January 31, 2020

VIA Email

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Ladies and Gentlemen:

We refer to our letter dated January 10, 2020 (the "No-Action Request"), submitted on behalf of L Brands, Inc., a Delaware corporation (the "Company"), pursuant to which we requested that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission concur with the Company’s view that the shareholder proposal (as revised, the "Proposal") submitted by John Chevedden (the "Proponent") may be excluded from the proxy materials the Company intends to distribute in connection with its 2020 Annual Meeting of Stockholders (the "2020 Proxy Materials"). In accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent.

The No-Action Request stated the Company’s view that the Proposal may be excluded from the 2020 Proxy Materials because the Company’s Board of Directors (the "Board") was expected, at its meeting held on January 30, 2020 (the "January Board Meeting"), to consider resolutions approving an amendment to the Company’s Restated Certificate of Incorporation (the "Certificate of Incorporation") to eliminate the Company’s classified board structure resulting in all directors being elected annually beginning at the Company’s 2021 Annual Meeting of Stockholders (the "Charter Amendment"), which would substantially implement the Proposal under Rule 14a-8(i)(10).

We submit this supplemental letter to notify the Staff that at the January Board Meeting, the Board adopted resolutions approving the Charter Amendment, directing that the Charter Amendment be submitted to the Company’s stockholders for adoption at the Company’s 2020 Annual Meeting of Stockholders and recommending that the Company’s stockholders vote to adopt the Charter Amendment. If the Company’s stockholders approve the Charter Amendment at the Company’s 2020 Annual Meeting of Stockholders with the affirmative vote of shares representing not less than 75% of the outstanding shares of the Company entitled to vote...
thereon, as required under the Certificate of Incorporation, the Board will be reorganized into one class with each director subject to election each year for a one-year term, which is precisely what the Proposal seeks to accomplish. The text of the Charter Amendment is attached hereto as Exhibit A.

As discussed in the No-Action Request, Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. Applying the principles described in the No-Action Request, the Staff has permitted exclusion under Rule 14a-8(i)(10) of proposals substantially similar to the Proposal, seeking the declassification of a company’s board of directors, where the board lacked unilateral authority to adopt the necessary amendments to the governing documents (which is the case with respect to the Certificate of Incorporation), but has taken all of the steps within its power to substantially implement the proposal by approving amendments to the governing documents and directing that they be submitted for shareholder approval. See, e.g., iRobot Corp. (avail. Feb. 9, 2018); Costco Wholesale Corp. (avail. Nov. 16, 2018); AbbVie Inc. (avail. Dec. 22, 2016); St. Jude Medical, Inc. (Feb. 3, 2015); LaSalle Hotel Properties (avail. Feb. 27, 2014); Dun & Bradstreet Corp. (avail. Feb. 3, 2011); and Baxter International Inc. (avail. Feb. 3, 2011) (concurring in each case with the exclusion of a shareholder proposal on board declassification where the board directed the submission of a declassification amendment for shareholder approval).

As in the letters referenced above and in the No-Action Request, the Charter Amendment substantially implements the Proposal and the Company has addressed the essential objective of the Proposal. Accordingly, consistent with the letters cited above and in the No-Action Request, the Company believes that the Proposal has been substantially implemented and may be excluded under Rule 14a-8(i)(10).

The Company respectfully requests confirmation that the Staff will not recommend any enforcement action if the Company omits the Proposal from its 2020 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at 212-450-4397 or william.aaronson@davispolk.com. If the Staff does not concur with the Company’s position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

Very truly yours,

William H. Aaronson

Attachments

cc w/ att: Samuel P. Fried,
L Brands, Inc.

John Chevedden,
Proponent
L BRANDS, INC.

PROPOSED AMENDMENT TO THE CERTIFICATE OF INCORPORATION TO ELIMINATE THE COMPANY’S CLASSIFIED BOARD STRUCTURE

Section 1 of Article SIXTH is hereby amended as shown below (with deletions highlighted in strike-through text and additions highlighted in underlined text):

SIXTH. Section 1. Election of Directors. Subject to the right of the holders of any class or series of Preferred Stock to elect one or more directors of the Corporation, commencing with the 2021 annual meeting, each director shall be elected for a term expiring at the next annual meeting, and shall hold office until such director’s successor is elected and qualified or until such director’s earlier death, resignation or removal. Classified Board. Effective immediately upon the issuance of more than 1,000 shares of Common Stock of the Corporation, the Board of Directors (exclusive of directors to be elected by the holders of any one or more series of Preferred Stock voting separately as a class or classes) shall be divided into three classes, Class A, Class B, and Class C. The number of directors in each class shall be the whole number contained in the quotient arrived at by dividing the authorized number of directors by three, and if a fraction is also contained in such quotient, then if such fraction is one-third, the extra director shall be a member of Class A and if the fraction is two-thirds, one of the extra directors shall be a member of Class A and the other shall be a member of Class B. Each director shall serve for a term ending on the date of the third annual meeting following the annual meeting at which such director was elected; provided, however, that the directors first elected to Class A shall serve for a term ending on the date of the annual meeting next following the end of the calendar year 1982, the directors first elected to Class B shall serve for a term ending on the date of the second annual meeting next following the end of the calendar year 1982, and the directors first elected to Class C shall serve for a term ending on the date of the third annual meeting next following the end of the calendar year 1982. Notwithstanding the foregoing formula provisions, in the event that, as a result of any change in the authorized number of directors, the number of directors in any class would differ from the number allocated to that class under the formula provided in this Article immediately prior to such change, the following rules shall govern:

(a) each director then serving as such shall nevertheless continue as a director of the class of which he is a member until the expiration of his current term, or his prior death, resignation or removal;

(b) at each subsequent election of directors, even if the number of directors in the class whose term of office then expires is less than the number then allocated to that class under said formula, the number of directors then elected for membership in that class shall in no case exceed the number of directors in that class whose term of office then expires, unless and to the extent that the aggregate number of directors then elected plus the number of directors in all classes then duly continuing in office does not exceed the then authorized number of directors of the Corporation;
(c) at each subsequent election of directors, if the number of directors in the class whose term of office then expires exceeds the number then allocated to that class under said formula, the Board of Directors shall designate one or more of the directorships then being elected as directors of another class or classes in which the number of directors then serving is less than the number then allocated to such other class or classes under said formula;

(d) in the event of the death, resignation or removal of any director who is a member of a class in which the number of directors serving immediately preceding the creation of such vacancy exceeded the number then allocated to that class under said formula, the Board of Directors shall designate the vacancy thus created as a vacancy in another class in which the number of directors then serving is less than the number then allocated to such other class under said formula;

(e) in the event of any increase in the authorized number of directors, the newly created directorships resulting from such increase shall be apportioned by the Board of Directors to such class or classes as shall, so far as possible, bring the composition of each of the classes into conformity with the formula in this Article, as it applies to the number of directors authorized immediately following such increase; and

(f) designation of directorships or vacancies into other classes and apportionments of newly created directorships to classes by the Board of Directors under the foregoing items (c), (d) and (e) shall, so far as possible, be effected so that the class whose term of office is due to expire next following such designation or apportionment shall contain the full number of directors then allocated to said class under said formula.

Notwithstanding any of the foregoing provisions of this Article, each director shall serve until his successor is elected and qualified or until his death, resignation or removal.

Article TENTH is hereby amended as shown below (with deletions highlighted in strike-through text and additions highlighted in underlined text):

TENTH. Any director may be removed at any annual or special stockholders’ meeting, with or without cause, upon the affirmative vote of the holders of not less than a majority 75 percent of the outstanding shares of voting stock of the Corporation at that time entitled to vote thereon; provided, however, that such director may be removed only for cause and shall receive a copy of the charges against him, delivered to him personally or by mail at his last known address at least 10 days prior to the date of the stockholders’ meeting; provided further, that directors who shall have been elected by the holders of a series or class of Preferred Stock, voting separately as a class, shall be removed only pursuant to the provisions establishing the rights of such series or class to elect such directors.
January 26, 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
L Brands, Inc. (LB)
False and Misleading No-Action Request
John Chevedden

Ladies and Gentlemen:

This is in regard to the false and misleading January 10, 2020 no-action request.

This statement is false at the bottom of page 3:
“By approving the proposed Charter Amendment, the Board will have therefore ‘take[n] all the steps necessary’ that are within its power to address the underlying concerns of the Proposal – declassifying the Board.”

The Board has not addressed whether it has the power to do a special solicitation in regard to its ballot proposal or adjourn the annual meeting to obtain more votes for its proposal.

The Board should address these 2 points after its January 30, 2020 Board meeting or its no action request will continue to be false and misleading.

Sincerely,

John Chevedden

cc: Sam Fried <SFried@lb.com>

James A. Mitarotonda <jmitarotonda@barington.com>
January 19, 2020

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

# 2 Rule 14a-8 Proposals
L Brands, Inc. (LB)
Declassify
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 10, 2020 no-action request.

Management included a news release that mentioned Barington Capital Group, L.P. However management did not include any expression of confidence by Barington Capital that the management proposal would likely be approved by shareholders given the high percentage vote of all outstanding shares that are required for shareholder approval.

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: Sam Fried <SFried@lb.com>

James A. Mitarotonda <jmitarotonda@barington.com>
January 15, 2020

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

# 1 Rule 14a-8 Proposals
L Brands, Inc. (LB)
Declassify
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 10, 2020 no-action request.

Management failed to disclose that it is a daunting challenge to obtain an approval vote on its proposed proposal. Management did not claim that it can guarantee an approval vote on this proposal topic. Thus management needs to submit a plan in case it has a failed vote.

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: Sam Fried <SFried@lb.com>
RESOLVED, shareholders ask that our Company take all the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year for a one-year term.

Arthur Levitt, former Chairman of the Securities and Exchange Commission said, “In my view it’s best for the investor if the entire board is elected once a year. Without annual election of each director shareholders have far less control over who represents them.”

A total of 79 S&P 500 and Fortune 500 companies, worth more than $1 trillion, adopted this important proposal topic since 2012. Annual elections are widely viewed as a corporate governance best practice. Annual election of each director could make directors more accountable, and thereby contribute to improved performance and increased company value.

It is ridiculous for the L Brands directors beyond age 80 to run for a 3-year term. L Brands had 3 such directors. Plus our stock is in the cellar. In 4-years of a robust market our stock dropped from $95 to $18.

Hopefully this proposal will achieve the same level of support as the 2019 shareholder proposal for a simple majority vote standard – 98%-support.

Please vote yes:
Elect Each Director Annually – Proposal [4]
January 10, 2020

VIA Email

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Ladies and Gentlemen:

On behalf of L Brands, Inc., a Delaware corporation ("L Brands" or the "Company"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we are filing this letter with respect to the shareholder proposal (as revised, the "Proposal") submitted by John Chevedden (the "Proponent") for inclusion in the proxy materials the Company intends to distribute in connection with its 2020 Annual Meeting of Stockholders (the "2020 Proxy Materials"). The Company received an initial version of the Proposal, via email, on September 25, 2019, dated September 24, 2019. On December 27, 2019, the Company received a revised version of the Proposal, via email, dated December 27, 2019. The Proposal and related correspondence is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the "Staff") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2020 Proxy Materials. In accordance with Rule 14a-8(j), this letter is being filed with the Securities and Exchange Commission (the "Commission") not less than 80 days before the Company plans to file its definitive proxy statement.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and any related correspondence via email to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company’s intention to omit the Proposal from the 2020 Proxy Materials. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal to be proper.

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

The Proposal states:

“RESOLVED, shareholders ask that our Company take all the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year for a one-year term.”

REASONS FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(10) upon confirmation that the Company’s Board of Directors (the “Board”) has approved the resolutions, described below, approving and submitting for stockholder approval at the Company’s 2020 Annual Meeting of Stockholders the Charter Amendment (as defined below) that will substantially implement the Proposal. The Board will consider the resolutions at its next regularly scheduled meeting to be held on January 30, 2020 (the “January Board Meeting”).

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because the Company Will Have Substantially Implemented the Proposal.

I. Background of Rule 14a-8(i)(10).

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the Company has substantially implemented the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” See Exchange Act Release No. 12598 (July 7, 1976). The Commission later stated that formalistic application of the rule requiring full implementation “defeated [the rule’s] purpose,” and then adopted a revised interpretation to the rule to permit the omission of proposals that had been “substantially implemented.” See Exchange Act Release No. 20091 (Aug. 16, 1983) and Exchange Act Release No. 40018, at no. 30 (May 21, 1998).

In determining whether the shareholder proposal has been “substantially implemented,” the Staff has noted that a determination that the company has substantially implemented the proposal depends on whether the company’s particular policies, practices and procedures compare favorably with the guidelines of the proposal. See, e.g., General Dynamics Corp. (avail. Feb. 6, 2019) (permitting exclusion of a proposal requesting a 10% ownership threshold for special meetings where the company planned to adopt a special meeting bylaw with an ownership threshold of 10% for special meetings called by one shareholder and 25% for special meetings called by a group of shareholders). When a company has satisfied the proposal’s essential objectives, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded under Rule 14a-8(i)(10). See, e.g., Eli Lilly and Co. (avail. Jan. 8, 2018); Korn/Ferry International (avail. July 6, 2017); and NETGEAR, Inc. (avail. Mar. 31, 2015) (in each case, permitting exclusion of a shareholder proposal under Rule 14a-8(i)(10) where (1) the proposals sought to eliminate supermajority voting provisions from the company’s certificate of incorporation and bylaws and (2) the company planned to provide shareholders at the next annual meeting an opportunity to approve amendments to the company’s certificate of
incorporation to replace the supermajority voting provisions with a majority of outstanding shares voting standard).

II. The Anticipated Amendment to the Certificate of Incorporation Will Substantially Implement the Proposal.

LB Industries’s Restated Certificate of Incorporation (the “Certificate of Incorporation”) currently divides the Board into three classes that are elected for staggered, three-year terms. On April 18, 2019, the Company issued a press release stating that the Board has unanimously committed to submit and recommend to the Company’s stockholders at the Company’s 2020 Annual Meeting of Stockholders a proposal to declassify the Board immediately, so that all directors will stand for election at the Company’s 2021 Annual Meeting of Stockholders. See Exhibit B for the press release. The Board is expected, at the January Board Meeting, to consider resolutions approving an amendment to the Certificate of Incorporation to eliminate the Company’s classified board structure resulting in all directors being elected annually beginning at the Company’s 2021 Annual Meeting of Stockholders (the “Charter Amendment”), directing that the Charter Amendment be submitted to the Company’s stockholders for adoption at the Company’s 2020 Annual Meeting of Stockholders and recommending that that the Company’s stockholders vote to adopt the Charter Amendment. In accordance with the Certificate of Incorporation, the Charter Amendment will require the affirmative vote of shares representing not less than 75% of the outstanding shares of the Company entitled to vote thereon. If the Board adopts the resolutions described above, and the Company’s stockholders approve the Charter Amendment at the Company’s 2020 Annual Meeting of Stockholders, the Board will be reorganized into one class with each director subject to election each year for a one-year term, which is precisely what the Proposal seeks to accomplish.

The text of the Proposal makes clear that the Proposal’s essential objective is to remove the classified board structure contained in the Certificate of Incorporation. Applying the principles described above, the Staff has permitted exclusion under Rule 14a-8(i)(10) of proposals substantially similar to the Proposal, seeking the declassification of a company’s board of directors, where the board lacked unilateral authority to adopt the necessary amendments to the governing documents (which is the case with respect to the Certificate of Incorporation), but has taken all of the steps within its power to substantially implement the proposal by approving amendments to the governing documents and directing that they be submitted for shareholder approval. See, e.g., iRobot Corp. (avail. Feb. 9, 2018); Costco Wholesale Corp. (avail. Nov. 16, 2018); AbbVie Inc. (avail. Dec. 22, 2016); St. Jude Medical, Inc. (Feb. 3, 2015); LaSalle Hotel Properties (avail. Feb. 27, 2014); Dun & Bradstreet Corp. (avail. Feb. 3, 2011); and Baxter International Inc. (avail. Feb. 3, 2011) (concurring in each case with the exclusion of a shareholder proposal on board declassification where the board directed the submission of a declassification amendment for shareholder approval).

As in the foregoing letters, the anticipated Charter Amendment substantially implements the Proposal. Specifically, in the event that the Board adopts the resolutions described above, the Company’s stockholders will be asked at the Company’s 2020 Annual Meeting of Stockholders to vote and adopt the Charter Amendment that would, if approved, reorganize the Board into one class with each director subject to election each year for a one-year term, which is precisely what the proposal seeks to accomplish. By approving the proposed Charter Amendment, the Board will have therefore “take[n] all the steps necessary” that are within its power to address the underlying concerns of the Proposal – declassifying the Board. As a result,
in the event the Board adopts the resolutions described above, the Company will have addressed the essential objective of the Proposal.

**III. The Company Will Submit Supplemental Notification to the Staff Following Board Action.**

We submit this no-action request now to address the timing requirements of Rule 14a-8(j). We will submit a supplemental letter notifying the Staff of the Board's action on this matter, which will include a copy of the Charter Amendment approved by the Board, shortly after the January Board Meeting. The Staff consistently has permitted exclusion under Rule 14a-8(i)(10) where a company has notified the Staff that it intends to recommend that its board of directors take certain action that will substantially implement the proposal and then supplements its request for no-action relief by notifying the Staff after that action has been taken by the board of directors. See, e.g., United Technologies Corporation (avail. Feb. 14, 2018); State Street Corporation (avail. Mar. 5, 2018); AbbVie Inc. (avail. Feb. 16, 2018); PPG Industries, Inc. (avail. Jan. 23, 2018); T. Rowe Price Group, Inc. (avail. Jan. 17, 2018); Eli Lilly and Company (avail. Jan. 8, 2018); Dover Corporation (avail. Dec. 15, 2017); The Southern Co. (Feb. 24, 2017); Windstream Holdings (avail. Feb. 14, 2017); Medivation, Inc. (avail. Mar. 13, 2015); Visa Inc. (Nov. 14, 2014); Hewlett-Packard Co. (Dec. 19, 2013); NETGEAR, Inc. (avail. Mar. 31, 2015); Starbucks Corp. (Nov. 27, 2012); NiSource Inc. (avail. Mar. 10, 2008); Johnson Johnson (avail. Mar. 3, 2008); Hewlett-Packard Co. (avail. Dec. 11, 2007); General Motors Corp. (avail. Mar. 3, 2004); and Intel Corp. (avail. Mar. 11, 2003) (each permitting exclusion of a proposal under Rule 14a-8(i)(10) where the board of directors was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of the board action).

Accordingly, the Company believes that once the Board takes the actions described above, the Proposal will have been substantially implemented and may be excluded under Rule 14a-8(i)(10).

**CONCLUSION**

Accordingly, consistent with the Staff's previous interpretations of Rule 14a-8(i)(10), the Company believes that the Proposal may be excluded from the 2020 Proxy Materials, subject to confirmation of the Board's adoption of resolutions approving the Charter Amendment.

In light of the Company's public commitment that the Board will submit to and recommend to the Company's stockholders a proposal to declassify the Board, the Company's expectation that the Board will approve the resolutions to approve the Charter Amendment, and the long line of no-action letters issued by the Staff, as discussed above, the Company has asked the Proponent to withdraw the Proposal, but the Proponent has not done so at the time of the submission of this request for no-action relief. The Company respectfully requests confirmation that the Staff will not recommend any enforcement action if, in reliance on the foregoing, the Company omits the Proposal from its 2020 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at 212-450-4397 or william.aaronson@davispolk.com. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its response.
Very truly yours,

William H. Aaronson

Attachments

cc w/ att.: Samuel P. Fried,
L Brands, Inc.

John Chevedden,
Proponent
Dear Mr. Fried,

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
Mr. Sam Fried  
EVP - Law, Policy & Governance  
L Brands, Inc. (LB)  
3 Limited Parkway  
Columbus, OH 43230  
PH: 614-415-7000  
PH: 614-415-7199  
FX: 614-415-7786  
FX: 614-415-7240  
FX: 614-415-7440

Dear Mr. Fried,

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  

September 24, 2019
RESOLVED, shareholders ask that our Company take all the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year for a one-year term.

Arthur Levitt, former Chairman of the Securities and Exchange Commission said, “In my view it’s best for the investor if the entire board is elected once a year. Without annual election of each director shareholders have far less control over who represents them.”

A total of 79 S&P 500 and Fortune 500 companies, worth more than $1 trillion, also adopted this important proposal topic since 2012. Annual elections are widely viewed as a corporate governance best practice. Annual election of each director could make directors more accountable, and thereby contribute to improved performance and increased company value.

It is ridiculous to for L Brands directors beyond age 80 to run for a 3-year term and we had 3 such directors. Plus our stock is in the cellar. In 4-years of a robust market our stock dropped from $95 to $18.

Hopefully this proposal will achieve the same level of support as the 2019 shareholder proposal for a simple majority vote standard – 98%-support.

Please vote yes:

Elect Each Director Annually – Proposal [4]
John Chevedden, *** sponsors this proposal.

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(l)(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:

On behalf of L Brands, Inc., please find attached a letter regarding certain procedural deficiencies concerning the stockholder proposal that was sent to L Brands, Inc. via email at 12:03 am (EDT) on September 25, 2019.

Best regards,

Sang

Sang Hun Lee
Davis Polk & Wardwell LLP
450 Lexington Avenue | New York, NY 10017
+1 212 450 3329 tel | +1 646 460 2036 mobile
sanghun.lee@davispolk.com

Confidentiality Note: This email is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. Unauthorized use, dissemination, distribution or copying of this email or the information herein or taking any action in reliance on the contents of this email or the information herein, by anyone other than the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, is strictly prohibited. If you have received this email in error, please notify the sender immediately and destroy the original message, any attachments thereto and all copies. Please refer to the firm's Privacy Notice for important information on how we process personal data. Our website is at www.davispolk.com.
Dear Mr. Chevedden:

I am writing on behalf of L Brands, Inc. (the “Company”), which received a letter that was sent via e-mail at 12:03 am (EDT) on September 25, 2019 submitting a stockholder proposal for inclusion in the Company’s proxy statement for the 2020 annual meeting. The proposal contains certain procedural deficiencies, which the Securities and Exchange Commission (“SEC”) regulations require us to bring to your attention.

Proof of Ownership. Rule 14a-8(b)(1) of the Securities Exchange Act of 1934, as amended, requires that in order to be eligible to submit a proposal for inclusion in the Company’s proxy statement, each shareholder proponent must, among other things, have continuously held at least $2,000 in market value of the Company’s common stock, or 1%, of the company’s securities entitled to vote on the proposal at the meeting for at least one year by the date you submitted the proposal.

The Company’s stock records do not indicate that you are currently the registered holder on the Company’s books and records of any shares of the Company’s common stock and you have not provided proof of ownership. Accordingly, you must submit to us a written statement from the “record” holder of the shares (usually a bank or broker) verifying that, at the time you submitted the proposal on September 25, 2019, you had continuously held at least $2,000 in market value, or 1%, of the Company’s common stock for at least the one year period prior to and including September 25, 2019.

Rule 14a 8(b) requires that a proponent of a proposal must prove eligibility as a shareholder of the company by submitting either:

- a written statement from the “record” holder of the securities verifying that at the time the proponent submitted the proposal, the proponent had continuously held the requisite amount of securities for at least one year; or

- a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the proponent’s ownership of shares as of or before the date on which the one year eligibility period begins and the proponent’s
written statement that he or she continuously held the required number of shares for the one year period as of the date of the statement.

To help shareholders comply with the requirements when submitting proof of ownership to companies, the SEC’s Division of Corporation Finance published Staff Legal Bulletin No. 14F ("SLB 14F"), dated October 18, 2011, and Staff Legal Bulletin No. 14G ("SLB 14G"), dated October 16, 2012. We have attached copies of both for your reference. A copy of Rule 14a-8, which applies to shareholder proposals submitted for inclusion in proxy statements, is also enclosed for your reference.

Please note that most large U.S. banks and brokers deposit their customers’ securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). SLB 14F and SLB 14G provide that for securities held through the DTC, only DTC participants should be viewed as “record” holders of securities that are deposited at DTC. You can confirm whether your bank or broker is a DTC participant by checking DTC’s participant list, which is currently available on the Internet at [http://www.dtcc.com/client-center/dtc-directories](http://www.dtcc.com/client-center/dtc-directories).

If you hold shares through a bank or broker that is not a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds your shares. You should be able to find out the name of the DTC participant by asking your bank or broker. If the DTC participant that holds your shares knows your bank or broker’s holdings, but does not know your holdings, you may satisfy the proof of ownership requirements by submitting two proof of ownership statements—one from your bank or broker confirming your ownership and the other from the DTC participant confirming the bank or broker’s ownership. Both should verify your ownership for the one-year period prior to and including September 25, 2019. Please review SLB 14F carefully before submitting proof of ownership to ensure that it is compliant.

In order to meet the eligibility requirements for submitting a shareholder proposal, the SEC rules require that these defects that we have identified be remedied and any supporting documentation must be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Please address any response to me at the address as provided above.

Sincerely,

[Signature]

Samuel P. Fried
Executive Vice President

Enclosure
Rule 14a-8 - Shareholder proposals.

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

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

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

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

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

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

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, 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, or in shareholder reports of investment companies under Rule 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 Rule 14a-8 and provide you with a copy under Question 10 below, Rule 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 Rule 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 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
Rule 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 Rule 14a-21(b) of this chapter.

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

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

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

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

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

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

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

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

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

   (i) The proposal;

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

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

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

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

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

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

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

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

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

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, Rule 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 Rule 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.

A. The purpose of this bulletin

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

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

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission’s website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.
B. The types of brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

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

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

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. Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder’s holdings satisfy Rule 14a-8(b)’s eligibility requirement.

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

2. 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

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1 See Rule 14a-8(b).

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

3 If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).
DTC. The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC’s nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a “securities position listing” as of a specified date, which identifies the DTC participants having a position in the company’s securities and the number of securities held by each DTC participant on that date.5

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

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

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

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


7 See KBR Inc. v. Chevedden, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); Apache Corp. v. Chevedden, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company’s non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.
We believe that taking this approach as to who constitutes a “record” holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,\(^8\) under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

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

\(\text{How can a shareholder determine whether his or her broker or bank is a DTC participant?}\)

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/downloads/membership/directories/dtc/alpha.pdf.

\(\text{What if a shareholder’s broker or bank is not on DTC’s participant list?}\)

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.

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

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.

\(^8\) Techne Corp. (Sept. 20, 1988).

\(^9\) In addition, if the shareholder’s broker is an introducing broker, the shareholder’s account statements should include the clearing broker’s identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.
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).\(^\text{10}\) We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder’s beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date before the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date after the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder’s beneficial ownership over the required full one-year period preceding the date of the proposal’s submission.

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

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.
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.
Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

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

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

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

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

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a “written statement from the ‘record’ holder of your securities (usually a broker or bank)...."
In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company (“DTC”) should be viewed as “record” holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

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

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

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

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

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

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

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

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

D. Use of website addresses in proposals and supporting statements

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

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise
the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this
view and, accordingly, we will continue to count a website address as one word for purposes of
Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a
proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14,
which provides that references to website addresses in proposals or supporting statements could
be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is
materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in
corvarention of the proxy rules, including Rule 14a-9.³

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

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

References to websites in a proposal or supporting statement may raise concerns under Rule
14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as
vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor
the company in implementing the proposal (if adopted), would be able to determine with any
reasonable certainty exactly what actions or measures the proposal requires. In evaluating
whether a proposal may be excluded on this basis, we consider only the information contained in
the proposal and supporting statement and determine whether, based on that information,
shareholders and the company can determine what actions the proposal seeks.

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

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

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

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

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

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

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

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

4 A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.
From: ***
Sent: Thursday, October 10, 2019 11:18 PM
To: Fried, Sam <SFried@lb.com>
Subject: [External] Rule 14a-8 Proposal (LB) blb

Mr. Fried,
Please see the attached letter.
Sincerely,
John Chevedden
10/10/2019

John Chevedden
***

Re: Your TD Ameritrade Account Ending in ***

Dear John Chevedden,

Thank you for allowing me to assist you today. As you requested, this letter confirms that, as of the date of this letter, you have continuously held no less than the below number of shares in the above referenced account since July 1, 2018.

Limited Brands, Inc (LB) 90 shares

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We’re available 24 hours a day, seven days a week.

Sincerely,

Andrew P. Haag
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

Mr. Fried,
Please see the attached letter.
Sincerely,
John Chevedden
10/16/2019

John Chevedden
***

Re: Your TD Ameritrade Account Ending in ***

Dear John Chevedden,

Thank you for allowing me to assist you today. As you requested, this letter confirms that, as of the date of this letter, you have continuously held no less than the below number of shares in the above referenced account since July 1, 2018:

L Brands, Inc. (LB) 90 shares

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

Jennifer Hickman
Jennifer Hickman
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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Dear Mr. Chevedden:

I am writing in reference to your stockholder proposal for L Brands to declassify its board of directors.

Please see the attached press release from April 18, 2019 announcing that our board has committed to submitting a proposal at our 2020 annual meeting of stockholders to declassify the board which, if approved, will be implemented immediately so that the entire board will face annual elections in 2021.

For that reason, we would appreciate you withdrawing your proposal.

Please confirm and I am happy to address any questions you have regarding this subject.

Sincerely,
Samuel P. Fried
sfried@lb.com
614-415-7199 T
614-595-2528 M

Dear Mr. Fried,

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
COLUMBUS, Ohio, April 18, 2019 (GLOBE NEWSWIRE) -- L Brands, Inc. (NYSE: LB) today announced its slate of director nominees for election to the board of directors at the company’s 2019 Annual Meeting of Stockholders, which includes three independent directors with considerable expertise in business, finance, governance and leadership, as well as L Brands’ founder, chairman and chief executive officer, Leslie H. Wexner. Joining incumbent directors Patricia S. Bellinger and Wexner on the company’s slate are Anne Sheehan and Sarah E. Nash. If the company’s slate of director nominees is elected at the 2019 Annual Meeting, more than 40 percent of the L Brands board will be women.

Additionally, the L Brands board has unanimously committed to submitting and recommending that stockholders vote in favor of proposals at the company’s 2020 Annual Meeting of Stockholders to declassify the board immediately, so that all directors will stand for election at the company’s 2021 Annual Meeting of Stockholders, and to eliminate the company’s supermajority voting requirements.

“We are pleased to nominate Anne and Sarah as new independent directors and believe the addition of fresh perspectives to our board will be beneficial to L Brands, its businesses and the actions underway to improve performance and support our growth,” said Allan R. Tessler, lead independent director and chair of the board's Nominating and Governance Committee. “Anne and Sarah bring governance and financial expertise and public company board experience that will be invaluable to the board and management team. Further, we believe the governance enhancements we are committed to making will ensure our board best serves the interests of our stockholders.”

The company also announced today that it has entered into an agreement with Barington Capital Group, L.P. and Barington Companies Equity Partners, L.P. (collectively, “Barington”), pursuant to which Barington has agreed to vote all of its shares in favor of L Brands’ nominees at the 2019 Annual Meeting and agreed to customary provisions. Under the agreement, Barington Capital Group, L.P. will serve as special advisor to L Brands.

Tessler continued, “We appreciate Barington’s role in providing valuable input on director nominations and corporate governance, and we look forward to benefitting from its experience and role as special advisor as we work together to drive L Brands’ growth and future success.”

James A. Mitarotonda, chairman and chief executive officer of Barington said, “We are pleased to have reached this collaborative agreement with the L Brands board and management team. We are aligned in our belief that there are significant opportunities to continue to drive improved financial results, and look forward to working closely with the company and the board toward our shared goal of enhancing long-term stockholder value.”

Wexner said, “L Brands is committed to creating long-term value for all L Brands stockholders by delivering growth, strengthening our financial performance and building on our leading market positions. We will continue to take actions that we believe will enable us to achieve these important objectives.”

ABOUT ANNE SHEEHAN:

Anne Sheehan is the Chair of the Securities and Exchange Commission’s Investor Advisory Committee. From 2008 until 2018, Sheehan served as the Director of Corporate Governance at The California State Teachers’ Retirement System (CalSTRS), the largest educator-only pension fund in the world and the second largest pension fund in the United States. She previously served as the Chief Deputy Director for Policy at the California Department of Finance from 2004 to 2008 and as Executive Director at the California Building Industry Foundation from 2000 to 2004. Sheehan is a founder of the Investor Stewardship Group and serves on the Advisory Board of the Weinberg Center for Corporate Governance at the University of Delaware.

ABOUT SARAH E. NASH:

Sarah Nash is the Chair of the Board and Chief Executive Officer of privately held Novagard Solutions, a manufacturer of silicone sealants, coatings, foam and thermal products, and has held this position since 2018. Nash spent nearly 30 years in investment banking at JPMorgan Chase & Co. (and predecessor companies), retiring as Vice Chairman, Global Investment Banking, in 2005. Nash currently serves on the board of Blackbaud, Inc., a software company providing technology solutions for the not-for-profit industry, and has done so since 2010, on the board of Knoll, Inc., a designer and manufacturer of lifestyle and workplace furnishings, textiles and fine leathers, and has done so since 2006 and on the board of privately held Irving Oil Company, and has done so since 2012. Nash previously served as a director of Merrimack Pharmaceuticals, Inc., a biopharmaceutical company, from 2006 until 2014. Nash is a trustee of the New York-Presbyterian Hospital, a member of the National Board of the Smithsonian Institution and Chairman of the International Advisory Board of the Montreal Museum of Fine Arts.

ABOUT BARINGTON CAPITAL GROUP, L.P.:

Barington Capital Group, L.P. is a fundamental, value-oriented activist investment firm founded in January 2000 by James A. Mitarotonda. Barington invests in undervalued publicly traded companies that it believes can appreciate significantly in value when substantive improvements are made to their operations, corporate strategy, capital allocation and corporate governance made. Barington’s investment team, advisors and network of industry experts draw upon their extensive strategic, operating and boardroom experience to assist companies in designing and implementing initiatives to improve long-term stockholder value. Barington has significant experience investing in consumer-focused companies, with prior investments in companies such as The Children’s Place, Dillard’s, The Jones Group, Warnaco, Nautica, The Pep Boys, Steven Madden, Avon Products and Darden Restaurants.

ABOUT L BRANDS:

L Brands, through Victoria’s Secret, PINK and Bath & Body Works, is an international company. The company operates 2,943 company-owned specialty stores in the United States, Canada, the United Kingdom and Greater China, and its brands are also sold in more than 650 franchised

Safe Harbor Statement Under the Private Securities Litigation Reform Act of 1995
We caution that any forward-looking statements (as such term is defined in the Private Securities Litigation Reform Act of 1995) contained in this press release or made by our company or our management involve risks and uncertainties and are subject to change based on various factors, many of which are beyond our control. Accordingly, our future performance and financial results may differ materially from those expressed or implied in any such forward-looking statements. Words such as "estimate," "project," "plan," "believe," "expect," "anticipate," "intend," "planned," "potential" and any similar expressions may identify forward-looking statements. Risks associated with the following factors, among others, in some cases have affected and in the future could affect our financial performance and actual results and could cause actual results to differ materially from those expressed or implied in any forward-looking statements included in this press release or otherwise made by our company or our management:

- general economic conditions, consumer confidence, consumer spending patterns and market disruptions including severe weather conditions, natural disasters, health hazards, terrorist activities, financial crises, political crises or other major events, or the prospect of these events;
- the seasonality of our business;
- the dependence on mall traffic and the availability of suitable store locations on appropriate terms;
- our ability to grow through new store openings and existing store remodels and expansions;
- our ability to successfully expand internationally and related risks;
- our independent franchise, license and wholesale partners;
- our direct channel businesses;
- our ability to protect our reputation and our brand images;
- our ability to attract customers with marketing, advertising and promotional programs;
- our ability to protect our trade names, trademarks and patents;
- the highly competitive nature of the retail industry and the segments in which we operate;
- consumer acceptance of our products and our ability to manage the life cycle of our brands, keep up with fashion trends, develop new merchandise and launch new product lines successfully;
- our ability to source, distribute and sell goods and materials on a global basis, including risks related to:
  - political instability, significant health hazards, environmental hazards or natural disasters;
  - duties, taxes and other charges;
  - legal and regulatory matters;
  - volatility in currency exchange rates;
  - local business practices and political issues;
  - potential delays or disruptions in shipping and transportation and related pricing impacts;
  - disruption due to labor disputes; and
  - changing expectations regarding product safety due to new legislation;
- our geographic concentration of vendor and distribution facilities in central Ohio;
- fluctuations in foreign currency exchange rates;
- stock price volatility;
- our ability to pay dividends and related effects;
- our ability to maintain our credit rating;
- our ability to service or refinance our debt;
- shareholder activism matters;
- our ability to retain key personnel;
- our ability to attract, develop and retain qualified associates and manage labor-related costs;
- the ability of our vendors to deliver products in a timely manner, meet quality standards and comply with applicable laws and regulations;
- fluctuations in product input costs;
- our ability to adequately protect our assets from loss and theft;
- fluctuations in energy costs;
- increases in the costs of mailing, paper and printing;
- claims arising from our self-insurance;
- liabilities arising from divested businesses;
- our ability to implement and maintain information technology systems and to protect associated data;
- our ability to maintain the security of customer, associate, third-party or company information;
- our ability to comply with regulatory requirements;
- legal and compliance matters; and
- tax, trade and other regulatory matters.

We are not under any obligation and do not intend to make publicly available any update or other revisions to any of the forward-looking statements contained in this press release to reflect circumstances existing after the date of this report or to reflect the occurrence of future events even if experience or future events make it clear that any expected results expressed or implied by those forward-looking statements will not be realized.

For further information, please contact:
Mr. Fried,
Please advise the prospects for the 2 management proposal receiving enough support to pass.
John Chevedden
Mr. Chevedden,

We have every expectation that both management proposals will pass.

The board will recommend for both proposals, and the company has made a very public commitment to corporate governance enhancements, as stated in the press release that I sent to you previously.

If you wish to discuss further, please let me know.

Sincerely,
Samuel P. Fried
sfried@lb.com
614-415-7199 T
614-595-2528 M

Mr. Fried,
Please advise the prospects for the 2 management proposal receiving enough support to pass.
John Chevedden
Dear Mr. Fried,

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
Mr. Sam Fried  
EVP - Law, Policy & Governance  
L Brands, Inc. (LB)  
3 Limited Parkway  
Columbus, OH 43230  
PH: 614 415-7000  
PH: 614-415-7199  
FX: 614-415-7786  
FX: 614-415-7240  
FX: 614-415-7440

Dear Mr. Fried,

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

[Signature]  
[Date]
RESOLVED, shareholders ask that our Company take all the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year for a one-year term.

Arthur Levitt, former Chairman of the Securities and Exchange Commission said, “In my view it’s best for the investor if the entire board is elected once a year. Without annual election of each director shareholders have far less control over who represents them.”

A total of 79 S&P 500 and Fortune 500 companies, worth more than $1 trillion, adopted this important proposal topic since 2012. Annual elections are widely viewed as a corporate governance best practice. Annual election of each director could make directors more accountable, and thereby contribute to improved performance and increased company value.

It is ridiculous for the L Brands directors beyond age 80 to run for a 3-year term. L Brands had 3 such directors. Plus our stock is in the cellar. In 4-years of a robust market our stock dropped from $95 to $18.

Hopefully this proposal will achieve the same level of support as the 2019 shareholder proposal for a simple majority vote standard – 98%-support.

Please vote yes:

Elect Each Director Annually – Proposal [4]
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 ***
Dear Mr. Chevedden,

Following up from L Brands’ email below, could you please let us know if you agree to withdraw your proposal (as revised on December 27), given that the L Brands board has committed to submitting a proposal at the company’s 2020 annual meeting to declassify the board (which, if approved, will be implemented immediately so that the entire board will face annual elections in 2021)? If you do not agree to withdraw your proposal, we would appreciate your confirmation as well.

Best,
Cheryl Chan

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From: Fried, Sam <SFried@lb.com>
Sent: Wednesday, December 18, 2019 9:33 AM
To: ***
Subject: RE: Rule 14a-8 Proposal (LB)

Mr. Chevedden,

We have every expectation that both management proposals will pass.

The board will recommend for both proposals, and the company has made a very public commitment to corporate governance enhancements, as stated in the press release that I sent to you previously.

If you wish to discuss further, please let me know.

Sincerely,
Samuel P. Fried
sfried@lb.com
614-415-7199 T
614-595-2528 M
From: ***
Sent: Tuesday, December 17, 2019 4:10 PM
To: Fried, Sam <SFried@lb.com>
Subject: [External] Rule 14a-8 Proposal (LB)

Mr. Fried,
Please advise the prospects for the 2 management proposal receiving enough support to pass.
John Chevedden
L Brands Announces Slate of Directors for 2019 Annual Meeting of Stockholders

April 18, 2019

**Commits to Implementing Governance Enhancements**

**Enters into Agreement with Barington Capital Group, L.P.**

COLUMBUS, Ohio, April 18, 2019 (GLOBE NEWSWIRE) -- L Brands, Inc. (NYSE: LB) today announced its slate of director nominees for election to the board of directors at the company’s 2019 Annual Meeting of Stockholders, which includes three independent directors with considerable expertise in business, finance, governance and leadership, as well as L Brands’ founder, chairman and chief executive officer, Leslie H. Wexner. Joining incumbent directors Patricia S. Bellinger and Wexner on the company’s slate are Anne Sheehan and Sarah E. Nash. If the company’s slate of director nominees is elected at the 2019 Annual Meeting, more than 40 percent of the L Brands board will be women.

Additionally, the L Brands board has unanimously committed to submitting and recommending that stockholders vote in favor of proposals at the company’s 2020 Annual Meeting of Stockholders to declassify the board immediately, so that all directors will stand for election at the company’s 2021 Annual Meeting of Stockholders, and to eliminate the company’s supermajority voting requirements.

“We are pleased to nominate Anne and Sarah as new independent directors and believe the addition of fresh perspectives to our board will be beneficial to L Brands, its businesses and the actions underway to improve performance and support our growth,” said Allan R. Tessler, lead independent director and chair of the board’s Nominating and Governance Committee. “Anne and Sarah bring governance and financial expertise and public company board experience that will be invaluable to the board and management team. Further, we believe the governance enhancements we are committed to making will ensure our board best serves the interests of our stockholders.”

The company also announced today that it has entered into an agreement with Barington Capital Group, L.P. and Barington Companies Equity Partners, L.P. (collectively, “Barington”), pursuant to which Barington has agreed to vote all of its shares in favor of L Brands’ nominees at the 2019 Annual Meeting and agreed to customary provisions. Under the agreement, Barington Capital Group, L.P. will serve as special advisor to L Brands.

Tessler continued, “We appreciate Barington’s role in providing valuable input on director nominations and corporate governance, and we look forward to benefitting from its experience and role as special advisor as we work together to drive L Brands’ growth and future success.”

James A. Mitarotonda, chairman and chief executive officer of Barington said, “We are pleased to have reached this collaborative agreement with the L Brands board and management team. We are aligned in our belief that there are significant opportunities to continue to drive improved financial results, and look forward to working closely with the company and the board toward our shared goal of enhancing long-term stockholder value.”

Wexner said, “L Brands is committed to creating long-term value for all L Brands stockholders by delivering growth, strengthening our financial performance and building on our leading market positions. We will continue to take actions that we believe will enable us to achieve these important objectives.”

**ABOUT ANNE SHEEHAN:**

Anne Sheehan is the Chair of the Securities and Exchange Commission’s Investor Advisory Committee. From 2008 until 2018, Sheehan served as the Director of Corporate Governance at The California State Teachers’ Retirement System (CalSTRS), the largest educator-only pension fund in the world and the second largest pension fund in the United States. She previously served as the Chief Deputy Director for Policy at the California Department of Finance from 2004 to 2008 and as Executive Director at the California Building Industry Foundation from 2000 to 2004. Sheehan is a founder of the Investor Stewardship Group and serves on the Advisory Board of the Weinberg Center for Corporate Governance at the University of Delaware.

**ABOUT SARAH E. NASH:**

Sarah Nash is the Chair of the Board and Chief Executive Officer of privately held Novagard Solutions, a manufacturer of silicone sealants, coatings, foam and thermal products, and has held this position since 2018. Nash spent nearly 30 years in investment banking at JPMorgan Chase & Co. (and predecessor companies), retiring as Vice Chairman, Global Investment Banking, in 2005. Nash currently serves on the board of Blackbaud, Inc., a software company providing technology solutions for the not-for-profit industry, and has done so since 2010, on the board of Knoll, Inc., a designer and manufacturer of lifestyle and workplace furnishings, textiles and fine leathers, and has done so since 2006 and on the board of privately held Irving Oil Company, and has done so since 2012. Nash previously served as a director of Merrimack Pharmaceuticals, Inc., a biopharmaceutical company, from 2006 until 2014. Nash is a trustee of the New York-Presbyterian Hospital, a member of the National Board of the Smithsonian Institution and Chairman of the International Advisory Board of the Montreal Museum of Fine Arts.

**ABOUT BARINGTON CAPITAL GROUP, L.P.:**

Barington Capital Group, L.P. is a fundamental, value-oriented activist investment firm founded in January 2000 by James A. Mitarotonda. Barington invests in undervalued publicly traded companies that it believes can appreciate significantly in value when substantive improvements are made to their operations, corporate strategy, capital allocation and corporate governance made to Barington’s investment team, advisors and network of industry experts draw upon their extensive strategic, operating and boardroom experience to assist companies in designing and implementing initiatives to improve long-term stockholder value. Barington has significant experience investing in consumer-focused companies, with prior investments in companies such as The Children’s Place, Dillard’s, The Jones Group, Warnaco, Nautica, The Pep Boys, Steven Madden, Avon Products and Darden Restaurants.

**ABOUT L BRANDS:**

L Brands, through Victoria’s Secret, PINK and Bath & Body Works, is an international company. The company operates 2,943 company-owned specialty stores in the United States, Canada, the United Kingdom and Greater China, and its brands are also sold in more than 650 franchised
Safe Harbor Statement Under the Private Securities Litigation Reform Act of 1995

We caution that any forward-looking statements (as such term is defined in the Private Securities Litigation Reform Act of 1995) contained in this press release or made by our company or our management involve risks and uncertainties and are subject to change based on various factors, many of which are beyond our control. Accordingly, our future performance and financial results may differ materially from those expressed or implied in any such forward-looking statements. Words such as “estimate,” “project,” “plan,” “believe,” “expect,” “anticipate,” “intend,” “planned,” “potential” and any similar expressions may identify forward-looking statements. Risks associated with the following factors, among others, in some cases have affected and in the future could affect our financial performance and actual results and could cause actual results to differ materially from those expressed or implied in any forward-looking statements included in this press release or otherwise made by our company or our management:

- general economic conditions, consumer confidence, consumer spending patterns and market disruptions including severe weather conditions, natural disasters, health hazards, terrorist activities, financial crises, political crises or other major events, or the prospect of these events;
- the seasonality of our business;
- the dependence on mall traffic and the availability of suitable store locations on appropriate terms;
- our ability to grow through new store openings and existing store remodels and expansions;
- our ability to successfully expand internationally and related risks;
- our independent franchise, license and wholesale partners;
- our direct channel businesses;
- our ability to protect our reputation and our brand images;
- our ability to attract customers with marketing, advertising and promotional programs;
- our ability to protect our trade names, trademarks and patents;
- the highly competitive nature of the retail industry and the segments in which we operate;
- consumer acceptance of our products and our ability to manage the life cycle of our brands, keep up with fashion trends, develop new merchandise and launch new product lines successfully;
- our ability to source, distribute and sell goods and materials on a global basis, including risks related to:
  - political instability, significant health hazards, environmental hazards or natural disasters;
  - duties, taxes and other charges;
  - legal and regulatory matters;
  - volatility in currency exchange rates;
  - local business practices and political issues;
  - potential delays or disruptions in shipping and transportation and related pricing impacts;
  - disruption due to labor disputes; and
  - changing expectations regarding product safety due to new legislation;
- our geographic concentration of vendor and distribution facilities in central Ohio;
- fluctuations in foreign currency exchange rates;
- stock price volatility;
- our ability to pay dividends and related effects;
- our ability to maintain our credit rating;
- our ability to service or refinance our debt;
- shareholder activism matters;
- our ability to retain key personnel;
- our ability to attract, develop and retain qualified associates and manage labor-related costs;
- the ability of our vendors to deliver products in a timely manner, meet quality standards and comply with applicable laws and regulations;
- fluctuations in product input costs;
- our ability to adequately protect our assets from loss and theft;
- fluctuations in energy costs;
- increases in the costs of mailing, paper and printing;
- claims arising from our self-insurance;
- liabilities arising from divested businesses;
- our ability to implement and maintain information technology systems and to protect associated data;
- our ability to maintain the security of customer, associate, third-party or company information;
- our ability to comply with regulatory requirements;
- legal and compliance matters; and
- tax, trade and other regulatory matters.

We are not under any obligation and do not intend to make publicly available any update or other revisions to any of the forward-looking statements contained in this press release to reflect circumstances existing after the date of this report or to reflect the occurrence of future events even if experience or future events make it clear that any expected results expressed or implied by those forward-looking statements will not be realized.

For further information, please contact: