January 28, 2020

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

# 4 Rule 14a-8 Proposal
JPMorgan Chase & Co. (JPM)
Meaningful Shareholder Written Consent
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 13, 2020 no-action request.

The company is given latitude in implementing this proposal with the resolved text, “take the steps necessary.”

The proposal sets a goal and does not give further direction.

The company had no claim that if 2 attorneys were given an assignment to draft adopting text that both attorneys would produce the exactly the same words.

There is nothing in this proposal about orcas, tar sands production or indigenous peoples’ rights.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2020 proxy.

Sincerely,

[Signature]
John Chevedden

cc: Molly Carpenter <molly.carpenter@jpmchase.com>
January 20, 2020

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

# 3 Rule 14a-8 Proposal  
JPMorgan Chase & Co. (JPM)  
Meaningful Shareholder Written Consent  
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 13, 2020 no-action request.

Management made the impossible claim that in voting for “Meaningful Shareholder Written Consent” shareholders would be guilty of micromanagement.

There is nothing in this unchallenged supporting statement related to micromanagement:

“When JPMorgan adopted a shareholder right to act by written consent in it put in a hurdle to make written consent not a meaningful right. Our directors made it necessary for 20% of JPM shares to request a record date. In other words shareholders need the backing of $80 Billion of JPM shares to simply ask for a record date.

“And once the owners of $80 Billion of JPM stock provide management with their direct contact information then JPM management can pressure the owners of $80 Billion of JPM stock to revoke their written consents using the unlimited deep pocket of JPM. It is like it would take the backing of $80 Billion of JPM stock to just get a ticket to the parking lot of the ballpark. JPM has a history of not hesitating to spend shareholder money to oppose shareholder proposals that ask JPM to be more accountable to its shareholders.”

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

Sincerely,

John Chevedden

cc: Molly Carpenter <molly.carpenter@jpmchase.com>
January 15, 2020

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

#2 Rule 14a-8 Proposal
JPMorgan Chase & Co. (JPM)
Meaningful Shareholder Written Consent
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 13, 2020 no-action request.

The company purposely made its shareholder right to act by written consent so complex it would be difficult for shareholders to make use of it.

Now the company in effect claims its unnecessarily complex written consent has the added bonus of supposedly being too complex for shareholders to consider a simplification of it – as requested by this concise proposal.

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

Sincerely,

[Signature]

John Chevedden

cc: Molly Carpenter <molly.carpenter@jpmchase.com>
January 14, 2020

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

# 1 Rule 14a-8 Proposal
JPMorgan Chase & Co. (JPM)
Meaningful Shareholder Written Consent
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 13, 2020 no-action request.

This proposal gets attacked first for micromanagement and then finally for not giving enough detail.

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

Sincerely,

[Signature]

John Chevedden

cc: Molly Carpenter <molly.carpenter@jpmchase.com>

Shareholders request that our board of directors take the steps necessary to add these words to our bylaws:

"Any stockholder of record, seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice delivered to the secretary of the corporation, request the board of directors to fix a record date."

This proposal includes making each change in our governing documents necessary to be consistent with the above text. The above quoted words are from the bylaws of a $60 Billion company.

When JPMorgan adopted a shareholder right to act by written consent in it put in a hurdle to make written consent not a meaningful right. Our directors made it necessary for 20% of JPM shares to request a record date. In other words shareholders need the backing of $80 Billion of JPM shares to simply ask for a record date.

And once the owners of $80 Billion of JPM stock provide management with their direct contact information then JPM management can pressure the owners of $80 Billion of JPM stock to revoke their written consents using the unlimited deep pocket of JPM. It is like it would take the backing of $80 Billion of JPM stock to just get a ticket to the parking lot of the ballpark. JPM has a history of not hesitating to spend shareholder money to oppose shareholder proposals that ask JPM to be more accountable to its shareholders.

The above $60 Billion company did not ask that 20% of shares request a record date.

It makes no sense to require 20% of shares ($80 Billion of JPM shares) to just get started to act by written consent when 3% of JPM shares can put a proxy access candidate on our annual meeting ballot.

Please vote yes:

Initiate Meaningful Shareholder Written Consent – Proposal [4]

[The above line – Is for publication.]
January 13, 2020

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: JPMorgan Chase & Co.
Shareholder Proposal of John Chevedden

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client JPMorgan Chase & Co., a Delaware corporation (the “Company”), which requests confirmation that the staff (the “Staff”) of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Commission”) will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”), the Company omits the attached shareholder proposal (the “Proposal”) submitted by John Chevedden (the “Proponent”) from the Company’s proxy materials for its 2020 Annual Meeting of Shareholders (the “2020 Proxy Materials”).

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

• submitted this letter to the Staff no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and

• concurrently sent a copy of this correspondence to the Proponent.

Copies of the Proposal, the Proponent’s cover letter submitting the Proposal, and other correspondence relating to the Proposal are attached hereto as Exhibit A.
Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to Martin Dunn, on behalf of the Company, via email at mdunn@mofo.com, and to the Proponent via email at

I. THE PROPOSAL

On December 7, 2019, the Company received from the Proponent the Proposal for inclusion in the Company’s 2020 Proxy Materials. The Proposal reads as follows:


Shareholders request that our board of directors take the steps necessary to add these words to our bylaws:

“Any stockholder of record, seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice delivered to the secretary of the corporation, request the board of directors to fix a record date.”

This proposal includes making each change in our governing documents necessary to be consistent with the above text. The above quoted words are from the bylaws of a $60 Billion company.

When JPMorgan adopted a shareholder right to act by written consent in it put in a hurdle to make written consent not a meaningful right. Our directors made it necessary for 20% of JPM shares to request a record date. In other words shareholders need the backing of $80 Billion of JPM shares to simply ask for a record date.

And once the owners of $80 Billion of JPM stock provide management with their direct contact information then JPM management can pressure the owners of $80 Billion of JPM stock to revoke their written consents using the unlimited deep pocket of JPM. It is like it would take the backing of $80 Billion of JPM stock to just get a ticket to the parking lot of the ballpark. JPM has a history of not hesitating to spend shareholder money to oppose shareholder proposals that ask JPM to be more accountable to its shareholders.

The above $60 Billion company did not ask that 20% of shares request a record date.

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1 The Company initially received the Proposal on November 25, 2019. The Company received a revised Proposal on December 7, 2019. The Proposal received on December 7, 2019 is the Proposal addressed in this no-action request. The initial proposal is included in the correspondence with the Proponent provided in Exhibit A.
It makes no sense to require 20% of shares ($80 Billion of JPM shares) to just get started to act by written consent when 3% of JPM shares can put a proxy access candidate on our annual meeting ballot.

Please vote yes:

Initiate Meaningful Shareholder Written Consent - Proposal [4]

II. BACKGROUND

The Company’s By-Laws (“By-Laws”) and Restated Certificate of Incorporation (the “Certificate”) currently provide for shareholder action by written consent, subject to provisions establishing the requirements and procedures for that process.

Section 1.12 of the By-Laws states as follows:

Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders or may be effected by a consent in writing by stockholders as provided by, and subject to the limitations in, the Certificate of Incorporation.

The Certificate provides the standards for action by written consent of stockholders “pursuant to Section 228 of the General Corporation Law of the State of Delaware; provided that no such action may be effected except in accordance with the provisions of this Article SEVENTH(1) and applicable law.” Article SEVENTH(1) then sets forth paragraphs (a) through (h), which contain a range of requirements and process for shareholder action by written consent:

- Article SEVENTH(1)(a): “Request for Record Date. The record date for determining such stockholders entitled to consent to corporate action in writing without a meeting shall be as fixed by the Board of Directors or as otherwise established under this Article SEVENTH(1). Any holder of Common Stock of the Corporation seeking to have such stockholders authorize or take corporate action by written consent without a meeting shall, by written notice addressed to the Secretary of this Corporation, delivered to this Corporation and signed by holders of record at the time such notice is delivered holding shares representing in the aggregate at least twenty percent (20%) of the outstanding shares of Common Stock of the Corporation, which shares are determined to be “Net Long Shares” as defined in the By-Laws of the Corporation, as may be amended from time to time, request that a record date be fixed for such purpose. The written notice must contain the information set forth in paragraph (b) of this Article SEVENTH(1).”

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• Article SEVENTH(1)(b): “Notice Requirements. Any notice required by paragraph (a) of this Article SEVENTH(1) must be delivered by the holders of record of at least twenty percent (20%) of the outstanding shares of Common Stock of the Corporation (representing Net Long Shares, and with evidence of ownership attached to the notice), must describe the action proposed to be taken by written consent of stockholders and must contain (i) such information and representations, to the extent applicable, then required by this Corporation’s By-Laws as though such stockholder was intending to make a nomination of persons for election to the Board of Directors or to bring any other matter before a meeting of stockholders, as applicable, and (ii) the text of the proposed action to be taken (including the text of any resolutions to be adopted by written consent of stockholders and the language of any proposed amendment to the By-Laws of this Corporation). This Corporation may require the stockholder(s) submitting such notice to furnish such other information as may be requested by this Corporation to determine whether the request relates to an action that may be effected by written consent under paragraph (c) of this Article SEVENTH(1).”

• Article SEVENTH (1)(c): “Actions Which May Be Taken by Written Consent. Stockholders are not entitled to act by written consent if (i) the action relates to an item of business that is not a proper subject for stockholder action under applicable law, (ii) the request for a record date for such action is delivered to the Corporation during the period commencing 90 days prior to the first anniversary of the date of the notice of annual meeting for the immediately preceding annual meeting and ending on the earlier of (x) the date of the next annual meeting and (y) 30 calendar days after the first anniversary of the date of the immediately preceding annual meeting, (iii) an identical or substantially similar item (as determined in good faith by the Board, a “Similar Item”), other than the election or removal of directors, was presented at a meeting of stockholders held not more than 12 months before the request for a record date for such action is delivered to the Corporation, (iv) a Similar Item consisting of the election or removal of directors was presented at a meeting of stockholders held not more than 90 days before the request for a record date was delivered to the Corporation (and, for purposes of this clause, the election or removal of directors shall be deemed a “Similar Item” with respect to all items of business involving the election or removal of directors), (v) a Similar Item is included in the Corporation’s notice as an item of business to be brought before a stockholders meeting that has been called by the time the request for a record date is delivered to the Corporation but not yet held, (vi) such record date request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934 or other applicable law, or (vii) sufficient written consents are not dated and delivered to the Corporation prior to the first anniversary of the date of the notice of annual meeting for the immediately preceding annual meeting.”

• Article SEVENTH(1)(d): “Manner of Consent Solicitation. Holders of Common Stock of the Corporation may take action by written consent only if consents are solicited by the stockholder or group of stockholders seeking to take action by written consent of
stockholders from all holders of capital stock of this Corporation entitled to vote on the matter and in accordance with applicable law.”

- **Article SEVENTH(1)(e):** “Date of Consent. Every written consent purporting to take or authorize the taking of corporate action (each such written consent is referred to in this paragraph and in paragraph (f) as a “Consent”) must bear the date of signature of each stockholder who signs the Consent, and no Consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated Consent delivered in the manner required by paragraph (f) of this Article SEVENTH(1), consents signed by a sufficient number of stockholders to take such action are so delivered to this Corporation.

- **Article SEVENTH(1)(f):** “Delivery of Consents. No Consents may be dated or delivered to this Corporation or its registered office in the State of Delaware until 60 days after the delivery of a valid request to set a record date. Consents must be delivered to this Corporation by delivery to its registered office in the State of Delaware or its principal place of business. Delivery must be made by hand or by certified or registered mail, return receipt requested. In the event of the delivery to this Corporation of Consents, the Secretary of this Corporation, or such other officer of this Corporation as the Board of Directors may designate, shall provide for the safe-keeping of such Consents and any related revocations and shall promptly conduct such ministerial review of the sufficiency of all Consents and any related revocations and of the validity of the action to be taken by written consent as the Secretary of this Corporation, or such other officer of this Corporation as the Board of Directors may designate, as the case may be, deems necessary or appropriate, including, without limitation, whether the stockholders of a number of shares having the requisite voting power to authorize or take the action specified in Consents have given consent; provided, however, that if the action to which the Consents relate is the election or removal of one or more members of the Board of Directors, the Secretary of this Corporation, or such other officer of this Corporation as the Board of Directors may designate, as the case may be, shall promptly designate two persons, who shall not be members of the Board of Directors, to serve as inspectors (“Inspectors”) with respect to such Consent, and such Inspectors shall discharge the functions of the Secretary of this Corporation, or such other officer of this Corporation as the Board of Directors may designate, as the case may be, under this Article SEVENTH(1). If after such investigation the Secretary of this Corporation, such other officer of this Corporation as the Board of Directors may designate or the Inspectors, as the case may be, shall determine that the action purported to have been taken is duly authorized by the Consents, that fact shall be certified on the records of this Corporation kept for the purpose of recording the proceedings of meetings of stockholders and the Consents shall be filed in such records. In conducting the investigation required by this section, the Secretary of this Corporation, such other officer of this Corporation as the Board of Directors may designate or the Inspectors, as the case may be, may, at the expense of this Corporation, retain special legal counsel and any other necessary or
appropriate professional advisors as such person or persons may deem necessary or appropriate and, to the fullest extent permitted by law, shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

- Article SEVENTH(1)(g): “Effectiveness of Consent. Notwithstanding anything in this Certificate to the contrary, no action may be taken by written consent of the holders of Common Stock of the Corporation except in accordance with this Article SEVENTH(1). If the Board of Directors shall determine that any request to fix a record date or to take stockholder action by written consent was not properly made in accordance with, or relates to an action that may not be effected by written consent pursuant to, this Article SEVENTH(1), or the stockholder or stockholders seeking to take such action do not otherwise comply with this Article SEVENTH(1), then the Board of Directors shall not be required to fix a record date and any such purported action by written consent shall be null and void to the fullest extent permitted by applicable law. No action by written consent without a meeting shall be effective until such date as the Secretary of this Corporation, such other officer of this Corporation as the Board of Directors may designate, or the Inspectors, as applicable, certify to this Corporation that the Consents delivered to this Corporation in accordance with paragraph (f) of this Article SEVENTH(1), represent at least the minimum number of votes that would be necessary to take the corporate action at a meeting at which all shares entitled to vote thereon were present and voted, in accordance with Delaware law and this Certificate of Incorporation.

- Article SEVENTH(1)(h): “Challenge to Validity of Consent. Nothing contained in this Article SEVENTH(1) shall in any way be construed to suggest or imply that the Board of Directors of this Corporation or any stockholder shall not be entitled to contest the validity of any Consent or related revocations, whether before or after such certification by the Secretary of this Corporation, such other officer of this Corporation as the Board of Directors may designate, or the Inspectors, as applicable, certify to this Corporation that the Consents delivered to this Corporation in accordance with paragraph (f) of this Article SEVENTH(1), represent at least the minimum number of votes that would be necessary to take the corporate action at a meeting at which all shares entitled to vote thereon were present and voted, in accordance with Delaware law and this Certificate of Incorporation.

- Article SEVENTH(1)(i): “Board-solicited Stockholder Action by Written Consent. Notwithstanding anything to the contrary set forth above, (x) none of the foregoing provisions of this Article SEVENTH(1) shall apply to any solicitation of stockholder action by written consent by or at the direction of the Board of Directors and (y) the Board of Directors shall be entitled to solicit stockholder action by written consent in accordance with applicable law.”

**III. EXCLUSION OF THE PROPOSAL**

**A. Bases for Excluding the Proposal**

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2019 Proxy Materials in reliance on the following bases:
• Rule 14a-8(i)(7), as the Proposal deals with matters related to the Company’s ordinary business operations; and

• Rule 14a-8(i)(3) because the Proposal is materially false and misleading and contrary to Rule 14a-9.

B. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(7), as It Deals With Matters Relating to the Company’s Ordinary Business Operations

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company’s “ordinary business operations.” According to the Commission, the 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 problems at an annual shareholders meeting.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission described the two “central considerations” for the ordinary business exclusion. One consideration of the 1998 Release relates to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The other is that certain 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, as such, may be excluded, unless the proposal raises policy issues that are sufficiently significant to transcend day-to-day business matters. (footnote omitted).

Staff Legal Bulletin No. 14J (October 23, 2018) (“SLB 14J”) provides guidance as to the Staff’s evaluation of a company’s arguments for omission of a shareholder proposal under Rule 14a-8(i)(7) on the basis of micromanagement, and reiterates that its framework for the analysis focuses on whether a proposal “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies” and thus micromanages a company’s business. Similarly, Staff Legal Bulletin No. 14K (October 16, 2019) (“SLB 14K”) states that where a proposal “seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board it may be excluded under Rule14a-8(i)(7) on the basis of micromanagement.” The Staff further clarified in SLB 14K that in assessing a micromanagement argument, the determining factor is not whether a proposal “present[s] issues that are too complex for shareholders to understand,” but rather, “the level of prescriptiveness of the proposal.” In this regard, SLB 14K provides that “[w]hen a proposal prescribes specific actions that the company’s management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted.”

In considering whether a proposal is “seeking to impose specific methods for implementing complex policies,” responses to prior no-action requests illustrate that the Staff generally considers the prohibition of a practice in all situations, the “phasing out” of a practice,
or the adoption of a specific practice in all situations to be excludable as micromanaging. For example, in *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018), the Staff concurred in the exclusion of a proposal requesting that any open market share repurchase program or stock buyback be approved by stockholders prior to becoming effective. The Staff concurred that the proposal unduly supplanted management’s and/or the board’s discretion with regard to a particular matter, noting that the proposal “requests that any open market share repurchase programs or stock buybacks adopted by the board after approval of the [p]roposal shall not become effective until such new programs are approved by shareholders.”

As was the case in *Walgreens Boots Alliance, Inc.*, the Proposal would supplant the judgment of the Company’s Board of Directors (the “Board”) without exception or flexibility to consider any specific circumstances, in this case, by allowing no room for the Board’s judgment in determining whether or how to amend the Company’s By-Laws with regard to action by written consent, including whether any procedural or other requirements would be necessary or appropriate. The Proposal requests that the Board “take the steps necessary to add” the following specific words to the By-Laws: “Any stockholder of record, seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice delivered to the secretary of the corporation, request the board of directors to fix a record date.” This language is presumably intended to grant any shareholder the right to request action by written consent without meeting any stock ownership or procedural requirements. As such a corporate governance decision necessarily involves myriad, detailed considerations and significant complexity, the Proposal seeks to micromanage – without regard to any specific circumstances or the possibility of the need for reasonable exceptions – by prescribing the exact language by which the By-Laws should provide for shareholder action by written consent, thereby supplanting the judgment of the Board. As such, the Proposal “is overly prescriptive” as contemplated by SLB 14K and seeks to micromanage the decisions of the Board with respect to shareholders’ right to act by written consent.

As emphasized in SLB 14K, the “micromanagement” analysis under the Rule 14a-8(i)(7) exclusion “rests on an evaluation of the manner in which a proposal seeks to address the subject matter raised, rather than the subject matter itself.” In the past, the Staff has concurred in the exclusion, under the micromanagement analysis, of proposals involving a wide variety of topics, including, for example, *Sea World Entertainment, Inc.* (Mar. 30, 2017) (concurring in exclusion of a proposal seeking the specific outcome of the “retire[ment of] the current resident orcas to seaside sanctuaries and replace[ment of] the captive-area exhibits with innovative virtual and augmented reality or other types of non-animal experiences”); *JPMorgan Chase & Co. (The Christensen Fund)* (Mar. 30, 2018) (concurring in exclusion of a proposal which asked for a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising, and investing for tar sands production and transportation as being one that would “impose specific methods for implementing complex policies”); and *JPMorgan Chase & Co. (Harrington)* (Mar. 30, 2018) (concurring in exclusion of a proposal which asked the company to establish a human and indigenous peoples’ rights committee that, among other things, would adopt policies and procedures to require consideration of human and
indigenous peoples’ rights in connection with certain financing decisions”). While the Proposal’s subject matter of written consent is not complex on its face, as was the case in each of the above no action requests, the Proposal seeks a specific outcome – the addition of specific language in the By-Laws and a specified written consent policy – which necessitates the consideration of a broad range of complex factors, resulting in micromanagement of the Company for purposes of Rule 14a-8(i)(7).

The Staff has made clear that it will apply the micromanagement analysis consistently across proposal topics, including those where it traditionally had not. For example, in SLB 14J, the Staff noted that, while historically it had not agreed with the exclusion of proposals addressing the subject matter of senior executive and/or director compensation on the basis of micromanagement, the Staff had concluded that, going forward, there is not “a basis for treating executive compensation proposals differently than other types of proposals” with respect to the micromanagement analysis. In *JPMorgan Chase & Co. (AFL-CIO Reserve Fund)* (Mar. 22, 2019), the proposal requested that the board adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service. The Staff concurred with the company’s view that the action requested by the proposal “necessitate[d] highly complex determinations that are dependent on management’s and the Board of Directors’ underlying knowledge and expertise.” The Staff, concurring in exclusion of the proposal, noted that the proposal micromanaged the company “by seeking to impose specific methods for implementing complex policies.” In *Johnson & Johnson* (Feb. 14, 2019), the Staff addressed a proposal requesting that the board “adopt a policy that no financial performance metric shall be adjusted to exclude legal or compliance costs when evaluating performance for purposes of determining the amount or vesting of any senior executive incentive compensation award.” In its response, the Staff stated its view that the proposal sought to micromanage the company “by seeking to impose specific methods for implementing complex policies [. . .] Specifically, the [p]roposal, if implemented, would prohibit any adjustment of the broad categories of expenses covered by the [p]roposal without regard to specific circumstances or the possibility of reasonable exceptions.” The *Walgreens Boots Alliance, Inc.* letter discussed above similarly applied the micromanagement analysis to a governance matter that, the Company believes, the Staff had historically not considered as a matter of micromanagement. As with the Staff’s guidance regarding the application of the micromanagement analysis to director or executive compensation proposals and stock repurchases, the application of the micromanagement analysis to the Proposal is based on consideration of the specific action sought by the Proposal and not on the broad subject matter of shareholder action by written consent.

Similar to the circumstances in *JPMorgan Chase & Co. (AFL-CIO Reserve Fund)* and *Johnson & Johnson*, the Board is responsible for evaluating and taking the necessary steps to implement the appropriate thresholds and safeguards for Company stockholders in connection with action by written consent. The Board invests a significant amount of time and effort in analyzing and determining the Company’s approach to corporate governance matters such as establishing what it deems to be the appropriate written consent provisions to be included in the
Company’s By-Laws and Certificate. The Company is a global financial services firm, has millions of shareholders, and operates in a highly complex corporate governance environment. Thus, the Company’s decisions regarding the appropriate written consent requirements and process, as described above, are the result of complex analyses requiring the Board’s and management’s specific background and expertise.

The Company’s written consent provisions in its By-Laws must be read in conjunction with the Certificate. Both governing documents provide for action by written consent by shareholders, as set forth above, and the Certificate specifies the requirements and process for that action, including that any shareholder may request a record date for action by written consent by written notice signed by holders of record of at least 20% of the Company’s outstanding common stock. As a general matter, the utility in having the right to act by “written consent depends, to a much greater extent than most other shareholder powers, on other provisions of state law and the corporate governance structure. Because different shareholder powers are complements or substitutes, the relevant issue is much more complex than whether or not shareholders can, say, call a special meeting.” For these reasons, the Company’s decisions with respect to its shareholder written consent provisions involve determinations by the Board that are dependent on its underlying expertise and judgment of many factors, including, for example, corporate governance trends and best practices and feedback from Company shareholders, to determine the most appropriate corporate governance practices for the Company. Given the complexity of the decisions relating to shareholders’ rights in the By-Laws and Certificate specifically, and to the Company’s corporate governance decisions generally, the Proposal’s attempt to supplant the judgment of the Board by prescribing the specific outcome – without flexibility or exception – of adding prescribed By-Law language would unduly limit the decision-making of the Board with regard to this complex matter. Accordingly, the Company is of the view that the Proposal may be omitted pursuant to Rule 14a-8(i)(7) as it seeks to micromanage the Company.

C. The Proposal May Be Omitted in Reliance On Rule 14a-8(i)(3) Because It Is Impermissibly Vague and Indefinite So as To Be Materially False and Misleading and Contrary to Rule 14a-9

Rule 14a-8(i)(3) permits a company to omit a proposal or supporting statement, or portions thereof, that are contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false and misleading statements in proxy materials. In Staff Legal Bulletin No. 14 (July 31, 2000), the Staff stated that “when a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading.” The Staff has taken the position that a proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite if, as stated in Staff Legal Bulletin No. 14B (September 15, 2004), “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.”

The Proposal – including both its specific language and the specific action requested – would materially mislead shareholders as to the effect of the addition of a specific sentence to the By-Laws because taking action to “add” the Proposal’s prescribed language to the Company’s By-Laws would do nothing more than add a redundant, ineffective, and conflicting sentence to those By-Laws. By the terms of the Proposal’s first paragraph, the Company would be required to “add” the following specific “words to [the Company’s] bylaws” [emphasis added]:

“Any stockholder of record, seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice delivered to the secretary of the corporation, request the board of directors to fix a record date.”

As discussed above, Section 1.12 of the Company’s By-Laws currently states: “Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders or may be effected by a consent in writing by stockholders as provided by, and subject to the limitations in, the Certificate of Incorporation.” As such, currently: (1) the By-Laws contain language addressing the general substance of the Proposal; (2) the By-Laws permit holders of Company common stock to act by written consent; (3) the By-Laws contain language, not in the Proposal’s specified language, requiring that action by written consent of shareholders must be “as provided by, and subject to the limitations in, the Certificate of Incorporation regarding the discussion of action by written consent under the By-Laws”; and (4) the Certificate of Incorporation contains specific requirements for shareholders to act by written consent.

While the Proposal seeks to “add” to the Company’s By-Laws the exact language prescribed in the Proposal, it does not seek to remove any existing By-Law provisions and, though the Proposal alludes to the 20% requirement in the third paragraph of the Proposal, it makes no specific mention of the Certificate. Rather, (1) the Proposal seeks only to “add” the specified sentence to the By-Laws; it does not permit alternate action by the Company; (2) the Proposal describes its purpose and effect as the elimination of the 20% ownership requirement for requesting a record date for shareholder action by written consent;4 (3) the Proposal does not state that it is seeking to replace or eliminate any of the current language in Section 1.12 of the Company’s By-Law subjecting action by written consent of shareholders to the requirements of the Certificate of Incorporation; and (4) the Proposal alludes to but does not address the

4 The Proposal’s supporting statement states:

- “When JPMorgan adopted a shareholder right to act by written consent in it put in a hurdle to make written consent not a meaningful right. Our directors made it necessary for 20% of JPM shares to request a record date.”
- “It makes no sense to require 20% of shares ($80 Billion of JPM shares) to just get started to act by written consent when 3% of JPM shares can put a proxy access candidate on our annual meeting ballot”
Company’s Certificate, in which those requirements – including the requirement for requesting a record date for action by shareholder written consent – are established. Thus, the Proposal would not accomplish its presumed intent.

The Proposal includes the following vague sentence: “This proposal includes making each change in our governing documents to be consistent with the above text.” The inclusion of such a catch-all sentence, which refers only to the prescribed language to be added, does not inform shareholders in any way of the actions intended by the Proposal or explain the redundant, ineffective, and conflicting sentence to be added; rather, it would further mislead shareholders through its fundamental vagueness and indefiniteness. Just a few of the potential readings of this sentence could include:

- That the existing language of Section 1.12 of the By-Laws would be deleted entirely;
- That the existing language of Section 1.12 of the By-Laws would be altered to remove the reference to the Certificate entirely;
- That the existing language of Section 1.12 of the By-Laws would be altered to remove the reference to the Certificate but the requirement in Article SEVENTH(1)(a) regarding the 20% ownership of common stock required to request a record date for action by written consent would not be altered or removed; or
- That Article SEVENTH(1)(a) of the Certificate would be amended to eliminate the 20% ownership of common stock requirement for requesting a record date for action by written consent.

In addition to this uncertainty is the lack of any guidance as to whether the prescribed sentence to be added and its absence of any reference to the Certificate is intentional or would simply have several unintended consequences. If the deletion of the reference to the Certificate is intentional, the vague, catch-all sentence would have the intent of deleting any reference to Article SEVENTH(1), resulting in the inherent conflict of the By-Laws creating an absolute right of shareholders to act by written consent that has no established procedures or requirements, in direct conflict with the procedures and requirements established by the Certificate regarding the right of shareholders to act by written consent. If the deletion of the reference to the Certificate is unintentional, the consequences could be the same or could be implemented through a variety of interpretations. In any case, the materially misleading nature of the Proposal would cause shareholders to be fundamentally uninformed as to the actions to be undertaken to implement the Proposal.

Further to the above, the Company, being incorporated under Delaware law, is subject to the Delaware General Corporation Law (the “DGCL”), which does not specify a minimum percentage of stock ownership for stockholders to be able to call a special meeting of stockholders; Section 211(d) of the DGCL states that a special meeting of stockholders may be called “by such person or persons as may be authorized by the certificate of incorporation or by the bylaws” of a company. As such, the DGCL provides no context by which the Proposal’s unclear meaning could be further interpreted.
The Staff has previously agreed with the exclusion of written consent proposals that were impermissibly vague in violation of Rule 14a-8(i)(3). In *Altera Corporation* (March 8, 2013), the proposal asked that the board take “the steps necessary [. . .] to strengthen [the company’s] weak shareholder right to act by written consent adopted in 2012 [. . .] [t]his proposal would include removal of the requirement that a percentage of shares ask for a record date to be set and removal of the requirement that all shareholders must be solicited.” The proposal did not define the use of “weak,” nor did it clarify whether the removal of the percentage of shares required for a record date and the removal of the requirement for solicitation were sufficient to satisfy the proposal’s terms. The company argued that the proposal did not sufficiently clarify what changes were contemplated to the right to act by written consent. The Staff concurred with exclusion of the proposal in reliance on Rule 14a-8(i)(3), stating that “in applying [the] particular proposal” to the company, “neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” As in *Altera*, in consideration of the vagueness of the Proposal and the associated different implications for implementation, the Company’s stockholders voting on the Proposal will not be able to know with any reasonable certainty the actual effect of the specific actions the Company would be required to take under the Proposal’s provisions.

In *Newell Rubbermaid Inc.* (Feb. 21, 2012), the Staff concurred with the exclusion of a proposal in reliance on Rule 14a-8(i)(3) where a proposal sought to permit stockholders to call special meetings but presented two different standards for determining the number of stockholders required to call such special meetings (i.e., “one or more shareholders, holding not less than one-tenth” of the voting power of the company, or “the lowest percentage of [the Company’s] outstanding common stock permitted by state law”) and the company argued that the proposal, in failing to provide any guidance on how the ambiguity should be resolved, made it impossible to fully understand the effect of implementation. As in *Newell Rubbermaid*, the Proposal presents a similar situation for shareholders, as it would create two fundamentally different standards for the ownership threshold required to request a record date for action by written consent of shareholders. The Proposal does not explain in any way how to reconcile the two inapposite standards it attempts to create (i.e., the existing, continuing language referencing the requirements of the Certificate, and the new, conflicting language to be added to the By-laws stating that there are no limitations on the right to act by written consent of shareholders). As discussed above, the vague reference in the Proposal to “mak[e] each change in our governing documents to be consistent with the above text” provides no clarification; rather it further confuses the potential implications of the Proposal. In addition, the Proposal actively misstates to shareholders that the effect of the Proposal would be to eliminate the 20% ownership requirement for shareholder action by written consent. For these reasons, the Proposal is fundamentally misleading as to its operation and materially misleads shareholders as to the effect of a vote by shareholders. Based on the discussion above, the Company is of the view that the Proposal may be excluded in reliance on Rule 14a-8(i)(3).
IV. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company’s view and not recommend enforcement action to the Commission if the Company omits the Proposal from its 2020 Proxy Materials. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 778-1611.

Sincerely,

[Signature]

Martin P. Dunn
Morrison & Foerster LLP

Attachments

cc: John Chevedden
Molly Carpenter, Corporate Secretary, JPMorgan Chase & Co.
EXHIBIT A
Dear Ms. Carpenter,

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

Sincerely,

John Chevedden
Ms. Molly Carpenter
Corporate Secretary
JPMorgan Chase & Co. (JPM)
270 Park Ave.
38th Floor
New York NY 10017
PH: 212-270-6000
FX: 212-270-1648

Dear Mr. Carpenter,

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

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

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

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

Sincerely,

John Chevedden

Date

cc: Linda E. Scott <linda.e.scott@chase.com>

Shareholders request that our board of directors take the steps necessary to add these words to our bylaws:

“Any stockholder of record, seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice delivered to the secretary of the corporation, request the board of directors to fix a record date.”

This proposal includes making each change in our governing documents necessary to be consistent with the above text. The above quoted words are from the bylaws of a $60 Billion company.

When JPMorgan adopted a shareholder right to act by written consent in it put in a hurdle to make written consent not a meaningful right. Our directors made it necessary for 20% of JPM shares to request a record date. In other words shareholders need the backing of $80 Billion of JPM shares to simply ask for a record date. And once the owners of $80 Billion of JPM stock provide management with their contact information then management can pressure them to revoke their written consents.

The above $60 Billion company does not ask that 20% of shares request a record date.

It makes no sense to require 20% of shares ($80 Billion of JPM shares) to just get started to act by written consent when 3% of JPM shares can put a proxy access candidate on our annual meeting ballot.

Please vote yes:

Initiate Meaningful Shareholder Written Consent – Proposal [4]

[The above line – Is for publication.]
John Chevedden,*** sponsors this proposal.

Notes:
This proposal is believed to conform with Staff Legal Bulletin No. 148 (CF), September 15, 2004 including (emphasis added):

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***
Dear Mr. Chevedden,

Attached is a copy of our letter regarding the shareholder proposal submitted for inclusion in the proxy materials relating to JPMC’s 2020 Annual Meeting of Shareholders.

Thank you,
Stella Lee

Stella Lee | Senior Counsel | JP Morgan Chase & Co. | Legal Department | OTS | 4 New York Plaza, 8th Floor, New York, New York 10004 | 212.623.3064 | stella.lee@jpmorgan.com
December 6, 2019

VIA EMAIL & OVERNIGHT DELIVERY

John Chevedden

***

Dear Mr. Chevedden:

I am writing on behalf of JPMorgan Chase & Co. ("JPMC"), which received from you (the "Proponent"), via email on November 25, 2019, the shareholder submission titled “Initiate Meaningful Shareholder Written Consent” (the “Proposal”) for consideration at JPMC’s 2020 Annual Meeting of Shareholders.

The Submission contains a certain procedural deficiency, as set forth below, which Securities and Exchange Commission (“SEC”) regulations require us to bring to your attention.

Ownership Verification

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that each shareholder proponent must submit sufficient proof that it has continuously held at least $2,000 in market value, or 1%, of a company’s shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. JPMC’s stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof from the Proponent that it has satisfied Rule 14a-8’s ownership requirements as of the date that the Proposal was submitted to JPMC. In this regard, our records indicate that you submitted the Proposal on November 25, 2019.

To remedy this defect, you must submit sufficient proof of ownership of JPMC shares. As explained in Rule 14a-8(b), sufficient proof may be in one of the following forms:

- A written statement from the “record” holder of the shares (usually a broker or a bank) verifying that, as of the date the Proposal was submitted (i.e., November 25, 2019), the Proponent continuously held the requisite number of JPMC shares for at least one year.

- If the Proponent has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting ownership of JPMC shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Co-filer continuously held the required number of shares for the one-year period.
To help shareholders comply with the requirement to prove ownership by providing a written statement from the “record” holder of the shares, the SEC’s Division of Corporation Finance (the “SEC Staff”) published Staff Legal Bulletin No. 14F (“SLB 14F”). In SLB 14F, the SEC Staff stated that only brokers or banks that are Depository Trust Company (“DTC”) participants will be viewed as “record” holders for purposes of Rule 14a-8. Thus, you will need to obtain the required written statement from the DTC participant through which your shares are held. If you are not certain whether your broker or bank is a DTC participant, you may check the DTC’s participant list, which is currently available on the Internet at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC,alpha.ashx. If your broker or bank is not on DTC’s participant list, you will need to obtain proof of ownership from the DTC participant through which your securities are held. You should be able to determine the name of this DTC participant by asking your broker or bank. If the DTC participant knows the holdings of your broker or bank, but does not know your holdings, you may satisfy the proof of ownership requirement 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 by you for at least one year – with one statement from your broker or bank confirming your ownership, and the other statement from the DTC participant confirming the broker or bank’s ownership.

For your reference, please find enclosed a copy of SEC Rule 14a-8 and SLB 14F.

For the Proposal to be eligible for inclusion in JPMC’s proxy materials for JPMC’s 2020 Annual Meeting of Shareholders, the rules of the SEC require that a response to this letter, correcting all procedural deficiencies described in 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 4 New York Plaza 8th Floor, New York NY 10004 or via email to corporate.secretary@jpmchase.com.

If you have any questions with respect to the foregoing, please contact me.

Sincerely,

Enclosures:
Rule 14a-8 of the Securities Exchange Act of 1934
Division of Corporation Finance Staff Bulletin No. 14F
Rule 14a-8 – Proposals of Security Holders

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

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

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

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

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

(i) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or
(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter) and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

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

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

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

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

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

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

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

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

   (3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.
(f) **Question 6:** What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Director elections: If the proposal:

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

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

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

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

   (v) Otherwise could affect the outcome of the upcoming election of directors.
(9) **Conflicts with company's proposal:** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

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

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

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

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

**Date:** October 18, 2011

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

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

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

**A. The purpose of this bulletin**

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

In The Hain Celestial Group, Inc. (Oct. 1, 2008), we took the position that an introducing broker could be considered a “record” holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.6 Instead, an introducing broker engages another broker, known as a “clearing broker,” to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements.
Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC’s securities position listing, Hain Celestial has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent’s records or against DTC’s securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8 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.

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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](http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx).

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

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

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

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

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

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

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

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has “continuously held at least $2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal” (emphasis added). 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. ¹⁶

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

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

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

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

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¹ See Rule 14a-8(b).

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

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.

Techne Corp. (Sept. 20, 1988).

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.

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.

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

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.
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.


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.

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.
December 9, 2019

John R Chevedden
***

Dear Mr. Chevedden:

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

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than the share quantity listed in the following table in the following securities, since November 1, 2018.

<table>
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<th>Security Name</th>
<th>CUSIP</th>
<th>Symbol</th>
<th>Share Quantity</th>
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<tr>
<td>JP Morgan Chase and Co</td>
<td>46625H100</td>
<td>JPM</td>
<td>50.000</td>
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<tr>
<td>Ford Motor Company</td>
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<tr>
<td>JetBlue Air Ways Corporation</td>
<td>477143101</td>
<td>JBLU</td>
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<tr>
<td>Northrop Grumman Corp Holding Co</td>
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<td>NOC</td>
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<td>Advanced Auto Parts</td>
<td>015351109</td>
<td>AAP</td>
<td>50.000</td>
</tr>
</tbody>
</table>

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

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

Sincerely,

Stormy Delehanty
Operations Specialist

Our File: W257759-09DEC19
Ms. Molly Carpenter  
Corporate Secretary  
JPMorgan Chase & Co. (JPM)  
270 Park Ave.  
38th Floor  
New York NY 10017  
PH: 212-270-6000  
FX: 212-270-1648  

Dear Mr. Carpenter,

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

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

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

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

Sincerely,

[Signature]
John Chevedden  

[Date]

cc: Linda E. Scott <linda.e.scott@chase.com>

Shareholders request that our board of directors take the steps necessary to add these words to our bylaws:

“Any stockholder of record, seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice delivered to the secretary of the corporation, request the board of directors to fix a record date.”

This proposal includes making each change in our governing documents necessary to be consistent with the above text. The above quoted words are from the bylaws of a $60 Billion company.

When JPMorgan adopted a shareholder right to act by written consent in it put in a hurdle to make written consent not a meaningful right. Our directors made it necessary for 20% of JPM shares to request a record date. In other words shareholders need the backing of $80 Billion of JPM shares to simply ask for a record date.

And once the owners of $80 Billion of JPM stock provide management with their direct contact information then JPM management can pressure the owners of $80 Billion of JPM stock to revoke their written consents using the unlimited deep pocket of JPM. It is like it would take the backing of $80 Billion of JPM stock to just get a ticket to the parking lot of the ballpark. JPM has a history of not hesitating to spend shareholder money to oppose shareholder proposals that ask JPM to be more accountable to its shareholders.

The above $60 Billion company did not ask that 20% of shares request a record date.

It makes no sense to require 20% of shares ($80 Billion of JPM shares) to just get started to act by written consent when 3% of JPM shares can put a proxy access candidate on our annual meeting ballot.

Please vote yes:

Initiate Meaningful Shareholder Written Consent – Proposal [4]

[The above line – Is for publication.]
Notes:
This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

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

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

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

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

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