January 14, 2020

Via E-mail to shareholderproposals@sec.gov

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Northrop Grumman Corporation
Exclusion of CODEPINK – Women for Peace as Co-Proponent of
Shareholder Proposal

Ladies and Gentlemen:

We are writing on behalf of our client, Northrop Grumman Corporation (the “Company”), to inform you of the Company’s intention to exclude CODEPINK – Women for Peace (the “Proponent”) as a co-proponent of the enclosed shareholder proposal and supporting statement (collectively, the “Shareholder Proposal”) submitted for inclusion in the Company’s proxy statement and proxy to be filed and distributed in connection with its 2020 Annual Meeting of Shareholders (the “Proxy Materials”) requesting that the Company “publish a report, at reasonable cost and omitting proprietary information, with the results of human rights impact assessments examining the actual and potential human rights impacts associated with high-risk products and services, including those in conflict-affected areas.”

The Company respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the

1 The Company separately is submitting a no-action request to exclude from its Proxy Materials the Shareholder Proposal, as submitted by the following co-proponents: Sisters of St. Dominic of Caldwell New Jersey, School Sisters of Notre Dame Cooperative Investment Fund and Sisters of St. Francis of Philadelphia, pursuant to Rule 14a-8(i)(7) of the Exchange Act, on the basis that the Shareholder Proposal deals with matters relating to the company’s ordinary business operations or, alternatively, Rule 14a-8(i)(10) of the Exchange Act, on the basis that the Company has substantially implemented the Shareholder Proposal or, alternatively, Rule 14a-8(i)(3) of the Exchange Act, on the basis that the Shareholder Proposal is impossibly vague and indefinite so as to be materially misleading in violation of Rule 14a-9.
Proponent as a co-proponent of the Shareholder Proposal pursuant to Rule 14a-8(f) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that the Proponent failed to provide sufficient proof of ownership of the Company’s common stock as of the date the Shareholder Proposal was submitted, as required by Rule 14a-8(b), despite the Company’s clear and timely notice of the Shareholder Proposal’s procedural deficiencies.

Pursuant to Rule 14a-8(j) of the Exchange Act and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter and the Shareholder Proposal and related correspondence (attached as Exhibits A and B to this letter), and is concurrently sending a copy to the Proponent, no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

Procedural Background

On November 26, 2019, the Proponent sent the Shareholder Proposal via overnight courier to the Company, which the Company received on November 27, 2019. The submission included a copy of a letter from RBC Wealth Management, dated November 26, 2019, stating that the Proponent owned 5 shares of the Company’s common stock “representing a market value of approximately $1,770 and that, CODEPINK – Women for Peace has owned such shares since March 13, 2019” (the “RBC Letter” included in Exhibit A to this letter).

On December 6, 2019, the Company sent to the Proponent via e-mail and overnight courier a notice of deficiency (the “Deficiency Notice” attached as Exhibit B to this letter), indicating the Company’s view that the Proponent’s submission failed to meet the requirements of Rule 14a-8(b) and that deficiencies must be cured within 14 days of the Proponent’s receipt of the Deficiency Notice.

As of the date of this letter, which is past the Proponent’s 14-day deadline for responding to the Deficiency Notice, the Company has not received any additional proof of ownership documentation from the Proponent.

2 The Proponent also sent the same submission materials to the Company via e-mail on November 27, 2019.
Basis for Exclusion

The Proponent May Be Excluded as a Co-Proponent of the Shareholder Proposal in Reliance on Rule 14a-8(f), as the Proponent Has Not Sufficiently Demonstrated Its Eligibility to Submit a Shareholder Proposal Under Rule 14a-8(b) And Did Not Provide Sufficient Proof of Ownership Upon Request After Receiving Proper Notice Under Rule 14a-8(f)(1)

Rule 14a-8(b)(1) provides that “[i]n order to be eligible to submit a 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 meeting for at least one year by the date [the shareholder] submit[s] the proposal.” Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”) provides in relevant part that “[i]n the event that the shareholder is not the registered holder, the shareholder is responsible for proving his or her eligibility to submit a proposal to the company.” In this regard and in accordance with Rule 14a-8(b)(2), the shareholder must do one of two things, including “submit a written statement from the record holder of the securities verifying that the shareholder has owned the securities continuously for one year as of the time the shareholder submits the proposal. . . .” SLB 14, at C.1.c. Pursuant to Rule 14a-8(f)(1), a company may exclude a shareholder proposal from its proxy materials if such shareholder proposal fails to comply with the eligibility or procedural requirements under Rule 14a-8, provided that (a) the company has notified the proponent of such deficiencies within 14 days of the company’s receipt of the proposal and (b) the proponent has failed to correct such deficiencies within 14 days of receipt of such notice.

The Staff has routinely concurred in the exclusion of co-proponents from shareholder proposals or entire proposals pursuant to Rule 14a-8(f) when, within 14 days of receipt of a company’s request, such co-proponents or the proposal’s sole proponent, respectively, failed to provide documentary support evidencing their or its satisfaction of the minimum ownership requirement for the continuous one-year period as required under Rule 14a-8(b). See, e.g., JPMorgan Chase & Co. (February 2, 2017) (in which the co-proponent’s proof of ownership documentation covered a period ending on a date two days prior to the date the proposal was submitted to the company); JPMorgan Chase & Co. (February 1, 2017) (in which the co-proponent’s proof of ownership documentation covered a period ending on a date 18 days prior to the date the proposal was submitted to the company); JPMorgan Chase & Co. (January 31, 2017) (in which the co-proponent’s proof of ownership documentation covered a period ending on a date 12 days prior to the date the proposal was submitted to the company); PepsiCo, Inc. (January 21, 2015) (in which none of the co-proponents satisfied the minimum ownership requirement, including a co-proponent whose proof of ownership documentation stated that he owned such shares “for over one year” as of November 20, 2014, where such proposal was submitted on November 18, 2014, thus the proof of ownership documentation covered less than one year as it needed to clearly evidence that it covered the period from November 18, 2013 through and including November 18,
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2014); UnitedHealth Group Incorporated (March 15, 2012) (in which the co-proponent was not a
record holder and failed to provide any proof of ownership documentation); Anadarko Petroleum
Corporation (January 26, 2011) (in which the co-proponent failed to prove sufficient continuous
ownership by submitting only two account holding snapshots, the most recent of which was dated
more than a month before the proposal was submitted); AT&T Inc. (December 16, 2010) (in which
the co-proponent’s proof of ownership documentation covered only an 11-month period ending on
a date 10 days before the proposal was submitted); The Home Depot, Inc. (February 5, 2007) (in
which the proponent’s proof of ownership documentation was dated November 7, 2006 and stated
“[t]he [proponent] has held at least $2,000 worth of The Home Depot, Inc. common stock for the
past year,” where such proposal was submitted on October 19, 2006, thus the proof of ownership
documentation covered less than one year as it needed to clearly evidence that it covered the period
from October 19, 2005 through and including October 19, 2006); and AutoNation, Inc. (March 14,
2002) (in which the proponent’s proof of ownership documentation covered the period from
December 12, 2000 through and including December 12, 2001, which was two days less than the
required one-year period where the proposal was submitted on December 10, 2001).

As the procedural history described herein reflects, both prongs necessary for exclusion pursuant
to Rule 14a-8(f)(1) are satisfied in this case. On November 26, 2019, the Proponent sent the
Shareholder Proposal, including the RBC Letter, via overnight courier to the Company, which the
Company received on November 27, 2019. On December 6, 2019, within 14 days of the
Company’s receipt of the Shareholder Proposal, the Company sent the Deficiency Notice to the
Proponent via e-mail and overnight courier, indicating the Company’s view that the Proponent’s
submission failed to meet the requirements of Rule 14a-8(b). The Deficiency Notice included:

- A description of Rule 14a-8(b)’s eligibility requirements;

- A clear statement that the Company had not received sufficient proof of ownership and an
  explanation of what the Proponent must do to comply with the requirements of Rule
  14a-8(b), including the following statement:

  A shareholder must continuously own such shares for at least one year as of
  the date of submission. The Company’s stock records do not indicate that
  the Proponent is the record owner of sufficient continuously owned shares
  to satisfy this requirement. . . . The proof of ownership you have submitted
  covered the period from March 13, 2019 to November 26, 2019, rather than
  the required period of November 26, 2018 to November 26, 2019. To
  remedy this defect, the Proponent must submit sufficient proof of its
  ownership of the requisite number of Company shares during the time
  period of one year preceding and including the November 26, 2019
  submission date;
• A statement highlighting the 14-day deadline for the Proponent to respond to the Deficiency Notice: “The SEC’s rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter”; and

• For reference, a copy of Rule 14a-8 and Staff Legal Bulletins No. 14F (October 18, 2011) and 14G (October 16, 2012).

As of the date of this letter, which is past the Proponent’s 14-day deadline for responding to the Deficiency Notice, the Company has not received any written support from the Proponent to demonstrate that it continuously held shares of the Company’s securities for at least one year by the date on which the Shareholder Proposal was submitted. Accordingly, the Company believes that it may exclude the Proponent as a co-proponent of the Shareholder Proposal in reliance on Rules 14a-8(b) and (f).

Conclusion

Based on the foregoing, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proponent as a co-proponent of the Shareholder Proposal pursuant to Rule 14a-8(f), on the basis that the Proponent failed to provide sufficient proof of ownership of the Company’s common stock as of the date the Shareholder Proposal was submitted, as required by Rule 14a-8(b), despite the Company’s clear and timely notice of the Shareholder Proposal’s procedural deficiencies.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proponent as a co-proponent of the Shareholder Proposal, please do not hesitate to contact me at meredith.cross@wilmerhale.com or (202) 663-6644, or Jennifer C. McGarey, Corporate Vice President & Secretary, Northrop Grumman Corporation at Jennifer.McGarey@ngc.com. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Very truly yours,

Meredith B. Cross

Enclosures

cc: Jennifer C. McGarey
Carley Towne, CODEPINK – Women for Peace
Dear Ms. Jennifer C. McGarey,

CODEPINK is the beneficial owner of 5 shares of common stock which we have held for at least a year and intend to hold until after the annual meeting. Verification of ownership is attached.

I am hereby authorized to notify you of our intention to present the attached proposal requesting a Human Rights Impact Assessment for consideration and action by the stockholders at the next annual meeting. I hereby submit it for inclusion in the proxy statement in accordance with rule 14-a-8 of the general rules and regulations of the Securities Exchange Act of 1934.

Attached are the requisite documents to present the attached proposal for consideration and action by stockholders at the next annual meeting. We have also mailed you these documents, which will arrive no later than Friday, November 29th 2019.

Thank you for your time,

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Carley Towne
CODEPINK
909-809-8104
carley@codepink.org
2010 Linden Ave Venice, CA
November 26, 2019

Ms. Jennifer C. McGarey  
Corporate Secretary  
Northrop Grumman Corporation  
2980 Fairview Park Drive  
Falls Church, Virginia 22042

Dear Ms. McGarey:

CODEPINK considers social, environmental, and financial factors in our investment decisions. We are a women-led grassroots anti-war organization dedicated to peace and justice, and are co-filing today to ensure that our investments reflect basic respect for human rights and peace around the world.

CODEPINK is the beneficial owner of 5 shares of common stock which we have held for at least a year and intend to hold until after the annual meeting. Verification of ownership is attached.

I am hereby authorized to notify you of our intention to present the attached proposal requesting a Human Rights Impact Assessment for consideration and action by the stockholders at the next annual meeting. I hereby submit it for inclusion in the proxy statement in accordance with rule 14-a-8 of the general rules and regulations of the Securities Exchange Act of 1934.

The Sisters of St. Francis of Philadelphia and Sisters of St. Dominic of Caldwell are the primary filers of this resolution, and if an agreement is reached, a representative of the primary filers is authorized to withdraw the resolution on our behalf. We look forward to discussing the issues raised in the proposal at your earliest convenience.

Sincerely,

Carley Towne  
Director, Divest from the War Machine  
CODEPINK
**Human Rights Impact Assessment**

**2020 – Northrop Grumman Corporation**

**Whereas:** Under the UN Guiding Principles on Business and Human Rights (UNGPs), companies have a responsibility to respect human rights within their operations and value chains. This responsibility entails that companies should assess, identify, prevent, mitigate, and remediate adverse human rights impacts and disclose how they address salient human rights issues.

Northrop Grumman is the world’s third largest defense contractor, with the U.S. Government (USG) representing 82 percent of 2018 sales. Business relationships with the USG and governments whose activities may be linked to human rights violations may expose Northrop Grumman to legal, financial, and reputational risks. It is essential to conduct human rights impact assessments to evaluate and mitigate associated human rights risks.

In 2018, Northrop Grumman was awarded a $95 million USG contract to develop the Homeland Advanced Recognition Technology (HART) database, which is expected to hold biometric data for 260 million people. This presents concerns regarding algorithmic racial bias, risks to privacy and First Amendment rights, and potential harm to immigrant communities. The UN Office of the High Commissioner for Human Rights expressed alarm regarding the potential use of lethal autonomous robotics for targeted killings by states, including Northrop Grumman’s X-47B drone.

Conflict-affected areas are characterized by widespread human rights abuses, and the UNGPs encourage business enterprises operating in those contexts to conduct enhanced due diligence to ensure that the business is not involved with such abuses. Northrop Grumman has contracts with or supplies weapons to multiple states engaged in international and internal armed conflicts, including Saudi Arabia and United Arab Emirates (Yemen), India (Kashmir), Israel (Palestine), Morocco (Western Sahara), and Colombia.

Northrop Grumman is one of Saudi Arabia’s largest defense partners and has, “been heavily involved in the training and development of Saudi military personnel.” In 2018, the International Commission of Jurists reported that the Saudi-led coalition violated international humanitarian law during operations in Yemen in 2017. The UN declared that the conflict created the world’s worst humanitarian crisis, with 24 million people dependent on aid and protection.

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6. [www.northropgrumman.com/AboutUs/OurGlobalPresence/MiddleEastAndAfrica/Pages/Who-We-Are-in-the-Middle-East.aspx](http://www.northropgrumman.com/AboutUs/OurGlobalPresence/MiddleEastAndAfrica/Pages/Who-We-Are-in-the-Middle-East.aspx)
Northrop Grumman adopted a Human Rights Policy in 2013, but does not disclose its salient human rights issues or how the policy is implemented to prevent, mitigate, or remediate adverse human rights impacts associated with its government contracts. In 2019, 31% of shareholders voted in favor of increased reporting on the implementation of the company's Human Rights Policy. Yet, investors are still unable to assess how it evaluates and mitigates risks accompanying specific activities such as weapons contracts, military training, biometrics, and emerging technologies, or with governments engaged in conflict.

Resolved: Shareholders request that Northrop Grumman publish a report, at reasonable cost and omitting proprietary information, with the results of human rights impact assessments examining the actual and potential human rights impacts associated with high-risk products and services, including those in conflict-affected areas.

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8 http://investor.northropgrumman.com/node/36321/html
November 26, 2019

Jennifer C. McGarey
Corporate Secretary
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, Virginia 22042

Dear Ms. McGarey,

RBC Capital Markets, LLC, acts as custodian for CODEPINK – Women for Peace.

We are writing to verify that our books and records reflect that, as of market close on November 26, 2019, CODEPINK – Women for Peace owned 5 shares of Northrop Grumman Corporation (Cusip: 666807102) representing a market value of approximately $1,770 and that, CODEPINK – Women for Peace has owned such shares since March 13, 2019. We are providing this information at the request of CODEPINK – Women for Peace in support of its activities pursuant to rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me directly at 415-445-8304.

Sincerely,

Thomas Van Dyck
Managing Director – Financial Advisor
From: McGarey, Jennifer C [US] (CO)
Sent: Friday, December 6, 2019 5:17 PM
To: 'carley@codepink.org' <carley@codepink.org>
Subject: Shareholder Proposal

Please see attached letter.

Jennifer C. McGarey
Corporate Vice President & Secretary
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042

703-280-4011 (phone)
844-888-9054 (fax)
Jennifer.mcgarey@ngc.com
December 6, 2019

VIA EMAIL (carley@codepink.org) AND FEDEX

CODEPINK
2010 Linden Ave
Venice, CA 90291
ATTN: Carley Towne, Director

Re: Notice of Deficiency Relating to Shareholder Proposal

Dear Ms. Towne:

On November 27, 2019, Northrop Grumman Corporation (the “Company”) received via email the shareholder proposal submitted by you on behalf of CODEPINK (the “Proponent”) for consideration at the Company’s 2020 Annual Meeting. Based on the postmark date of the hard copy of the submission you mailed to us, the Company has determined that the date of submission was November 26, 2019.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a shareholder must submit sufficient proof of its continuous ownership of at least $2,000 in market value, or 1%, of a company’s shares entitled to vote on the proposal. A shareholder must continuously own such shares for at least one year as of the date of submission. The Company’s stock records do not indicate that the Proponent is the record owner of sufficient continuously owned shares to satisfy this requirement. Therefore, under Rule 14a-8(b), the Proponent must prove its eligibility by submitting either:

- A written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that, as of the November 26, 2019 submission date, the Proponent continuously held the requisite number of Company shares for at least one year. As addressed by the SEC staff in Staff Legal Bulletin 14G, please note that if the Proponent’s shares are held by a bank, broker or other securities intermediary that is a Depository Trust Company (“DTC”) participant or an affiliate thereof, proof of ownership from either that DTC participant or its affiliate will satisfy this requirement. Alternatively, if the Proponent’s shares are held by a bank, broker or other securities intermediary that is not a DTC participant or an affiliate of a DTC participant, proof of ownership must be provided by both (1) the bank, broker or other securities intermediary and (2) the DTC participant (or an affiliate thereof) that can verify the holdings of the bank, broker or other securities intermediary. You can confirm whether a particular bank, broker or other securities intermediary is a DTC participant by checking DTC’s participant list, which is available on the Internet at http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf. The Proponent should be able to determine who the DTC participant is by asking the Proponent’s bank, broker or other securities intermediary; or
• If the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting its ownership of the requisite number of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite number of Company shares for the one-year period.

The proof of ownership you have submitted covered the period from March 13, 2019 to November 26, 2019, rather than the required period of November 26, 2018 to November 26, 2019. To remedy this defect, the Proponent must submit sufficient proof of its ownership of the requisite number of Company shares during the time period of one year preceding and including the November 26, 2019 submission date.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Failure to correct the deficiencies within this timeframe will provide the Company with a basis to exclude the proposal from the Company's proxy materials for the 2020 Annual Meeting.

Sincerely,

Jennifer C. McGarey
Corporate Vice President and Secretary

Enclosures — Exchange Act Rule 14a-8
Staff Legal Bulletins 14F and 14G
Securities and Exchange Commission

§240.14a-6

Shareholder proposals

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

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

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held securities through the date you submit the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold these 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. If you are not a registered holder, the company may not be able to verify your eligibility.

The first way is to submit 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.

The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13g-102), Form 3 (§249.103 of this chapter), Form 4 (§249.105 of this chapter) and/or Form 5 (§249.106 of this chapter).
§ 240.14a-6

17 CFR Ch. II (4-1-19 Edition)

representatives, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date at which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

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

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

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

Question 2: How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders meeting.

Question 3: How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

Question 4: What is the deadline for submitting a proposal? The company must notify you in writing of any procedural or eligibility deficiencies, as well as the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice if the deficiency cannot be remedied, such as if you fail to submit a proposal on time.

Question 5: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? 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 deadline specified in this section, the company must notify you of any procedural or eligibility deficiencies, as well as the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice if the deficiency cannot be remedied, such as if you fail to submit a proposal on time.

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? 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 deadline specified in this section, the company must notify you of any procedural or eligibility deficiencies, as well as the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice if the deficiency cannot be remedied, such as if you fail to submit a proposal on time.

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.

Question 8: Must I appear personally at the shareholders' meeting to present the proposal? (1) Neither you, nor your representative who is qualified...
under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

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

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

(1) Question 8: 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 (1)(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 not recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

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

NOTE TO PARAGRAPH (1)(2): We will not apply the basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-8, which prohibits materially false or misleading statements in proxy soliciting materials.

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

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

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

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

(8) Director elections: If the proposal:

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

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

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

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

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

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

NOTE TO PARAGRAPH (1)(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 (1)(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 §240.14a-8.
§ 240.14a-8

to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a proxy statement) or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-31(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-31(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 have 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 5 calendar years of the last time it was included if the proposal received:

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

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

(3) Less than 10% of the vote on its last submission to shareholders if proposal thrice 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.

(1) Question 11: 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, if the company demonstrates good cause for missing the deadline.

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

(1) The proposal;

(3) 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

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

(5) Question 12: May I submit my own statement to the Commission responding to the company’s arguments? Yes, you may submit a response, but it is not required. You should try to submit any response to us with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(1) Question 13: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

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

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

(2) Question 14: 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
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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 rules, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

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

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

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its initial definitive copies of its proxy statement and form of proxy under §240.14a-6.


§240.14a-9 False or misleading statements.

(a) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

(b) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

(c) No nominee, nominating shareholder or nominating shareholder group, or any member thereof, shall cause to be included in a registrant's proxy materials, either pursuant to the Federal proxy rules, an applicable state or foreign law provision, or a registrant's governing documents, as they relate to including shareholder nominees for director in a registrant's proxy materials, include in a notice on Schedule 14N (§240.14a-11), or include in any other related communication, any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to a solicitation for the same meeting or subject matter which has become false or misleading.

Note: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

A. Predictions as to specific future market values.

1. Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.
Divison 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.

Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.\(^2\)

2. The role of the Depository Trust Company

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

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

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

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8\textsuperscript{7} and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow Hain Celestial.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule\textsuperscript{8} under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

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

\begin{quote}
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 \url{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\textsuperscript{2}.

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.\[1\]

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)(2)(ii).

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


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

See Techno 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.

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. By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

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

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

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

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

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

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

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

D. Use of website addresses in proposals and supporting statements

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

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

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

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

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

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

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

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

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

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(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.
1 An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

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

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

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

http://www.sec.gov/interps/legal/cfsib14g.htm
Delivered
Monday 12/09/2019 at 9:36 am

FROM
Falls Church, VA US

TO
VENICE, CA US

Shipment Facts

<table>
<thead>
<tr>
<th>TRACKING NUMBER</th>
<th>SERVICE</th>
<th>WEIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>777177007605</td>
<td>FedEx Priority Overnight</td>
<td>7 lbs / 3.18 kgs</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>DELIVERED TO</th>
<th>TOTAL PIECES</th>
<th>TOTAL SHIPMENT WEIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residence</td>
<td>1</td>
<td>7 lbs / 3.18 kgs</td>
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</tbody>
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<tr>
<th>TERMS</th>
<th>PACKAGING</th>
<th>SPECIAL HANDLING SECTION</th>
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</thead>
<tbody>
<tr>
<td>Shipper</td>
<td>FedEx Pak</td>
<td>Deliver Weekday, Residential Delivery</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STANDARD TRANSIT</th>
<th>SHIP DATE</th>
<th>ACTUAL DELIVERY</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/09/2019 by 10:30 am</td>
<td>Fri 12/06/2019</td>
<td>Mon 12/09/2019 9:36 am</td>
</tr>
</tbody>
</table>

Travel History

Monday, 12/09/2019

9:36 am
VENICE, CA
Delivered
Left on porch. Package delivered to recipient address - release authorized

7:24 am
MARINA DEL REY, CA
On FedEx vehicle for delivery

7:04 am
MARINA DEL REY, CA
At local FedEx facility

Sunday, 12/08/2019

5:16 pm
LOS ANGELES, CA
At destination sort facility

3:17 pm
MEMPHIS, TN
Departed FedEx location
<table>
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<tr>
<th>Date</th>
<th>Time</th>
<th>Location</th>
<th>Event</th>
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</thead>
<tbody>
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<td>8:40 am</td>
<td>MEMPHIS, TN</td>
<td>Arrived at FedEx location</td>
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<tr>
<td>Friday, 12/06/2019</td>
<td>9:00 pm</td>
<td>ALEXANDRIA, VA</td>
<td>Left FedEx origin facility</td>
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<tr>
<td></td>
<td>6:08 pm</td>
<td>ALEXANDRIA, VA</td>
<td>Picked up</td>
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<tr>
<td></td>
<td>3:32 pm</td>
<td></td>
<td>Shipment information sent to FedEx</td>
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