January 14, 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
Newell Brands Inc. (NWL)
Written Consent
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 3, 2020 no-action request.

The purported precedent of Occidental Petroleum (January 30, 2018) is no precedent. Occidental Petroleum did not involve a fix-it proposal which this proposal is.

This is a fix-it proposal like the 2012 Home Depot proposal. The Home Depot proposal received 25% support in a first ever vote on a written consent fix-it proposal.

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

Sincerely,

John Chevedden

cc: Raj Dave <Raj.Dave@newellco.com>
March 7, 2012

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: The Home Depot, Inc.
   Incoming letter dated January 13, 2012

The proposal requests that the board take the steps necessary to strengthen the shareholder right to act by written consent. The proposal seeks removal of the requirement that a percentage of shares ask for a record date and the requirement that all shareholders must be solicited.

We are unable to concur in your view that Home Depot may exclude the proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that Home Depot’s practices and policies do not compare favorably with the guidelines of the proposal and that Home Depot has not, therefore, substantially implemented the proposal. Accordingly, we do not believe that Home Depot may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Sonia Bednarowski
Attorney-Adviser
January 13, 2020

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

# 2 Rule 14a-8 Proposal
Newell Brands Inc. (NWL)
Written Consent
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 3, 2020 no-action request.

Based on the claim in the no action request the existing written consent could require more shareholders to request a record date than would be able to act by written consent.

For instance in the tedious job of assembling 15% of shares held for one-year to request a record date, shareholders could find that they own more than 51% of company stock but only 15% of that stock is held for one continuous year.

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

Sincerely,

[Signature]
John Chevedden

cc: Raj Dave  <Raj.Dave@newellco.com>
January 5, 2020

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

# 1 Rule 14a-8 Proposal
Newell Brands Inc. (NWLN)
Written Consent
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 3, 2020 no-action request.

The company makes the impossible claim that “participating” in written consent has one meaning in the resolved statement and magically has a different meaning in the supporting statement.

“Participating” in written consent in the resolved statement clearly means material participation.

The company claims that, without help from any other text, “participating” in the supporting statement means sideline participation.

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

Sincerely,

[Signature]
John Chevedden

cc: Raj Dave <Raj.Dave@newellco.com>
Proposal [4] – Help Make Our Shareholder Written Consent Right a Meaningful Right

Shareholders request that our board of directors take the steps necessary to remove the requirement in the company governing documents that shares participating in written consent must be held continuously for at least one-year.

When Newell Brands directors adopted a shareholder right to act by written consent the directors put in a hurdle to make written consent a meaningless right. Newell Brands directors first made it necessary for 15% of Newell Brands shares to simply request a record date. Then any NWL stock that is not held continuously for one-year is disqualified from participating in written consent. Half of NWL stock could be held for less that one continuous year and thus be disqualified.

Thus is could be impossible to exercise a shareholder right to act by written consent because it could take unanimous written consent from the holders of NWL stock held continuously for one-year. And shareholders have no means of even contacting such a group of shareholders that furthermore may not even exist. There is no assurance that 50% of NWL shares are held continuously for one-year.

Please vote yes:

Help Make Our Shareholder Written Consent Right a Meaningful Right – Proposal [4]

[The above line – Is for publication.]
January 3, 2020

VIA E-MAIL

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

Re: Newell Brands Inc.
Stockholder Proposal Submitted by John Chevedden
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen,

This letter is to inform the staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) of the intention of Newell Brands Inc. (the “Company”) to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Stockholders (collectively, the “2020 Proxy Materials”) a stockholder proposal (the “Proposition”) and statement in support thereof received from John Chevedden (the “Proponent”). In accordance with Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Company respectfully requests confirmation that the Staff will not recommend enforcement action if the Company excludes the Proposal from its 2020 Proxy Materials.

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Commission no later than 80 calendar days before the company intends to file its definitive 2020 Proxy Materials with the Commission, which is currently expected to be filed on or about March 27, 2020; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff with regard to company requests such as this. Accordingly, the Company is taking this opportunity to inform the Proponent that if the Proponent elects to submit correspondence to the Commission or the Staff with respect to this request, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.
THE PROPOSAL

The Proposal states as follows:

"Shareholders request that our board of directors take the steps necessary to remove the requirement in the company governing documents that shares participating in written consent must be held continuously for at least one-year."

In support of the Proposal, the Proponent includes several statements that describe his views as to why the Company’s current written consent right is not meaningful. For example, the Proposal states “[t]hen any NWL stock that is not held continuously for one-year is disqualified from participating in written consent” (emphasis added); further states that “[t]hus is (sic) could be impossible to exercise a shareholder right to act by written consent because it could take unanimous written consent from the holders of NWL stock held continuously for one-year. Half of NWL stock could be held for less that (sic) one continuous year and thus be disqualified”; and notes that “[t]here is no assurance that 50% of NWL shares are held continuously for one-year.”

A copy of the Proposal and the related supporting statement, as well as related correspondence between the Company and the Proponent is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2020 Proxy Materials pursuant to:

- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal; and
- Rule 14a-8(i)(3) because the Proposal is false and misleading in violation of Rule 14a-9.

BACKGROUND

In 2017, the Company received and included in its 2018 Proxy Statement a shareholder proposal from the Proponent that requested the “board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting…” At the time, the Company’s Restated Certificate of Incorporation did not permit stockholders to act by written consent.

The stockholder proposal was narrowly approved by 50.1% of the shares voted at the 2018 Annual Meeting of Stockholders (the “2018 Annual Meeting”), which constituted approximately 45% of shares outstanding. Subsequent to the 2018 Annual Meeting and in response to the majority supported proposal, the Company conducted stockholder outreach to investors representing approximately 58% of

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1 See the Company’s 2018 Definitive Proxy Statement on DEF14A (filed on April 5, 2019) available at https://www.sec.gov/Archives/edgar/data/814453/000119312519099221/d667250ddef14a.htm
shares outstanding and sought their feedback on a stockholder right to act by written consent. Many of the Company’s stockholders expressed the view that the Company should be responsive to the majority supported proposal and, therefore, should adopt some form of the right to act by written consent. Some were of the view that the right to act by written consent was unnecessary in light of other existing corporate governance policies and procedures, including the right of stockholders who hold at least 15% of outstanding shares to call special meetings and the existing proxy access bylaw provisions.

After careful consideration of the feedback heard from stockholders, the Company’s Board of Directors (the “Board”) included a management proposal (the “2019 Board Proposal”) in the 2019 Proxy Statement to amend the Company’s Restated Certificate of Incorporation (the “Certificate”) and By-Laws (collectively, the “Amendments”) to permit stockholders to act by written consent. The 2019 Board Proposal submitted by management at the 2019 Annual Meeting of Stockholders (the “2019 Annual Meeting”) received the support of over 80% of shares present.² The Amendments included procedural and other safeguards, which the Board believed were in the best interests of the Company and its stockholders, to address concerns that the written consent process could be abused. Notably, the 2019 Board Proposal included the following safeguards that received overwhelming stockholder support:

- To reduce the risk that a small group of short-term, special interest or self-interested stockholders initiate actions that are not in the best interests of the Company or its stockholders and to reduce the financial and administrative burdens on the Company, the Amendments required that holders of at least 15% of outstanding shares (provided that such shares are determined to be Net Long Shares (as defined in the By-Laws) that have been held continuously for at least 1 year prior to the request) to request that the Board set a record date to determine the stockholders entitled to act by written consent. The ownership threshold required to request a record date for action by written consent is the same threshold required for stockholders to call a special meeting. The Board believed that the threshold for setting a record date to act by written consent and calling a special meeting should be the same so there is no advantage to proceeding in one way versus the other.

- To protect against stockholder disenfranchisement, the Amendments provided that written consents must be solicited from all stockholders in accordance with Regulation 14A of the Exchange Act, ensuring that a written consent solicitation statement is publicly filed and giving each stockholder the right to consider and act on a proposal. This protection eliminates the possibility that a small group of stockholders could act without a public and transparent discussion of the merits of any proposed action and without input from all stockholders. The Board reasoned that any such small group of stockholders may not owe a fiduciary duty to all stockholders and could act without deliberation and comment from the Company’s management or the Board which would in turn, deprive stockholders of this important deliberative process, during which stockholders can consider the advice of directors who owe a fiduciary duty to all stockholders.³

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² See the Company’s Form 8-K (filed May 10, 2019), available at https://www.sec.gov/Archives/edgar/data/814453/000119312519144259/d738214d8k.htm

³ See the Company’s Definitive Proxy Statement on DEF 14A (filed on April 5, 2019) available at https://www.sec.gov/Archives/edgar/data/814453/000119312519099221/d667250dde14a.htm
The Amendments became effective after the stockholders approved them at the 2019 Annual Meeting and continue in effect today.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) as Substantially Implemented

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has substantially implemented the proposal. As discussed below, the Company has substantially implemented the Proposal because the Certificate already provides all Company’s stockholders with the ability to participate in any action by written consent without a one-year continuous holding period requirement.

A. Rule 14a-8(i)(10) Background

Rule 14a-8(i)(10) permits a company to exclude a stockholder 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.” Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal only when proposals were “fully effected” by the company. See Exchange Act Release No. 19135 (Oct. 14, 1982). Therefore, in the 1983 Release, the Commission adopted a revised interpretation to the rule to permit the omission of proposals that had been “substantially implemented,” and the Commission codified this revised interpretation in Exchange Act Release No. 40018 (May 21, 1998) (“1998 Release”). Applying this standard, the Staff has noted, “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” Texaco, Inc. (avail. Mar. 28, 1991).

The Proposal states that it is “necessary for 15% of Newell Brands shares to simply request a record date. Then any NWL stock that is not held continuously for one-year is disqualified from participating in written consent.” (emphasis added)” The former statement is correct, but the latter statement is incorrect. The Certificate does require that a request for a record date be delivered by holders of record representing at least 15% of the Company’s outstanding voting stock. However, the requirement that the Company’s shares of voting stock must be held continuously for at least one year applies only to requesting a record date and not to participating in any stockholder action by written consent. In this regard, the relevant provision in the Certificate states as follows:

“A. Record Date. The record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be as fixed by the Board of Directors or as otherwise established under this Article. Any stockholder seeking to have stockholders authorize or take corporate action by written consent without a meeting shall, by written request addressed to the

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4 See the Company’s Form 8-K (filed May 10, 2019), available at [https://www.sec.gov/Archives/edgar/data/814453/000119312519144259/d738214d8k.htm](https://www.sec.gov/Archives/edgar/data/814453/000119312519144259/d738214d8k.htm)
secretary of the Corporation and delivered to the Corporation’s principal executive offices and
signed by holders of record at the time such request is delivered representing at least fifteen
percent (15%) of the outstanding voting stock of the Corporation, provided that such shares are
determined to be Net Long Shares (as defined in the By-Laws of the Corporation) that have been
held continuously for at least one year prior to the date of the written request (the “Requisite
Percentage”), request that a record date be set for such purpose.\footnote{5}

Participation in any stockholder action by written consent takes many forms, which could include
receiving notice of actions that shareholders seek to take by written consent, learning the views of fellow
stockholders, Company management and the Board on such issues and perhaps most importantly,
exercising any action by written consent. It is clear from the Proponent’s supporting statements that focus on the exercise of voting rights (e.g., “[t]hus is (sic) could be impossible to exercise a shareholder right to act by written consent because it could take unanimous written consent from the holders of NWL stock held continuously for one-year”) that the Proponent interprets the term “participation” similarly.

As noted above, the 2019 Board Proposal provided for, and was indeed designed for the purpose
of facilitating, broad participation in any stockholder action by written consent. In this regard, the Board
sought to reduce the risk that a small group of short-term, special interest or self-interested stockholders
initiate actions that are not in the best interests of the Company or its stockholders without having to seek
input (and actual written consents) from all stockholders. Notably, Article Ninth of the Certificate states that:

- “... all actions required or permitted to be taken by stockholders at an annual or special
  meeting of stockholders of the Corporation may be taken by the written consent of the
  holders of capital stock of the Corporation entitled to vote.”

- “Holders of shares of voting stock of the Corporation may take action by written consent
  only if consents are solicited from all holders of voting stock at the Corporation entitled
to vote on the matter and in accordance with Regulation 14A under the Securities
  Exchange Act of 1934 and other applicable law ...” and

- “No consent shall be effective until such date as the Inspectors certify to the Corporation
  that the consents delivered to the Corporation in accordance with Section F of this Article
  represent at least the minimum number of votes that would be necessary to vote thereon
  were present and voted, in accordance with Delaware law and this Restated Certificate of
  Incorporation.”\footnote{6}

The Board’s concern with stockholder disenfranchisement was the impetus for the requirement in
the Amendments that written consents must be solicited from all stockholders to eliminate the possibility
that a small group of stockholders could act without a public and transparent discussion of the merits of

\footnote{5}{See Section 3(a) of the Certificate of Amendment to the Restated Certificate of Incorporation of Newell Brands Inc., available at \url{https://www.sec.gov/Archives/edgar/data/814453/000119312519144259/d738214d8k.htm}}

\footnote{6}{See the Certificate at Section 3, Section 3(D) and Section 3(G), available at \url{https://www.sec.gov/Archives/edgar/data/814453/000119312519144259/d738214d8k.htm}}
any proposed action and without input from all stockholders. Any Company stockholder of record on the record date set for action by written consent may participate in executing any action by written consent regardless of the period of time during which they have held the Company’s shares. Under the Certificate, there is a substantive difference between initiating a request for a record date, for which the Company has established meaningful safeguards to protect the interests of stockholders and participating in deliberations and a vote on written consent after a record date has been established, for which a one-year continuous holding period requirement does not apply. The Board considered this difference and deliberately provided for the ability for broad participation in action by written consent.

B. The Amendments Substantially Implemented the Proposal

The Proposal may be properly excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Amendments have substantially implemented the Proposal. The Proposal’s stated objective is to make the stockholder written consent right a meaningful right by eliminating a non-existent requirement that the Company’s shares be held continuously for at least one-year in order for a stockholder to participate in any action by written consent. As discussed above, participation in any action by written consent is not limited to stockholders that have continuously held shares for one year, but rather that requirement only exists for stockholders initiating a request for a record date in connection with such action by written consent. The concept of participation in any action by written consent (which does not require continuous ownership for one year) is very different than requesting a record date (which does require continuous ownership for one year). As noted above, the Certificate currently provides that all stockholders of record as of the record date be solicited and given the opportunity to learn about the different views on issues and ultimately, execute any action by written consent. No action by written consent will be effective unless it has been approved by at least the minimum number of votes necessary to take corporate action at an annual or special meeting. Therefore, the existing right in the Certificate to participate in any stockholder action by written consent is robust, and the Amendments have substantially implemented the Proposal’s objective of having a meaningful right of participation.

In Occidental Petroleum Corporation (avail. January 30, 2018), the Staff concurred with the exclusion of a written consent proposal as substantially implemented under Rule 14a-8(i)(10) where the requesting company’s policies, practices and procedures compared favorably with the action sought in a shareholder proposal. In Occidental Petroleum Corporation, the proposal’s essential objective was that the Board permit stockholders to act by written consent pursuant to a requested approval threshold. In that letter, the company had already amended its certificate of incorporation to grant stockholders the ability to act by written consent using the very approval threshold requested in the proposal. Similar to Occidental Petroleum Corporation, the Proposal seeks to make the stockholder action by written consent right a meaningful right. The Proposal goes further to specifically assert that in order to achieve objectives sought by the proponent the Company should remove the requirement that shares participating in any stockholder action by written consent must be held continuously for at least one-year (emphasis added). Given that the Certificate already affords this right – and there is indeed no minimum holding period requirement for participation in any action by written consent – the Certificate’s provision on action by written consent compares favorably to the actions sought by the Proposal.

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7 See the Company’s 2019 Proxy Statement at p. 77, also available at https://www.sec.gov/Archives/edgar/data/814453/000119312519144259/d738214d8k.htm
As described in the Background section above, over the past two years, the Company and its Board have carefully deliberated, conducted outreach with stockholders, including the Proponent, and expended financial resources to draft and obtain stockholder approval for the existing action by written consent right in the Certificate. The concerns about meaningful and broad participation rights evidenced in the Proposal have been addressed. The Staff has concurred with the exclusion of “adopt” written consent proposals such as the Proposal under Rule 14a-8(i)(10) where the requesting company had taken all possible action to implement a written consent right. See, e.g., American Tower Corp. (avail. Mar. 5, 2015) (concurring with the exclusion of a proposal requesting the adoption of a written consent right where the company’s certificate permitted stockholder action by written consent); Citigroup Inc. (avail. Jan. 27, 2011) (same); PG&E Corp. (avail. Feb. 2, 2010) (same). Like the companies in American Tower Corp., Citigroup Inc., and PG&E Corp., the Company has already achieved the Proposal’s fundamental objective of “mak[ing] our shareholder written consent right a meaningful right” because the Certificate does not contain a continuous holding period requirement of at least one-year to participate in written consent.

The Company is aware that in Home Depot, Inc. (avail. Mar. 7, 2012), the proponent asked the company to take very specific steps to amend its written consent right, which included the “removal of the requirement that a percentage of shares ask for a record date to be set” and “removal of the requirement that all shareholders must be solicited.” The company argued that “shareholders have a meaningful right to act by written consent” but did not act to remove the specific restrictions at issue in that proposal. The Staff denied the company’s request, finding that the company’s practices and policies did not compare favorably with the proposal’s guidelines.

The Company’s situation is distinguishable from Home Depot, Inc. In the Company’s case, its practices and policies compare favorably with the Proposal’s requested action because the Certificate is consistent with the Proposal’s objective. The Proposal is styled as a request to change the stockholders’ existing action by written consent right and specifically takes issue with an inaccurate reading of the Certificate. In contrast to Home Depot, Inc. where the company did not act to remove specific restrictions at issue a proposal, the specific restriction raised by the Proponent for elimination does not exist. Further, the Company has given adequate consideration to the requisite holding period and ownership requirements to request a record date. As described above, the Board concluded that alignment with the requirements to call a special meeting and concern about the best interests of stockholders were important reasons to implement the one-year holding period requirement to request a record date, and this was overwhelmingly supported by stockholders in the approval of the 2019 Board Proposal. Participation in action by written consent is assured to all stockholders of record as of the record date established for action by written consent by the Certificate. Accordingly, the Company has substantially implemented the key objective of the Proposal and the Proposal may be excluded from the 2020 Proxy Materials in reliance on Rule 14a-8(i)(10).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Materially False and Misleading.

Rule 14a-8(i)(3) provides that a company may exclude from its proxy materials a stockholder proposal if the proposal or supporting statement is “contrary to any of the Commission’s proxy rules, including [Rule] 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” Specifically, Rule 14a-9 provides that no solicitation shall be made by means of any proxy
statement “containing any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” In Staff Legal Bulletin 14B, the Staff stated that exclusion under Rule 14a-8(i)(3) may be appropriate where “the company demonstrates objectively that a factual statement is materially false or misleading.” The Staff has concurred with the exclusion under Rule 14a-8(i)(3) of stockholder proposals that contain statements that are materially false or misleading. See, e.g., Microsoft Corp. (avail. Oct. 7, 2016) (concurring in the exclusion of a proposal requesting that the “board shall not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action” because neither the company nor its stockholders could determine which situations the proposal applied to or what types of conduct it was intended to address); Ferro Corp. (avail. Mar. 17, 2015) (concurring in the exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which improperly suggested that the stockholders would have increased rights if the Delaware law governed the company instead of Ohio law); General Electric Co. (avail. Jan. 6, 2009) (concurring in the exclusion of a proposal under which any director who received more than 25% in “withheld” votes would not be permitted to serve on any key board committee for two years because the company did not typically allow stockholders to withhold votes in director elections); Johnson & Johnson (avail. Jan. 31, 2007) (concurring in the exclusion of a proposal to provide stockholders a “vote on an advisory management resolution . . . to approve the Compensation Committee [R]eport” because the proposal would create the false implication that stockholders would receive a vote on executive compensation); State Street Corp. (avail. Mar. 1, 2005) (concurring in the exclusion of a proposal requesting stockholder action pursuant to a section of state law that had been recodified and was thus no longer applicable); General Magic, Inc. (avail. May 1, 2000) (concurring in the exclusion of a proposal requesting that the company make “no more false statements” to its stockholders because the proposal created the false impression that the company tolerated dishonest behavior by its employees when in fact the company had corporate policies to the contrary). Furthermore, the Staff has stated that “[when a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading.” Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”).

In the Company’s case, the Proposal is materially false and misleading because it incorrectly states that the Company’s Certificate possesses a requirement that shares must be held continuously for at least one-year in order to participate in any stockholder action by written consent. The Proposal makes multiple false statements that a one-year holding period requirement exists by asserting that “any NWL stock that is not held continuously for one-year is disqualified from participating in written consent. Half of NWL stock could be held for less than (sic) one continuous year and thus be disqualified (emphasis added).” As discussed previously, the one-year continuous holding period requirement only applies for requesting a record date for action by written consent. The Proposal also misinterprets participation in an overbroad and imprecise manner. As noted above, participation includes receiving notice of a record date and a request for action by written consent, considering the views of Company management, the Board and fellow stockholders, and voting on action by written consent. If included in the 2020 Proxy Materials, the Proposal would mislead investors to think that the current stockholder right to act by written consent in the Certificate limits all aspects of participation to only those stockholders who have held the requisite amount of stock continuously for one-year.
The Proposal also obfuscates and confuses the voting standard for written consent by stating that it “could be impossible to exercise a shareholder right to act by written consent because it could take a unanimous written consent from the holders of NWL stock held continuously for one year...[t]here is no assurance that 50% of NWL shares are held continuously for one year.” In fact, the one-year continuous holding requirement only applies to requesting a record date, not participating in the vote on written consent. In such a case, only 15% of shares outstanding would need to be held continuously for one year in order to request a record date. This is in contrast to the voting standard to effectuate an action by written consent, which would be in excess of 50% of total shares, but for which there is no minimum holding requirement. The above referenced statements render the Proposal excludable under Rule 14a-8(i)(3) because they falsely imply that the Company has a one-year continuous holding requirement to participate in action by written consent and set forth a 50% requirement that has no relevance to the record date request requirement.

As reflected in the Background section above, after the 2018 Annual Meeting of Stockholders, the Board sought to implement a meaningful stockholder right to act by written consent. A thorough process of Board deliberation and stockholder outreach resulted in the current written consent right that provides stockholders the ability to participate in written consent without a continuous one-year holding requirement. The Proposal asserts the contrary and confuses multiple concepts in a way that would be materially false and misleading to stockholders if disclosed in the 2020 Proxy Materials.

The materiality under Rule 14a-8(i)(3) of false and misleading assertions in a supporting statement is demonstrated by the court’s holding in Express Scripts Holding Co. v. Chevedden, 2014 WL 631538, at *4 (E.D. Mo. Feb. 18, 2014). There, in the context of a proposal that sought to separate the positions of chief executive officer and chairman, the court ruled that, “when viewed in the context of soliciting votes in favor of a proposed corporate governance measure, statements in the proxy materials regarding the company’s existing corporate governance practices are important to the stockholder’s decision whether to vote in favor of the proposed measure” and therefore are material. Just as in Express Scripts, the Proponent’s statements discussed above are misleading because they materially misconstrue the Company’s “existing governance practices.” Specifically, they convey the false notion that the Company has a continuous one-year holding requirement to participate in written consent and falsely suggest that the Proposal will improve a situation that does not exist. Additionally, similar to Express Scripts, the statements are material because stockholders would assume them to be true and would consider them in the context of determining how to vote on the Proposal. As a result, if the Company were to include the Proposal in its 2020 Proxy Materials, a stockholder’s vote might be based upon the mistaken assumption that the Proposal is necessary to enable him or her to participate more freely in written consent when in fact, the Company’s Certificate already permits stockholders who have not held Company shares continuously for one-year to participate in written consent. It would also lead to confusion between the requirements in the Certificate to request a record date for written consent (15% and one-year continuous ownership) and the requirements to participate in written consent (ownership on the record date).

The Proposal contains materially false and misleading statements about what is required to participate in written consent at the Company. It creates the false appearance of a bar on participation when no such bar exists and fails to clearly and adequately distinguish between the requirements to request a record date and to vote on written consent. Over the past two years, the Company spent a significant amount of time and resources considering the Proponent’s 2018 proposal, conducting outreach
with stockholders and adopting a provision in the Certificate intended to ensure broad and meaningful participation by written consent. Rule 14a-8(i)(3) is intended to protect a company from having to include in its proxy materials a proposal that contains materially false and misleading allegations that could mislead stockholders into supporting the proposal. The Company does not want to spread misunderstanding or confusion among its stockholders regarding their right to participate in action by written consent after the issue was robustly considered by the Board and the Board Proposal was overwhelmingly supported by stockholders during the 2019 proxy season. Accordingly, the Proposal is excludable under Rule 14a-8(i)(3) for containing materially false and misleading statements that violate Rule 14a-9.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to Raj.Dave@Newellco.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (201) 240-7465.

Sincerely,

Raj Dave
Vice President, Chief Securities Counsel & Assistant Secretary, Newell Brands Inc.

Enclosures

Cc: Bradford Turner, Esq., Chief Legal & Administrative Officer, Newell Brands Inc.
John Chevedden
EXHIBIT A

STOCKHOLDER PROPOSAL AND CORRESPONDENCE WITH COMPANY
Mr. Turner,
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. Bradford R. Turner  
Corporate Secretary  
Newell Brands Inc. (NWL)  
221 River Street  
Hoboken, NJ 07030  
PH: 201-610-6600  
PH: 770 418-7000  
FX: 770-677-8662  

Dear Mr. Turner,

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.

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

Sincerely,

[Signature]

November 30, 2019

Raj Dave <Raj.Dave@newellco.com>  
FX: 770-677-8710  
FX: 770-677-8737
Proposal [4] – Help Make Our Shareholder Written Consent Right a Meaningful Right

Shareholders request that our board of directors take the steps necessary to remove the requirement in the company governing documents that shares participating in written consent must be held continuously for at least one-year.

When Newell Brands directors adopted a shareholder right to act by written consent the directors put in a hurdle to make written consent a meaningless right. Newell Brands directors first made it necessary for 15% of Newell Brands shares to simply request a record date. Then any NWL stock that is not held continuously for one-year is disqualified from participating in written consent. Half of NWL stock could be held for less than one continuous year and thus be disqualified.

Thus is could be impossible to exercise a shareholder right to act by written consent because it could take unanimous written consent from the holders of NWL stock held continuously for one-year. And shareholders have no means of even contacting such a group of shareholders that furthermore may not even exist. There is no assurance that 50% of NWL shares are held continuously for one-year.

Please vote yes:

Help Make Our Shareholder Written Consent Right a Meaningful Right – Proposal [4]

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

Notes:
This proposal is believed to conform with Staff Legal Bulletin No. 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 ***
Mr. Turner,
Please see the attached broker letter.
Sincerely,
John Chevedden
12/06/2019

John Chevedden

Re: Your TD Ameritrade Account Ending in *** in TD Ameritrade Clearing Inc DTC #0188

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 October 1, 2018.

Cognizant Technology Solutions Corporation (CTSH) - 100 shares
eBay Inc. (EBAY) - 100 shares
Cummins Inc. (CMI) - 50 shares
Newell Brands Inc. (NWL) - 200 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,

[Signature]

Ryan Evers
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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Mr. Chevedden,

We have received your proposal dated November 30 and your broker letter dated December 6.

Raj Dave
Vice President, Chief Securities Counsel & Asst. Corporate Secretary
201.610.6751 (o)
201.240.7465 (m)
Raj.Dave@Newellco.com

Mr. Turner,
Please see the attached broker letter.
Sincerely,
John Chevedden
Thank you.