March 20, 2020

Martin P. Dunn  
Morrison & Foerster LLP  
mdunn@mofo.com

Re: Fitbit, Inc.  
Incoming letter dated January 17, 2020

Dear Mr. Dunn:

This letter is in response to your correspondence dated January 17, 2020, January 24, 2020, and February 3, 2020, which described the receipt by Fitbit, Inc. (the “Company”) of an initial proposal relating to simple majority voting from John Chevedden, as representative (the “Representative”) of Kenneth Steiner (the “Proponent”) for inclusion in the Company’s proxy materials for its upcoming annual meeting of security holders, and your receipt of a subsequent proposal relating to single class voting structure from the Representative on the Proponent’s behalf. We also have received correspondence submitted on the Proponent’s behalf dated January 19, 2020, January 20, 2020, January 26, 2020, February 2, 2020, and February 3, 2020. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml.

Sincerely,

M. Hughes Bates  
Special Counsel

Enclosure

cc: John Chevedden  
***
March 20, 2020

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Fitbit, Inc.
Incoming letter dated January 17, 2020

One proposal requests that the board take steps to ensure that all of the Company’s outstanding stock has an equal one-vote per share in each voting situation.

There appears to be some basis for your view that the Company may exclude that proposal under rule 14a-8(f). Based on the specific facts and circumstances of the Representative’s submission of two proposals to the Company, it does not appear that the Proponent has provided the Company with clear documentation of his authorization for the Representative to substitute the initially submitted proposal with this proposal. The Representative first submitted a simple majority voting proposal (without clear documentation of the Proponent’s authorization, which was rectified after receiving a deficiency notice) and subsequently the Representative submitted this proposal, but with another deficient authorization letter that failed to specify the subject matter of the proposal. As such, the Representative has given the Company insufficient information to determine whether the Proponent prefers the second proposal rather than the originally submitted simple majority voting proposal. Because the Company had already sent the Representative a deficiency notice with respect to the original submission for the same deficiency, the Representative was on notice that the authorization letter needed to specify the subject matter of the proposal. Accordingly, we will not recommend enforcement action to the Commission if the Company omits this subsequent proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Lisa Krestynick
Special Counsel
February 3, 2020

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

# 5 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Equal Voting Rights for Each Shareholder
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 17, 2020 no-action request.

As of today management said nothing to address the fact that this text is not preceded by a black box warning that it does not apply to a revised proposal:

"(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response."

Question 6 states, “Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response.” Management admits it received the revised proposal.

Management also failed to provide any purported precedent that Question 6 does not apply to a revision of the original proposal.

According to the management theory if a rule 14a-8 proposal was submitted 3 months before the due date and on the due date a typographical change was made in the title (without a revised authorization letter) then management could remain silent in regard to Question 6 and then file an invincible no action request.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Andy Missan <amissan@fitbit.com>
February 3, 2020

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Fitbit, Inc.
Shareholder Proposal of John Chevedden on behalf of Kenneth Steiner

Dear Ladies and Gentlemen:

This letter concerns the request, dated January 17, 2020 (the “Initial Request Letter”), that we submitted on behalf of our client, Fitbit, Inc., a Delaware corporation (the “Company”), seeking confirmation that the staff (the “Staff”) of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Commission”) will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”), the Company omits the shareholder proposal submitted by John Chevedden (the “Proponent’s Representative”) on behalf of Kenneth Steiner (the “Proponent”) from the Company’s proxy materials for its 2020 Annual Meeting of Shareholders (the “2020 Proxy Materials”). The Proponent’s Representative submitted a letter to the Staff, dated January 19, 2020. The Company responded to that letter on January 24, 2020 (the “Initial Response Letter”). The Proponent’s Representative submitted a second letter to the Staff, dated January 26, 2020 (the “Proponent’s Representative’s Second Letter”). The Proponent’s Representative’s Second Letter is attached as Exhibit A to this letter. Terms that are not defined in this letter are defined in the Initial Request Letter.

We submit this letter on behalf of the Company to supplement the Initial Request Letter and the Initial Response letter and respond to the assertions made in the Proponent’s Representative’s Second Letter. We also renew our request for confirmation that the Staff will not recommend enforcement action to the Commission if the Company omits the Proposal from
its 2020 Proxy Materials in reliance on Rule 14a-8. We have concurrently sent copies of this correspondence to the Proponent’s Representative.

I. THE PROPOSAL

On December 12, 2019, the Company received from the Proponent’s Representative the Proposal for inclusion in the Company’s 2020 Proxy Materials. We provided the Proposal and all related correspondence as attachments to the Initial Request Letter. As discussed in the Initial Request Letter, the Company believes that it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(b), Rule 14a-8(f), and Rule 14a-8(i)(7).

II. THE PROPOINENT’S REPRESENTATIVE’S SECOND LETTER PROVIDES NO BASIS FOR INCLUDING THE PROPOSAL IN THE 2020 PROXY MATERIALS

As discussed in the Initial Request Letter and Initial Response Letter, the Company believes it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(f), as the Proponent’s Representative did not provide sufficient documentation demonstrating the Proponent’s delegation of authority to the Proponent’s Representative consistent with Rule 14a-8(b), despite the Company’s explanation of the requirements of an appropriate Rule 14a-8 delegation of authority in its timely notice of the deficiencies in the First Delegation of Authority.

The Proponent’s Representative’s Second Letter appears to indicate that the Company was obligated to provide a second explanation of the requirements for a proper delegation of authority under Rule 14a-8. In this regard, the Proponent’s Representative’s Second Letter states the following: “Management could have resolved this situation by simply asking that Mr. Steiner confirm his authorization for the revised proposal. Instead the company tried to ambush Mr. Steiner.” The Proponent’s Representative’s Second Letter does not address the Company’s expressed substantive basis for excluding the Proposal from the 2020 Proxy Materials, as discussed in the Initial Request Letter, and fails to recognize the Company’s clear explanation to the Proponent’s Representative of the appropriate means for evidencing a delegation of authority under Rule 14a-8.

The Company provided a notice of deficiency in response to the Initial Proposal that fully informed the Proponent’s Representative of the evidence necessary to show a proper delegation of authority to submit a proposal under Rule 14a-8 in a timely manner. That notice of deficiency was received and understood by the Proponent’s Representative, as shown by the Proponent’s Representative’s responsive submission of the Simple Majority Vote Delegation of Authority. After receiving guidance from the Company and evidencing a full understanding of the requirements of a Rule 14a-8 delegations of authority, the Proponent’s Representative then elected to ignore his demonstrated understanding of the requirements of an appropriate Rule 14a-8 delegation of authority and submit the Proposal without complying with those requirements. The Company believes it had no obligation to re-explain the Rule 14a-8 requirements for
delegations of authority, particularly as the Proponent’s Representative clearly understood those requirements when submitting the Simple Majority Vote Delegation of Authority after the Company delivered the notice of deficiency.

The December 12 Delegation of Authority had the exact deficiencies as the First Delegation of Authority. Those deficiencies were clearly explained to the Proponent’s Representative in the notice of deficiency and were responded to by the Proponent’s Representative in the Simple Majority Vote Delegation of Authority. As such, in submitting the Proposal with a resubmission of the First Delegation of Authority, the Proponent’s Representative was fully informed of the requirement for a Rule 14a-8 delegation of authority and chose not to comply with those requirements. As noted in the Initial Request letter, the delegation of authority with respect to the Proposal goes beyond a mere technical deficiency – the Proponent’s Representative used the original, non-specific First Delegation of Authority and completely switched the subject matter of the Proposal without any indication that the Proponent consented to the entirely different subject matter; indeed, in submitting the Proposal and the December 12 Delegation of Authority, the Proponent’s Representative chose to delete the caption included in the Simple Majority Vote Delegation of Authority and forego any specificity as to the scope of the December 12 Delegation of Authority, despite the Company’s notice of deficiency and the Proponent’s Representative’s responsive submission of the Simple Majority Vote Delegation of Authority. The Company is of the view that such an approach goes to the core of why a delegation of authority must specifically identify the proposal to which it relates, consistent with Staff guidance in SLB 14I, and therefore it may omit the Proposal from its 2020 Proxy Materials.

The Company met its obligation to advise the Proponent’s Representative of the requirements of Rule 14a-8. The actions of the fully-informed Proponent’s Representative, without appropriate delegation of authority, are inconsistent with the requirements of Rule 14a-8, the publicly expressed views of the Staff and the Commission, and the necessary obligation to protect the Proponent’s previously-expressed intention to submit the Simple Majority Vote Proposal.
III. CONCLUSION

For the reasons discussed in the Initial Request Letter, the Initial Response Letter, and above, the Proponent’s Representative’s Second Letter does not impact the application of Rule 14a-8 to the Proposal and the Company continues to be of the view that it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 778-1611.

Sincerely,

[Signature]

Martin P. Dunn
Morrison & Foerster LLP

Attachment

cc: John Chevedden
Andy Missan, Executive Vice President, General Counsel and Corporate Secretary, Fitbit, Inc.
EXHIBIT A
Ladies and Gentlemen:
Please see the attached letter.
Sincerely,
John Chevedden
January 26, 2020

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

# 3 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Equal Voting Rights for Each Shareholder
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 17, 2020 no-action request.

Management could have resolved this situation by simply asking that Mr. Steiner confirm his authorization for the revised proposal. Instead the company tried to ambush Mr. Steiner.

Mr. Steiner did not need to submit an additional broker letter for the revised proposal.

This text is not preceded by a black box warning that it does not apply to revised proposals:

“(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response.”

According to the management theory if a proponent submitted a proposal that management claimed was 2 topics and the proponent submitted an entirely new proposal in response – the company could then ambush the proponent by claiming the second submission was 2 topics without ever giving notice.

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: Kenneth Steiner

Andy Missan <amissan@fitbit.com>
February 2, 2020

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

# 4 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Equal Voting Rights for Each Shareholder
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 17, 2020 no-action request.

The company is given latitude in implementing this proposal with the resolved statement
words of “take steps to ensure.”

The proposal sets a goal and mentions “encouragement and negotiation.”

Management made no claim that if 2 attorneys were given an assignment to draft text
adopting this proposal based on the resolved statement, that both attorneys would produce the
exactly the same words.

Management made no claim that this proposal can be adopted in only one way. No claim that
it would be impossible to adopt this proposal in a way to fully address shareholder concerns,
to minimally address shareholder concerns or to strike a balance.

Staff Legal Bulletin No. 14K stated:
“When a company asserts the micromanagement prong as a reason to exclude a proposal, we
would expect it to include in its analysis how the proposal may unduly limit the ability of
management and the board to manage complex matters with a level of flexibility necessary to
fulfill their fiduciary duties to shareholders.”

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: Kenneth Steiner

Andy Missan <amissan@fitbit.com>
January 26, 2020

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

# 3 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Equal Voting Rights for Each Shareholder
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 17, 2020 no-action request.

Management could have resolved this situation by simply asking that Mr. Steiner confirm his authorization for the revised proposal. Instead the company tried to ambush Mr. Steiner.

Mr. Steiner did not need to submit an additional broker letter for the revised proposal.

This text is not preceded by a black box warning that it does not apply to revised proposals:

"(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response."

According to the management theory if a proponent submitted a proposal that management claimed was 2 topics and the proponent submitted an entirely new proposal in response – the company could then ambush the proponent by claiming the second submission was 2 topics without ever giving notice.

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: Kenneth Steiner

Andy Missan <amissan@fitbit.com>
January 24, 2020

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Fitbit, Inc.
Shareholder Proposal of John Chevedden on behalf of Kenneth Steiner

Dear Ladies and Gentlemen:

This letter concerns the request, dated January 17, 2020 (the “Initial Request Letter”), that we submitted on behalf of our client, Fitbit, Inc., a Delaware corporation (the “Company”), seeking confirmation that the staff (the “Staff”) of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Commission”) will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”), the Company omits the shareholder proposal submitted by John Chevedden (the “Proponent’s Representative”) on behalf of Kenneth Steiner (the “Proponent”) from the Company’s proxy materials for its 2020 Annual Meeting of Shareholders (the “2020 Proxy Materials”). The Proponent’s Representative submitted a letter to the Staff, dated January 19, 2020 (the “Proponent’s Representative’s Letter”). The Proponent’s Representative’s Letter is attached as Exhibit A to this letter. (Other defined terms used in this letter are as defined in the Initial Request Letter).

We submit this letter on behalf of the Company to supplement the Initial Request Letter and respond to the assertions made in the Proponent’s Representative’s Letter. We also renew our request for confirmation that the Staff will not recommend enforcement action to the Commission if the Company omits the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8.
We have concurrently sent copies of this correspondence to the Proponent’s Representative.

I. THE PROPOSAL

On December 12, 2019, the Company received from the Proponent’s Representative the Proposal for inclusion in the Company’s 2020 Proxy Materials. We provided the Proposal and all related correspondence as attachments to the Initial Request Letter. As discussed in the Initial Request Letter, the Company believes that it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(b), Rule 14a-8(f), and Rule 14a-8(i)(7).

II. THE PROPOSANT’S REPRESENTATIVE’S LETTER PROVIDES NO BASIS FOR INCLUDING THE PROPOSAL IN THE 2020 PROXY MATERIALS

As discussed in the Initial Request Letter, the Company believes it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(f), as the Proponent’s Representative did not provide sufficient documentation demonstrating the Proponent’s delegation of authority to the Proponent’s Representative consistent with Rule 14a-8(b), despite the Company’s explanation of the requirements of a delegation of authority in its timely notice of the deficiencies in the First Delegation of Authority.

The Proponent’s Representative’s Letter provides three statements regarding the Proposal and the Initial Request Letter:

- “Company management led the proponent to believe that the delegation was sufficient.”
- “The revised proposal was timely submitted on December 12, 2019.”
- “Company management failed to give notice of any procedural issue with the December 12, 2019 submittal.”

The Proponent’s Representative’s Letter concludes by stating: “This is to request that the Securities and Exchange Commission allow the resolution to stand and be voted upon in the 2019 proxy.” The Proposal was submitted on December 12, 2019.

As discussed in the Initial Request Letter, Rule 14a-8(b) provides guidance as to “who is eligible to submit a proposal.” Further, in *Staff Legal Bulletin No. 14I* (November 1, 2017) (“SLB 14I”), the Staff expressed its views regarding the application of Rule 14a-8(b) when a shareholder submits a proposal through a representative. The Staff stated in SLB 14I that a shareholder’s submission by proxy is consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b) if the shareholder who submits such a proposal provides documentation describing the shareholder’s delegation of authority to the proxy. Among other guidance, the
Staff noted that sufficient documentation should “identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%).”

The Company received the First Delegation of Authority, accompanied by the Initial Proposal, via email on October 15, 2019 with insufficient delegation of authority to the Proponent’s Representative, as the First Delegation of Authority failed to identify the specific proposal being made by the Proponent for which authority would be delegated to the Proponent’s Representative and instead merely referred to “this Rule 14a-8 proposal, and/or modification of it.” The Company’s notice of deficiency, as described in detail in the Initial Request Letter, sufficiently advised the Proponent’s Representative of the requirements for the required delegation of authority. The Company did not object to the Simple Majority Vote Delegation of Authority, as it related to the subject matter of the Initial Proposal and identified that proposal, and appeared consistent with prior Staff positions on no-action requests on alleged proposal by proxy deficiencies.

However, put simply, the Proponent’s Representative, after being provided with the required notice regarding the manner in which the Staff stated is necessary to demonstrate proper delegation of authority for a representative to submit a proposal on behalf of a shareholder, then decided to:

- submit an entirely new proposal relating to a completely different subject matter that was in no manner related to the “specific proposal to be submitted” most recently identified by the Proponent in the Simple Majority Vote Delegation of Authority; and

- re-submit the First Delegation of Authority, without any change or identification of a proposal, as a basis for submitting the Proposal, and ignore the Simple Majority Vote Delegation of Authority that he had previously submitted as sufficient evidence of a proposal by proxy.

The Company provided the Proponent’s Representative with a notice of the deficiencies in the First Delegation of Authority and, in that notice, made clear to the Proponent’s Representative the requirements of a sufficient delegation of authority, as detailed in the Initial Request Letter. The Proponent’s Representative, after following that guidance in providing the Simple Majority Vote Delegation of Authority, then made the determination to ignore the Company’s clear explanation and simply re-submit the First Delegation of Authority with the Proposal. Despite the Proponent’s Representative’s claim otherwise, it was not necessary for the Company to send a second notice of deficiency that would have merely repeated the clear guidance it had already provided to the Proponent’s Representative simply because the Proponent’s Representative chose to submit an entirely new proposal, ignore the Simple Majority Vote Delegation of Authority that he had submitted, re-submit the First Delegation of Authority, and purposefully not comply with the Staff’s guidance for a second time. We reiterate the Company’s view that the Staff’s guidance on proposals by proxy and the
Commission’s proposed rules are intended to prevent just this type of conduct where a Proponent’s Representative attempts to use a non-specific proxy to put forth two completely different proposals.

While the Proponent’s Representative’s Letter states that it “request(s) that the Securities and Exchange Commission allow the resolution to stand and be voted upon in the 2019 proxy,” the Initial Request Letter related to the 2020 Proxy Materials. As such, it is assumed for the purposes of this supplemental letter that the Proponent’s Representative meant to refer to the 2020 Proxy Materials. As discussed above, the Proponent’s Representative’s Letter provides no basis for altering the Company’s views in the Initial Request Letter with regard to the omission of the Proposal from the 2020 Proxy Materials.

The Company remains of the view that it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(b) and Rule 14a-8(f). Although not addressed in this supplemental letter, the Company also remains of the view that it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8(i)(7) as the Proposal seeks to micromanage the Company.

III. CONCLUSION

For the reasons discussed in the Initial Request Letter and discussed further above, the Proponent’s Representative’s Letter does not impact the application of Rule 14a-8 to the Proposal and the Company continues to be of the view that it may properly omit the Proposal from its 2020 Proxy Materials in reliance on Rule 14a-8. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 778-1611.

Sincerely,

Martin P. Dunn
Morrison & Foerster LLP

Attachments

cc: John Chevedden
    Andy Missan, Executive Vice President, General Counsel and Corporate Secretary, Fitbit, Inc.
EXHIBIT A
January 19, 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
Fitbit Inc (FIT)
Equal Voting Rights for Each Shareholder
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 17, 2020 no-action request.

Company management led the proponent to believe that the delegation was sufficient.

The revised proposal was timely submitted on December 12, 2019.

Company management failed to give notice of any procedural issue with the December 12, 2019 submittal.

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: Kenneth Steiner

Andy Missan <amissan@fitbit.com>
RESOLVED: Shareholders request that our Board take steps to ensure that all of our company’s outstanding stock has an equal one-vote per share in each voting situation. This would encompass all practicable steps including encouragement and negotiation with current and future shareholders, who have more than one vote per share, to request that they relinquish, for the common good of all shareholders, any preexisting rights, if necessary.

This proposal is not intended to unnecessarily limit our Board’s judgment in crafting the requested change in accordance with applicable laws and existing contracts. This proposal is important because certain shares have super-sized voting power with 10-votes per share compared to the weakling one-vote per share for other shareholders. This proposal would even allow 7-years to transition to equal voting rights for each shareholder.

With certain stock having 10-times more voting power our company takes our shareholder money but does not give us in return an equal voice in our company’s management. Without a voice, shareholders cannot hold management accountable.

As an example for Fitbit, social and mobile-game maker Zynga announced moving to a single-class share structure in 2018. Zynga executives said that a single-class share structure simplifies the company’s stock structure and gives parity to shareholders. In its 2018 annual report, Zynga said its old multi-class share system could limit the ability of its other stockholders to influence the company and could negatively impact its share price.

Please vote yes:


[The above line – Is for publication.]
January 20, 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
Fitbit Inc (FIT)
Equal Voting Rights for Each Shareholder
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 17, 2020 no-action request.

The micromanagement argument of the company shows that the company has a low opinion of its shareholders compared to the general population.

For instance a California voter was deemed competent to make decisions on these complex items in the 2018 general election:

Prop 1: State Housing Bonds
Prop 2: State Housing Bonds
Prop 3: Water Bonds
Prop 4: Hospital Bonds
Prop 5: Allow Property Owners to Transfer their Lower Property Tax Rates
Prop 6: Gas Tax Repeal
Prop 7: Potential Change to Daylight Savings Time
Prop 8: Kidney Dialysis Charges
Prop 10: Rent Control
Prop 11: Ambulance Employee Compensation Reforms
Prop 12: Restrictive Regulations on Farms Over Animal Confinement

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: Kenneth Steiner

Andy Missan <amissan@fitbit.com>
January 19, 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
Fitbit Inc (FIT)
Equal Voting Rights for Each Shareholder
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 17, 2020 no-action request.

Company management led the proponent to believe that the delegation was sufficient.

The revised proposal was timely submitted on December 12, 2019.

Company management failed to give notice of any procedural issue with the December 12, 2019 submittal.

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: Kenneth Steiner

Andy Missan <amissan@fitbit.com>

RESOLVED: Shareholders request that our Board take steps to ensure that all of our company’s outstanding stock has an equal one-vote per share in each voting situation. This would encompass all practicable steps including encouragement and negotiation with current and future shareholders, who have more than one vote per share, to request that they relinquish, for the common good of all shareholders, any preexisting rights, if necessary.

This proposal is not intended to unnecessarily limit our Board’s judgment in crafting the requested change in accordance with applicable laws and existing contracts. This proposal is important because certain shares have super-sized voting power with 10-votes per share compared to the weakling one-vote per share for other shareholders. This proposal would even allow 7-years to transition to equal voting rights for each shareholder.

With certain stock having 10-times more voting power our company takes our shareholder money but does not give us in return an equal voice in our company’s management. Without a voice, shareholders cannot hold management accountable.

As an example for Fitbit, social and mobile-game maker Zynga announced moving to a single-class share structure in 2018. Zynga executives said that a single-class share structure simplifies the company’s stock structure and gives parity to shareholders. In its 2018 annual report, Zynga said its old multi-class share system could limit the ability of its other stockholders to influence the company and could negatively impact its share price.

Please vote yes:


[The above line – Is for publication.]
January 17, 2020

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Fitbit, Inc.
Shareholder Proposal of John Chevedden on behalf of Kenneth Steiner

Dear Ladies and Gentlemen:

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

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

• filed this letter with 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’s Representative.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to Martin Dunn, on behalf of the
Company, via email at mdunn@mofo.com, and to the Proponent’s Representative, via email at 

I. PROCEDURAL HISTORY.

October 15, 2019
The Company receives, via email from the Proponent’s Representative, a proposal from the Proponent dated October 15, 2019 and titled “Proposal [4] – Simple Majority Vote” (the “Initial Proposal”) accompanied by a letter from the Proponent dated October 9, 2019 (the “First Delegation of Authority”) that, among other things, names the Proponent’s Representative as the Proponent’s proxy regarding a shareholder proposal. See Exhibit A.

October 28, 2019
Company counsel sends a deficiency notice to the Proponent’s Representative, via email and U.S. mail, requesting that he provide (1) sufficient evidence of the Proponent’s delegation of authority to the Proponent’s Representative to submit the Initial Proposal consistent with the requirements of Staff Legal Bulletin No. 141 and (2) sufficient proof of the Proponent’s ownership of the Company’s securities consistent with Rule 14a-8(b) under the Exchange Act within 14 days of receipt of the notice. See Exhibit B.

October 31, 2019
The Company receives, via email, a revised delegation of authority that includes a pasted-in version of the title of the Initial Proposal (“Proposal [4] – Simple Majority Vote”) with the Proponent’s signature and the date “10-31-19” (the “Simple Majority Vote Delegation of Authority”) but does not include a proposal. See Exhibit C.

November 7, 2019
The Company receives, via email, proof of ownership of the Company’s securities that is consistent with the ownership requirements of Rule 14a-8(b) of the Exchange Act. See Exhibit D.

December 12, 2019
The Company receives, via email, a “revised” proposal from the Proponent’s Representative dated “October 15, 2019 | Revised December 12, 2019” and titled “Proposal [4] –Equal Voting Rights for Each Shareholder” (the “Proposal”) accompanied by a copy of a “new” Delegation of Authority (the “December 12 Delegation of Authority”) that is identical to the First Declaration of Authority but for a handwritten note in the upper right corner, unsigned by the Proponent, indicating “REVISED 12 DEC 2019.”
Delegation of Authority does not include the pasted-in proposal caption included in the Simple Majority Vote Delegation of Authority. See Exhibit E.

December 13, 2019

The 14-day deadline for responding to the Company’s notice of the eligibility and procedural deficiencies passes without the Proponent submitting additional evidence of delegation of authority.

II. THE PROPOSAL

The Proposal, as submitted on December 12, 2019, reads as follows:


RESOLVED, Shareholders request that our Board take steps to ensure that all of our company’s outstanding stock has an equal one-vote per share in each voting situation. This would encompass all practicable steps including encouragement and negotiation with current and future shareholders, who have more than one vote per share, to request that they relinquish, for the common good of all shareholders, any preexisting rights, if necessary.

This proposal is not intended to unnecessarily limit our Board’s judgment in crafting the requested change in accordance with applicable laws and existing contracts. This proposal is important because certain shares have super-sized voting power with 10-votes per share compared to the weakling one-vote per share for other shareholders. This proposal would even allow 7-years to transition to equal voting rights for each shareholder.

With certain stock having 10-times more voting power our company takes our shareholder money but does not give us in return an equal voice in our company’s management. Without a voice, shareholders cannot hold management accountable.

As an example for Fitbit, social and mobile-game maker Zynga announced moving to a single-class share structure in 2018. Zynga executives said that a single-class share structure simplifies the company’s stock structure and gives parity to shareholders. In its 2018 annual report, Zynga said its old multi-class share system could limit the ability of its other stockholders to influence the company and could negatively impact its share price.

Please vote yes: Equal Voting Rights for Each Shareholder – Proposal [4]”
III. EXCLUSION OF THE PROPOSAL

A. Bases for Excluding the Proposal

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2020 Proxy Materials in reliance on (1) Rule 14a-8(f), as the Proponent’s Representative did not provide sufficient documentation demonstrating the Proponent’s delegation of authority to the Proponent’s Representative consistent with Rule 14a-8(b), despite the Company’s timely notice of the First Delegation of Authority’s procedural deficiencies, and (2) Rule 14a-8(i)(7), as the Proposal relates to the Company’s ordinary business matters.

B. The Proposal May Be Omitted in Reliance on Rule 14a-8(f), as the Proponent’s Representative Has Not Provided Sufficient Documentation Demonstrating the Proponent’s Delegation of Authority Consistent with Rule 14a-8(b) and Did Not Provide Sufficient Documentation Demonstrating the Proponent’s Delegation of Authority Upon Request After Receiving Proper Notice Under Rule 14a-8(f)(1)

1. Staff Guidance on Eligibility to Submit Proposals under Rule 14a-8

Rule 14a-8(b) provides guidance as to “who is eligible to submit a proposal.” On November 1, 2017, the Staff published Staff Legal Bulletin No. 141 (“SLB 141”) which announced the Staff’s policy regarding the application of Rule 14a-8(b) when a shareholder submits a proposal through a representative (i.e., a “proposal by proxy”). The Staff stated in SLB 141 that a shareholder’s submission by proxy is consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b) if the shareholder who submits a proposal by proxy provides documentation describing the shareholder’s delegation of authority to the proxy. The Staff noted that sufficient documentation would do the following:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.
Further emphasizing the importance of a shareholder submitting a clear and unambiguous
deviation of authority to a representative, on November 5, 2019, the Commission proposed
amendments to Rule 14a-8 that would, among other things, require the submission of
documentation that includes the items mentioned in SLB 14I and also:

- includes the shareholder’s statement authorizing the designated representative to submit
  the proposal and/or otherwise act on the shareholder’s behalf; and

- includes the shareholder’s statement supporting the proposal.

The November 2019 Proposing Release emphasized the importance of safeguarding
the integrity of the shareholder proposal process and the eligibility restrictions and stated:

We believe an affirmative statement that the shareholder authorizes the designated
representative to submit the proposal and/or otherwise act on the shareholder’s behalf would help to make clear that the representative has been so authorized. In
addition, we believe that a shareholder’s affirmative statement that it supports the
proposal would help to ensure that the interest being advanced by the proposal is
the shareholder’s own.

Accordingly, the Staff’s guidance in SLB 14I and the Commission’s recent rule proposal
make clear that it is necessary for a proper Rule 14a-8 delegation of authority to identify the
specific proposal to which the delegation relates.

2. The Proponent has Failed to Provide Sufficient Evidence of a
Delegation of Authority to the Proponent’s Representative

As described above, the Staff’s guidance in SLB 14I sets forth specific requirements
regarding the type of information that the Staff expects a proponent to provide to sufficiently
evidence a delegation of authority to the proponent’s representative. In this regard, the Staff
further notes that it expects companies to apply reasonable judgment when the documentation
may be technically deficient but otherwise provides reasonable support for such delegation.
Further, the Company is aware that the Staff has denied no-action requests that were based solely
on a proponent’s failure to sufficiently identify the subject matter of a proposal to which its
delegation of authority relates. The delegation of authority with respect to the Proposal,
however, goes beyond a mere technical deficiency – the Proponent’s Representative has used the
original, non-specific First Delegation of Authority and completely switched the subject matter
of the Proposal without any indication that the Proponent consented to the entirely different
subject matter; indeed, in submitting the Proposal and the December 12 Delegation of Authority,
the Proponent’s Representative has chosen to delete the pasted-in proposal caption included in
the Simple Majority Vote Delegation of Authority and forego any specificity as to the scope of the December 12 Delegation of Authority. The Company is of the view that such an approach goes to the core of why a delegation of authority must specifically identify the proposal to which it relates, consistent with Staff guidance in SLB 14I, and therefore it may omit the Proposal from its 2020 Proxy Materials.

Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company’s proxy materials if a shareholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, provided that the company has timely notified the proponent of any eligibility or procedural deficiencies and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice; see also SLB 14I (“Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder’s failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. See Rule 14a-8(f)(1).”).

The Company received the First Delegation of Authority, accompanied by the Initial Proposal, via email on October 15, 2019 with insufficient delegation of authority to the Proponent’s Representative, as the First Delegation of Authority failed to identify the specific proposal being made by the Proponent for which authority would be delegated to the Proponent’s Representative and instead merely referred to “this Rule 14a-8 proposal, and/or modification of it.” The Company’s notice of deficiency to the Proponent’s Representative included:

- a description of the eligibility requirements of Rule 14a-8(b) and the guidance of SLB 14I – this description listed the five requirements set forth by the Staff, as described above;

- a statement explaining that sufficient delegation of authority had not been received by the Company – *i.e.*, “A shareholder’s ability to submit a ‘proposal by proxy’ must be consistent with Securities Exchange Act of 1934 Rule 14a-8 and the eligibility requirements of Rule 14a-8(b). … The delegation of authority included with the Proponent’s submission of the Proposal is inconsistent with the Staff’s guidance set forth above because it fails to identify the specific proposal to be submitted”;

- an explanation of what the Proponent should do to comply with the rule – *i.e.*, “To remedy this defect, you are requested to submit a sufficient delegation of authority by the Proponent to submit the Proposal by proxy”;

- a statement calling the Proponent’s attention to the 14-day deadline for responding to the Company’s notice – *i.e.*, “For the Proposal to be eligible for inclusion in Fitbit’s proxy materials for Fitbit’s 2020 Annual Meeting of Shareholders, the rules of the SEC require that a response to this letter, correcting all procedural deficiencies described in this letter,
be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter”; and


As described above, the Proponent’s Representative submitted the Simple Majority Vote Delegation of Authority following receipt of the Company’s notice. The First Delegation of Authority (submitted on October 15, 2019) and the December 12 Delegation of Authority failed to identify the specific proposal being submitted, either by identifying the subject matter or naming the title of the proposal; indeed, the December 12 Delegation of Authority was merely the First Delegation of Authority but for the addition of the Proponent’s Representative’s handwritten, unsigned note in the upper right corner simply indicating “REVISED 12 DEC 2019.” Further, the language and dating of the Simple Majority Vote Delegation of Authority, which had been added to the First Delegation of Authority on October 31, 2019, had now been deleted. The December 12 Delegation of Authority remained signed by the Proponent only as of October 9, 2019 and simply referred to “this Rule 14a-8 proposal and/or modification of it.” However, the Initial Proposal that was attached to the First Delegation of Authority and referred to in the Simple Majority Vote Delegation of Authority (titled “Simple Majority Vote” and relating, generally, to the elimination of supermajority voting requirements) was completely different in subject matter and substance from the Proposal that was attached to the December 12 Delegation of Authority (titled “Equal Voting Rights for Each Shareholder” and relating, generally, to a single-class “one share, one vote” voting structure). In fact, the December 12 Delegation of Authority appears to demonstrate knowledge of the fundamental change in the attached proposal, as it no longer included the pasted-in “Proposal [4] – Simple Majority Vote” caption that had been included in the Simple Majority Vote Delegation of Authority.

The Company recognizes the rationale in prior Staff no-action responses where the Staff did not concur with the omission of a proposal when the delegation of authority accompanied a single proposal because it could be inferred that the Proponent assented to the submission of that proposal. That is not the case with respect to the Proposal. The Proponent’s Representative submitted the Initial Proposal attached to the non-specific First Delegation of Authority, submitted the Simple Majority Vote Delegation of Authority in response to the Company’s Rule 14a-8 deficiency notice, and then submitted a completely different proposal using the same non-specific Delegation of Authority as in the First Delegation of Authority with merely a handwritten, unsigned note reading “REVISED 12 DEC 2019.” The Proponent Representative’s actions in this regard are fundamentally inconsistent with the Staff’s guidance in SLB 14I and the Commission’s statements in the November 2019 Proposing Release.

In submitting the Proposal, the Proponent’s Representative (1) submitted the Initial Proposal with the non-specific First Delegation of Authority, which included a vague description
of “this Rule 14a-8 proposal”; (2) in response to the Company’s Rule 14a-8 deficiency notice, submitted the Simple Majority Vote Delegation of Authority, which was simply the First Delegation of Authority revised to paste in the caption “Proposal [4] – Simple Majority Vote” and the Proponent’s signature dated “10-31-19”; and (3) submitted the entirely new Proposal with the December 12 Delegation of Authority, which presented no specificity as to the Proposal, but instead contained only a handwritten, unsigned note reading “REVISED 12 DEC 2019” and the same vague description of “this Rule 14a-8 proposal.” Accordingly, the Company is of the view that the deficiency associated with the December 12 Delegation of Authority is of such significance that it undermines the guidance in SLB 14I that a proxy should be provided with respect to a single identifiable proposal. It is impossible to tell from the First Delegation of Authority, the Simple Majority Vote Delegation of Authority, or the December 12 Delegation of Authority that the Proponent’s Representative had been delegated authority to submit the Proposal, or, equally importantly, the subject matter of any proposal with which the Proponent intends to authorize the Proponent’s Representative to act on its behalf. As such, the deficiency with respect to the First Delegation of Authority (which provides no specificity as to the subject matter of the related proposal), the Simple Majority Vote Delegation of Authority (which appears to specify the subject matter of the Initial Proposal, which is no longer being submitted), and the December 12 Delegation of Authority (which removed the specificity in the Simple Majority Vote Delegation of Authority and provides no specificity as to the subject matter of the Proposal) is not merely a technical deficiency – it is a fundamental deficiency exactly of the type that SLB 14I attempted to address to “help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal’s submission by proxy.”

The Company respects the Staff’s expectation that companies will not seek to exclude proposals by proxy based on highly technical readings of documentation of eligibility. The Company further understands that the Staff has declined to concur in no-action requests where companies argued that exclusion of a proposal was permitted based solely on the failure to name a specific proposal in a delegation of authority where only one proposal was attached. The Company respectfully submits, however, that the issues raised by the First Delegation of Authority, the Simple Majority Vote Delegation of Authority, and the December 12 Delegation of Authority, and the differences between the Initial Proposal and the Proposal are inconsistencies that are not mere foot faults; rather, the collective submission demonstrates exactly the issues that the Staff attempted to address with its guidance on proposals by proxy in SLB 14I, namely, the failure to make a company aware of the specific subject matter of a proponent’s proposal that is the subject of a delegation of authority. Consistent with Rule 14a-8(f)(1), the Company timely notified the Proponent’s Representative of the eligibility deficiencies, including the deficiency related to the First Delegation of Authority. By providing the interim Simple Majority Vote Delegation of Authority and then submitting the December 12 Delegation of Authority (which is unchanged as to specificity from the First Delegation of Authority and eliminates the attempted specificity in the interim Simple Majority Vote
Delegation of Authority) and also providing the Proposal with a completely different subject matter, the Proponent has fully disregarded the intent of Rule 14a-8(b) and the Staff’s related guidance in SLB 14I. Acceptance of the purported December 12 Delegation of Authority would fundamentally undermine SLB 14I and render that guidance moot. Accordingly, the Company believes that it may properly omit the Proposal from its 2020 Proxy Materials in reliance on paragraphs (b) and (f) of Rule 14a-8.

C. The Proposal may be Omitted in Reliance on Rule 14a-8(i)(7) Because it Seeks to Micromanage the Company

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company’s “ordinary business operations.” According to the Commission, the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission described the two “central considerations” for the ordinary business exclusion. One consideration of the 1998 Release relates to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The other is that certain tasks are “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight” and, as such, may be excluded, unless the proposal raises policy issues that are sufficiently significant to transcend day-to-day business matters. (footnote omitted).

On October 23, 2018, the Staff released Staff Legal Bulletin No. 14J (“SLB 14J”) to provide guidance as to its evaluation of a company’s arguments for omission of a shareholder proposal under Rule 14a-8(i)(7) on the basis of micromanagement and to reiterate that its framework for the analysis focuses on whether a proposal “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies” and thus micromanages a company’s business. On October 16, 2019, in Staff Legal Bulletin No. 14K (“SLB 14K”), the Staff further clarified its views with respect to its analysis of arguments for exclusion under Rule 14a-8(i)(7) based on the micromanagement analysis, providing that the determinant factor is not whether a proposal “present[s] issues that are too complex for shareholders to understand,” but is, rather, an “assessment of the level of prescriptiveness of the proposal.”

It is the Company’s view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company. The Proposal requests that the Company “take steps to ensure that all of [the Company’s] outstanding stock has an equal one-vote per share in each voting situation. This would encompass all practicable steps
including encouragement and negotiation with current and future shareholders, who have more than one vote per share, to request that they relinquish, for the common good of all shareholders, any preexisting rights, if necessary.” The Proposal goes on to specify a time frame in which the transition from a dual class stock structure to a “one share, one vote” structure should occur, stating “This proposal would even allow 7-years to transition to equal voting rights for each shareholder.” SLB 14K provides that “[w]hen a proposal prescribes specific actions that the company’s management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted.”

The Company has had a dual class common stock structure since its initial public offering in 2015. The Company’s Restated Certificate of Incorporation (the “Charter”) authorizes the issuance of Class A common stock with one vote per share and Class B common stock with ten votes per share. The considerations for implementing such a structure are inherently complex and involve, among other things, issues of corporate governance, share price, potential takeover protections and the importance of ongoing governance by the Company’s co-founders who are the principal holders of the Company’s Class B common stock. As discussed further below, the Proposal effectively seeks for the Company to undertake a complete recapitalization in order to implement a “one share, one vote” structure for all items upon which shareholders are entitled to vote and provides no flexibility in implementing such a policy. As such a corporate governance decision necessarily involves myriad, detailed considerations and significant complexity, the Proposal seeks to micromanage – without regard to specific circumstances or the possibility of reasonable exceptions – all decisions relating to the Company’s stock structure and voting standards that are within the discretion of the Board of Directors (the “Board”) and the Company’s management.

The Company’s view that the Proposal seeks to micromanage the decision making of its management and Board is supported by the guidance in SLB 14K, which provides that where a proposal “imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board it may be excluded under Rule14a-8(i)(7) on the basis of micromanagement.” The Proposal explicitly seeks to supplant the judgment of management and the Board by requiring a change to a specific capital structure and voting policy by which the Company must abide in all instances – the Proposal would require that, going forward the Board “ensure that all of [the Company’s] outstanding stock has an equal one-vote per share in each voting situation.” The Proposal is precise in its prescriptions – it has a specific, inflexible mandate in that the Company may only have a single class “one share, one vote” structure in all shareholder votes – a result that would require, among other policy and corporate governance amendments, specific amendments to the Company’s Charter. The Proposal further specifies the timing of implementation by “allowing” a seven-year transition period. Accordingly, the Proposal seeks to micromanage the decisions of management and the Board in all instances involving its capital structure and shareholder voting.
In considering whether a proposal is “seeking to impose specific methods for implementing complex policies,” responses to prior no-action requests illustrate that the Staff generally considers the prohibition of a practice in all situations, the “phasing out” of a practice, or the adoption of a specific practice in all situations to be excludable as micromanaging. For example, in *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018), the Staff concurred in the exclusion of a proposal requesting that any open market share repurchase program or stock buyback be approved by stockholders prior to becoming effective. The Staff concurred that the proposal unduly supplanted management’s and/or the board’s discretion with regard to a particular matter, noting that the proposal “requests that any open market share repurchase programs or stock buybacks adopted by the board after approval of the [p]roposal shall not become effective until such new programs are approved by shareholders.” As was the case in *Walgreens Boots Alliance, Inc.*, the Proposal would supplant the judgment of management and the Board without exception and without consideration of any specific circumstances, in this case by allowing no room for the Board’s judgment in determining whether and when to utilize a dual class stock structure and, as such, the Proposal “is overly prescriptive” as contemplated by SLB 14K.

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

In SLB 14J, the Staff further noted that, while historically it had not agreed with the exclusion of proposals addressing the subject matter of senior executive and/or director compensation on the basis of micromanagement, the Staff had concluded that, going forward,
there is not “a basis for treating executive compensation proposals differently than other types of proposals” with respect to the micromanagement analysis. For example, in *JPMorgan Chase & Co. (AFL-CIO Reserve Fund)* (March 22, 2019), the proposal requested that the board adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service. The Staff concurred with the company’s view that the action requested by the proposal “necessitate[d] highly complex determinations that are dependent on management’s and the Board of Directors’ underlying knowledge and expertise.” The Staff, concurring in exclusion of the proposal, noted that the proposal micromanaged the company “by seeking to impose specific methods for implementing complex policies.” In *Johnson & Johnson* (February 14, 2019), the Staff addressed a proposal requesting that the board “adopt a policy that no financial performance metric shall be adjusted to exclude legal or compliance costs when evaluating performance for purposes of determining the amount or vesting of any senior executive incentive compensation award.” In its response, the Staff stated its view that the proposal sought to micromanage the company “by seeking to impose specific methods for implementing complex policies [. . .] Specifically, the Proposal, if implemented, would prohibit any adjustment of the broad categories of expenses covered by the Proposal without regard to specific circumstances or the possibility of reasonable exceptions.”

Similar to *JPMorgan Chase & Co. (AFL-CIO Reserve Fund)* and *Johnson & Johnson*, the Board and management are responsible for evaluating and taking the necessary steps to implement the appropriate capital structure and voting standards for the Company. The Board invests a significant amount of time, energy, and effort in determining how the Company will approach corporate governance matters such as the voting rights attached to its two outstanding classes of common stock. As in *JPMorgan Chase & Co. (AFL-CIO Reserve Fund)*, the Company’s decisions regarding appropriate shareholder voting rights in all instances are the result of complex analyses requiring the Board’s and management’s specific background and expertise. As a technology company in the health industry with a well-known platform that combines wearable devices with software and services, the Company has a large number of shareholders and operates in a highly complex corporate governance environment. The Company’s decision to utilize a dual class structure of its common equity is based on a broad range of determinations regarding the voting standards appropriate for the Company. The Company’s decisions with respect to each of its voting standards involve specific determinations of members of the Board and of management that are dependent on the underlying expertise of each with respect to the many components of determining the most appropriate corporate governance practices for the Company. Given the complexity of the decisions relating to the Company’s equity structure specifically, and to the Company’s voting standards generally, the Proposal’s attempt to supplant the judgment of the Board and of management by imposing a specific outcome – without exception – of allowing only “one share, one vote” would unduly limit the decision-making of the Board and management with regard to this complex matter.
Similar to the Staff decisions cited above, the Proposal seeks to impose upon the Company’s decision-making process a specific outcome, in this case by mandating a policy establishing, without exception, the Company’s shareholder voting standards. Each of the Company’s determinations regarding the appropriate voting standards to implement requires specific consideration of the Company’s industry, competitive environment, business operations, and governance background. The Company is of the view that the Proposal may be omitted from its 2020 Proxy Materials in reliance on Rule 14a-8(i)(7), as it would supplant the judgment of management and the Board by imposing a specific outcome with regard to the determination of all Company voting standards and, therefore, micromanage the Company.

**IV. CONCLUSION**

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

Sincerely,

[Signature]

Martin P. Dunn
Morrison & Foerster LLP

Attachments

cc: John Chevedden
    Andy Missan, Executive Vice President, General Counsel and Corporate Secretary, Fitbit, Inc.
EXHIBIT A
Mr. Missan,

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
Dear Mr. Missan,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. 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 my proposal promptly by email to

Sincerely,

Kenneth Steiner

Date

cc: Juliana Chen <jchen@fitbit.com>
investor@fitbit.com

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

Meanwhile our stock has lost 90% of its value since 2015 and James Park continued as both our Chairman and CEO. Under such circumstances Mr. Park should at least relinquish one of these 2 roles.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy’s. The proponents of these proposals included Ray T. Chevedden and William Steiner.

Currently a 1%-minority can frustrate the will of our 66%-shareholder majority in an election with 67% of shares casting ballots. In other words a 1%-minority could have the power to prevent shareholders from improving the governing rules of our company. This can be particularly important during periods of management underperformance and/or an economic downturn. Currently the role of shareholders is downsized because management can simply push the snooze button in response to a 66%-vote of shareholders on certain issues.

Please vote yes:
Simple Majority Vote – Proposal [4]
[The above line – Is for publication.]
Kenneth Steiner, sponsors this proposal.

Notes:
This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email...
EXHIBIT B
From: Lynn, David M  
Sent: Monday, October 28, 2019 9:25 PM  
To:  
Cc: 'Andy Missan' <amissan@fitbit.com>  
Subject: Letter regarding shareholder proposal submitted to Fitbit, Inc.

Dear Mr. Chevedden:

On behalf of our client, Fitbit, Inc., we are contacting you, as Mr. Kenneth Steiner’s representative, with respect to the shareholder proposal regarding supermajority voting that was submitted for consideration at Fitbit’s 2020 Annual Meeting of Shareholders.

The attached letter notes that the proposal contains certain procedural deficiencies that we are required to bring to your attention pursuant to SEC Rule 14a-8.

Please do not hesitate to contact me if you have any questions.

DAVID LYNN  
Partner | Morrison & Foerster LLP  
2000 Pennsylvania Avenue, NW | Washington, DC 20006-1888  
P: +1 (202) 778-1603  
mofo.com | LinkedIn | Twitter
October 28, 2019

VIA EMAIL & OVERNIGHT DELIVERY

Mr. John Chevedden

Dear Mr. Chevedden:

I am writing on behalf of Fitbit, Inc. ("Fitbit") with respect to the shareholder proposal regarding supermajority voting (the “Proposal”) received from you for consideration at Fitbit’s 2020 Annual Meeting of Shareholders. The proposal was submitted by you on behalf of Kenneth Steiner (the “Proponent”).

The Proposal contains certain procedural deficiencies, as set forth below, which Securities and Exchange Commission ("SEC") regulations require us to bring to your attention.

Proposal by Proxy

A shareholder’s ability to submit a “proposal by proxy” must be consistent with Securities Exchange Act of 1934 Rule 14a-8 and the eligibility requirements of Rule 14a-8(b). The SEC Staff provided guidance in Staff Legal Bulletin No. 141 ("SLB 141") to assist the SEC Staff and companies in their evaluation regarding whether the eligibility requirements of Rule 14a-8(b) have been satisfied. In SLB 141, the SEC Staff stated that it will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder’s delegation of authority to the proxy. The SEC Staff stated in SLB 141 that it expects that documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.
The delegation of authority included with the Proponent's submission of the Proposal is inconsistent with the Staff's guidance set forth above because it fails to identify the specific proposal to be submitted. As such, Fitbit is of the view that the Proponent has failed to satisfy the eligibility requirements of Rule 14a-8(b).

To remedy this defect, you are requested to submit a sufficient delegation of authority by the Proponent to submit the Proposal by proxy.

Ownership Verification

Rule 14a-8(b) provides that to be eligible to submit a shareholder proposal, each shareholder proponent must submit sufficient proof that he or she has continuously held at least $2,000 in market value, or 1 percent, of the company's securities entitled to vote on the proposal at the meeting for at least one year as of the date the shareholder submits the proposal. According to Fitbit's records, the Proponent does not appear to be a registered shareholder. In addition, to date Fitbit has not received proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to Fitbit.

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

- A written statement from the "record" holder of the shares (usually a broker or a bank) verifying that, as of the date the Proposal was submitted, the Proponent continuously held the requisite number of Fitbit's securities for at least one year. For this purpose, the SEC Staff considers the date that a proposal was submitted to be the date the proposal was postmarked or transmitted electronically, which, in the case of the Proposal, was October 15, 2019.

- If the Proponent has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting ownership of Fitbit's securities as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent has continuously held the required number of shares for the one-year period.
In order to help shareholders comply with the requirement to prove ownership by providing a written statement from the “record” holder of the shares, the SEC’s Division of Corporation Finance published Staff Legal Bulletin 14F (“SLB 14F”) in October 2011 and Staff Legal Bulletin 14G (“SLB 14G”) in October 2012. In SLB 14F and SLB 14G, the SEC Staff clarified that, for purposes of SEC Rule 14a-8(b)(2)(i), only brokers or banks that are DTC participants or affiliates of DTC participants will be viewed as “record” holders of securities that are deposited at DTC. An entity is an “affiliate” of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant. As a result, you will need to obtain the required written statement from the DTC participant or an affiliate of the DTC participant through which the Proponent’s shares are held. For the purposes of determining if a broker or bank is a DTC participant, you may check the list posted at: http://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/alpha.ashx. If the DTC participant or an affiliate of the DTC participant knows the holdings of the Proponent’s broker or bank, but does not know the Proponent’s individual holdings, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the Proposal was submitted, the required amount of securities was held continuously by the Proponent or at least one year – with one statement from the broker or bank confirming the Proponent’s ownership, and the other statement from the DTC participant or an affiliate of the DTC participant confirming the broker’s or bank’s ownership.

In Staff Legal Bulletin 14G, the SEC Staff also clarified that, in situations where a shareholder holds securities through a securities intermediary that is not a broker or bank, a shareholder can satisfy Rule 14a-8’s documentation requirement by submitting a proof of ownership letter from that securities intermediary. If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

For your reference, please find enclosed a copy of SEC Rule 14a-8, SLB 14F, SLB 14G and SLB 14F. For the Proposal to be eligible for inclusion in Fitbit’s proxy materials for Fitbit’s 2020 Annual Meeting of Shareholders, the rules of the SEC require that a response to this letter, correcting all procedural deficiencies described in this letter, be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please
address any response to me at 199 Fremont Street, 14th Floor, San Francisco, CA 94105, or via email to nramachandran@fitbit.com.

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

Sincerely,

Nisha Ramachandran
Associate General Counsel and Assistant Secretary

cc: Kenneth Steiner
    Andy Missan, Fitbit, Inc.
    David Lynn, Morrison & Foerster LLP

Enclosures:

Rule 14a-8 of the Securities Exchange Act of 1934
Division of Corporation Finance Staff Bulletin No. 14F
Division of Corporation Finance Staff Bulletin No. 14G
Division of Corporation Finance Staff Bulletin No. 14I
Rule 14a-8 — Proposals of Security Holders

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

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

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?
(1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

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

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

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

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

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

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

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

Question 5: What is the deadline for submitting a proposal?
(1) If you are submitting your proposal for the company’s annual meeting, you can in most cases find the deadline in last year’s proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year’s meeting, you can usually find the deadline in one of the company’s quarterly reports on Form 10-Q, or in shareholder reports of investment companies under Rule 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

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

(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

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

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

(g) Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?

Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

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

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

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

3. If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.
Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

1. Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

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

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

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

3. Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

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

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

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

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

8. Relates to election: If the proposal:

   (i) Would disqualify a nominee who is standing for election;
(i) Would remove a director from office before his or her term expired;

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

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

(iv) Otherwise could affect the outcome of the upcoming election of directors.

(9) **Conflicts with company's proposal:** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.

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

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

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

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

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

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;
(i) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
The company is not responsible for the contents of your proposal or supporting statement.

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

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

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, Rule 14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

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

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

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before it files definitive copies of its proxy statement and form of proxy under Rule 14a-6.
Division of Corporation Finance  
Securities and Exchange Commission  

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

Action: Publication of CF Staff Legal Bulletin  

Date: October 18, 2011  

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

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

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

A. The purpose of this bulletin  

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

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

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

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

1. Eligibility to submit a proposal under Rule 14a-8
To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.1

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

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

2. The role of the Depository Trust Company

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

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

In The Hain Celestial Group, Inc. (Oct. 1, 2009), we took the position that an introducing broker could be considered a “record” holder for purposes of Rule 14a-8(b)(2)(C). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.6 Instead, an introducing broker engages another broker, known as a “clearing broker,” to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC’s securities position listing, Hain Celestial has required companies to
accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g3-1 and a 1988 staff no-action letter addressing that rule, under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

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

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx.

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

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

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

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

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

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

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal." (emphasis added). We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date before the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date after the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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

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

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."

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

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.
1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c). If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

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

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

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

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

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

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

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

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

1. See Rule 14a-8(b).

2. For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").
If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(ii).

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


See KBR Inc. v. Chevedden, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); Apache Corp. v. Chevedden, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company’s non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

See Techne Corp. (Sept. 20, 1988).

In addition, if the shareholder’s broker is an introducing broker, the shareholder’s account statements should include the clearing broker’s identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

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

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

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

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


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

16 Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

Division of Corporation Finance
 Securities and Exchange Commission

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

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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

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

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)
To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the record holder of your securities (usually a broker or bank)...."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.1 By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

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

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.2 If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

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

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

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to...
correct it. In SLB No. 14 and SLB No. 148, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

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

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

D. Use of website addresses in proposals and supporting statements

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

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.²

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

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

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

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

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

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

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

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(i) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.
An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

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

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

A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.


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Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals
Staff Legal Bulletin No. 141 (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 1, 2017

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

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

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

A. The purpose of this bulletin

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

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

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

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

1. Background

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

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

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

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

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

1. Background

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

2. History of Rule 14a-8(i)(5)

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

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

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

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

That analysis simply considered whether a company conducted any amount of business related to the issue in the proposal and whether that issue was of broad social or ethical concern. We believe the Division's application of Rule 14a-8(i)(5) has unduly limited the exclusion's availability because it has not fully considered the second prong of the rule as amended in 1982—the question of whether the proposal "deals with a matter that is not significantly related to the issuer's business" and is therefore excludable. Accordingly, going forward, the Division's analysis will focus, as the rule directs, on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business.

Because the test only allows exclusion when the matter is not "otherwise significantly related to the company," we view the analysis as dependent upon the particular circumstances of the company to which the proposal is submitted. That is, a matter significant to one company may not be significant to another. On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.

Where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is "otherwise significantly related to the company's business."[8] For example, the proponent can provide information demonstrating that the proposal "may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities."[9] The proponent could continue to raise social or ethical issues in its arguments,

https://www.sec.gov/litigation/elsa/041.htm
but it would need to tie those to a significant effect on the company’s business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the “total mix” of information about the issuer.

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

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

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

D. Proposals submitted on behalf of shareholders

While Rule 14a-8 does not address shareholders’ ability to submit proposals through a representative, shareholders frequently elect to do so, a practice commonly referred to as “proposals by proxy.” The Division has been, and continues to be, of the view that a shareholder’s submission by proxy is consistent with Rule 14a-8.[10]

The Division is nevertheless mindful of challenges and concerns that proposals by proxy may present. For example, there may be questions about whether the eligibility requirements of Rule 14a-8(b) have been satisfied. There have also been concerns raised that shareholders may not know that proposals are being submitted on their behalf. In light of these challenges and concerns, and to help the staff and companies better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied, going forward, the staff will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder’s delegation of authority to the proxy.[11] In general, we would expect this documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
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We believe this documentation will help alleviate concerns about proposals by proxy, and will also help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal's submission by proxy. Where this information is not provided, there may be a basis to exclude the proposal under Rule 14a-8(b).

E. Rule 14a-8(d)

1. Background

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

2. The use of images in shareholder proposals

Questions have recently arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images. In two recent no-action decisions, the Division expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.

Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.

The Division recognizes the potential for abuse in this area. The Division believes, however, that these potential abuses can be addressed through other provisions of Rule 14a-8. For example, exclusion of graphs and/or images would be appropriate under Rule 14a-8(1)(3) where they:

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

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

[2] Id.
[3] Id.


[6] Id.


[8] Proponents bear the burden of demonstrating that a proposal is "otherwise significantly related to the company's business." See Release No. 34-39093 (Sep. 18, 1997), citing Release No. 34-19135.


[10] We view a shareholder's ability to submit a proposal by proxy as largely a function of state agency law provided it is consistent with Rule 14a-8.

[11] This guidance applies only to proposals submitted by proxy after the date on which this staff legal bulletin is published.

[12] Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder's failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. See Rule 14a-8(f)(1).

[13] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. See Release No. 34-12999 (Nov. 22, 1976).


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

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


http://www.sec.gov/interp/legal/cfs/lb14i.htm
EXHIBIT C
On 10/31/19, 4:43 PM, " wrote:

Dear Ms. Ramachandran,
Please see the attached letter.
Sincerely,
John Chevedden
Mr. Andrew P. Missan  
Secretary  
Fitbit Inc (FIT)  
199 Fremont Street, 14th Floor  
San Francisco, CA 94105

Dear Mr. Missan,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. 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 my proposal promptly by email to

cc: Juliana Chen <jchen@fitbit.com>  
investor@fitbit.com

Proposition [4] – Simple Majority Vote

Sincerely,

Kenneth Steiner

10-9-19

Date

10-31-19
EXHIBIT D
11/07/2019

Kenneth Steiner

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

Dear Kenneth Steiner,

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 500 shares of each of the following stocks in the above referenced account since July 1, 2018:

JP Morgan Chase & Co (JPM)
Vector Group Inc (VGR)
Valley National Bancorp (VLY)
Fitbit Inc (FIT)
The Allstate Corporation (ALL)

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

Sincerely,

Andrew P. Haag
Resource Specialist
TD Ameritrade

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

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

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Mr. Missan,
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. Andrew P. Missan  
Secretary  
Fitbit Inc (FIT)  
199 Fremont Street, 14th Floor  
San Francisco, CA 94105

Dear Mr. Missan,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. 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 my proposal promptly by email to

cc: Juliana Chen <jchen@fitbit.com>  
investor@fitbit.com

Sincerely,

Kenneth Steiner

Date  
10-9-19

RESOLVED: Shareholders request that our Board take steps to ensure that all of our company’s outstanding stock has an equal one-vote per share in each voting situation. This would encompass all practicable steps including encouragement and negotiation with current and future shareholders, who have more than one vote per share, to request that they relinquish, for the common good of all shareholders, any preexisting rights, if necessary.

This proposal is not intended to unnecessarily limit our Board’s judgment in crafting the requested change in accordance with applicable laws and existing contracts. This proposal is important because certain shares have super-sized voting power with 10-votes per share compared to the weakling one-vote per share for other shareholders. This proposal would even allow 7-years to transition to equal voting rights for each shareholder.

With certain stock having 10-times more voting power our company takes our shareholder money but does not give us in return an equal voice in our company’s management. Without a voice, shareholders cannot hold management accountable.

As an example for Fitbit, social and mobile-game maker Zynga announced moving to a single-class share structure in 2018. Zynga executives said that a single-class share structure simplifies the company’s stock structure and gives parity to shareholders. In its 2018 annual report, Zynga said its old multi-class share system could limit the ability of its other stockholders to influence the company and could negatively impact its share price.

Please vote yes:


[The above line – Is for publication.]
Kenneth Steiner, 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 [***]