclusion of a proposal relating to the terms of the company’s employee retirement plans); PG&E Corp. (Jan. 15, 2016) (proposal to adopt anti-discrimination policy relating to hiring vendor contracts and customer relations); PG&E Corp. (Feb. 27, 2015) (proposal to include in all employment policies the right of employees to freely express their personal religious and political thoughts); Costco Wholesale Corp. (Sept. 26, 2014) (proposal relating to the terms of the company’s Code of Conduct and anti-discrimination policy); Willis Group Holdings Public Limited Co. (Jan. 18, 2011) (proposal relating to the terms of the company’s ethics policy); Honeywell International Inc. (Feb. 1, 2008) (proposal relating to the terms of the company’s conflicts-of-interest policy).

Additionally, the Staff has consistently concurred with exclusion of proposals relating to management of the workforce, including those related to employee welfare, compensation and benefits and conditions and terms of employment. See, e.g., Apple, Inc. (Nov. 16, 2015) (concurring in the exclusion of a proposal to adopt new compensation principles responsive to the “general economy, such as unemployment, working hour[s] and wage inequality”); Merck & Co. Inc. (Mar. 6, 2015) (proposal to fill entry-level positions only with outside candidates, where the Staff noted that “[p]roposals concerning a company’s management of its workforce are generally excludable under rule 14a-8(i)(7)”; Starwood Hotels & Resorts Worldwide, Inc. (Feb. 14, 2012) (proposal asking management to verify U.S. citizenship for certain workers); National Instruments Corp. (Mar. 5, 2009) (proposal to adopt detailed succession planning policy); Wilshire Enterprises, Inc. (Mar. 27, 2008) (proposal to replace the chief executive officer); Wells Fargo & Company (Feb. 22, 2008) (proposal to prohibit employing individuals who had been employed by a credit rating agency during the previous year); and Consolidated Edison, Inc. (Feb. 24, 2005) (proposal to terminate certain supervisors).

Similar to the proposals described above in which the Staff concurred that the proposals could be excluded from proxy materials, the matters referred to in the Proposal are inextricably linked to the Company’s policies relating to employee benefits and hiring employees, and, more generally, the way the Company manages its workforce. Matters concerning the scope of healthcare and insurance benefits concerning sexual and reproductive healthcare, the design of employment and employee welfare policies nationwide and state by state, the consideration of regional or state and county-level distinctions, promoting diversity and inclusion, supporting employees in their role as parents, and the various particular examples cited by the Proponents (e.g., “paid parental and family leave, flexible hours, lactation accommodations, and child care options”) are all core ordinary business matters. If implemented, the Proposal would prevent management of all levels at Progressive’s locations throughout the United States from making the tailored employment-related decisions that are a fundamental part of the Company’s day-to-day business operations. Progressive is an insurance holding company with a highly integrated network of people, technology and physical assets located in all 50 States and the District of Columbia, and a workforce of more than 37,000 employees. The Company’s business model relies on its strong customer service culture, which is deeply interconnected with the engagement and satisfaction of all of its employees. The Company is intensely committed to maintaining its superior work environment, and management at all levels are focused on best workforce practices and providing
competitive benefits to all of its employees, over 55% of whom are women. While the Company is continually working to harmonize best workforce practices, it also purposefully tailors the policies and procedures governing its workforce, including appropriate consideration of enacted and proposed local, state and federal laws to the extent relevant and material to the Company.

The day-to-day decisions that management makes in managing, recruiting, compensating and designing and providing competitive benefit packages to its workforce are precisely the types of core business functions that the Staff has long recognized are not appropriate for direct shareholder oversight. The overbroad nature of the Proposal’s policy and its lack of flexibility to tailor its Proposal proves not only that the Proposal’s policy would not be in the best interests of the Company’s multifaceted workforce, but also that shareholders are not best suited to implement such core functions that are fundamental to the success of management’s ordinary business operations.

C. The Proposal Is Excludable Because It Relates to the Company’s Management of Legal and Litigation Risks.

The Proposal is excludable as relating to the Company’s ordinary business operations because both the Proposal and the Supporting Statement focus on how the Company manages legal and litigation risks. Although the resolved clause asks for strategies beyond litigation strategies and legal compliance, the Supporting Statement requests that the report cover “any risks and costs including, . . . increases in litigation and brand risks.” The Proposal also requests disclosures of the Company’s evaluation of the risks and costs associated with “enacted or proposed state policies” affecting reproductive health. Thus, the Proposal requests a report on how the Company views a certain category of legal and litigation risks and how it intends to manage those risks, which the Staff has historically deemed ordinary business matters.

The Staff consistently has concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that relate to litigation matters. See, e.g., Johnson & Johnson (Feb. 14, 2012) (proposal requesting report describing “new initiatives instituted by management to address the health and social welfare concerns of people harmed by adverse effects from Levaquin” excludable under Rule 14a-8(i)(7), as relating to Johnson & Johnson’s ordinary business operations where the Staff noted that “the company is presently involved in litigation relating to the subject matter of the proposal” and that “[p]roposals that would affect the conduct of ongoing litigation to which the company is a party are generally excludable under Rule 14a-8(i)(7)”; see also Merck Inc. (Feb. 3, 2009) (proposal providing that Merck should take various actions relating to Vioxx litigation that are specified in the proposal, including that Merck should publicly declare that criminal acts have occurred and that, instead of paying for lawyers, Merck should use the funds to compensate the victims of Vioxx and their families, excludable under Rule 14a-8(i)(7), as relating to Merck’s ordinary business operations (i.e., litigation strategy)); Reynolds American Inc. (Mar. 7, 2007) (proposal requesting that the company provide information on the health hazards of secondhand smoke, including legal options available to minors to ensure their environments are smoke free, where the company was currently litigating six separate cases alleging injury as a result of exposure to secondhand smoke and a principal issue concerned the health hazards of secondhand smoke, excludable as relating to ordinary business matter, (i.e., litigation strategy)).

Evaluating the risks and costs associated with enacted or proposed state policies affecting reproductive rights are exactly the types of “core matters involving the [C]ompany’s business and operations” that are the basis for Rule 14a-8(i)(7). See generally the 1998 Release.
For that reason, the Staff consistently has concurred that shareholder proposals that implicate a company’s conduct of litigation or litigation strategy are properly excludable under the “ordinary course of business” exception contained in Rule 14a-8(i)(7). For example, the Staff agreed with Benihana National Corp. (Sept. 13, 1991) that the company could exclude under Rule 14a-8(i)(7) a proposal requesting the company to publish a report prepared by a board committee analyzing claims asserted in a pending lawsuit. Since then, the Staff repeatedly has concurred in the exclusion of proposals that, in a variety of ways, addressed pending litigation or litigation strategy that the companies faced. See, e.g., Wal-Mart Stores, Inc. (Apr. 14, 2015) (proposal requesting that the company create reports on gender-based pay inequity excludable under Rule 14a-8(i)(7) where the company was involved in litigation relating to the subject matter of the proposal because “[p]roposals that would affect the conduct of ongoing litigation to which the company is a party are generally excludable under Rule 14a-8(i)(7)").

The Staff has also permitted exclusion of proposals concerning company responses to legislative, regulatory or public pressures, a company’s public relations, marketing and community-oriented initiatives and posture and the impacts of a company operating in particular communities (in this case, particular states as referenced by the Proposal). See Amazon.com, Inc. (Mar. 28, 2019) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board annually report its analysis of the community impacts of the company’s operations and opportunities arising from its presence in communities, noting the proposal relates to the company’s “ordinary business operations” because “the [p]roposal relates generally to ‘the community impacts’ of the [c]ompany’s operations and does not appear to focus on an issue that transcends ordinary business matters.”); see also Johnson & Johnson (Jan. 12, 2004) (concurring in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board review pricing and marketing policies and prepare a report on how the company will respond to regulatory, legislative and public pressure to increase access to prescription drugs, noting the proposal “relat[es] to [the company’s] ordinary business operations (i.e., marketing and public relations)

As in the letters cited above, the Company views analyzing the risks, costs and strategic approaches to compliance with enacted or proposed state policies affecting reproductive rights as fundamental activities central to management’s ability to run the Company. For the foregoing reasons, we respectfully request that the Staff concur in our view that the Proposal is excludable under Rule 14a-8(i)(7).

D. The Proposal Does Not Focus on a Significant Policy Issue that Transcends the Company’s Day-to-Day Business.

The 1998 Release provides that a shareholder proposal may not be excluded under Rule 14a-8(i)(7) if it focuses on “significant policy issues” that “transcend” the day-to-day business matters of a company. There is no “bright-line test” for determining whether a shareholder proposal raises significant policy issues; rather, it is a “case-by-case” determination. In Staff Legal Bulletin No. 14H (Oct. 22, 2015), the Commission clarified its approach to determining whether a proposal falls within the ordinary business exclusion, explaining that “the analysis should focus on the underlying subject matter of a proposal’s request for board or committee review regardless of how the proposal is framed.” Additionally, the Staff has suggested that a significant policy issue will be “a consistent topic of widespread public debate.” See AT&T Inc. (Feb. 2, 2011, recon. denied Mar. 4, 2011); see also Comcast Corp. (Feb. 15, 2011) (concurring in the exclusion of the proposal under Rule 14a-8(i)(7), noting that it is not sufficient that the topic of the proposal may have “recently
attracted increasing levels of public attention,” but instead it must have “emerged as a consistent topic of widespread public debate”).

Where a proposal has sought to apply employment practices across its employees, the Staff has consistently found that the proposal did not relate to sufficiently significant policy issues. See CVS Health Corp. (Mar. 1, 2017) (permitting exclusion of the proponent’s proposal advocating for minimum wage reform); CVS Health Corp. (Feb. 27, 2015) (concurring in the exclusion of a proposal requesting the company “to amend its policies to explicitly prohibit discrimination based on political ideology, affiliation or activity,” finding that it did not focus on a significant policy issue, as it related to the company’s policies “concerning its employees”); see also The Walt Disney Co. (Nov. 24, 2014); Deere & Co. (Nov. 14, 2014); Costco Wholesale Corp. (Nov. 14, 2014); Bristol-Myers Squibb Co. (Jan. 7, 2015). Rather, the key issue underlying proposals relating to employment practices is the relationship between the company and its employees, which is not a significant policy issue, but a basic component of the day-to-day operations of the company.

The underlying subject matter of the Proposal is the relationship between the Company and its employees. Specifically, the Proposal appears to focus on “employees’ needs and expectations with respect to health coverage.” The Proposal lumps the enacted or proposed state policies affecting reproductive rights and the Company’s employee health coverage together to refer to the Company’s approach pejoratively—without providing any support for the assertion that the Company’s practices are in fact inequitable or represent a failure to meet the employees’ needs and expectations with respect to health coverage—such an approach does not establish a “significant policy issue.” In addition, with respect to the Proponent’s concerns regarding the potential effect of unspecified state policies on employee hiring, retention, and productivity, these are, insofar as they relate to the Company, business matters that appear to be only marginally implicated by the Proposal and fall within the purview of ordinary business matters as historically defined by the Staff. There is no one significant policy issue raised by the Proposal and impacting the Company that is the subject of widespread public debate that ties these topics together—the only common theme is health coverage-related issues, which are too general and vague to be considered the type of significant policy issue that would render an ordinary business matter appropriate for direct shareholder input. Rather, the relationship between the Company and its employees is a key component of its day-to-day ordinary business operations, and the Proposal’s policy, if implemented, would inappropriately override management’s experience and judgment in how best to address a wide range of workforce practices and cultivate a positive work environment with appropriate benefits and health coverage for its employees.

Further, even if, for the sake of argument, the Staff believes the Proposal touches upon a non-ordinary business matter—whether a significant policy or otherwise—such fact would not preclude exclusion under Rule 14a-8(i)(7). Instead, the question is whether the Proposal focuses on a non-ordinary business matter or also deals with matters related to the Company’s ordinary business operations. For example, in PetSmart, Inc. (Mar. 24, 2011), the proposal called for the company’s suppliers to certify that they had not violated certain laws regarding the humane treatment of animals. Even though the Staff had determined that the humane treatment of animals was a “significant policy issue,” the Staff granted relief to exclude the proposal given that the scope of the laws covered by the proposal were “fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping” and therefore determined that the proposal’s focus was not confined to the humane treatment of animals.
As in PetSmart, Inc., even though the Proposal may touch upon “enacted or proposed state policies affecting reproductive rights” that the Proponent believes to involve significant policy issues, the Proposal is extremely broad and involves a myriad of ordinary business matters and a wide range of potential topics. For example, the term “reproductive rights” can encompass a broad swath of topics, including rights of individuals to decide whether to reproduce, achieving reproductive health, an individual’s right to plan a family, family and parental leave and care approaches, breastfeeding and care accommodations, child care options and support, matters concerning voluntary or involuntary termination of a pregnancy, use of contraceptives, sex and reproductive education, access to reproductive health services and many other matters. Further, policies potentially “affecting” reproductive rights could implicate an even broader swath of topics such as general health care policies, mental health initiatives, government spending decisions, and matters impacting economic conditions, among many others.

The relationship between the Company and these matters may or may not be tenuous, but the Proposal itself addresses employee health coverage, which implicates the management of the Company’s workforce, the management of the Company’s expenses, the manner in which the Company develops its annual budget and operating plan, and the Company’s employee compensation and benefits. The Staff has consistently concluded that such matters constitute ordinary business matters, and therefore, proposals dealing with such topics are excludable under Rule 14a-8(i)(7). Thus, the Proposal extends well beyond any discernable non-ordinary business matters and instead delves into a wide array of aspects concerning the Company’s ordinary business operations. Therefore, the Proposal does not “transcend the day-to-day business matters,” and we respectfully request that the Staff concur in our view that it is excludable under Rule 14a-8(i)(7).

E. The Proposal Is Excludable Because It Seeks to Micromanage the Company by Mandating Specific, Intricate Changes with Regard to Complex Policies.

In considering whether a proposal falls within the scope of Rule 14a-8(i)(7), the 1998 Release stated that the Staff would consider “the degree to which the proposal seeks to ‘micromanage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The Staff further clarified that a proposal could “probe too deeply” where “the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” See 1998 Release. The Staff recently reiterated its view and application of this standard of assessing whether a proposal micromanages in Staff Legal Bulletin No. 14J (Oct. 23, 2018).

The Staff has consistently concurred that proposals that seek to impose specific methods for implementing complex policies are excludable under Rule 14a-8(i)(7) as they interfere with management’s core functions of overseeing ordinary business operations. See, e.g., RH (May 11, 2018) (concurring in the exclusion of a proposal broadly mandating that the luxury retailer in home furnishings offering a wide range of products sell no down products because the proposal sought to impose specific methods for implementing complex policies); EOG Resources, Inc. (Feb. 26, 2018) (concurring in the exclusion of a proposal seeking company-wide, quantitative, time-bound targets for reducing greenhouse gas emissions as excludable because the proposal sought to micromanage the company by “probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment”); Chevron Corp. (Mar. 19, 2013) (concurring in the exclusion of a proposal as relating to the company’s ordinary business operations (i.e., litigation strategy) where the proposal requested that the
company review its "legal initiatives against investors"); CMS Energy Corp. (Feb. 23, 2004) (concurring in the exclusion of a proposal requiring the company to void any agreements with two former members of management and initiate action to recover all amounts paid to them, where the Staff noted that the proposal related to the complex policy of the "conduct of litigation").

The Proposal attempts to micromanage the Company's business by mandating broad, intricate analysis with respect to the Company's employment practices with no regard to the various types, levels or needs of employees. The relationship between the Company and its employees is a complicated and critical component of its day-to-day management. Decisions concerning employee relations and workplace conditions, such as decisions regarding the strategies the Company may deploy with respect to health coverage and personal, reproductive health and family choices (as well as any items implicating employment-related claims (including by former employees)), are multifaceted, complex and based on a range of factors. These are fundamental business matters for the Company's management and require an understanding of the business implications that could result from any potential changes made to workforce policies.

The Proposal seeks to micromanage the relationship between the Company and its employees by asking the Company to report, and presumably make decisions, on health coverage based on a wide swath of possible "enacted or proposed state policies affecting reproductive rights," some of which have not even been written into law as of the date of the Proposal. Accordingly, the Proposal falls squarely within the Company's day-to-day business operations, and we respectfully request that the Staff concur in our view that it is therefore excludable under Rule 14a-8(i)(7).

F. Board Analysis.

In Staff Legal Bulletin No. 141 (Nov. 1, 2017) and subsequent legal bulletins, the Staff explained that the evaluation of whether a policy issue was sufficiently significant in the context of a particular company involved "difficult judgment calls" that, in the first instance, a company's board of directors was "generally in a better position to determine." The Staff further noted that a well-informed board, in terms of knowledge of the company's business and the implications of a particular proposal on that business, acting consistent with its fiduciary duties, 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." Id.

As there were no regularly scheduled meetings of the Company's Board of Directors (the "Board") in place in time to meet timing expectations for submission of this letter to the SEC Staff, determinations concerning the policy significance of the Proposal to the Company and its relation to the Company's ordinary business operations and related matters were referred to a combined meeting of the Executive Committee and the Nominating and Governance Committee of the Company's Board (the "Committees") for consideration. These Committees include the Chairperson of the Board, the Chair of the Compensation Committee, an additional Independent Director, and the Company's Chief Executive Officer. Following deliberation and analysis, the Committees unanimously concurred with the views articulated in this letter to the Staff that the Proposal does directly relate to the Company's ordinary business matters regarding workforce-related issues, including as to how the Company designs its employee benefit and wellness packages and takes into account relevant, complex and dynamic considerations in doing so, that the Proposal does not raise a significant policy issue that transcends the Company's ordinary business and that the Proposal itself is extremely vague and indefinite, rendering it difficult for the Committees (and,
presumably, shareholders) to assess clearly the desired scope and coverage of the report outlined in the Proposal.

In reaching this conclusion, the Committees took into account various factors that it deemed relevant, including the following and benefiting from management input:

- prior discussions with the Board and relevant committees of the Board regarding the Company’s management of human capital, strategies for recruitment, retention and promotion, corporate culture, compensation, workforce and employee benefit practices and diversity and inclusion initiatives;

- the Company’s current understanding that existing legislation in certain states that are referenced by the Proponent have not materially impacted the Company to date, including as to having any material adverse effects on employee hiring, retention, productivity, branding or internal corporate culture;

- the Company’s current processes for designing employee benefits and compensation, wellness and healthcare offerings and human resources-related matters, including as to matters touching upon reproductive health and insurance;

- the Company’s approach for regularly reviewing and assessing whether employee benefits are competitive;

- the Company’s current employee benefits policies and practices;

- that the Company’s robust enterprise risk management systems, overseen and with regular briefings provided to the Board and relevant committees, had not identified the issues raised by the Proposal as material or emerging risks to the Company;

- how the particular prescriptive measures called for by the Proponent compared to the Company’s existing policies and practices;

- the Company’s approach to political and legislative matters, including as to lobbying and political spending;

- that the Company’s culture and reputation for treating people fairly and well are substantial drivers of its success, and the Company works hard to maintain this competitive advantage;

- that the Company is one of the few companies in the Fortune 500 with both a female CEO and a female independent Board chair, 6 of the 12 members of the Board are women, and of the five new Board members that the Company has added since 2016, four are women;
that the Company’s employee surveys and other measures for assessing organizational and cultural health and staying apprised of employee concerns had not identified the issues raised by the Proposal as material problems for the Company;

that the Company’s current employee benefits policies, among other things, do seek to support employees in their role as parents (e.g., paid parental leave, adoption assistance, flexible work arrangements, lactation accommodations and additional maternal and family resources) and provide meaningful access to coverage under insurance health plans afforded by the Company regarding sexual and reproductive health services, regardless of an employee’s geographical base or position with the Company;

that the Company’s management, with the support of the Board, strives to implement and maintain workforce benefits and practices that are not only in line with the legal practices of each jurisdiction in which the Company operates, but that treat employees equitably and with respect, and contribute to a superior work environment;

the Company has, and continues to be, competitive among its peers, and more broadly in terms of Fortune 500 companies, when it comes to addressing employee health needs, including as to reproductive health-related matters;

that the Company previously publicly announced its commitment to pay equity, and that the Company seeks to design its employee benefits in ways that are intended to support and invest in its people and promote health and wellness;

that diversity, inclusion and meeting employees’ needs are top priorities at the Company, and this commitment is shared at the Board and senior management levels and throughout its organization;

that the Company was recently ranked by The Wall Street Journal as “Number One” on its list of the most diverse companies in the S&P 500 and is regularly recognized for being a company that values diversity and inclusion, including being named one of the Best Workplaces for Women – Great Place to Work (2019 & 2018); Best Workplaces for Diversity – Great Place to Work (2018); 50 Out Front: Best Places to Work (Diversity MBA Magazine) (2019); and a Military Friendly Company (2019);

that the Company’s engagements with its shareholders and analysts covering the Company have not featured inquiries regarding the Company’s employee benefits policies and practices identified in the Proposal; and
• that the Company has not previously received any shareholder proposals on the matters addressed in the Proposal.

II. The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(3) Because the Proposal and the Supporting Statement Are Inherently Vague and Indefinite in Violation of Rule 14a-9.

A. Rule 14a-8(i)(3) Background.

Rule 14a-8(i)(3) under the Exchange Act permits a company to exclude a shareholder proposal if such proposal is contrary to the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy solicitation materials. Rule 14a-9 provides: “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 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. 1. The Proposal Is Impermissibly Vague and Indefinite in Violation of Rule 14a-8(i)(3).

The Staff consistently has taken the position that a shareholder proposal is excludable under Rule 14a-8(i)(3) when it is vague and indefinite so that “neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004). Additionally, the Staff has determined that a shareholder proposal may be excludable as materially misleading where “any action ultimately taken by the Company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal.” Fuqua Industries, Inc. (Mar. 12, 1991) (concurring in the exclusion of a proposal requesting that the board prohibit “any major shareholder . . . which currently owns 25% of the [c]ompany and has three [b]oard seats from compromising the ownership of the other stockholders”); see also Walgreens Boots Alliance, Inc. (Oct. 7, 2016) (concurring in the exclusion of a proposal requesting that before the board takes any action “whose primary purpose is to prevent the effectiveness of shareholder vote,” it will determine whether there is a “compelling justification”); Morgan Stanley (Mar. 12, 2013) (concurring in the exclusion of a proposal that requested the appointment of a committee to explore “extraordinary transactions” as vague and indefinite); NYC Employees’ Retirement System v. Brunswick Corporation, 789 F. Supp. 144, 146 (S.D.N.Y. 1992) (“NYCERS”) (finding that a proposal was rightfully excluded because “the [p]roposal as drafted lacks the clarity required of a proper shareholder proposal. Shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote.”).

Further, the Staff consistently has permitted the exclusion of shareholder proposals when such proposals have failed to define certain terms necessary to implement them or where the meaning and application of key terms or standards under the proposal could be subject to differing interpretations. See, e.g., AT&T Inc. (Feb. 21, 2014) (concurring in the exclusion of a proposal requesting the board review the company’s policies and procedures relating to director’s moral, ethical and legal fiduciary duties and opportunities to ensure the company protects the privacy rights
of American citizens as vague and indefinite because neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires); Moody's Corp. (Feb. 10, 2014) (concurring in the exclusion of a proposal that the company provide a report on its assessment of the feasibility and relevance of incorporating ESG risk assessments qualitatively and quantitatively into all of its credit rating methodologies because neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires); Morgan Stanley (Mar. 12, 2013) (concurring in the omission of a proposal that requested the appointment of a committee to explore "extraordinary transactions" as vague and indefinite); The Boeing Company (Mar. 2, 2011) (allowing exclusion of a proposal requesting, among other things, that senior executives relinquish certain "executive pay rights" without explaining the meaning of the phrase); General Motors Corp. (Mar. 26, 2009) (concurring in the exclusion of a proposal to "eliminate all incentives for the CEO and the Board of Directors" that did not define "incentives"); Verizon Communications Inc. (Feb. 21, 2008) (proposal prohibiting certain compensation unless Verizon’s returns to stockholders exceeded those of its undefined "industry Peer Group" was excludable).

The Proposal violates Rule 14a-8(i)(3) because it is vague and indefinite with respect to the scope of its application, the methodology for its implementation and the definition of key terms that would be necessary for shareholders (and the Company) to understand exactly the action they are voting on. The Proposal urges the Company to "establish policies that minimize risk to the firm’s reputation and brand through perceived failures to meet employees’ needs and expectations with respect to health coverage” and asks the Company to issue a public report “detailing any known or potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights . . . including effects on employee hiring, retention, and productivity, and increase in litigation and brand risks.” The likelihood of confusion and ambiguity is enhanced by the Proponent identifying the Proposal as a "report on political spending related to company values and policies,” when in fact the Proposal does not call for such a report.

Certain terms of the Proposal are not defined and are so vague and indefinite that the shareholders and the Company would not be able to determine with reasonable certainty what actions or measures the Proposal requires. As noted above, the Proposal asks the Company to report on “any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights.” The phrase “enacted or proposed state policies affecting reproductive rights” is key to the Proposal because shareholders would have to be able to assess the scope of that term in order to vote on the Proposal and the Company would first have to determine which policies would guide the requested evaluation of risks and costs. Similar to the proposals in AT&T Inc., Moody's Corp., Morgan Stanley and The Boeing Company, the Proposal does not define or explain exactly which policies the Company must consider.

Importantly, it is far from clear what would comprise “enacted or proposed state policies affecting reproductive rights” to which the Proponent is referring. By definition, “policies” encompass more than state laws, and could include administrative policies and guidelines of executive agencies in each state as well as state or local level practices, benefits and regulations. It could also encompass criminal, civil or administrative laws, sanctions and regulations on various matters that might implicate reproductive freedoms or benefits or costs to state residents of healthcare or other personal decisions. Requiring the Company to identify “proposed state policies” would add further uncertainty; these could include bills in committee, laws or policies proposed in speeches by state legislators, regulators, or other officials, or even policies proposed by think tanks, public interest groups, academics or other individuals. It is also not clear how the Company could
identify, assess and quantify all the undefined “potential risks and costs” of the matters described in the Proposal or what shareholders’ expectations in that regard would be in deciding whether or not to vote for the Proposal. The Proposal also is vague as to what standard should be used to determine whether a policy “affects” reproductive rights and accordingly would be part of the report.

In short, it is impossible for the Company or the shareholders to comprehend precisely the depth and scope of the Proposal and the reach of policies the Company would be expected to issue a report on. See NYCERS (“Shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote.”).

As a general matter, it is particularly important for the Company’s shareholders to clearly understand the scope of the report, since any results will undoubtedly impact the Company’s workforce and any future actions taken by the Company with respect to health coverage and operational decisions. Shareholders would not be able to assess the operational and financial cost and the diversion of resources necessary to implement this policy unless they understood the underlying intentions and goals of the Proposal. See Fuqua Industries, Inc. (Mar. 12, 1991); see also Occidental Petroleum Corp. (Feb. 11, 1991) (“The staff, therefore, believes that the proposal may be misleading because any action(s) ultimately taken by the [c]ompany upon implementation of this proposal could be significantly different from the action(s) envisioned by shareholders voting on the proposal.”).

The Supporting Statement highlights the lack of clarity about which state policies the Proponent believes affect reproductive health rights. The Proponent asks for an array of effects on “employee hiring, retention, and productivity,” as well as an evaluation of any “public policy advocacy programs, political contributions policies, and human resources or educational strategies.” As noted above by way of example, it is not clear what is intended by the term “affecting” reproductive rights. Does the Company need to report only on enacted or proposed state policies that impact an employee’s access to reproductive rights or must it also consider bills that may not directly regulate reproductive rights but could, in terms of expected impact or in the future, lead to policies or have intended or unintended consequences that impact these rights? Without further clarification from the Proponent, the Company and shareholders are being unfairly asked to make interpretations and voting decisions about an unclear proposal.

Because of the multiple ambiguities and inherent vagueness in the Proposal, the Company believes that neither shareholders voting on the Proposal, nor the Company’s management in its potential implementation of the Proposal, would be able to determine with any reasonable certainty what actions should be taken should the Proposal be approved. Such qualities render the Proposal vague and indefinite, and we respectfully request that the Staff concur in our view that it is excludable under Rule 14a-8(i)(3).

B. 2. The Proposal Is Materially Misleading and Omits Material Facts in Violation of Rule 14a-8(i)(3) as to the Asserted “Perceived Failure to Meet Employees’ Needs and Expectations.”

In addition to the foregoing, the Proposal provides no basis for the assertion that there is any “perceived failure to meet employees’ needs and expectations with respect to health coverage” with respect to the Company, rendering the Proposal materially misleading and containing material omissions. This misleading assertion appears to underpin the Proposal.
III. The Company May Exclude the Proposal Pursuant to the Eligibility Requirements of Rule 14a-8(b) Because the Proposal is an Impermissible “Proposal by Proxy” Submission.

A. Rule 14a-8(b) Background.

Although Rule 14a-8 does not address shareholders’ ability to submit proposal through a representative, shareholders periodically do so, a practice commonly referred to as “proposal by proxy.” The Division of Corporation Finance has historically been of the view that a shareholder’s submission by proxy can be consistent with Rule 14a-8. See Staff Legal Bulletin No. 141 (Nov. 1, 2017) (“SLB 141”) (“We view a shareholder’s ability to submit a proposal by proxy as largely a function of state agency law provided it is consistent with Rule 14a-8.”).

However, in order to be consistent with Rule 14a-8, when a shareholder submits a proposal through a proxy, certain eligibility requirements of Rule 14a-8(b) must be satisfied. Pursuant to SLB 141, the Staff expects the documentation describing the shareholder’s delegation of authority to:

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

B. The Proposal is an Impermissible “Proposal by Proxy.”

The Proposal violates Rule 14a-8(i)(3) because it is an impermissible proposal by proxy, since the actual shareholders in interest did not appear to be informed of, understand or authorize the actual resolution and Proposal filed. As outlined in the Proposal, As You Sow submitted a shareholder proposal on behalf of Lutra Living Trust (“Lutra”), as lead filer, and Hazen Foundation (“Hazen”), as co-filer. On December 13, 2019, the Company sent identical letters to Lutra and Hazen (“Deficiency Letters”) concerning procedural deficiencies in the proof of eligibility of Lutra and Hazen to submit a shareholder proposal pursuant to Rule 14a-8.

In the Deficiency Letters, the Company raised, among other eligibility issues, concerns about the identification of the specification proposal to be submitted because the Proposal does not match the resolution subject matter identified in the Lutra and Hazen authorization letters. The Proponent noted in its response to the Deficiency Letters on December 23, 2019 that the subject matter is “identified as a proposal to report on political spending related to company values and policies” and further states that such “shorthand description accurately identifies the content of the proposal as being related to the company’s political spending that is contrary to the companies’ values and policies related to sexual and reproductive health.” See correspondence in Exhibit B.
However, Lutra and Hazen do not appear to have authorized this proposal or been apprised of the specific content of the proposal being filed on their behalf because the Proposal does not address the alleged subject matter. Nowhere in the Proposal does the Proponent mention a “report on political spending” or call for such a report. In addition, the information provided to the underlying shareholders refers to the Proponent seeking to understand matters concerning employee benefit practices, while the actual Proposal addresses the potential impact of current and potential state policies. A plain reading of the Proposal demonstrates that does not fit the identification and description that has been provided.

The Proponent has not satisfied the eligibility requirements to submit a shareholder proposal by proxy, and we respectfully request that the Staff concur in our view that the Proposal is excludable under Rule 14a-8.

CONCLUSION

Based on the foregoing analyses, we are of the view that (1) the Proposal relates to ordinary business operations, (2) the Proposal is impermissibly vague and indefinite in violation of Rule 14a-9 and (3) the Proposal is an impermissible “proposal by proxy” submission. Therefore, on behalf of the Company, we respectfully request that the Staff confirm that it will not recommend enforcement action if the Company excludes the Proposal and the Supporting Statement from its 2020 Proxy Materials.

If we can be of any further assistance in this matter, please do not hesitate to call the undersigned at (440) 395-3796. If the Staff is unable to concur with the Company’s conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff before the issuance of any written response to this letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please send your response to this letter by email to LAURIE_F_HUMPHREY@progressive.com.

Very truly yours,

THE PROGRESSIVE CORPORATION

By: ____________________________
Laurie F. Humphrey
Deputy General Counsel – Business

Enclosures

cc: Andrew Behar, As You Sow
    Jeff Colin, Baker Street Advisors, LLC
    Lori Hazen, Hazen Foundation
    Sebastiang Niles, Wachtell, Lipton, Rosen & Katz
Exhibit A
VIA EMAIL

December 2, 2019

Daniel P. Mascaro
Secretary
The Progressive Corporation
6300 Wilson Mills Road
Mayfield Village, OH 44143
secretary@progressive.com

Dear Mr. Mascaro,

Lutra Living Trust is a shareholder of Progressive Corporation. We submit the enclosed shareholder proposal on behalf of Lutra Living Trust (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 eager to begin a conversation with Progressive about this issue, as we are hopeful that the company’s strong record in workplace equity indicates a willingness to lead its peers in addressing employee reproductive health needs. To schedule a dialogue, please contact Meredith Benton, Principal, Whistle Stop Capital, at benton@whistlestop.capital. Please send all correspondence to Ms. Benton with a copy to shareholderengagement@asyousow.org. Also, please note that our address has changed. Our new address is set forth above.

Sincerely,

Andrew Behar
CEO

Enclosures
- Shareholder Proposal
- Shareholder Authorization
WHEREAS reproductive rights of access to contraception and abortion are being challenged at the state and federal level in the U.S.

In the first six months of 2019, states enacted 58 abortion restrictions, 26 of which would ban all, some or most abortions. At the same time, other states enacted legislation that protects these rights, and advanced measures to increase access to contraception.1 A similar patchwork of state laws regulate the coverage of abortion by private insurance plans. Eleven states ban abortion coverage in all state-regulated private insurance plans, whereas six states require private insurance plans to cover abortion.

The Progressive Corporation (the “Company” or “Progressive”) has operations in some of the states that ban abortion coverage in state regulated private insurance plans.

A 2016 study (95% Confidence Range: 22.4; 44.0) estimated that denying female employees full coverage of contraceptives increases unexpected pregnancies and terminations and increases employer costs associated with employee absenteeism, decreased productivity, employee replacement, maternity leave, and sick leave. (Downing, 2016)

Within a 2019 study by the Wall Street Journal, Progressive was the top ranked company within the S&P 500 for its diversity and inclusion programs. In this study, the twenty most diverse companies had an average annual five year stock return that was 5.8% higher than the twenty least-diverse companies.2 Our Company states: “We live up to our name, not just by being an innovator, but by embracing our different backgrounds, cultures, experiences, and ways of thinking. We encourage our employees to bring their whole selves to work, and through this idea our company flourishes.”

According to a survey from Anthem Life Insurance Company3, nearly one in three millennial workers has turned down a job offer due to insufficient health insurance. Progressive may find it difficult to recruit the highest quality employees within states viewed as inhospitable to women’s reproductive rights; this may harm Progressive’s ability to meet diversity and inclusion goals, with negative consequences to brand and reputation.

The proponents believe Progressive should establish policies that minimize risk to the firm’s reputation and brand through perceived failure to meet employees’ needs and expectations with respect to health coverage.

RESOLVED: Shareholders request that The Progressive Corporation issue a public report to shareholders, employees, customers, and public policy leaders, omitting confidential information and at a reasonable expense, by December 1, 2020, detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks. SUPPORTING STATEMENT: Shareholders recommend that the report evaluate any risks and costs including, but not limited to effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contributions policies, and human resources or educational strategies.

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2 https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200
11/25/2019 | 10:00:23 AM PST
Andrew Behar
CEO
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

As of the date of this letter, the undersigned authorizes As You Sow (AYS) file, cofile, or endorse the shareholder resolution identified below on Stockholder’s behalf with the identified company, and that it be included in the proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder: Lutra Living Trust
Company: Progressive Corporation
Annual Meeting/Proxy Statement Year: 2020
Resolution Subject: Report on political spending related to company values and policies

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 deal on the Stockholder’s behalf with 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 related to the resolution.

Sincerely,

[Signature]

Name: Jeff Colin, Power of Attorney

Title: Mr.
VIA EMAIL

December 2, 2019

Daniel P. Mascaro
Secretary
The Progressive Corporation
6300 Wilson Mills Road
Mayfield Village, OH 44143
secretary@progressive.com

Dear Mr. Mascaro,

Hazen Foundation, a shareholder of Progressive Corporation, is co-filing a shareholder proposal for action at the next annual meeting of the company. Shareholder is co-filing this resolution with Lutra Living Trust, who is the lead filer of the proposal. Lutra Living Trust (represented by As You Sow) has submitted the enclosed shareholder proposal for inclusion in the 2020 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. Lutra Living Trust is authorized to act on the co-filer’s behalf with regard to withdrawal of the proposal.

A letter authorizing As You Sow to act on the co-filer’s behalf are enclosed. A representative of the lead filer will attend the stockholders’ meeting to move the resolution as required. To schedule a dialogue, please contact Meredith Benton, Principal, Whistle Stop Capital, at benton@whistlestop.capital. Please send all correspondence to Ms. Benton with a copy to shareholderengagement@asyousow.org. Also, please note that our address has changed. Our new address is set forth above.

Sincerely,

Andrew Behar
CEO

Enclosures
- Shareholder Proposal
- Shareholder Authorization
WHEREAS reproductive rights of access to contraception and abortion are being challenged at the state and federal level in the U.S.

In the first six months of 2019, states enacted 58 abortion restrictions, 26 of which would ban all, some or most abortions. At the same time, other states enacted legislation that protects these rights, and advanced measures to increase access to contraception. A similar patchwork of state laws regulate the coverage of abortion by private insurance plans. Eleven states ban abortion coverage in all state-regulated private insurance plans, whereas six states require private insurance plans to cover abortion.

The Progressive Corporation (the “Company” or “Progressive”) has operations in some of the states that ban abortion coverage in state regulated private insurance plans.

A 2016 study (95% Confidence Range: 22.4; 44.0) estimated that denying female employees full coverage of contraceptives increases unexpected pregnancies and terminations and increases employer costs associated with employee absenteeism, decreased productivity, employee replacement, maternity leave, and sick leave. (Downing, 2016)

Within a 2019 study by the Wall Street Journal, Progressive was the top ranked company within the S&P 500 for its diversity and inclusion programs. In this study, the twenty most diverse companies had an average annual five year stock return that was 5.8% higher than the twenty least-diverse companies. Our Company states: “We live up to our name, not just by being an innovator, but by embracing our different backgrounds, cultures, experiences, and ways of thinking. We encourage our employees to bring their whole selves to work, and through this idea our company flourishes.”

According to a survey from Anthem Life Insurance Company, nearly one in three millennial workers has turned down a job offer due to insufficient health insurance. Progressive may find it difficult to recruit the highest quality employees within states viewed as inhospitable to women’s reproductive rights; this may harm Progressive’s ability to meet diversity and inclusion goals, with negative consequences to brand and reputation.

The proponents believe Progressive should establish policies that minimize risk to the firm's reputation and brand through perceived failure to meet employees’ needs and expectations with respect to health coverage.

RESOLVED: Shareholders request that The Progressive Corporation issue a public report to shareholders, employees, customers, and public policy leaders, omitting confidential information and at a reasonable expense, by December 1, 2020, detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

SUPPORTING STATEMENT: Shareholders recommend that the report evaluate any risks and costs including, but not limited to effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contributions policies, and human resources or educational strategies.

2 https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200
November 29, 2019

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

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned (the “Stockholder”) authorizes As You Sow to file or co-file a shareholder resolution on Stockholder’s behalf with the named 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 the below described subject.

Stockholder: Hazen Foundation
Company: Progressive Corporation
Subject: Report on political spending related to company values and policies

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 the 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 further authorizes As You Sow to send a letter of support of the resolution on Stockholder’s behalf.

Sincerely,

[Signature]

Lori Hazen
President
Hazen Foundation
Exhibit B
Dear Ms. Griffith:

The undersigned institutional investors, asset owners and asset managers are writing today to request a dialogue with Progressive about the urgent threats to reproductive health care in the United States, and to learn how Progressive views its responsibilities and obligations in this area to its employees and the broader public. We are long term investors in the public markets, with combined assets under management of $236 billion.

We wish to better understand your positions and policies related to insurance for sexual and reproductive healthcare, and we are also interested in Progressive’s benefits policies to support employees in their role as parents (such as paid parental and family leave, flexible hours, lactation accommodations, and child care options). We wish to learn whether Progressive holds any public policy positions related to reproductive health care and rights, and how these may factor into your decisions related to your political spending and lobbying priorities.

In recent months, we have watched with growing alarm as access to reproductive health care has become increasingly curtailed. Meaningful access to contraception and abortion affords women better control of their reproductive health and the timing of pregnancy, with beneficial results for themselves, their families and careers.1 As expressed by a Supreme Court majority in Planned Parenthood of Southeastern Pennsylvania v. Casey, “The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”2 Conversely, laws that restrict the ability of an individual to manage her fertility can imperil her health, and disrupt or even derail her life. From an employers’ perspective, these strains can impact attendance, productivity, and advancement at work. It has been estimated that health-related loss of productive time results in annual losses to businesses of approximately $226 billion.3

Corporations and the economy as a whole benefit enormously from the participation of women in the workforce:

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1 We use “woman” most frequently in our communications to describe those in need of contraceptive and abortion services, but note that it does not describe the identity of all those who can become pregnant, such as trans men, nonbinary and gender nonconforming individuals. We urge your company to construct policies that are sensitive to the needs of all who can become pregnant.


• Women comprised approximately 48% of the 53 million workers employed by private industry in 2016.4 Women are projected to account for 51% of the growth in total labor force from 2008 to 2018.5
• The Center for American Progress has estimated that the increased number of women in the workforce in recent decades has added $1.7 trillion gross domestic product to the national economy.6
• A study by PwC study found that increasing women’s participation in the workforce to the same level as men’s would increase the nation’s GDP by 5%.7

We see Progressive’s appreciation for the contributions of its female workforce reflected in its highly regarded diversity and inclusion programs and in its transparency around its hiring and promotion data.

We believe it is incumbent upon America’s businesses to take action to protect the ability of their employees to access affordable and comprehensive reproductive health services, regardless of their geographical base or position within the company. Companies who make this commitment stand to become more competitive in the labor market. Many studies have pointed to the link between employee satisfaction and improved stock performance, operating margin, revenue per employee, and return on company assets.8

A patchwork of state and federal laws governs the quality, scope, accessibility and affordability of services related to reproductive health care. For example, in the area of contraception, the Affordable Care Act requires that most private health insurance plans cover at least one form of each of 18 FDA-approved methods for women without cost sharing, but a number of states require additional coverage that companies or their insurers could voluntarily assume. With respect to abortion, only four states require insurance coverage. State policies are similarly variegated with respect to paid parental leave and related benefits.

In our view, it is in the best interest of companies to offer comprehensive coverage and benefits in these areas. A recent poll conducted by Naral and The Harris Poll found that if choosing between two employment offers, more than half of employed adults (52%) surveyed said that benefits offering full reproductive care would be a deciding factor. An even greater proportion (60%) say they would be more loyal to a company that offers coverage for prenatal care, family planning, and abortion care. Two in three (66%) agreed that all companies should publicly support women’s reproductive freedom, and 61%

said that access to reproductive health care should be a consideration when companies relocate or open new offices.\textsuperscript{9}

We would also like to be better informed on Progressive’s public policy positions related to reproductive and family health care. Since the passage last spring of a number of state bills severely curtailing access to abortion, corporate political spending to anti-choice politicians has come under increased scrutiny.\textsuperscript{10}

We understand that many major U.S. employers are reviewing their approach to reproductive health care in light of recent developments, as well as their level of public disclosure. As such, we appreciate your careful consideration of the concerns expressed in this letter and our request for dialogue. We have also appended a series of questions for the dialogue that provide more specificity around the level of information we seek, and further background information on the issues. We look forward to your timely response, and an indication of your availability for a meeting to continue this dialogue in the coming weeks.

Please reply to Meredith Benton, Principal at Whistle Stop Capital, LLC, and consultant to As You Sow Foundation, at benton@whistlestop.capital.

Sincerely,

Meredith Benton
Shareholder Engagement Specialist,
As You Sow

Shelley Alpern
Andrew Behar
Scott M. Stringer
Keith Mestrich
Rob Fohr
Mary Kay Henry
Melissa Beck
Janna Six
Jason A Hicks
Allan Pearce
Ruth Shaber, MD
Jason A Hicks
Rini Banerjee
Joshua Ratner
Rhia Ventures
As You Sow
New York City Comptroller
Amalgamated Bank
Committee on Mission Responsibility Through Investment of the Presbyterian Church U.S.A.
SEIU
The Educational Foundation of America
The Prentice Foundation
Sant Charitable Foundation
Trillium Asset Management
Tara Health Foundation
The Summit Foundation
Jessie Smith Noyes Foundation
JLens


\textsuperscript{10} See, for example, \textit{Funding the Bans: A Look at the Major Corporations Financing the Lawmakers Behind State Abortions}, Equity Forward, August 2019 at \url{https://equityfwd.org/defund-the-bans}.
Ruth Shaber
Lauren Compere
Larisa Ruoff
Michael Kramer
Katie McCloskey
Mari Schwartz
Pat Miguel Tomaino
Molly Betournay
Natasha Lamb
Betsy Moszeter
Andrew McGeorge
Rachel J. Robasciotti
Ellen Dorsey, PhD
Richard W. Torgerson
Bruce Herbert
Peter Krull
Gideon Stein
Kim Griego-Kiel & Johann Klaassen
Sharon M Schendel
Nancy Swanson
Karen Shapiro
Allan Moskowitz

Ruth Shaber Family Office
Boston Common Asset Management
The Sustainability Group of Loring, Wolcott & Coolidge
Natural Investments
United Church Funds
NorthStar Asset Management, Inc.
Zevin Asset Management
Clean Yield Asset Management
Arjuna Capital
Green Alpha Advisors, LLC
Unitarian Universalist Association
Robasciotti & Philipson
Wallace Global Fund
SharePower Responsible Investing
Newground Social Investment
Earth Equity Advisors
The Moriah Fund
Horizons Sustainable Financial Services
Sharon Schendel Revocable Trust
Linked Foundation
Provo Wealth Management
Transformative Wealth Management
Questions for Investor-Company Dialogue

1. What is the process within your company for determining insurance coverage policies as they relate to reproductive health and family planning?

2. Is your company self- or fully-insured?

3. Contraceptive coverage
   a. Has your company completed a self-audit to ensure that it complies with the ACA contraceptive mandate?
   b. Does your company’s coverage of contraception in any way exceed the ACA’s mandates?

4. Insurance coverage for abortion
   a. Is abortion coverage included in all plans offered to employees?
   b. Are all abortions covered, or are any restrictions imposed?
   c. If restrictions are imposed, please describe them and their rationale.
   d. Is abortion care subject to a deductible and/or co-pay?
   e. (For fully insured plans only) Has your company considered the purchase of abortion riders in states that require them as a condition of offering abortion coverage to employees?

5. Adequacy of network coverage
   a. Does the company monitor whether any of its employees need to go out of network to receive a full spectrum of reproductive health services?
   b. What steps, if any, has your company taken to ensure that employees can access comprehensive reproductive and maternal health services in a timely manner in markets where in-network and/or out-of-network providers may restrict these services based on religious or other grounds?
   c. Are employees reimbursed for travel costs if they are forced to seek reproductive health (or other) care beyond a reasonable distance from their homes?

6. Can prospective employees obtain detailed information about the company’s reproductive health insurance options during the interview or hiring processes?

7. Is health insurance coverage extended to part-time, temporary, contract or other non-full-time workers? If not, does the company provide any cash benefit to help them purchase their own coverage?

8. Has the company given any consideration to actively supporting public policies that would preserve or expand access to comprehensive reproductive and maternal health services? (By “active support,” we include such actions as private or public communications to policy makers, or signing onto public statements, or signing on to an amicus brief.)

9. Would the company consider publicly disclosing its policies regarding coverage of contraception and abortion on its web site?

10. When engaging in political spending, does your company consider the impact of its contributions on access to birth control or abortion?
11. Are employees permitted to make charitable gifts to reproductive health or rights organizations via payroll deductions?

12. Please provide information on any benefits you provide to support working parents (such as paid leave, flexible hours, telecommuting, accommodations for pregnant women and nursing mothers, and child care).
Background Information for Dialogue

Self-insured plans v. Fully-insured plans

Self-insured (or self-funded) plans are regulated under ERISA; state laws do not have authority over them. The ACA applies to self-insured plans.

Fully-insured plans must comply with both state and federal laws.

<table>
<thead>
<tr>
<th>Table 1: Who Regulates Health Insurance Plans</th>
</tr>
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<tbody>
<tr>
<td>Type of Plan</td>
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<tr>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>Fully-Insured Plan</td>
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<tr>
<td>Self-Insured ERISA plan</td>
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</tbody>
</table>

Source: Kaiser Family Foundation.

Contraception

The ACA requires that most private health insurance plans cover at least one form of the 18 FDA-approved methods for women (only) without cost sharing. “This means that plans must cover at least one of each of the three different types of oral contraceptives – the combined pill, the progestin-only pill and the continuous use pill – though it is up to an insurer’s discretion using reasonable medical management practices whether to cover a brand name or generic contraceptive if both are available. Insurers are required to cover other contraceptives if medically necessary, and must provide a process for policyholders to request coverage of a contraceptive that is not already covered without cost sharing by the plan. Insurers may also require step therapy and prior authorization before covering a different pill.” (“Oral Contraceptive Pills,” Kaiser Family Foundation, p. 5.)

A number of states expand on the ACA’s contraception mandate to require insurers to cover over-the-counter (OTC) contraception, extended birth control supplies, male sterilization, prohibition of cost-sharing, prohibiting restrictions and delays or use of medical management techniques that restrict access to contraceptives. (Source: “Insurance Coverage of Contraceptives,” Guttmacher Institute, November 2018.)

“Eighty-six percent of women executives believe that being able to time and plan parenthood is critical to a woman’s professional development and her family’s financial security – and 90% believe access to birth control is critical to family planning. There is significant evidence to support these beliefs. For example, 10% of the narrowing of the gender pay gap during the 1980s and 31% during the 1990s can be attributed to early access to the Pill.” (Reproductive Health Care Issue Brief, Business Forward, 2019.)

Exemptions apply for houses of worship, religiously affiliated nonprofits and closely held for-profit corporations, and the Trump Administration is seeking to broaden these exemptions. (”State and Federal
State Laws Regarding Insurance Coverage of Abortion

Eleven (11) states ban all insurance companies from offering any private plan that covers abortion services (in addition to the 15 states that allow ban abortion coverage in ACA Marketplaces as well). Of these, nine allow insurers to sell riders for abortion coverage on the private market. (“The Myth of the Abortion Insurance Rider,” Alina Salganicoff, HealthAffairs.org, 7.12.18.)

There is no recent data on the number of private plans that include abortion coverage. Only four states (California, New York, Oregon, and Washington) require all state-regulated private health plans, including Marketplace plans, to include coverage for abortion. (Kaiser Family Foundation Abortion Coverage in the Premium Relief Act of 2017 (HR 4666), March 2018 and “Restrictions on Private Insurance Coverage of Abortion: A Danger to Abortion Access and Better Health Coverage,” Guttmacher Policy Review, 2018 (vol. 21), p. 31.)

Maine enacted a law that requires all private health insurance plans renewed on or after January 1, 2020 that cover maternity care to cover abortion services. (H.P. 594, 129th Maine Legislature, Reg. Sess. 2019.) California and Washington require all plans including individual and employer plans to treat abortion coverage and maternity coverage neutrally. As all plans are required to include maternity coverage, all plans must also include abortion coverage. (“Coverage for Abortion Services in Medicaid, Marketplace Plans and Private Plans,” June 2019.)

Adequacy of Network Coverage

A study published by the National Bureau of Economic Research found that in 2016, 14.5 percent of all U.S. acute care hospitals were Catholic, including 10 of the 25 largest health care systems in the country. In some states with fewer hospitals, Catholic providers are a dominant presence in the market. In five states (Alaska, Iowa, Washington, Wisconsin, and South Dakota), more than 40 percent of acute care beds were Catholic-owned or -affiliated in 2016. (“Catholic hospitals are multiplying, and so is their impact on reproductive health care,” StatNews.com, 9.14.16.)

Coverage of Part-Time Workers


Employers aren’t required to provide health insurance for part-time employees. If workers’ employers do offer health insurance to them, the workers may be eligible for savings if the insurance doesn’t meet certain minimum standards or is considered affordable. (“Health insurance if you work part-time,” HealthCare.gov.)

According to a 2018 survey by the Transamerica Center for Health Studies, only 25% of large companies provide health care to part-time employees. (“Sixth Annual Transamerica Center for Health Studies Employees Survey,” November 2018.)
Maternity and Family Benefits

Most new parents are Millennials, and a strong majority of this demographic highly prizes caregiving benefits. Glassdoor reports that 90% of them say they would prefer benefits over a pay raise, and that 57% of U.S. job candidates report benefits and perks are among their top considerations before accepting a job. (“50 HR and Recruiting Statistics for 2017.”) The Transamerica Center for Health Studies measured this support among Millennials at 63%. (“Sixth Annual Transamerica Center for Health Studies Employees Survey,” November 2018.)

According to a survey conducted by Ovia Health, one-third of women who go on maternity leave choose not to return to work — and most make the decision before their baby is born. “Overwhelmingly, they agreed the following five components were key to ensuring a successful transition back to work: flexible scheduling, paid leave, breastfeeding support, manager planning, and childcare assistance.” (“Maternity & Family Benefits: A compelling case for why they’re good for business,” at https://www.oviahealth.com/blog/2018-04-19-maternity-family-benefits-why-theyre-good-for-business).

Avoidable turnover is costly. It can cost up to 33% of a departing worker’s salary to hire a replacement. (“Avoidable turnover costing employers big,” Employee Benefits News, 8.9.17.)

According to a recent survey of HR professionals by the Society for Human Resource Management, about half of all employers offer onsite lactation rooms, and only 11% of organizations offered lactation support services. The ACA mandates that private health plans provide breastfeeding support, counseling and equipment with no cost sharing. (“2018 Employee Benefits,” Society for Human Resource Management; “Blueprint for Sexual and Reproductive Health, Rights, and Justice,” July 2019.)

A 2018 report by Child Care Aware of America concluded that “child care is simply not affordable for millennial parents. The government standard for affordable child care fees set by the Department of Health & Human Services is under 7 percent of family income, yet across all states, the average cost of center-based infant child care exceeds 25 percent of the average median income for millennials.” (“Millennial Generation: How the Changing Economic Environment Impacts the Newest Parents,” Child Care Aware of America, 2018.)
Dear Mr. Mascaro,

Please find attached a lead and co-filing letter submitting a shareholder resolution for inclusion in the company’s 2020 proxy statement. As You Sow is representing the filers on this resolution.

We are eager to begin a conversation with Progressive on this issue. Meredith Benton, here cc-ed, is available to discuss the resolution in detail.

Thank you and receipt confirmation of this email its attachments would be appreciated

Best,
Kwan

Teoh, Kwan Hong (he/him)
Environmental Health Program
Research Manager
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704
(510) 735-8147 (direct line) | (605) 651-5517 (cell)
kwan@asyousow.org | www.asyousow.org

~Building a Safe, Just and Sustainable World since 1992~
VIA EMAIL

December 2, 2019

Daniel P. Mascaro  
Secretary  
The Progressive Corporation  
6300 Wilson Mills Road  
Mayfield Village, OH 44143  
secretary@progressive.com

Dear Mr. Mascaro,

Lutra Living Trust is a shareholder of Progressive Corporation. We submit the enclosed shareholder proposal on behalf of Lutra Living Trust (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 eager to begin a conversation with Progressive about this issue, as we are hopeful that the company’s strong record in workplace equity indicates a willingness to lead its peers in addressing employee reproductive health needs. To schedule a dialogue, please contact Meredith Benton, Principal, Whistle Stop Capital, at benton@whistlestop.capital. Please send all correspondence to Ms. Benton with a copy to shareholderengagement@asyousow.org. Also, please note that our address has changed. Our new address is set forth above.

Sincerely,

Andrew Behar  
CEO

Enclosures

• Shareholder Proposal
• Shareholder Authorization
WHEREAS reproductive rights of access to contraception and abortion are being challenged at the state and federal level in the U.S.

In the first six months of 2019, states enacted 58 abortion restrictions, 26 of which would ban all, some or most abortions. At the same time, other states enacted legislation that protects these rights, and advanced measures to increase access to contraception.¹ A similar patchwork of state laws regulate the coverage of abortion by private insurance plans. Eleven states ban abortion coverage in all state-regulated private insurance plans, whereas six states require private insurance plans to cover abortion.

The Progressive Corporation (the “Company” or “Progressive”) has operations in some of the states that ban abortion coverage in state regulated private insurance plans.

A 2016 study (95% Confidence Range: 22.4; 44.0) estimated that denying female employees full coverage of contraceptives increases unexpected pregnancies and terminations and increases employer costs associated with employee absenteeism, decreased productivity, employee replacement, maternity leave, and sick leave. (Downing, 2016)

Within a 2019 study by the Wall Street Journal, Progressive was the top ranked company within the S&P 500 for its diversity and inclusion programs. In this study, the twenty most diverse companies had an average annual five year stock return that was 5.8% higher than the twenty least-diverse companies.² Our Company states: “We live up to our name, not just by being an innovator, but by embracing our different backgrounds, cultures, experiences, and ways of thinking. We encourage our employees to bring their whole selves to work, and through this idea our company flourishes.”

According to a survey from Anthem Life Insurance Company, nearly one in three millennial workers has turned down a job offer due to insufficient health insurance. Progressive may find it difficult to recruit the highest quality employees within states viewed as inhospitable to women’s reproductive rights; this may harm Progressive’s ability to meet diversity and inclusion goals, with negative consequences to brand and reputation.

The proponents believe Progressive should establish policies that minimize risk to the firm’s reputation and brand through perceived failure to meet employees’ needs and expectations with respect to health coverage.

RESOLVED: Shareholders request that The Progressive Corporation issue a public report to shareholders, employees, customers, and public policy leaders, omitting confidential information and at a reasonable expense, by December 1, 2020, detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

SUPPORTING STATEMENT: Shareholders recommend that the report evaluate any risks and costs including, but not limited to effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contributions policies, and human resources or educational strategies.

² https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200
Re: Authorization to File Shareholder Resolution

Dear Andrew Behar,

As of the date of this letter, the undersigned authorizes As You Sow (AYS) to file, cofile, or endorse the shareholder resolution identified below on Stockholder’s behalf with the identified company, and that it be included in the proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder: Lutra Living Trust
Company: Progressive Corporation
Annual Meeting/Proxy Statement Year: 2020
Resolution Subject: Report on political spending related to company values and policies

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 deal on the Stockholder’s behalf with 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 related to the resolution.

Sincerely,

[Signature]

Name: Jeff Colin, Power of Attorney

Title: Mr.
VIA EMAIL

December 2, 2019

Daniel P. Mascaro  
Secretary  
The Progressive Corporation  
6300 Wilson Mills Road  
Mayfield Village, OH 44143  
secretary@progressive.com

Dear Mr. Mascaro,

Hazen Foundation, a shareholder of Progressive Corporation, is co-filing a shareholder proposal for action at the next annual meeting of the company. Shareholder is co-filing this resolution with Lutra Living Trust, who is the lead filer of the proposal. Lutra Living Trust (represented by As You Sow) has submitted the enclosed shareholder proposal for inclusion in the 2020 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. Lutra Living Trust is authorized to act on the co-filer’s behalf with regard to withdrawal of the proposal.

A letter authorizing As You Sow to act on the co-filer’s behalf are enclosed. A representative of the lead filer will attend the stockholders’ meeting to move the resolution as required. To schedule a dialogue, please contact Meredith Benton, Principal, Whistle Stop Capital, at benton@whistlestop.capital. Please send all correspondence to Ms. Benton with a copy to shareholderengagement@asyousow.org. Also, please note that our address has changed. Our new address is set forth above.

Sincerely,

Andrew Behar  
CEO

Enclosures

• Shareholder Proposal  
• Shareholder Authorization
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The Progressive Corporation (the “Company” or “Progressive”) has operations in some of the states that ban abortion coverage in state regulated private insurance plans.

A 2016 study (95% Confidence Range: 22.4; 44.0) estimated that denying female employees full coverage of contraceptives increases unexpected pregnancies and terminations and increases employer costs associated with employee absenteeism, decreased productivity, employee replacement, maternity leave, and sick leave. (Downing, 2016)

Within a 2019 study by the Wall Street Journal, Progressive was the top ranked company within the S&P 500 for its diversity and inclusion programs. In this study, the twenty most diverse companies had an average annual five year stock return that was 5.8% higher than the twenty least-diverse companies. 2 Our Company states: “We live up to our name, not just by being an innovator, but by embracing our different backgrounds, cultures, experiences, and ways of thinking. We encourage our employees to bring their whole selves to work, and through this idea our company flourishes.”

According to a survey from Anthem Life Insurance Company, nearly one in three millennial workers has turned down a job offer due to insufficient health insurance. Progressive may find it difficult to recruit the highest quality employees within states viewed as inhospitable to women’s reproductive rights; this may harm Progressive’s ability to meet diversity and inclusion goals, with negative consequences to brand and reputation.

The proponents believe Progressive should establish policies that minimize risk to the firm’s reputation and brand through perceived failure to meet employees’ needs and expectations with respect to health coverage.

RESOLVED: Shareholders request that The Progressive Corporation issue a public report to shareholders, employees, customers, and public policy leaders, omitting confidential information and at a reasonable expense, by December 1, 2020, detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks. SUPPORTING STATEMENT: Shareholders recommend that the report evaluate any risks and costs including, but not limited to effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contributions policies, and human resources or educational strategies.

2 https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200
November 29, 2019

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

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned (the “Stockholder”) authorizes As You Sow to file or co-file a shareholder resolution on Stockholder’s behalf with the named 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 the below described subject.

Stockholder: Hazen Foundation
Company: Progressive Corporation
Subject: Report on political spending related to company values and policies

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 the 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 further authorizes As You Sow to send a letter of support of the resolution on Stockholder’s behalf.

Sincerely,

Lori Hazen
President
Hazen Foundation
Mr. Behar and Ms. Benton,

In connection with your recent letter on behalf of Lutra, an overnight courier was mailed today to the Berkeley, CA address. I’ve attached an electronic copy of the package’s materials to this email.

Best,

Allyson Bach
Senior Counsel
+1 440 395 2394
December 13, 2019

VIA E-MAIL AND OVERNIGHT COURIER

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

Re: Shareholder Proposal

Dear Mr. Behar:

I am writing on behalf of The Progressive Corporation (“Progressive”). On December 2, 2019, we received your letter, dated December 2, 2019, via email regarding a shareholder proposal (the “Proposal”) for Progressive’s 2020 Annual Meeting of Shareholders (the “2020 Meeting”).

The Proposal contains certain procedural deficiencies which Securities and Exchange Commission (“SEC”) regulations require us to bring to your attention.

Proposals by Proxy

Your cover letter indicates you have submitted the Proposal on behalf of the Lutra Living Trust (“Lutra”). SEC Staff Legal Bulletin No. 141 (“SLB 141”) provides guidance regarding the application of 14a-8(b) under the Securities Exchange Act of 1934, as amended (“Rule 14a-8”), when a shareholder submits a proposal through a proxy. SLB 141 notes that proposals submitted by proxy, such as the Proposal, may present challenges and concerns, including “concerns raised that shareholders may not know that proposals are being submitted on their behalf.”

Accordingly, in evaluating whether there is a basis to exclude a proposal under the eligibility requirements of Rule 14a-8(b), as addressed below, SLB 141 states that in general the SEC staff expects any stockholder who submits a proposal by proxy to provide documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.
The Letter described the specific proposal to be submitted as a “report on political
spending related to company values and policies.” The included Proposal appears to address a
different topic – reproductive rights. (While the Proposal did not include a subject matter line, it
requests Progressive “to issue a public report … detailing any known and any potential risks and
costs to the Company caused by enacted or proposed state policies affecting reproductive
rights, and detailing any strategies beyond litigation and legal compliance that the Company may
deploy to minimize or mitigate these risks.”) As a result, Progressive believes that the Letter
does not meet the requirements of Rule 14a-8(b) and SLB 14I. Accordingly, to remedy this
defect, Lutra should provide revised documentation that confirms that it has instructed or
authorized you to submit the Proposal consistent with SLB 14I.

Additionally, the Letter from Lutra is signed by Mr. Jeff Colin, as power of attorney. It
did not include any additional information regarding how Mr. Colin has authority to act on
behalf of Lutra. As a result, Progressive believes that the Letter does not meet the requirements
of Rule 14a-8(b) and SLB 14I. Accordingly, to remedy this defect, Lutra should provide revised
documentation that provides evidence of Lutra’s delegation of authority to Mr. Colin consistent
with SLB 14I.

Your cover letter directs Progressive to contact Ms. Meredith Benton, principal of
Whistle Stop Capital to schedule a dialogue. It is unclear what role (if any) Ms. Benton and/or
Whistle Stop Capital have in connection with the Proposal.

- To the extent that Ms. Benton and/or Whistle Stop Capital are additional co-proponents
  of the Proposal, your submission must include documentation demonstrating that you had
  the legal authority to submit the Proposal on behalf of each proponent in accordance with
  SLB 14I and also include proof of continuous ownership in accordance with the
  requirements of Rule 14a-8(b) (described below).

- To the extent that neither Ms. Benton and/or Whistle Stop Capital are additional co­
  proponents of the Proposal, please provide documentation that confirms that Lutra has
  authorized Ms. Benton and/or Whistle Stop Capital to engage in dialogue and enter into
  binding resolutions from Lutra on its behalf.

Proof of Continuous Ownership

Rule 14a-8(b) provides that any shareholder proponents must submit sufficient proof of
their continuous ownership of at least $2,000 in market value, or 1%, of a company’s securities
entitled to be voted on the proposal for at least one year as of the date the shareholder proposal
was submitted. Our review of our records of registered shareholders do not indicate that Lutra is
a record owner of the sufficient number or amount of shares to satisfy this requirement. In
addition, to date we have not received any proof that Lutra has satisfied Rule 14a-8’s ownership
requirements as of the date the Proposal was submitted to Progressive.

To remedy this defect, Lutra must submit sufficient proof of its continuous ownership of
the required number or amount of Progressive’s shares for the one-year period preceding and
including the date that the Proposal was submitted to Progressive (December 2, 2019). As
explained in Rule 14a-8 and in SEC staff guidance, sufficient proof must be in the form of:

1. a written statement from the “record” holder of Lutra’s shares (usually a broker or
   bank) verifying that Lutra continuously held the required number or amount of
Progressive’s shares for the one-year period preceding and including the date the Proposal was submitted (December 2, 2019); or

2. if Lutra has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting Lutra’s ownership of the required number or amount of Progressive’s shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that Lutra continuously held the required number or amount of Progressive’s shares for the one-year period as of the date of the statement.

If Lutra intends to demonstrate ownership by submitting a written statement from the “record” holder of its shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. Lutra can confirm this by asking its broker or bank or by checking DTC’s participant list, which is available at http://www.dtcc.com/~media/files/downloads/client-center/DTC/alpha/ashx. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

1. If Lutra’s broker or bank is a DTC participant, then Lutra needs to submit a written statement from its broker or bank verifying that Lutra continuously held the required number or amount of Progressive’s shares for the one-year period preceding and including the date the Proposal was submitted (December 2, 2019).

2. If Lutra’s broker or bank is not a DTC participant, then it needs to submit proof of ownership from the DTC participant through which the shares are held verifying that Lutra continuously held the required number or amount of Progressive’s shares for the one-year period preceding and including the date the Proposal was submitted (December 2, 2019). Lutra should be able to find out the identity of the DTC participant by asking its broker or bank. If its broker is an introducing broker, Lutra may also be able to learn the identity and telephone number of the DTC participant through its account statements, because the clearing broker identified on account statements will generally be a DTC participant. If the DTC participant that holds Lutra’s shares is not able to confirm its individual holdings but is able to confirm the holdings of Lutra’s broker or bank, then Lutra needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including the date the Proposal was submitted (December 2, 2019), the required number or amount of Progressive shares were continuously held: (i) one from Lutra’s broker or bank confirming its ownership, and (ii) the other from the DTC participant confirming the broker or bank’s ownership.

The SEC rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address
any response to me at the address noted above. Alternatively, you may transmit any response by facsimile to me at 440-395-3678 or email to me at Secretary@Progressive.com.

If you have any questions with respect to the foregoing, please contact Allyson Bach at 440-395-2394 or Allyson_L_Bach@progressive.com. For your reference, I enclose a copy of Staff Legal Bulletin No. 14I, Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

[Signature]

Daniel P. Mascaro
Secretary

Enclosures

cc: Meredith Benton, Principal, Whistle Stop Capital
Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals
Staff Legal Bulletin No. 14I (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 1, 2017

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

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

Contacts: For further information, please contact the Division’s Office of Chief Counsel by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

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

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

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

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

1. Background

Rule 14a-8(i)(7), the “ordinary business” exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations.” The purpose of the
exception is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”[1]

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

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

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

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

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

1. Background

Rule 14a-8(i)(5), the “economic relevance” exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.”

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

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

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

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

That analysis simply considered whether a company conducted any amount of business related to the issue in the proposal and whether that issue was of broad social or ethical concern. We believe the Division’s application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal “deals with a matter that is not significantly related to the issuer’s business” and is therefore excludable. Accordingly, going forward, the Division's analysis will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business.
Because the test only allows exclusion when the matter is not "otherwise significantly related to the company," we view the analysis as dependent upon the particular circumstances of the company to which the proposal is submitted. That is, a matter significant to one company may not be significant to another. On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.

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

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

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

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

D. Proposals submitted on behalf of shareholders

While Rule 14a-8 does not address shareholders' ability to submit proposals through a representative, shareholders frequently elect to do so, a practice commonly referred to as "proposal by proxy." The Division has been, and continues to be, of the view that a shareholder's submission by proxy is consistent with Rule 14a-8. [10]
The Division is nevertheless mindful of challenges and concerns that proposals by proxy may present. For example, there may be questions about whether the eligibility requirements of Rule 14a-8(b) have been satisfied. There have also been concerns raised that shareholders may not know that proposals are being submitted on their behalf. In light of these challenges and concerns, and to help the staff and companies better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied, going forward, the staff will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder’s delegation of authority to the proxy. In general, we would expect this documentation to:

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

We believe this documentation will help alleviate concerns about proposals by proxy, and will also help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal’s submission by proxy. Where this information is not provided, there may be a basis to exclude the proposal under Rule 14a-8(b).

E. Rule 14a-8(d)

1. Background

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

2. The use of images in shareholder proposals

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

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

- make the proposal materially false or misleading;
• render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
• directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
• are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.[17] Exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphics, exceeds 500.

[2] Id.
[3] Id.
[6] Id.
[8] Proponents bear the burden of demonstrating that a proposal is “otherwise significantly related to the company’s business.” See Release No. 34-39093 (Sep. 18, 1997), citing Release No. 34-19135.
[10] We view a shareholder’s ability to submit a proposal by proxy as largely a function of state agency law provided it is consistent with Rule 14a-8.
[11] This guidance applies only to proposals submitted by proxy after the date on which this staff legal bulletin is published.
[12] Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder’s failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. See Rule 14a-8(f)(1).
[13] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company’s proxy statement. See Release No. 34-12999 (Nov. 22, 1976).

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

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


http://www.sec.gov/interps/legal/cfslb14i.htm
§ 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.

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.
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.
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.

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.

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. 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, 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, 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.\(^2\)

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].”

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). 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.

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, 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.

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.

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

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

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.
Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

1 See Rule 14a-8(b).

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

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

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


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.


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.


Your package has been delivered

Tracking # 777238088258

Ship date: Fri, 12/13/2019
Daniel P Mascaro
PROGRESSIVE INS
Mayfield Village, OH 44143 US

Delivery date: Mon, 12/16/2019 11:47 am
Andrew Behar
As You Sow
2150 Kittredge Street
Suite 450
BERKELEY, CA 94704 US

Shipment Facts

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Thank you for your business.
Mr. Behar and Ms. Benton,

In connection with your recent letter on behalf of Hazen, an overnight courier was mailed today to the Berkeley, CA address. I’ve attached an electronic copy of the package’s materials to this email.

Best,

Allyson Bach
Senior Counsel
+1 440 395 2394
December 13, 2019

VIA E-MAIL AND OVERNIGHT COURIER

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

Re: Shareholder Proposal

Dear Mr. Behar:

I am writing on behalf of The Progressive Corporation (“Progressive”). On December 2, 2019, we received your letter, dated December 2, 2019, via email indicating the Hazen Foundation is co-filing a shareholder proposal (the “Proposal”) for Progressive’s 2020 Annual Meeting of Shareholders (the “2020 Meeting”).

The Proposal contains certain procedural deficiencies which Securities and Exchange Commission (“SEC”) regulations require us to bring to your attention.

Proposals by Proxy

Your cover letter indicates you have submitted the Proposal on behalf of the Hazen Foundation (“Hazen”) as a co-filer with the Lutra Living Trust as the lead filer. SEC Staff Legal Bulletin No. 141 (“SLB 141”) provides guidance regarding the application of 14a-8(b) under the Securities Exchange Act of 1934, as amended (“Rule 14a-8”), when a shareholder submits a proposal through a proxy. SLB 141 notes that proposals submitted by proxy, such as the Proposal, may present challenges and concerns, including “concerns raised that shareholders may not know that proposals are being submitted on their behalf.” Accordingly, in evaluating whether there is a basis to exclude a proposal under the eligibility requirements of Rule 14a-8(b), as addressed below, SLB 141 states that in general the SEC staff expects any stockholder who submits a proposal by proxy to provide documentation to:

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

...
• be signed and dated by the shareholder.

The Letter described the specific proposal to be submitted as a “report on political spending related to company values and policies.” The included Proposal appears to address a different topic — reproductive rights. (While the Proposal did not include a subject matter line, it requests Progressive “to issue a public report ... detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.”) As a result, Progressive believes that the Letter does not meet the requirements of Rule 14a-8(b) and SLB 14I. Accordingly, to remedy this defect, Hazen should provide revised documentation that confirms that is has instructed or authorized you to submit the Proposal consistent with SLB 14I.

Your cover letter directs Progressive to contact Ms. Meredith Benton, principal of Whistle Stop Capital to schedule a dialogue. It is unclear what role (if any) Ms. Benton and/or Whistle Stop Capital have in connection with the Proposal.

- To the extent that Ms. Benton and/or Whistle Stop Capital are additional co-proponents of the Proposal, your submission must include documentation demonstrating that you had the legal authority to submit the Proposal on behalf of each proponent in accordance with SLB 14I and also include proof of continuous ownership in accordance with the requirements of Rule 14a-8(b) (described below).
- To the extent that neither Ms. Benton and/or Whistle Stop Capital are additional co­proponents of the Proposal, please provide documentation that confirms that Hazen has authorized Ms. Benton and/or Whistle Stop Capital to engage in dialogue and enter into binding resolution from Hazen on its behalf.

Proof of Continuous Ownership

Rule 14a-8(b) provides that any shareholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company’s securities entitled to be voted on the proposal for at least one year as of the date the shareholder proposal was submitted. Our review of our records of registered shareholders do not indicate that Hazen is a record owner of the sufficient number or amount of shares to satisfy this requirement. In addition, to date we have not received any proof that Hazen has satisfied Rule 14a-8’s ownership requirements as of the date the Proposal was submitted to Progressive.

To remedy this defect, Hazen must submit sufficient proof of its continuous ownership of the required number or amount of Progressive’s shares for the one-year period preceding and including the date that the Proposal was submitted to Progressive (December 2, 2019). As explained in Rule 14a-8 and in SEC staff guidance, sufficient proof must be in the form of:

1. a written statement from the “record” holder of Hazen’s shares (usually a broker or bank) verifying that Hazen continuously held the required number or amount of Progressive’s shares for the one-year period preceding and including the date the Proposal was submitted (December 2, 2019); or
2. If Hazen has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting Hazen’s ownership of the required number or amount of Progressive’s shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that Hazen continuously held the required number or amount of Progressive’s shares for the one-year period as of the date of the statement.

If Hazen intends to demonstrate ownership by submitting a written statement from the “record” holder of its shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. Hazen can confirm this by asking its broker or bank or by checking DTC’s participant list, which is available at http://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/alpha/ashx. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

1. If Hazen’s broker or bank is a DTC participant, then Hazen needs to submit a written statement from its broker or bank verifying that Hazen continuously held the required number or amount of Progressive’s shares for the one-year period preceding and including the date the Proposal was submitted (December 2, 2019).

2. If Hazen’s broker or bank is not a DTC participant, then it needs to submit proof of ownership from the DTC participant through which the shares are held verifying that Hazen continuously held the required number or amount of Progressive’s shares for the one-year period preceding and including the date the Proposal was submitted (December 2, 2019). Hazen should be able to find out the identity of the DTC participant by asking its broker or bank. If its broker is an introducing broker, Hazen may also be able to learn the identity and telephone number of the DTC participant through its account statements, because the clearing broker identified on account statements will generally be a DTC participant. If the DTC participant that holds Hazen’s shares is not able to confirm its individual holdings but is able to confirm the holdings of Hazen’s broker or bank, then Hazen needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including the date the Proposal was submitted (December 2, 2019), the required number or amount of Progressive shares were continuously held: (i) one from Hazen’s broker or bank confirming its ownership, and (ii) the other from the DTC participant confirming the broker or bank’s ownership.

The SEC rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at the address noted above. Alternatively, you may transmit any response by facsimile to me at 440-395-3678 or email to me at Secretary@Progressive.com.
If you have any questions with respect to the foregoing, please contact Allyson Bach at 440-395-2394 or Allyson_L_Bach@progressive.com. For your reference, I enclose a copy of Staff Legal Bulletin No. 14I, Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

Daniel P. Mascaro
Secretary

Enclosures

cc: Meredith Benton, Principal, Whistle Stop Capital
Division of Corporation Finance  
Securities and Exchange Commission

Shareholder Proposals  
Staff Legal Bulletin No. 14I (CF)

Action: Publication of CF Staff Legal Bulletin  
Date: November 1, 2017

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

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

Contacts: For further information, please contact the Division’s Office of Chief Counsel by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

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

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

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

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

1. Background
Rule 14a-8(i)(7), the “ordinary business” exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations.” The purpose of the
exception is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”[1]

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

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

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

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

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

1. Background

Rule 14a-8(i)(5), the “economic relevance” exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.”

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

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

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

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

That analysis simply considered whether a company conducted any amount of business related to the issue in the proposal and whether that issue was of broad social or ethical concern. We believe the Division’s application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal “deals with a matter that is not significantly related to the issuer’s business” and is therefore excludable. Accordingly, going forward, the Division’s analysis will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal’s relevance to the company’s business.
Because the test only allows exclusion when the matter is not “otherwise significantly related to the company,” we view the analysis as dependent upon the particular circumstances of the company to which the proposal is submitted. That is, a matter significant to one company may not be significant to another. On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.

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

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

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

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

D. Proposals submitted on behalf of shareholders

While Rule 14a-8 does not address shareholders’ ability to submit proposals through a representative, shareholders frequently elect to do so, a practice commonly referred to as “proposal by proxy.” The Division has been, and continues to be, of the view that a shareholder’s submission by proxy is consistent with Rule 14a-8.
The Division is nevertheless mindful of challenges and concerns that proposals by proxy may present. For example, there may be questions about whether the eligibility requirements of Rule 14a-8(b) have been satisfied. There have also been concerns raised that shareholders may not know that proposals are being submitted on their behalf. In light of these challenges and concerns, and to help the staff and companies better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied, going forward, the staff will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder’s delegation of authority to the proxy. In general, we would expect this documentation to:

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

We believe this documentation will help alleviate concerns about proposals by proxy, and will also help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal’s submission by proxy. Where this information is not provided, there may be a basis to exclude the proposal under Rule 14a-8(b).

E. Rule 14a-8(d)

1. Background

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

2. The use of images in shareholder proposals

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

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

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

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

[2] Id.
[3] Id.
[6] Id.
[8] Proponents bear the burden of demonstrating that a proposal is "otherwise significantly related to the company’s business." See Release No. 34-39093 (Sep. 18, 1997), citing Release No. 34-19135.
[10] We view a shareholder’s ability to submit a proposal by proxy as largely a function of state agency law provided it is consistent with Rule 14a-8.
[11] This guidance applies only to proposals submitted by proxy after the date on which this staff legal bulletin is published.
[12] Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder’s failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. See Rule 14a-8(f)(1).
[13] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company’s proxy statement. See Release No. 34-12999 (Nov. 22, 1976).

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

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


http://www.sec.gov/interps/legal/cfslb14i.htm
§ 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.

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.
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.
(1) 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 it files definitive copies of its proxy statement and form of proxy under §240.14a-6.

Division of Corporation Finance  
Securities and Exchange Commission  

Shareholder Proposals  
Staff Legal Bulletin No. 14F (CF)  

**Action:** Publication of CF Staff Legal Bulletin  
**Date:** October 18, 2011  
**Summary:** This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.  

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

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

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

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

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.¹ 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.²

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.³ 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.³

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. 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 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, 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.  

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). 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].”

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). 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.

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, 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.

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.

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

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

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.
Given the availability of our responses and the related correspondence on the Commission’s website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission’s website copies of this correspondence at the same time that we post our staff no-action response.

1 See Rule 14a-6(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.”).

1 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).

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.


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.


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.
Your package has been delivered
Tracking # 777238103137

Ship date: Fri, 12/13/2019
Shipper: Daniel P Mascaro
Mayfield Village, OH 44143 US

Delivery date: Mon, 12/16/2019 11:47 am
Recipient: Andrew Behar
2150 Kittredge Street Suite 450
BERKELEY, CA 94704 US

Shipment Facts
Our records indicate that the following package has been delivered.

- Tracking number: 777238103137
- Status: Delivered: 12/16/2019 11:47 AM Signed for By: S.CHO
- Department number: 01600
- Purchase order number: 576782
- Reference: 01600
- Signed for by: S.CHO
- Delivery location: BERKELEY, CA
- Delivered to: Receptionist/Front Desk
- Service type: FedEx Standard Overnight®
- Packaging type: FedEx® Envelope
- Number of pieces: 1
- Weight: 0.50 lb.
- Special handling/Services: Deliver Weekday
- Standard transit: 12/16/2019 by 3:00 pm
Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 1:52 PM CST on 12/16/2019.

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Thank you for your business.
Dear Mr. Mascaro,

We have received your letter issued January 6, 2020 responding to our December 23, 2019 letter.

We agree that Fidelity made a clerical error in the second paragraph of the December 9, 2019 ownership verification letter issued for Lutra Living Trust, erroneously naming Genuine Parts Co. rather than Progressive. However, the leading paragraph specifically names Progressive Corp and provides Progressive Corp’s CUSIP number, which affirms Fidelity’s intent to describe ownership of Progressive shares and not those of Genuine Parts. Furthermore, the leading paragraph alone satisfies Rule 14a-8. We enclose an amended ownership letter from Fidelity, confirming the above.

In response to power of attorney. As noted in our December 23rd letter, Jeff Colin is a representative of Baker Street Advisors, which was given POA by Lutra Living Trust. In addition to the POA letter, I refer you to the email which was attached to our December 23rd letter (see: pg. 9 of the PDF). In that email, Jeff Colin confirms that he is a representative of Baker Street, has received information about the proposal prior to signing the authorization, and that he, as partner of Baker Street, is exercising the firm’s power of attorney to sign the authorization letter for the resolution with Progressive Corp on behalf of Lutra Living Trust. We disagree that the email might be interpreted to mean Jeff Colin is signing the authorization letter in a personal capacity.

We hope that the above satisfactorily addresses your concern. Please let us know if you have further questions.

Best,
Kwan

Teoh, Kwan Hong (he/him)
Environmental Health Program
Research Manager
As You Sow
December 23, 2019

Via Electronic Mail

Progressive Corporation
Daniel P. Mascaro
Secretary
6300 Wilson Mills Road – N72
Mayfield Village, Ohio 44143
Daniel_P_Mascaro@Progressive.com

Re: Deficiency Letter

Dear Mr. Mascaro:

On December 2, 2019, As You Sow submitted a shareholder proposal (the “Proposal”) on behalf of Lutra Living Trust (“Lutra”), as lead filer, and Hazen Foundation (“Hazen”), as co-filer. This letter responds to your identical letters dated December 13, 2019 to Lutra and Hazen (“Deficiency Letters”) concerning procedural deficiencies in the proof of eligibility of Lutra and Hazen to submit a shareholder proposal pursuant to Rule 14a-8 of the Securities and Exchange Act.

Proof of Ownership

Rule 14a-8(b) provides, in relevant part, that a proponent must prove eligibility to submit a proposal by offering proof that it “continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date” the proposal is submitted, and that the proponent “intends to continue to hold those securities through the date of the meeting.”

You raise the issue that Lutra and Hazen have not submitted sufficient proof of its continuous ownership of the required securities for at least one year as of the date of the proposal, as required.

As You Sow submits the attached certifications from the record holder as remedy for this deficiency. This documentation shows that both Lutra and Hazen held more than $2,000 in market value of shares in Progressive Corporation for one year preceding and including the date the Proposal was submitted, December 2, 2019. Both Lutra and Hazen have already provided a written statement that the proponents intend to hold the required
amount of stock through the date of the company’s annual meeting in 2020 as required under Rule 14a-8(b).

These documents satisfy the legal requirements under Rule 14a-8 for proof of Lutra and Hazen’s eligibility to submit the proposal.

**Proposals by Proxy**

In addition to the legal requirements of Rule 14a-8, you raise concerns regarding *As You Sow*’s submission of the Proposal by proxy. Citing SEC Staff Legal Bulletin, SLB 14I, you list the documentation that the SEC looks to in evaluating a proposal’s eligibility. Although the criteria listed in SLB 14I are not legally binding requirements for eligibility, *As You Sow* provides the following documentation and explanations to allay the company’s concerns that shareholders Lutra and Hazen “may not know that proposals are being submitted on their behalf.”

**Identification of the specific proposal to be submitted.** First, you assert that the proposal does not match the resolution subject matter identified in the Lutra and Hazen authorization letters. The subject is identified as a proposal to “report on political spending related to company values and policies.” This shorthand description accurately identifies the content of the proposal as being related to the company’s political spending that is contrary to the companies’ values and policies related to sexual and reproductive health. To clarify that the shareholders did indeed understand the specific content of the proposal being filed on their behalf, please see the additional documentation from Lutra and Hazen confirming their knowledge of the contents of the Proposal.

**Signed and dated by the shareholder.** Second, you raise a question regarding the authority of Mr. Jeff Colin to sign the authorization letter on Lutra’s behalf. Mr. Colin is a Partner at Baker Street Advisors, LLC; he was granted Power of Attorney to sign and deliver letters of authorization to *As You Sow* on behalf of Lutra Living Trust.

**Identification of the entity selected as proxy.** Finally, you raise a question regarding the authority of Meredith Benton to receive documents and participate in dialogues on behalf of the Proponents. Lutra and Hazen have authorized *As You Sow* to act on their behalf as well as to “[designate] another entity as … representative of the shareholder.” Ms. Benton is working on behalf of, and acts as a representative of, *As You Sow*. She is not a co-proponent, so no additional documentation is required.

We expect that the clarifications and above-mentioned documentation will satisfy any concerns raised by Progressive Corporation regarding Lutra and Hazen’s representation by *As You Sow*, and that no further documentation will be needed. In the event that you
believe for any reason that the documentation provided herein is insufficient, in light of the upcoming holidays we request an additional fourteen days to review and respond to your allegations.

Sincerely,

Chelsea Linsley
Staff Attorney
As You Sow

Attachments:

- Proof of ownership letters
- Power of attorney, Lutra Living Trust
- Shareholder email communications
December 11, 2019

Ms. Lori Bezahler  
President  
Edward W. Hazen Foundation  
476 Bergen Street, Suite 2  
Brooklyn, NY 11217

Dear Ms. Bezahler:

RBC Capital Markets, LLC, acts as custodian for Edward W. Hazen Foundation.

We are writing to verify that our books and records reflect that, as of market close on December 2, 2019, Edward W. Hazen Foundation owned 71 shares of Progressive Corporation (Cusip: 743315103) representing a market value of approximately $5,087 and that, Edward W. Hazen Foundation has owned such shares since May 30, 2012. We are providing this information at the request of Edward W. Hazen Foundation in support of its activities pursuant to rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me directly at 415-445-8304.

Sincerely,

Thomas Van Dyck  
Managing Director – Financial Advisor
December 09, 2019

To Whom It May Concern:

Fidelity Investments, a DTC participant, acts as the custodian for the Lutra Living Trust. As of and including December 2, 2019, Fidelity Investments held 3372 shares of Progressive Corp common stock (CUSIP 743315103), continuously for over one year on behalf of the Lutra Living Trust.

We confirm that Lutra Living Trust has beneficial ownership of at least $2,000 in market value of the voting securities of Genuine Parts Co, and that such beneficial ownership has existed for one or more years in accordance with rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

Sincerely,

[Signature]

Brian Newby
Client Services Manager

Our file: W366381-09DEC19
December 18, 2018

Baker Street Advisors, LLC
455 Market Street, 23rd Floor
San Francisco, CA 94105

Dear Jeff and Rhonda:

Re: Power of Attorney – Shareholder Resolutions

I hereby grant Baker Street Advisors, LLC Power of Attorney to sign and deliver letters of authorization to As You Sow Foundation as directed by me to authorize them to file or co-file a shareholder resolution on behalf of Lutra Living Trust with public corporations in which I am an eligible stockholder, and that the resolutions be included in the proxy statements, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The shares to which this letter of authorization pertains are held in the Lutra Living Trust Aperio managed account and to the extent that any resolutions are filed, the subject shares will be held through the date of the company’s next annual meeting.

I understand and acknowledge that Baker Street Advisors, LLC will not under any circumstances exercise discretion and will not vote on my behalf without specific instructions in writing.

Sincerely yours,

Urs Hoelzle, Trustee
Lutra Living Trust

DocuSign Envelope ID: 70B928D2-5069-41C1-8D60-91D1570DB326
This is to confirm that I received notification of and understood the content of the proposal to Progressive Corp. Filed on the behalf of the Hazen Foundation.

Thank you,
Lori Bezahler, President
Edward Hazen Foundation

On Dec 19, 2019, at 2:45 PM, Kwan Hong Teoh <Kwan@asyousow.org> wrote:

Hi Lori,

We have filed the resolution with Progressive Corp regarding sexual and reproductive health. Thank you for your support.

At this time we are addressing a deficiency letter from Progressive Corp. that raises the concern that you were not aware of the content of the proposal that was filed on behalf of Hazen Foundation (prior to filing). In order to satisfy the company’s concern: can you please confirm, that you were aware of and understood that the proposal filed on the Foundation’s behalf was related to the company’s reporting on political contributions to enact policies that would negatively impact the company due to limiting sexual and reproductive rights. For reference, I have attached a copy of an email shared between us that first introduced the proposal.

If you can reply to this by EOD tomorrow it would be appreciated as we wish to be responsive to the company before the Holidays.

Thank you!

Best,
Kwan

Teoh, Kwan Hong (he/him)
Environmental Health Program
Research Manager
As You Sow
<20.PGR.1 Email to Lori Hazen 20191127.pdf>
From: Austin Wilson <awilson@aperigroup.com>
Date: Thursday, December 19, 2019 at 4:51 PM
To: Kwan Hong Teoh <Kwan@asyousow.org>
Subject: FW: Request from As You Sow - RE: Lutra Living Trust

Lutra Living Trust/Baker Street Advisors had received information (see below) and understood the contents of the resolution prior to signing the authorization letter. Furthermore, Jeff Colin is a partner of Baker Street Advisors and has Power of Attorney for Lutra Living Trust.

For reference, I am including information below that was shared with Baker Street ahead of the authorization letter.

Program: Social
Initiative: Sexual and Reproductive Health
Ticker: PGR
Company: Progressive Corporation
Subject Line: Report on political spending related to company values and policies
Notes: We wish to better understand the company’s positions and policies related to insurance for sexual and reproductive healthcare, and we are also interested in the company’s benefits policies to support employees in their role as parents (such as paid parental and family leave, flexible hours, lactation accommodations, and child care options). We wish to learn whether the company holds any public policy positions related to reproductive health care and rights, and how these may factor into the company’s decisions related to political spending and lobbying priorities.

Thank you for your consideration.

Jeff Colin

Baker Street Advisors has moved!
Our new location is:
575 Market Street, Suite 600
San Francisco, CA 94105

Parking is accessed from Stevenson Street and signage reads “555 Market”

Jeff Colin
Partner

Baker Street Advisors

575 Market Street, Suite 600
San Francisco, CA 94105
415.344.6137 Office
415.608.6923 Mobile
415.344.6190 Fax
Jeff@bakerstreetadvisors.com

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To Whom It May Concern:

National Financial Services LLC, a DTC participant, acts as the custodian for the Lutra Living Trust. As of and including December 2, 2019, National Financial Services LLC held 3,372 shares of Progressive common stock (cusip 743315103), continuously for over one year on behalf of the Lutra Living Trust.

We confirm that Lutra Living Trust has beneficial ownership of at least $2,000 in market value of the voting securities of Progressive, and that such beneficial ownership has existed for one or more years in accordance with rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

Sincerely,

Dale Braumersrither  
Client Services Manager

Our file: W129905-06Dec19
Ms. Linsley,

In connection with your December 23, 2019 letter, an overnight courier was mailed today to the Berkeley, CA address. I’ve attached an electronic copy of the package’s materials to this email.

Best,

Allyson Bach
Senior Counsel
+1 440 395 2394
January 6, 2020

Via E-mail and overnight courier
Chelsea Linsley
As You Sow
2150 Kittredge St., Suite 450
Berkley, CA 94704

Re: Shareholder Proposal

Dear Ms. Linsley:

I am writing on behalf of The Progressive Corporation in response to your December 23, 2019 letter (the "Response") addressing, among other things, certain procedural deficiencies in the proof of eligibility of the Lutra Living Trust ("Lutra") and the Hazen Foundation ("Hazen") to submit a shareholder proposal pursuant to Rule 14a-8 of the Securities and Exchange Act.

After reviewing Fidelity’s December 9, 2019 letter submitted with your Response, it remains unclear whether Lutra has satisfied Rule 14a-8’s ownership requirements. The first paragraph of Fidelity’s letter references shares of Progressive Corp common stock. The second paragraph references voting securities of Genuine Parts Co. Both paragraphs should have referenced the same company (either Progressive Corp or Genuine Parts Co). Our December 13, 2019 letter explained the mechanics of how Lutra could submit sufficient proof in accordance with Rule 14a-8 and SEC staff guidance. Assuming Lutra’s shares are held by Fidelity Investments, a DTC participant, Lutra needs to submit an updated written statement from Fidelity verifying that Lutra continuously held the required number or amount of Progressive’s shares for the one-year period preceding and including the date the proposal was submitted (December 2, 2019).

Additionally, we have reviewed the power of attorney submitted with your Response. We note Lutra granted power of attorney to Baker Street Advises, LLC ("Baker"), not to Mr. Jeff Colin. For purposes of our records, given that the power of attorney was issued to Baker, please have Lutra’s authorization to file shareholder resolution letter re-issued showing Baker as the entity-level signatory pursuant to the power of attorney and signed by an officer or other authorized representative of Baker, rather than Mr. Colin in his personal capacity.

Finally, we are reviewing the information you provided regarding whether Lutra and Hazen in fact understood that you were submitting the proposal that was actually submitted (and provided authorization and direction for the same). This includes the characterization you provided to them that your proposal was a “report on political spending related to company
values and policies”. With respect to the desire you conveyed to both Lutra and Hazen that you wish to “better understand the company’s positions and policies related to insurance for sexual and reproductive healthcare” and the “company’s benefits policies to support employees in their role as parents (such as paid parental and family leave, flexible hours, lactation accommodations, and child care options),” as previously conveyed, if you do wish to engage with us regarding those matters, please let us know.

Please address any response to me at the address noted above. Alternatively, you may transmit any response by facsimile to me at 440-395-3678 or email to me at Secretary@Progressive.com. If you have any questions with respect to the foregoing, please contact Allyson Bach at 440-395-2394 or Allyson_L_Bach@Progressive.com.

Sincerely,

Daniel P. Mascaro
Secretary

Enclosures

cc: Andrew Behar, Danielle Fugere and Kwan Hong Teoh, As You Sow
Meredith Benton, Principal, Whistle Stop Capital
Your package has been delivered

Tracking # 777402348463

Ship date: Mon, 1/6/2020

Daniel P Mascaro
PROGRESSIVE INS
Mayfield Village, OH 44143 US

Delivery date: Tue, 1/7/2020 12:09 pm

Chelsea Linsley
As You Sow
2150 Kittredge Street
Suite 450
BERKELEY, CA 94704 US

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number: 777402348463
Status: Delivered: 01/07/2020 12:09 PM Signed for By: R.ROMERO
Department number: 01600
Purchase order number: 576782
Reference: 01600
Signed for by: R.ROMERO
Delivery location: BERKELEY, CA
Delivered to: Receptionist/Front Desk
Service type: FedEx Standard Overnight®
Packaging type: FedEx® Envelope
Number of pieces: 1
Weight: 0.50 lb.
Special handling/Services: Deliver Weekday
Standard transit: 1/7/2020 by 3:00 pm
Dear Mr. Mascaro,

We have received your letter issued January 6, 2020 responding to our December 23, 2019 letter.

We agree that Fidelity made a clerical error in the second paragraph of the December 9, 2019 ownership verification letter issued for Lutra Living Trust, erroneously naming Genuine Parts Co. rather than Progressive. However, the leading paragraph specifically names Progressive Corp and provides Progressive Corp’s CUSIP number, which affirms Fidelity’s intent to describe ownership of Progressive shares and not those of Genuine Parts. Furthermore, the leading paragraph alone satisfies Rule 14a-8. We enclose an amended ownership letter from Fidelity, confirming the above.

In response to power of attorney. As noted in our December 23rd letter, Jeff Colin is a representative of Baker Street Advisors, which was given POA by Lutra Living Trust. In addition to the POA letter, I refer you to the email which was attached to our December 23rd letter (see: pg. 9 of the PDF). In that email, Jeff Colin confirms that he is a representative of Baker Street, has received information about the proposal prior to signing the authorization, and that he, as partner of Baker Street, is exercising the firm’s power of attorney to sign the authorization letter for the resolution with Progressive Corp on behalf of Lutra Living Trust. We disagree that the email might be interpreted to mean Jeff Colin is signing the authorization letter in a personal capacity.

We hope that the above satisfactorily addresses your concern. Please let us know if you have further questions.

Best,

Kwan

Teoh, Kwan Hong (he/him)
Environmental Health Program
Research Manager
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704
(510) 735-8147 (direct line) | (605) 651-5517 (cell)
kwan@asyousow.org | www.asyousow.org

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To Whom It May Concern:

National Financial Services LLC, a DTC participant, acts as the custodian for the Lutra Living Trust. As of and including December 2, 2019, National Financial Services LLC held 3,372 shares of Progressive common stock (cusip 743315103), continuously for over one year on behalf of the Lutra Living Trust.

We confirm that Lutra Living Trust has beneficial ownership of at least $2,000 in market value of the voting securities of Progressive, and that such beneficial ownership has existed for one or more years in accordance with rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

Sincerely,

Dale Braurersrither
Client Services Manager

Our file: W129905-06Dec19
December 23, 2019

Via Electronic Mail

Progressive Corporation
Daniel P. Mascaro
Secretary
6300 Wilson Mills Road – N72
Mayfield Village, Ohio 44143
Daniel_P_Mascaro@Progressive.com

Re: Deficiency Letter

Dear Mr. Mascaro:

On December 2, 2019, As You Sow submitted a shareholder proposal (the “Proposal”) on behalf of Lutra Living Trust (“Lutra”), as lead filer, and Hazen Foundation (“Hazen”), as co-filer. This letter responds to your identical letters dated December 13, 2019 to Lutra and Hazen (“Deficiency Letters”) concerning procedural deficiencies in the proof of eligibility of Lutra and Hazen to submit a shareholder proposal pursuant to Rule 14a-8 of the Securities and Exchange Act.

Proof of Ownership

Rule 14a-8(b) provides, in relevant part, that a proponent must prove eligibility to submit a proposal by offering proof that it “continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date” the proposal is submitted, and that the proponent “intends to continue to hold those securities through the date of the meeting.”

You raise the issue that Lutra and Hazen have not submitted sufficient proof of its continuous ownership of the required securities for at least one year as of the date of the proposal, as required.

As You Sow submits the attached certifications from the record holder as remedy for this deficiency. This documentation shows that both Lutra and Hazen held more than $2,000 in market value of shares in Progressive Corporation for one year preceding and including the date the Proposal was submitted, December 2, 2019. Both Lutra and Hazen have already provided a written statement that the proponents intend to hold the required
amount of stock through the date of the company’s annual meeting in 2020 as required under Rule 14a-8(b).

These documents satisfy the legal requirements under Rule 14a-8 for proof of Lutra and Hazen’s eligibility to submit the proposal.

Proposals by Proxy

In addition to the legal requirements of Rule 14a-8, you raise concerns regarding As You Sow’s submission of the Proposal by proxy. Citing SEC Staff Legal Bulletin, SLB 14I, you list the documentation that the SEC looks to in evaluating a proposal’s eligibility. Although the criteria listed in SLB 14I are not legally binding requirements for eligibility, As You Sow provides the following documentation and explanations to allay the company’s concerns that shareholders Lutra and Hazen “may not know that proposals are being submitted on their behalf.”

Identification of the specific proposal to be submitted. First, you assert that the proposal does not match the resolution subject matter identified in the Lutra and Hazen authorization letters. The subject is identified as a proposal to “report on political spending related to company values and policies.” This shorthand description accurately identifies the content of the proposal as being related to the company’s political spending that is contrary to the companies’ values and policies related to sexual and reproductive health. To clarify that the shareholders did indeed understand the specific content of the proposal being filed on their behalf, please see the additional documentation from Lutra and Hazen confirming their knowledge of the contents of the Proposal.

Signed and dated by the shareholder. Second, you raise a question regarding the authority of Mr. Jeff Colin to sign the authorization letter on Lutra’s behalf. Mr. Colin is a Partner at Baker Street Advisors, LLC; he was granted Power of Attorney to sign and deliver letters of authorization to As You Sow on behalf of Lutra Living Trust.

Identification of the entity selected as proxy. Finally, you raise a question regarding the authority of Meredith Benton to receive documents and participate in dialogues on behalf of the Proponents. Lutra and Hazen have authorized As You Sow to act on their behalf as well as to “[designate] another entity as … representative of the shareholder.” Ms. Benton is working on behalf of, and acts as a representative of, As You Sow. She is not a co-proponent, so no additional documentation is required.

We expect that the clarifications and above-mentioned documentation will satisfy any concerns raised by Progressive Corporation regarding Lutra and Hazen’s representation by As You Sow, and that no further documentation will be needed. In the event that you
believe for any reason that the documentation provided herein is insufficient, in light of the upcoming holidays we request an additional fourteen days to review and respond to your allegations.

Sincerely,

[Signature]

Chelsea Linsley
Staff Attorney
As You Sow

Attachments:

- Proof of ownership letters
- Power of attorney, Lutra Living Trust
- Shareholder email communications
December 11, 2019

Ms. Lori Bezahler
President
Edward W. Hazen Foundation
476 Bergen Street, Suite 2
Brooklyn, NY 11217

Dear Ms. Bezahler:

RBC Capital Markets, LLC, acts as custodian for Edward W. Hazen Foundation.

We are writing to verify that our books and records reflect that, as of market close on December 2, 2019, Edward W. Hazen Foundation owned 71 shares of Progressive Corporation (Cusip: 743315103) representing a market value of approximately $5,087 and that, Edward W. Hazen Foundation has owned such shares since May 30, 2012. We are providing this information at the request of Edward W. Hazen Foundation in support of its activities pursuant to rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me directly at 415-445-8304.

Sincerely,

Thomas Van Dyck
Managing Director – Financial Advisor
To Whom It May Concern:

Fidelity Investments, a DTC participant, acts as the custodian for the Lutra Living Trust. As of and including December 2, 2019, Fidelity Investments held 3372 shares of Progressive Corp common stock (CUSIP 743315103), continuously for over one year on behalf of the Lutra Living Trust.

We confirm that Lutra Living Trust has beneficial ownership of at least $2,000 in market value of the voting securities of Genuine Parts Co, and that such beneficial ownership has existed for one or more years in accordance with rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

Sincerely,

Brian Newby
Client Services Manager

Our file: W366381-09DEC19
December 18, 2018

Baker Street Advisors, LLC
455 Market Street, 23rd Floor
San Francisco, CA 94105

Dear Jeff and Rhonda:

Re: Power of Attorney – Shareholder Resolutions

I hereby grant Baker Street Advisors, LLC Power of Attorney to sign and deliver letters of authorization to As You Sow Foundation as directed by me to authorize them to file or co-file a shareholder resolution on behalf of Lutra Living Trust with public corporations in which I am an eligible stockholder, and that the resolutions be included in the proxy statements, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The shares to which this letter of authorization pertains are held in the Lutra Living Trust Aperio managed account *** and to the extent that any resolutions are filed, the subject shares will be held through the date of the company’s next annual meeting.

I understand and acknowledge that Baker Street Advisors, LLC will not under any circumstances exercise discretion and will not vote on my behalf without specific instructions in writing.

Sincerely yours,

Urs Hoelzle, Trustee
Lutra Living Trust
This is to confirm that I received notification of and understood the content of the proposal to Progressive Corp. Filed on the behalf of the Hazen Foundation.

Thank you,
Lori Bezahler, President
Edward Hazen Foundation

On Dec 19, 2019, at 2:45 PM, Kwan Hong Teoh <Kwan@asyousow.org> wrote:

Hi Lori,

We have filed the resolution with Progressive Corp regarding sexual and reproductive health. Thank you for your support.

At this time we are addressing a deficiency letter from Progressive Corp. that raises the concern that you were not aware of the content of the proposal that was filed on behalf of Hazen Foundation (prior to filing). In order to satisfy the company’s concern: can you please confirm, that you were aware of and understood that the proposal filed on the Foundation’s behalf was related to the company’s reporting on political contributions to enact policies that would negatively impact the company due to limiting sexual and reproductive rights. For reference, I have attached a copy of an email shared between us that first introduced the proposal.

If you can reply to this by EOD tomorrow it would be appreciated as we wish to be responsive to the company before the Holidays.

Thank you!

Best,
Kwan

Teoh, Kwan Hong (he/him)
Environmental Health Program
Research Manager
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704
(510) 735-8147 (direct line) | (605) 651-5517 (cell)
kwan@asyousow.org | www.asyousow.org

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<20.PGR.1 Email to Lori Hazen 20191127.pdf>
Lutra Living Trust/Baker Street Advisors had received information (see below) and understood the contents of the resolution prior to signing the authorization letter. Furthermore, Jeff Colin is a partner of Baker Street Advisors and has Power of Attorney for Lutra Living Trust.

For reference, I am including information below that was shared with Baker Street ahead of the authorization letter.

Program: Social
Initiative: Sexual and Reproductive Health
Ticker: PGR
Company: Progressive Corporation
Subject Line: Report on political spending related to company values and policies
Notes: We wish to better understand the company's positions and policies related to insurance for sexual and reproductive healthcare, and we are also interested in the company's benefits policies to support employees in their role as parents (such as paid parental and family leave, flexible hours, lactation accommodations, and child care options). We wish to learn whether the company holds any public policy positions related to reproductive health care and rights, and how these may factor into the company's decisions related to political spending and lobbying priorities.

Thank you for your consideration.

Jeff Colin

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Baker Street Advisors has moved!
Our new location is:
575 Market Street, Suite 600
San Francisco, CA 94105

Parking is accessed from Stevenson Street and signage reads “555 Market”

Jeff Colin
Partner

Baker Street Advisors

575 Market Street, Suite 600
San Francisco, CA 94105
415.344.6137 Office
415.608.6923 Mobile
415.344.6190 Fax
Jeff@bakerstreetadvisors.com

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