
JOHN CHEVEDDEN

February 3, 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
The Southern Company (SO)
Untimely No Action Request?
John Chevedden

Ladies and Gentlemen:

This is in regard to the belated January 23, 2020 no-action request.

This no action request is tainted by the company's lack of civility in regard to rule 14a-8 proposals. Attached is a rule 14a-8 proposal published in the company 2018 proxy. The company had the bad manners to publish 3 negative images in regard to the rule 14a-8 proposal.

Sincerely,



John Chevedden

cc: Laura O. Hewett <lohewett@southernco.com>

Stockholder Proposal

Item 4 ► Amendment to Proxy Access By-Law

The Board recommends a vote **AGAINST** Item 4.

- We have been advised that John Chevedden, holder of at least 100 shares of common stock, proposes to submit the following resolution at the annual meeting.

Proposal 4 - Enhanced Shareholder Proxy Access

RESOLVED: Stockholders ask the board of directors to amend its proxy access bylaw provisions and any associated documents, to include the following changes for the purpose of decreasing the average amount of Company common stock the average member of a nominating group would be required to hold for 3-years to satisfy the aggregate ownership requirements to form a nominating group and to increase the possible number of proxy access director candidates:

No limitation shall be placed on the number of stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors under our Company's proxy access provisions.

The number of shareholder-nominated candidates eligible to appear in proxy materials will be 25% of Directors.

Even if the 20 largest public pension funds were able to aggregate their shares, they would not meet the current 3% criteria for a continuous 3-years at most companies according to the Council of Institutional Investors. This proposal addresses the sadly ironic situation that our company now has with proxy access potentially for only the largest shareholders who are the least likely shareholders to make use of it.

For 20 shareholders to make use of our current proxy access – the average holding for such a group of 20 Southern Company shareholders would be \$75 million each. Plus it might take an average current holding of \$150 million each when any stock held for less than 3 continuous years is subtracted.

Please vote to improve management accountability to shareholders:
Enhanced Shareholder Proxy Access – Proposal 4

Board's Recommendation and Statement in Response

The Board recommends a vote **AGAINST** Item 4 for the following reasons:

The Board has carefully considered the proposal and recommends a vote **AGAINST** the proposal. In 2016, the Board recommended, and stockholders approved, a meaningful proxy access right for stockholders that is aligned with current best practices and gives stockholders a meaningful voice in the Director nomination and election process. The Board believes that our current proxy access By-Law continues to be in the best interests of all stockholders and that implementation of the changes requested by the proposal would disrupt the balance achieved in the current By-Law and take us out of step with the public companies that have adopted proxy access.

- Since May 2016, our By-Laws have provided that any stockholder or group of up to 20 stockholders that has maintained continuous qualifying ownership of at least 3% of our outstanding shares for at least three years can nominate and include in our proxy materials Director nominees constituting the greater of two nominees or 20% (rounded down) of the number of Directors in our proxy materials for the next annual meeting.
- The Board's decision to propose a proxy access amendment to our By-Laws at the 2016 annual meeting was the result of feedback from stockholder outreach throughout 2015 and 2016, consideration of evolving corporate governance trends and continuous review of our corporate governance practices. The proposed amendment was overwhelmingly approved by stockholders at the 2016 annual meeting, with support from over 95% of the shares voted.

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Stockholder Proposal

- ▶ The Board continues to believe that our proxy access framework strikes the appropriate balance between promoting stockholder nomination rights and protecting the interests of all our stockholders.
 - ▶ *The proposal requests removal of the limitation on the number of stockholders that can aggregate their shares to meet the 3% ownership threshold and would place no limit on the size of the group.* We believe the 20-stockholder aggregation limit in our proxy access By-Law is a reasonable limitation to control the administrative burden of confirming and monitoring share ownership within a nominating group and prevent the use of proxy access by a group that includes stockholders that do not have a substantial economic stake in the Company. In addition, a 20-stockholder limit is widely embraced by companies that have adopted proxy access. There are multiple combinations of 20 stockholders that collectively own 3% of the outstanding shares.
 - ▶ *The proposal requests an increase in the number of permitted proxy access nominees to 25% of the Board.* We believe that increasing the potential level of Board representation to 25% of the Board could have unintended effects, such as promoting the use of proxy access to lay the groundwork for effecting a change of control, encouraging the pursuit of special interests at the expense of a holistic, long-term strategic view or otherwise disrupting the effective functioning of the Board.
- ▶ During 2017 and 2018, we have had further discussions with a number of our largest stockholders regarding our proxy access By-Law. Based on their feedback as well as a benchmarking review of proxy access rights adopted by other companies, we continue to believe that our current proxy access framework is most appropriate for the Company and our stockholders at this time.
- ▶ We remain committed to corporate governance standards and practices that create long-term value for our stockholders. Key corporate governance practices that we have adopted include:
 - ▶ Annual election of Directors.
 - ▶ Majority voting for Directors, with a Director resignation policy, in uncontested Director elections.
 - ▶ 10% threshold for stockholders to request a special meeting.
 - ▶ Ability of stockholders to act by written consent.
 - ▶ 14 of the 15 Director nominees are independent with an average tenure of 7.5 years.
 - ▶ Proactive focus on Board composition and refreshment, including adding four new Directors to our Board in the past four years.
 - ▶ Strong Lead Independent Director.
 - ▶ All Board committees are comprised of independent Directors.
 - ▶ Annual Board and committee self-evaluations.
 - ▶ Proactive and robust stockholder engagement that includes participation of independent Directors.
 - ▶ Clawback policy under our Omnibus Plan.
 - ▶ Strong stock ownership guidelines for Directors and officers.
 - ▶ Annual management succession planning review.
 - ▶ Policy against hedging and pledging.

In light of our commitment to stockholder engagement and effective corporate governance as well as our meaningful, existing proxy access right, the Board believes that adoption of this stockholder proposal is not necessary and could be detrimental to stockholder value.

 The Board recommends a vote **AGAINST** the stockholder proposal.



JOHN CHEVEDDEN

February 2, 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
The Southern Company (SO)
Untimely No Action Request?
John Chevedden

Ladies and Gentlemen:

This is in regard to the belated January 23, 2020 no-action request.

The company filed its 2019 proxy on April 5, 2019.

Sincerely,



John Chevedden

cc: Laura O. Hewett <lohewett@southernco.com>

JOHN CHEVEDDEN

January 26, 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
The Southern Company (SO)
Untimely No Action Request?
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 23, 2020 no-action request.

Although company management received the rule 14a-8 proposal on November 25, 2019 it inexplicitly waited 50-days to raise any issue with the proponent.

Management also failed to provide any information to the Staff on whether its no action request is even timely.

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

Sincerely,


John Chevedden

cc: Laura O. Hewett <lohewett@southernco.com>

January 23, 2020

VIA E-MAIL

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

Re: *The Southern Company*
Stockholder Proposal of John Chevedden
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Southern Company (the “Company”), intends 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 and statements in support thereof (the “Proposal”), received from John Chevedden (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 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 of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be sent at the same time to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states:

Shareholders request our Board of Directors adopt as policy, and amend our governing documents as necessary, to require that the Chairman of the Board be an independent member of the Board whenever possible. Although it would be better to have an immediate transition to an independent Board Chairman, the Board would have the discretion to phase in this policy for the next Chief Executive Officer transition.

If the Board determines that a Chairman, who was independent when selected is no longer independent, the Board shall select a new Chairman who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived in the unlikely event that no independent director is available to serve as Chairman.

A copy of the Proposal and related correspondence with the Proponent is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(11) because the Proposal is virtually identical to, and therefore substantially duplicates, the Prior Proposal (as defined below), which was previously submitted to the Company and which the Company intends to include in the 2020 Proxy Materials.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates An Earlier Submitted Proposal That The Company Intends To Include In Its 2020 Proxy Materials

A. Background

The Proposal substantially duplicates a stockholder proposal the Company previously received from the New York City Comptroller on behalf of the New York City Teachers' Retirement System, the New York City Police Pension Fund, the New York City Fire Pension Fund, and the New York City Employee's Retirement System (the "Prior Proposal"),

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and together with the Proposal, the “Proposals”). The text of the Prior Proposal is attached in its entirety as Exhibit B. The Prior Proposal states:

RESOLVED: Shareholders of The Southern Company (“Southern”) ask the Board of Directors to adopt a policy, and amend the bylaws as necessary, to require the Chair of the Board to be an independent director. The policy should provide that (i) if the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the policy within 60 days of that determination; and (ii) compliance with this policy is waived if no independent director is available and willing to serve as Chair. This policy shall apply prospectively so as not to violate any contractual obligation.

The Company first received the Prior Proposal on November 14, 2019, which is prior to the date the Company received the Proposal on November 25, 2019. See Exhibit A and Exhibit B. The Company intends to include the Prior Proposal in its 2020 Proxy Materials.

B. Analysis

Rule 14a-8(i)(11) provides that a stockholder proposal may be excluded if it “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.” The Commission has stated that “the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” Exchange Act Release No. 12999 (Nov. 22, 1976). Two stockholder proposals need not be identical in order to provide a basis for exclusion under Rule 14a-8(i)(11). The standard that the Staff traditionally has applied for determining whether stockholder proposals are substantially duplicative is whether the proposals present the same “principal thrust” or “principal focus.” *Pacific Gas & Electric Co.* (avail. Feb. 1, 1993).

The resolved clauses in the Proposal and the Prior Proposal are virtually identical and, therefore, the Proposals share the same principal thrust or focus. In this regard, both Proposals seek adoption of a policy that the chairman (the “Chairman”) of the Company’s Board of Directors (the “Board”) be an independent director. The substantial similarities between the two Proposals include the following provisions:

- requesting that the Board adopt a policy;
- requesting amendment to the Company’s governing documents (as the Prior Proposal notes, the bylaws), as necessary, to implement the policy;

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- requiring the Chairman to be independent;
- noting that the policy may be phased in for the next Chief Executive Officer transition (as the Prior Proposal notes, applied on a prospective basis so as to not violate any contractual obligation);
- specifying that in the event the Board determines that a Chairman who was independent when selected is no longer independent, the Board shall select a new Chairman;
- requesting that the new independent Chairman shall be selected within a reasonable time period (defined as within 60 days in the Prior Proposal); and
- providing that the policy is waived if no independent director is willing and able to serve as Chairman.

Although the Proposal and the Prior Proposal use different words in a few places, these are minor differences that do not detract from the overall shared thrust of the Proposals and preponderance of virtually identical language in the resolved clauses.

Notably, the Staff recently already effectively provided a determination on the Proposals when a virtually identical pair of proposals was received in *Comcast Corp.* (avail. Mar. 14, 2019). There, the Staff concurred with the exclusion of a proposal requesting that the board “adopt as policy, and amend the bylaws as necessary, to require that the [c]hair of the [b]oard, whenever possible, be an independent member of the [b]oard” under Rule 14a-8(i)(11) as “substantially duplicative of a previously submitted proposal that will be included in the [c]ompany’s 2019 proxy materials.” The two proposals at issue in *Comcast* (the “Comcast Proposals”), like the Proposals, were virtually identical. In fact, the Comcast Proposals, one of which was submitted by the Proponent, shared the same critical commonalities noted in the bulleted-list above as between the Proposal and Prior Proposal, as well as similar minor variances. As the resolved clauses of the Proposals essentially mirror the Comcast Proposals, which the Staff determined to be substantially duplicative, the Proposal is properly excludable, consistent with *Comcast*, as substantially duplicative of the Prior Proposal which the Company intends to include in the 2020 Proxy Materials.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(11) of substantially duplicative proposals relating to an independent board chair. For example, in *Pfizer Inc.* (avail. Dec. 20, 2018), the Staff concurred with the exclusion of a proposal submitted by the Proponent requesting that the board “adopt as policy, and amend [its] governing documents as necessary, to require henceforth that the [c]hair of the [b]oard of [d]irectors, whenever possible, to be an independent member of the [b]oard” under Rule 14a-

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8(i)(11) on the basis that the proposal was “substantially duplicative of a previously submitted proposal that will be included in the [c]ompany’s 2019 proxy materials” where the two proposals contained virtually identical resolved clauses. *See also The Kroger Co.* (avail. Apr. 4, 2018) (concurring with the exclusion of a proposal requesting the board adopt a policy and amend the company’s governing documents to require the board chair, whenever possible, to be an independent director and to phase in the policy for the next CEO transition so it does not violate any existing agreement, because it substantially duplicated a previously submitted proposal requesting the board adopt a policy and amend the bylaws to require the board chair be independent and to apply the policy prospectively so as not to violate any contractual obligation); *Pfizer Inc.* (avail. Jan. 11, 2018) (concurring with the exclusion of a proposal requesting the board adopt a policy that, whenever possible, the board chair should be a director who has not previously served as an executive officer of the company and who is independent of management, and to implement the policy without violating any contractual obligation, because it substantially duplicated a previously submitted proposal requesting the board adopt a policy and amend the bylaws to require the board chair, whenever possible, be an independent director and to phase in the policy for the next CEO transition); and *Nabors Industries Ltd.* (avail. Feb. 28, 2013) (concurring with the exclusion of a proposal requesting adoption of a policy to require the chair to be an independent director who has not previously served as an executive officer of the company and to implement the policy so as not to violate any contractual obligation, because it substantially duplicated a previously submitted proposal requesting adoption of a policy to require the board chair to be an independent director and to apply the policy prospectively so as to not violate any contractual obligation). As described above, the principal thrust of the Proposals is the adoption of a policy providing for an independent board Chairman. Accordingly, like the precedent cited above, even though the Proposals have certain inconsequential differences in their terms, the Proposal substantially duplicates the Prior Proposal and is excludable pursuant to Rule 14a-8(i)(11).

Furthermore, the Staff has consistently concurred with the exclusion of proposals under Rule 14a-8(i)(11) when the earlier and later-received proposals presented the same principal thrust or focus despite containing completely different supporting statements. For example, in *Comcast*, as noted above, the Staff concurred with the exclusion under Rule 14a-8(i)(11) of a proposal where the supporting statement outlined certain management-related benefits of an independent chair and also expressed concern with the company’s current employment practices, including the use of “mandatory arbitration provisions and non-disclosure agreements for employee harassment and discrimination claims.” In contrast, the earlier-received proposal’s supporting statement raised concerns with a certain “beneficial owner of [company] class B common stock (with 100-to-one voting power)”. Despite the significant variances in subject matter and concern expressed as between the supporting statements of the Comcast Proposals, the Staff concurred that such proposals shared the same principal

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thrust such that relief under Rule 14a-8(i)(11) was appropriate. *See also Pfizer Inc. (International Brotherhood of Teamsters General Fund)* (avail. Feb. 28, 2019) (concurring with the exclusion of a proposal requesting information on certain categories of lobbying expenditures and related company risks, with a supporting statement that “describe[d] the [p]roponents’ concern that the lack of lobbying disclosure creates reputational risk when such lobbying contradicts public positions”, as substantially duplicative of an earlier-received proposal with a supporting statement that “describe[d] lobbying in the context of [the company’s] free speech and freedom of association rights”); *Pfizer Inc.* (avail. Dec. 20, 2018) (as noted above, concurring with the exclusion of an independent chair proposal where the supporting statement noted the shortcomings of current board members in terms of experience and oversight and an independent director’s ability to strengthen the board’s oversight capabilities, as substantially duplicative of an earlier-received proposal with a supporting statement noting the inherent conflict of interest between the chief executive officer and an inside director acting as chair and an independent director’s ability to mitigate that conflict); *The Kroger Co.* (avail. April 4, 2018) (as noted above, concurring in the exclusion of an independent chair proposal where the supporting statement noted “[h]aving a board chairman who is independent of management is a practice that will promote greater management accountability to shareholders and lead to a more objective evaluation of management” and raised concern with long tenures of certain directors of the company, as substantially duplicative of an earlier-received proposal with a supporting statement noting that an independent chair “would be particularly useful at [the company] in providing more robust oversight regarding sustainability issues” and improve the company’s policies and practices to mitigate certain identified business risks); and *Danaher Corp.* (avail. Jan. 19, 2017) (concurring with the exclusion of a proposal to adopt goals for reducing greenhouse gas emissions, with a supporting statement describing reasons to do so, as substantially duplicative of an earlier-received proposal with a supporting statement describing risks and opportunities associated with climate change).

As noted above, the wording of the resolved clauses in the Proposals is virtually identical. Aspects of the supporting statements in the Proposals are also similar. For example, both Proposals associate an independent Chairman with potential for improved corporate governance. While there is other language that varies, consistent with the aforementioned precedent, this does not impact that the Proposals present the same principal thrust or focus.

Finally, as noted above, the purpose of Rule 14a-8(i)(11) “is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” Exchange Act Release No. 12999 (Nov. 22, 1976). As the Proposal substantially duplicates the Prior Proposal, if the Company were required to include both Proposals in its proxy materials, there is a risk that the Company’s stockholders would be confused when asked to vote on both Proposals. In such a

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circumstance, stockholders could assume incorrectly that there are substantive differences between the Proposals and the requested actions.

For the reasons discussed above, the principal thrust or focus of the Proposals is the same. Moreover, the Company intends to include the Prior Proposal in the 2020 Proxy Materials. Accordingly, the Company believes that the Proposal may be excluded under Rule 14a-8(i)(11).

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 pursuant to Rule 14a-8(i)(11).

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 shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Laura O. Hewett, the Company's Vice President, Corporate Governance at (404) 506-0714.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: James Y. Kerr II, The Southern Company
Laura O. Hewett, The Southern Company
John Chevedden

EXHIBIT A

From:
To: [Hewett, Laura Oleck](#); [CORPGOV](#)
Cc: [Ackel, Jessica N.](#)
Subject: Rule 14a-8 Proposal (SO)``
Date: Monday, November 25, 2019 9:41:12 PM
Attachments: [CCE25112019_4.pdf](#)
[ATT00001.txt](#)

EXTERNAL MAIL: Caution Opening Links or Files

Dear Ms. Hewett,

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

JOHN CHEVEDDEN

Ms. Laura O. Hewett
Assistant Secretary
The Southern Company (SO)
30 Ivan Allen Jr. Blvd NW
Atlanta GA 30308
PH: 404-506-5000
PH: 404-506-0684
FX: 404-506-0344
FX: 404-506-0455

Dear Ms. Hewett,

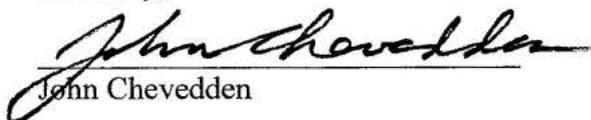
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

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

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

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

Sincerely,


John Chevedden


Date

cc: Laura O. Hewett <R2GOVERN@southernco.com>
Jessica Ackel <jnackel@southernco.com>

[SO – Rule 14a-8 Proposal, November 25, 2019]
[This line and any line above it – *Not* for publication.]

Proposal [4] – Independent Board Chairman

Shareholders request our Board of Directors adopt as policy, and amend our governing documents as necessary, to require that the Chairman of the Board be an independent member of the Board whenever possible. Although it would be better to have an immediate transition to an independent Board Chairman, the Board would have the discretion to phase in this policy for the next Chief Executive Officer transition.

If the Board determines that a Chairman, who was independent when selected is no longer independent, the Board shall select a new Chairman who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived in the unlikely event that no independent director is available and willing to serve as Chairman.

Boeing is an example of a company changing course and naming an independent board chairman in October 2019. Boeing did not wait for the next CEO succession.

Our combined Chairman/CEO, Thomas Fanning, received the highest negative votes at The Southern Company 2019 annual meeting. An independent chairman would have more time to focus on improving the governance of the company. Under Thomas Fanning's tenure the Board has failed 3-times (2016, 2017, 2019) to adopt a simple majority vote standard for company elections in spite of 98% shareholder support.

Currently a 1%-minority can frustrate the will of our 66%-shareholder majority in an election in which 67% of shares cast ballots. In other words a 1%-minority have the power to prevent 66% of shareholders from taking important action such as eliminating 67%-voting thresholds in our governing documents.

Please vote yes for an independent Chairman to improve the governance of our company:

Independent Board Chairman – Proposal [4]

[The line above – *Is* for publication.]

John Chevedden, ***
proposal.

sponsors this

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

From: Hewett, Laura Oleck <LOHEWETT@southernco.com>
Sent: Tuesday, November 26, 2019 8:31 AM
To: ***
Cc: Ackel, Jessica N.
Subject: RE: Rule 14a-8 Proposal (SO)``

Good morning Mr. Chevedden.

This email acknowledges receipt of your proposal.

Best,
Laura

Laura O. Hewett
VP, Corporate Governance
404.506.0714 (Office) / 404.218.5159 (Cell)
lohewett@southernco.com

From: ***
Sent: Monday, November 25, 2019 9:41 PM
To: Hewett, Laura Oleck <LOHEWETT@southernco.com>; CORPGOV <R2GOVERN@southernco.com>
Cc: Ackel, Jessica N. <jnackel@southernco.com>
Subject: Rule 14a-8 Proposal (SO)``

EXTERNAL MAIL: Caution Opening Links or Files

Dear Ms. Hewett,
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

From: ***
To: [Hewett, Laura Oleck](#)
Cc: [Ackel, Jessica N.](#)
Subject: Rule 14a-8 Proposal (SO)
Date: Wednesday, November 27, 2019 12:03:41 AM

EXTERNAL MAIL: Caution Opening Links or Files

Thank you.

From: Hewett, Laura Oleck <LOHEWETT@southernco.com>
Sent: Friday, December 6, 2019 2:13 PM
To: ***
Cc: CORPGOV
Subject: RE: Rule 14a-8 Proposal (SO)``
Attachments: Chevedden -- Deficiency Letter EXECUTED 12.6.19.pdf; Enclosures (Chevedden letter).pdf; ATT00001.txt

Good afternoon Mr. Chevedden.

Please find attached a letter relating to your recently-received Rule 14a-8 proposal. A hard copy is also being sent via overnight mail.

Do not hesitate to contact me should you have any questions.

Best,
Laura

Laura O. Hewett
VP, Corporate Governance
404.506.0714 (Work) / 404.218.5159 (Cell)
lohewett@southernco.com

From: ***
Sent: Monday, November 25, 2019 9:41 PM
To: Hewett, Laura Oleck <LOHEWETT@southernco.com>; CORPGOV <R2GOVERN@southernco.com>
Cc: Ackel, Jessica N. <jnackel@southernco.com>
Subject: Rule 14a-8 Proposal (SO)``

EXTERNAL MAIL: Caution Opening Links or Files

Dear Ms. Hewett,
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

December 6, 2019

VIA OVERNIGHT MAIL AND EMAIL

John Chevedden

Dear Mr. Chevedden:

I am writing on behalf of The Southern Company ("Southern"). On November 25, 2019, we received your shareholder proposal entitled "Independent Board Chairman" submitted pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for Southern's 2020 Annual Meeting of Stockholders (the "Proposal"). While you did not specify which annual meeting the Proposal relates to, unless you inform us otherwise before our Rule 14a-8 submission deadline, we will treat it as having been submitted for our 2020 annual meeting.

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. Southern's stock records do not indicate that you are the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to us.

To remedy this defect, you must submit sufficient proof of your continuous ownership of the required number or amount of Southern shares for the one-year period preceding and including November 25, 2019, the date the Proposal was submitted to us. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that you continuously held the required number or amount of company shares for the one-year period preceding and including November 25, 2019; or
- (2) if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the required number or amount of company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the required number or amount of company shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of

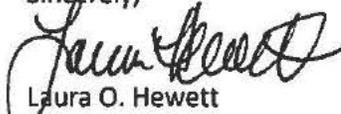
Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC's participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number or amount of Southern shares for the one-year period preceding and including November 25, 2019.
- (2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number or amount of Southern shares for the one-year period preceding and including November 25, 2019. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including November 25, 2019, the required number or amount of Southern shares were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at The Southern Company, 30 Ivan Allen Jr. Boulevard, N.W., BIN SC804, Atlanta, Georgia 30308. Alternatively, you may transmit any response by email to me at lohewett@southernco.com.

If you have any questions with respect to the foregoing, please contact me at (404) 506-0714. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,


Laura O. Hewett
VP, Corporate Governance

Enclosures

From: ***
To: [Hewett, Laura Oleck; CORPGOV](#)
Cc: [Caen, Melissa K. \(SCS Legal\)](#)
Subject: Rule 14a-8 Proposal (SO) blb
Date: Monday, December 9, 2019 5:09:24 PM
Attachments: [CCE09122019_5.pdf](#)
[ATT00001.txt](#)

EXTERNAL MAIL: Caution Opening Links or Files

Dear Ms. Hewett,
Please see the attached broker letter.
Sincerely,
John Chevedden

December 9, 2019

John R Chevedden

Dear Mr. Chevedden:

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

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

Security Name	CUSIP	Symbol	Share Quantity
VeriSign Inc	92343E102	VRSN	50.000
Southern Co	842587107	SO	100.000
FirstEnergy Corp	337932107	FE	50.000
Home Depot Inc	437076102	HD	50.000
Alexion Pharmaceuticals Inc	015351109	ALXN	40.000

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

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

Sincerely,



Stormy Delehanty
Operations Specialist

Our File: W256895-09DEC19

From: ***
To: [Hewett, Laura Oleck; CORPGOV](#)
Subject: Rule 14a-8 Proposal (SO)
Date: Monday, January 13, 2020 2:52:52 PM

EXTERNAL MAIL: Caution Opening Links or Files

Dear Ms. Hewett,
Will my proposal be published in the 2020 proxy.
John Chevedden

From: Hewett, Laura Oleck <LOHEWETT@southernco.com>
Sent: Monday, January 13, 2020 4:27 PM
To: ***
Cc: CORPGOV
Subject: Southern Company - independent chair proposal

Good afternoon Mr. Chevedden.

You may be aware that the NYC Comptroller submitted an independent chair shareholder proposal to Southern, as described in the news release that you can read here: <https://comptroller.nyc.gov/newsroom/to-tackle-climate-crisis-and-decarbonize-the-countrys-polluting-power-utilities-comptroller-stringer-and-the-nyc-retirement-systems-call-for-independent-board-leadership/>. The specific language of the proposal submitted to Southern can be found here: https://comptroller.nyc.gov/wp-content/uploads/2019/11/Shareholder-Proposals-Independent-Chair_Part1.pdf

Southern engaged with Mike Garland on behalf of the NYC Comptroller on Friday last week. Based on that conversation, we do not anticipate that we will come to agreement with the NYC Comptroller that will lead to withdrawal of the proposal.

The NYC Comptroller's independent chair proposal was submitted to us on November 14, 2019. Your independent chair proposal was submitted to us on November 25, 2019. Under the rules and regulations of the SEC, we believe that your independent chair proposal may be excluded because it is substantially duplicative of the NYC Comptroller's previously submitted independent chair proposal that will be included in Southern's 2020 proxy materials.

I understand that Mike Garland of the NYC Comptroller may have also reached out to you on the subject. Mike Garland can be contacted at mgarlan@comptroller.nyc.gov should you wish to confirm the status of the NYC Comptroller's independent chair proposal.

We would appreciate it if you would consider withdrawing your proposal as a cost-effective measure to save the time and expense of preparing and submitting a no-action letter to the SEC. As we are required to submit a no-action letter on or before January 21, 2020, time is of the essence.

Best,
Laura

Laura O. Hewett
VP, Corporate Governance
404.506.0714 (Work) / 404.218.5159 (Cell)
lohewett@southernco.com

From: Hewett, Laura Oleck <LOHEWETT@southernco.com>
Sent: Tuesday, January 14, 2020 3:46 PM
To: ***
Subject: Re: Independent chair proposal (SO)

Hello Mr. Chevedden.

I would estimate that we could save in excess of 10 hours of time and several thousand dollars.

Please let me know if you have additional questions.

Best,
Laura

Laura O. Hewett
(Sent from my mobile device)

From: ***
Sent: Tuesday, January 14, 2020 12:31:56 AM
To: Hewett, Laura Oleck <LOHEWETT@southernco.com>
Subject: Independent chair proposal (SO)

EXTERNAL MAIL: Caution Opening Links or Files

Dear Ms. Hewett,
How much will be saved by not filing a no action request.
John Chevedden

From: ***
To: [Hewett, Laura Oleck](#)
Subject: Independent chair proposal (SO)
Date: Wednesday, January 15, 2020 11:56:07 AM

EXTERNAL MAIL: Caution Opening Links or Files

Dear Ms. Hewett,

I do not believe I have a copy of the submittal letter of the other proponent to help establish the date of submittal.

John Chevedden

From: Hewett, Laura Oleck <LOHEWETT@southernco.com>
Sent: Wednesday, January 15, 2020 3:09 PM
To: ***
Subject: Southern Company
Attachments: ATT00001.txt

Hello Mr. Chevedden.

Please see below the email from Mike Garland transmitting the NYC Comptroller proposal on independent chair on November 14, 2019.

Please let me know if you have further questions.

Best,
Laura

Laura O. Hewett
(Sent from my mobile device)

From: Sologub, Jenny <jsologu@comptroller.nyc.gov> on behalf of Garland, Michael <mgarlan@comptroller.nyc.gov>
Sent: Thursday, November 14, 2019 4:39:42 PM
To: Hewett, Laura Oleck <LOHEWETT@southernco.com>
Cc: Garland, Michael <mgarlan@comptroller.nyc.gov>
Subject: Shareholder Proposal

EXTERNAL MAIL: Caution Opening Links or Files

Laura,

Please see attached shareholder proposal submitted on behalf of the New York City Retirement Systems. We look forward to discussing the proposal.

Regards,

Mike



MICHAEL GARLAND

Assistant Comptroller - Corporate Governance and Responsible Investment
Office of New York City Comptroller Scott M. Stringer, Bureau of Asset Management
1 Centre Street, 8th Floor North, New York, NY 10007

Sent from the New York City Office of the Comptroller. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. This footnote also confirms that this email message has been swept for the presence of computer viruses.

*****Please consider the environment before printing this email*****

From: Hewett, Laura Oleck <LOHEWETT@southernco.com>
Sent: Thursday, January 16, 2020 1:22 PM
To: ***
Subject: Southern Company independent chair proposal

Hello Mr. Chevedden.

Thank you for your voicemail response to my emails of this week requesting that you consider withdrawing your independent chair proposal (received on November 25, 2019) on the basis that it is substantially duplicative of the NYC Comptroller's previously submitted independent chair proposal (received November 14, 2019) that will be included in Southern's 2020 proxy materials. In light of the limited time available to Southern to file a timely request with the SEC, we have instructed outside counsel to move forward and prepare and file the no-action letter.

We appreciate your willingness to have considered withdrawal and look forward to continuing to work with you as a long-term shareholder of Southern.

Best,
Laura

Laura O. Hewett
VP, Corporate Governance
404.506.0714 (Work) / 404.218.5159 (Cell)
lohewett@southernco.com

EXHIBIT B



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

MUNICIPAL BUILDING
ONE CENTRE STREET, 8TH FLOOR NORTH
NEW YORK, N.Y. 10007-2341

TEL: (212) 669-2517
FAX: (212) 669-4072

MGARLAN@COMPTROLLER.NYC.GOV

Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT

November 13, 2019

James Y. Kerr, II
Executive Vice President and General Counsel
Southern Company
30 Ivan Allen Jr. Boulevard NW
Atlanta, Georgia 30308

Dear Mr. Kerr II:

I write to you on behalf of the Comptroller of the City of New York, Scott M. Stringer. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, the New York City Police Pension Fund and the New York City Fire Pension Fund (the "Systems"). The Systems' boards of trustees have authorized the Comptroller to file this resolution and to inform you of their intention to present the enclosed proposal for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Letters from State Street Bank and Trust Company certifying the Systems' ownership, for over a year, of shares of Southern Company common stock are enclosed. Each System intends to continue to hold at least \$2,000 worth of these securities through the date of the Company's next annual meeting.

We would welcome the opportunity to discuss the proposal with you. Should the Board of Directors approve a policy requiring an Independent Board Chair that we consider responsive to the proposal, we will withdraw the proposal from consideration at the annual meeting.

Please feel free to contact me at (212) 669-2517 if you would like to discuss this matter.

Sincerely,

Michael Garland
Enclosures

RESOLVED: Shareholders of The Southern Company (“Southern”) ask the Board of Directors to adopt a policy, and amend the bylaws as necessary, to require the Chair of the Board to be an independent director. The policy should provide that (i) if the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the policy within 60 days of that determination; and (ii) compliance with this policy is waived if no independent director is available and willing to serve as Chair. This policy shall apply prospectively so as not to violate any contractual obligation.

SUPPORTING STATEMENT

In our view, shareholder value is enhanced by an independent Board Chair who can provide a balance of power between the chief executive officer (“CEO”) and the Board and support strong Board oversight of management. According to proxy advisor Glass Lewis “shareholders are better served when the board is led by an independent chairman who we believe is better able to oversee the executives of the Company and set a pro-shareholder agenda without the management conflicts that exist when a CEO or other executive also serves as chairman.”

While separating the roles of Chair and CEO is the norm in Europe, 53% of S&P 500 boards have also implemented this leading practice. Directors on boards with a joint CEO-Chair report being more likely to have difficulty voicing a dissenting view (57% versus 41%) and to believe that one or more of their fellow directors should be replaced (61% versus 47%) according to a 2019 survey by PwC.

Southern’s CEOs have also served as Chair of the Board since 1994.

We believe independent Board leadership would be particularly useful to oversee the strategic transformation necessary for Southern to capitalize on the opportunities available in the transition to a low carbon economy. Unlike its peers Xcel Energy, Duke Energy, DTE and NRG, Southern has failed to set a target of achieving net zero emissions by 2050.¹ Southern has the second highest CO2 emissions of any US privately/investor-owned power producer.² We believe that a board chair independent of management would be better able to lead the process of setting a strategy to position Southern to take advantage of increased demand for decarbonized electricity and more effectively evaluate and mitigate the risks that excessive investment in natural gas infrastructure could become a stranded asset.³

We urge shareholders to vote for this proposal.

¹ Daniel Tait, “Southern Company’s ‘Low to No Carbon’ Pledge Misleads Investors, Public,” Energy and Policy Institute, August 27, 2019, available at <https://www.energyandpolicy.org/southern-company-carbon-misleads-investors/>.

² MJ Bradley, *Benchmarking Air Emissions*, June 2019, available at https://www.mjbradley.com/sites/default/files/Presentation_of_Results_2019.pdf p. 19.

³ Mark Dyson et al, *Prospects for Gas Pipelines in the Era of Clean Energy*, Rocky Mountain Institute, 2019.



STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
c/o NYC Office of the Comptroller
Municipal Building
One Centre Street
New York, NY 10007
Telephone: 347 749-2420
dfarrell@statestreet.com

November 13, 2019

Re: New York City Teachers' Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Teachers' Retirement System, the below position from October 31, 2018 through today as noted below:

Security: SOUTHERN CO/THE

Cusip: 842587107

Shares: 713,263

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Derek A. Farrell".

Derek A. Farrell
Assistant Vice President



STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
c/o NYC Office of the Comptroller
Municipal Building
One Centre Street
New York, NY 10007
Telephone: 347 749-2420
dfarrell@statestreet.com

November 13, 2019

Re: New York City Police Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Police Pension Fund, the below position from October 31, 2018 through today as noted below:

Security: SOUTHERN CO/THE

Cusip: 842587107

Shares: 397,685

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek A. Farrell".

Derek A. Farrell
Assistant Vice President



STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
c/o NYC Office of the Comptroller
Municipal Building
One Centre Street
New York, NY 10007
Telephone: 347 749-2420
dfarrell@statestreet.com

November 13, 2019

Re: New York City Fire Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Fire Pension Fund, the below position from October 31, 2018 through today as noted below:

Security: SOUTHERN CO/THE

Cusip: 842587107

Shares: 114,442

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Derek A. Farrell".

Derek A. Farrell
Assistant Vice President



STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
c/o NYC Office of the Comptroller
Municipal Building
One Centre Street
New York, NY 10007
Telephone: 347 749-2420
dfarrell@statestreet.com

November 13, 2019

Re: New York City Employee's Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Employee's Retirement System, the below position from October 31, 2018 through today as noted below:

Security: SOUTHERN CO/THE

Cusip: 842587107

Shares: 640,901

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek A. Farrell".

Derek A. Farrell
Assistant Vice President