February 17, 2020

Via Electronic Mail to shareholderproposals@sec.gov

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

Re: MetLife, Inc. — Shareholder Proposal Submitted by Walter O. Garcia, Maria Luisa Garcia and Gaby Garcia.

Ladies and Gentlemen,

We (“Walter O. Garcia, Maria Luisa Garcia and Gaby M. Garcia”) respectfully submit the following comments and observations in response to the no action-request (the “Letter”, the “Request”) dated February 5, 2020, submitted to your office by Ms. Jeannette N. Pina of MetLife, Inc. (“MetLife”, the “Company”), regarding our shareholder proposal (the “Proposal”) submitted in accordance with Rule 14a-8 under the Securities and Exchange Act of 1934 for inclusion in the proxy statement to be distributed by the Company in connection with its 2020 annual shareholders’ meeting.

Pursuant to the guidance provided in Staff Legal Bulletin No. 14D (November 7, 2008), we are submitting this letter to the Staff via email to shareholderproposals@sec.gov (in lieu of mailing paper copies). A copy of this letter is provided concurrently to Ms. Pina.

THE PROPOSAL

The Proposal provides as follows:

RESOLVED: Shareholders of MetLife, Inc. (“MetLife”) request that the Board of Directors create a standing committee to oversee the Company’s response to domestic and international developments in human rights that affect MetLife’s business.

SUPPORTING STATEMENT:

MetLife’s exposure to conflict in human rights risk is significant as our Company has a strong presence in nearly 50 countries, some of which have a significant risk of human rights violations.

The United Nations Guiding Principles on Business and Human Rights (the “Guiding Principles”) approved by the UN Human Rights Council in 2011, note that “Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties... For the purpose of
these Guiding Principles a business enterprise’s ‘activities’ are understood to include both actions and omissions; and its ‘business relationships’ are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.”

None of MetLife’s current Board Committees has been assigned responsibility for overseeing human rights issues. We believe that the significant risks associated with adverse human rights impacts at MetLife warrant specific accountability and responsibility at the Board level.

In our view, the Proposal transcends ordinary business matters, and, therefore, urge shareholders to support it.

The wording of the proposal is essentially the same as in Mastercard International (April 25, 2019).

**HUMAN RIGHTS**

Human rights are fundamental standards that allow human beings to live with freedom, dignity, equality, justice, peace. Respect for human rights is the responsibility of states, individuals, businesses. Human rights are not an abstract concept, the physical and psychological pain experienced by the victims of human rights violations is very real.

The guidelines of the United Nations Guiding Principles on Business and Human Rights (UNGPBHR) are not enforceable but they are a forceful framework whose implementation results in more socially responsible corporate governance.

**BASES FOR ALLOWING THE PROPOSAL**

MetLife argues that the Proposal may be excluded from its 2020 Proxy materials in reliance on Rule 14a-8 (i) (10) because the Company has substantially implemented the Proposal. MetLife arguments do not meet its burden of demonstrating that it may exclude the proposal. The policies, practices and procedures described in the Request do not, in our view, constitute a substantial implementation of the actions sought by the Proposal.

The proposed standing committee would have the responsibility to oversee the Company’s response to domestic and international developments in human rights, as recommended by the UN Guiding Principles on Business and Human Rights. To properly discharge that responsibility, the proposed committee would ensure that appropriate human rights due diligence procedures are put in place. Human rights due diligence is an integral and inseparable part of the processes needed to identify, prevent, mitigate and account for how business enterprises and their business relationships address adverse human rights impacts. Nothing in the Letter addresses human rights due diligence or adverse human rights impacts.

The Letter notes that the Company has established a Sustainability function that supports its Governance and Corporate Responsibility Committee in fulfilling its mandate to “oversee the Company’s monitoring of and responses to domestic and international developments in human rights that affect the Company’s business”, and that such function has the responsibility to prepare MetLife’s annual Corporate Responsibility Report. The latest published issue of this report does not include any reference to the term “human rights”.
The Proposal’s supporting statement refers to the UNGPBHR statement to the effect that “Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties...”. Further, the UNGPBHR recommends that where the business enterprise has leverage to prevent or mitigate the adverse impact of human rights violations by a business relationship, it should exercise it (emphasis added).

The human rights due diligence procedures that may be included within the Company’s broader enterprise risk management systems are ineffective. This assertion is based on the fact that the Company’s audit committee engages the services of an organization, a significant service provider, that has been found by independent specialized counsel to have policies that result in egregious violations of human rights. The continued relationship with such service provider evidences clearly that MetLife has not exercised its leverage to prevent further adverse impacts of human rights violations by such organization, as recommended by the UNGPBHR. Notwithstanding the Company’s statement that the mandates of the Audit Committee under its charter include consideration of the process by which the Company undertakes risk assessment and risk management, as well the Company’s policies on ethical business conduct.

The foregoing constitutes irrefutable evidence that the Company has not accomplished the essential objectives of the Proposal and, consequently, cannot claim relief under the provisions of Rule 14a-8 (i) (10) that allow issuers to exclude shareholder proposals that have been “substantially implemented”.

**CONCLUSION**

For the reasons expressed in this response, we respectfully request the Commission to deny MetLife, Inc.’s no-action request for the exclusion of our proposal from its 2020 Proxy Materials.

Sincerely,

Walter O. Garcia

cc: Ms. Jeannette N. Pina, Vice President and Secretary, MetLife, Inc.
February 5, 2020

Via Electronic Mail to shareholderproposals@sec.gov

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

Ladies and Gentlemen:

I am writing on behalf of MetLife, Inc., a Delaware corporation (“MetLife” or the “Company”), regarding a stockholder proposal and statement in support thereof dated December 11, 2019 (collectively, the “Proposal”) from Walter O. Garcia, Maria Luisa Garcia and Gaby M. Garcia (collectively, the “Proponent”) for inclusion in the proxy statement to be distributed to the Company’s stockholders in connection with the 2020 annual meeting of stockholders (the “Proxy Materials”).

The Company respectfully requests that the Securities and Exchange Commission (the “Commission”) Division of Corporation Finance staff (the “Staff”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials for the reasons set forth below.

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the “Exchange Act”) and Staff Legal Bulletin No. 14D (Nov. 7, 2008), the Company is submitting this letter, together with the Proposal and related attachments to the Commission via email to shareholderproposals@sec.gov (in lieu of mailing paper copies), with copies of this letter and the attachments provided concurrently to the Proponent. We respectfully remind the Proponent that pursuant to Rule 14a-8(k), a copy of any additional correspondence to the Commission or the Staff with respect to the Proposal should be furnished to the Company concurrently.
THE PROPOSAL

The Proposal provides as follows:

RESOLVED: Shareholders of MetLife, Inc. ("MetLife") request that the Board of Directors create a standing committee to oversee the Company’s response to domestic and international developments in human rights that affect MetLife’s business.

SUPPORTING STATEMENT:

MetLife’s exposure to conflict in human rights risk is significant as our Company has a strong presence in nearly 50 countries, some of which have a significant risk of human rights violations.

The United Nations Guiding Principles on Business and Human Rights (the “Guiding Principles”) approved by the UN Human Rights Council in 2011, note that “Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties... For the purpose of these Guiding Principles a business enterprise’s ‘activities’ are understood to include both actions and omissions; and its ‘business relationships’ are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.”

None of MetLife’s current Board Committees has been assigned responsibility for overseeing human rights issues. We believe that the significant risks associated with adverse human rights impacts at MetLife warrant specific accountability and responsibility at the Board level.

In our view, the Proposal transcends ordinary business matters, and, therefore, urge shareholders to support it.

A copy of the submission from the Proponent, including the Proposal as well as related correspondence with the Proponent, is set forth in Exhibit A.

BASIS FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, the Company respectfully requests that the Staff concur in the Company’s view that the Proposal may be excluded from the Proxy Materials in reliance on Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.
BACKGROUND

The Company is strongly committed to fundamental human rights. The Company’s Board of Directors (the “Board”) and its committees, specifically, the Governance and Corporate Responsibility Committee, the Audit Committee and the Finance and Risk Committee, oversees the Company’s monitoring of and responses to domestic and international developments in human rights that affect the Company’s business, similar to what the Proposal requests. Specifically, the Governance and Corporate Responsibility Committee provides oversight of human rights matters through the responsibilities in its charter to oversee MetLife’s “corporate citizenship programs” and “activities and initiatives related to sustainability … and corporate social responsibility.” The Governance and Corporate Responsibility Committee’s work with regards to human rights is complemented by the risk oversight work of the Audit Committee and the Finance and Risk Committee that encompass certain human rights risks.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because It Has Been Substantially Implemented.

The Company has already established Board committee-level responsibility for overseeing the Company’s response to human rights developments, policies and standards, including the management of related risks. Therefore, as discussed below, the Proposal is excludable because it has been substantially implemented.

A. Background On The Substantial Implementation Standard Under Rule 14a-8(i)(10)

The purpose of the Rule 14a-8(i)(10) exclusion is to “avoid the possibility of stockholders having to consider matters which have already been favorably acted upon by management.” Commission Release No. 34-12598 (July 7, 1976). While the exclusion was originally interpreted to allow exclusion of a stockholder proposal only when the proposal was “‘fully’ effected” by the company, the Commission has revised its approach to the exclusion over time to allow for exclusion of proposals that have been “substantially implemented.” Commission Release No. 34-20091 (Aug. 16, 1983) and Commission Release No. 40018 (May 21, 1998) (the “1998 Release”). In applying this standard, the Staff has noted that, “a determination that the [company] has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” Texaco, Inc. (Mar. 6, 1991, recon. denied Mar. 28, 1991).

A company can substantially implement a proposal without the need to implement the proposal in exactly the same manner as requested by the proponent. See 1998 Release. The Staff has not required that a company implement the action requested in a proposal exactly in all details but has issued no-action letters in situations where the “essential objective” of the proposal had been satisfied. See General Motors Corp. (Mar. 4, 1996) (concurring with exclusion of a proposal where the company argued, “[i]f the mootness requirement of paragraph (c)(10) were
applied too strictly, the intention of [the rule]—permitting exclusion of ‘substantially implemented’ proposals—could be evaded merely by including some element in the proposal that differs from the registrant’s policy or practice.”). Thus, differences between a company’s actions and a stockholder proposal are permitted as long as the company’s actions satisfactorily address the proposal’s essential objectives. For example, in The Boeing Co. (Feb. 17, 2011), the Staff concurred with exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company “review its policies related to human rights” and report its findings, where the company had already adopted human rights policies and provided an annual report on corporate citizenship. See also, The Dow Chemical Co. (Mar. 18, 2014, recon. denied Mar. 25, 2014) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal that requested a report on the company’s evaluation of a particular issue, where the proponents disputed statements made in the company’s report); and Walgreen Co. (Sept. 26, 2013) (concurring with exclusion of a proposal requesting elimination of supermajority voting requirements in the company’s governing documents where the company had eliminated all but one supermajority voting requirement).

B. The Existing Board Committee-Level Oversight Over Human Rights Issues Related to Company Activities Already Substantially Implements the Proposal

The Company has substantially implemented the Proposal because its Board-level committees already have oversight responsibility for human rights matters. Specifically, the Company’s Governance and Corporate Responsibility Committee, pursuant to its charter, reviews the Company’s “activities and initiatives related to sustainability, environmental stewardship and corporate social responsibility” and “oversees the Company’s efforts to manage its reputation and culture.” These matters include human rights matters. As described by the UN Global Compact, several of its principles focus on the “social dimension of corporate sustainability, of which human rights is the cornerstone.”1 Moreover, the mandates of the Audit Committee under its charter include consideration of the process by which the Company undertakes risk assessment and risk management, as well as the Company’s policies on ethical business conduct. The Finance and Risk Committee provides oversight of the assessment, management and mitigation of material risks affecting the Company.

The Board has implemented a management structure to support the Governance and Corporate Responsibility Committee in its oversight of domestic and international developments in human rights that affect MetLife’s business. Specifically, the Company has established a separate Sustainability function, which is led by the Chief Sustainability Officer, who periodically reports to the Governance and Corporate Responsibility Committee. The Sustainability function has responsibilities relating to, among other things, (a) MetLife’s annual corporate responsibility report, which includes discussion of human rights matters such as equality (gender and nation), housing safety and poverty eradication, (b) MetLife’s index of disclosures against Global Reporting Initiative requirements (which include several topics focused on human

---

The Company’s substantial implementation of the Proposal is similar to the situation addressed in Apple Inc. (Dec. 11, 2014) (“Apple 2014”). There, the proposal requested that the company “establish a Public Policy Committee to assist the Board of Directors in overseeing the Company’s policies and practice that relate to public issues including human rights … and others that may affect the Company’s operations, performance, reputation, and shareholders’ value.” The company argued that it had substantially implemented the proposal because its board’s audit committee had the primary responsibility for overseeing the company’s enterprise risk management, and in doing so was assisted by a “Risk Oversight Committee” consisting of key members of management, including the company’s chief financial officer and general counsel. The company noted that its Risk Oversight Committee reported regularly to the board’s audit committee. The Staff concurred that the proposal could be excluded, noting that the company’s “policies, practices and procedures compare favorably with the guidelines of the proposal and that Apple has, therefore, substantially implemented the proposal.” Similarly, in Verizon Communications Inc. (Feb. 19, 2019) (“Verizon 2019”), the Staff concurred in the exclusion of a proposal that requested the establishment of a “Public Policy and Social Responsibility Committee” to oversee the company’s “policies and practices that relate to public policy issues … including, among other things, human rights.” In Verizon 2019, the company had existing systems and controls, including a governance and public policy committee and audit committee of the board, designed to provide board-committee oversight of “important public policy issues” and “significant business risk exposures.” In its concurrence with exclusion of the proposal under Rule 14a-(i)(10), the Staff noted that it appeared that the company’s “policies, practices and procedures compare favorably with the guidelines of the proposal and that the company ha[d], therefore, substantially implemented the proposal.” Similarly, in Apple Inc. (Nov. 19, 2018) (“Apple 2018”), the Staff concurred in the exclusion under Rule 14a-8(i)(10) of a proposal requesting the formation an international policy committee of the board to oversee the company’s policies “including human rights … affecting Apple’s international business.” The company argued that its existing audit and finance committee of the board already had oversight of the company’s enterprise risk management and related policies. See also The Goldman Sachs Group, Inc. (Feb. 12, 2014) (concurring that a proposal requesting the formation of a public policy committee was substantially implemented by the company’s then-existing corporate governance, nominating and public responsibility committee and its public responsibility subcommittee); Entergy Corp. (Feb. 14, 2012) (concurring in the exclusion of a proposal that requested establishment of a committee to conduct a special review of certain nuclear matters when the company had an existing committee responsible for the matters referenced in the proposal).

The Company’s existing policies, practices and procedures substantially implement the Proposal by providing for oversight of domestic and international developments in human rights that affect the Company’s business. As a result, the creation of a new standing committee by the Board, as requested in the Proposal, would be duplicative and unnecessary. Because the essential objective of the Proposal already is accomplished, consistent with the Apple 2014,
Verizon, Apple 2018 and the other well-established precedents cited above, the Company has already implemented the Proposal, and the Proposal therefore may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(10).

CONCLUSION

For the foregoing reasons, the Company respectfully requests your confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from the Company’s Proxy Materials.

If you have any questions concerning the above, please do not hesitate to call me at (212) 578-3988, or email me at jpina1@metlife.com.

Sincerely,

Jeannette N. Pina
Vice President and Secretary, MetLife, Inc.

Attachments

cc: Walter O. Garcia

***
Exhibit A

The Proposal and Related Correspondence
December 11, 2019

RE: Shareholder Proposal for 2020 Annual Meeting

Dear MS. JEANNETTE N. PINA,

I, Walter O. Garcia, and Maria Luisa Garcia and Gaby M. Garcia, shareholders of MetLife, Inc., submit the enclosed shareowner proposal for inclusion in the proxy statement that MetLife, Inc. plans to circulate to shareowners in anticipation of the 2020 annual meeting. The proposal is being submitted under SEC Rule 14a-8.

We have beneficially owned more than $2,000 worth of MetLife, Inc. stock for longer than one year. Enclosed is a letter from Morgan Stanley Smith Barney LLC, confirming our ownership. Shareowners intend to continue ownership of at least $2,000 worth of MetLife, Inc. stock through the date of the 2020 annual meeting, which I will attend.

If you require additional information, please let me know.

Very truly yours,

Walter O. Garcia
PROPOSED SHAREHOLDER RESOLUTION under SEC rule 14a-8

RESOLVED: Shareholders of MetLife, Inc. ("MetLife") request that the Board of Directors create a standing committee to oversee the Company's response to domestic and international developments in human rights that affect MetLife's business.

SUPPORTING STATEMENT:

MetLife's exposure to conflict in human rights risk is significant as our Company has a strong presence in nearly 50 countries, some of which have a significant risk of human rights violations.

The United Nations Guiding Principles on Business and Human Rights (the "Guiding Principles") approved by the UN Human Rights Council in 2011, note that "Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties... For the purpose of these Guiding Principles a business enterprise's 'activities' are understood to include both actions and omissions; and its 'business relationships' are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services."

None of MetLife's current Board Committees has been assigned responsibility for overseeing human rights issues. We believe that the significant risks associated with adverse human rights impacts at MetLife warrant specific accountability and responsibility at the Board level.

In our view, the Proposal transcends ordinary business matters, and, therefore, urge shareholders to support it.
December 10, 2019

Walter O. Garcia,
Gaby Garcia & Maria Luis Garcia

Re: Account

Per your request, this serves to verify that as of December 10, 2019, the above referenced Morgan Stanley account held and has held continuously, for at least one year, the following shares of common stock:

180 shares of MetLife Inc were purchased as follows:
   154 shares on 05/12/16 at $39.20 total $6036.53
   19 shares on 08/11/16 at $40.51 total $769.61
   7 shares on 02/15/18 at $46.57 total $326.02
   Total 180 shares at $39.62 total $7132.16

Please see the Gain/Loss statement attached for verification.

Sincerely,

Jorge A. Vasquez
Complex Risk Officer

The information and data contained in this report are from sources considered reliable, but their accuracy and completeness is not guaranteed. This report has been prepared for illustrative purposes only and is not intended to be used as a substitute for monthly transaction statements you receive on a regular basis from Morgan Stanley Smith Barney LLC. Please compare the data on this document carefully with your monthly statements to verify its accuracy. The Company strongly encourages you to consult with your own accountants or other advisors with respect to any tax questions.
The gain and loss information is provided for informational purposes only, is not a substitute for tax advice, and should not be used for tax preparation. Unrealized gain and loss values are estimates and should be independently verified. Morgan Stanley does not provide tax advice. We recommend that you contact your tax advisor to determine the appropriate use of this information. Past performance does not guarantee future results.

Gain and loss information is calculated based upon uniform standards and does not account for each individual client's particular circumstances such as the existence of hedging transactions or constructive sales. Although we make every effort to adjust the cost basis for securities capital gains, we do not adjust the cost basis for all events. Contact your Financial Advisor for guidance on particular questions.

For accounts with Choice Select pricing, the commissions paid on your eligible equity and option purchases and sales are applied to the Total Cost on a monthly basis.

With respect to estimated gains and losses for listed equity options, we have taken into account option premiums paid or received and, in respect to multiple purchases and/or sales, calculated cost using an average unit price for all like positions. External Accounts: Certain fees listed in this view are based upon information provided by you, your client or other external sources and are not part of accounts that you manage at Morgan Stanley. Clients not held with Morgan Stanley may not be covered by SIPC protection or by additional protection under Morgan Stanley's excess insurance coverage plans. Morgan Stanley may include information about these external assets in this view solely as a service to you, and Morgan Stanley is not responsible for the accuracy of any information provided by external sources, including but not limited to, you, your client or another financial institution. You are responsible for ensuring the accuracy of such information. Generally, any financial institution that holds securities is responsible for year-end reporting (Internal Revenue Service (IRS) Form 1099) and separate periodic statements, which may vary from Morgan Stanley's information due to different tax reporting periods.

For Financial Advisors: Content generated in this view is based upon information provided by you, your client or other external sources. Morgan Stanley is not responsible for the accuracy of any information provided by external sources, including but not limited to, you, your client or another financial institution. You are responsible for ensuring the accuracy of such information.

For clients wishing to make versus purchase sales that information needs to be conveyed at the time of the sale. Unless you tell us otherwise, we will use first-in-first-out (FIFO) accounting.

Morgan Stanley & Co. Customer Type: Morgan Stanley & Co. LLC ("MS & Co.") is an affiliate of Morgan Stanley Smith Barney LLC ("Morgan Stanley Wealth Management") and both are subsidiaries of Morgan Stanley, the financial holding company. US & Co. values shown on the 3D platform may differ from the values shown on official MS & Co. statements due to, among other things, different reporting methods, delays, market conditions and interruptions. The information shown is approximate and subject to updating, correction and other changes. Information being reported by Morgan Stanley Wealth Management on assets held by other custodians, which are related to income, Performance, Tax Loss, Total Cost, Target Asset Allocation, Asset Classification and Dividends may differ from this information provided by the custodian. In performance calculations, the inception date will align with the first date on which Morgan Stanley Wealth Management received account information from the custodian. If there are discrepancies between the official MS & Co. account statement and 3D, rely on the official MS & Co. account statement.

Previous Close - Assets held outside of Morgan Stanley Wealth Management have been included in the "Previous Close Assets" calculation for the purposes of providing an aggregated value of the client's total assets currently in view. The calculation of "Previous Close Assets" may not be priced solely as of the previous day's close, as some assets are not refreshed on a daily basis.

Unrealized Gain/Loss External accounts - The information provided herein may not include any of your external or manual accounts because tax lot data may not be available. For Unrealized Gain/Loss, please refer to the position details for position level gain/loss information.
December 23, 2019

VIA FEDERAL EXPRESS

Walter O. Garcia, Maria Luisa Garcia & Gaby M. Garcia

***

Re: Shareholder Proposal for the MetLife, Inc. 2020 Annual Meeting

Dear Mr. Garcia and Ms. Garcia,

My name is Jeannette N. Pina and I am the MetLife, Inc. (“MetLife,” or the “Company”) Corporate Secretary. On December 13, 2019, the Company received by Federal Express a letter that was shipped on December 12, 2019, from Walter O. Garcia dated December 11, 2019, regarding a shareholder proposal (the “Proposal”) submitted by Mr. Garcia, Maria Luisa Garcia and Gaby M. Garcia (together, “you”), and intended for inclusion in the Company’s proxy materials for its 2020 Annual Meeting of Stockholders (the “2020 Annual Meeting”). Thank you for your interest in our Company. As explained in more detail below, I am writing to note that there is a deficiency regarding verification of ownership of Company stock.

As you may know, Rule 14a-8 under the Securities Exchange Act of 1934 (“Rule 14a-8”) sets forth the legal framework pursuant to which a shareholder may submit a proposal for inclusion in a public company’s proxy statement. Rule 14a-8(b) establishes that, in 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 you submit the proposal.” In addition, under Rule 14a-8(b), the shareholder proponent must also provide a written statement that the proponent intends to continue to own the required amount of securities through the date of the relevant meeting. If Rule 14a-8(b)’s eligibility requirements are not met, the company to which the proposal has been submitted may, pursuant to Rule 14a-8(f), exclude the proposal from its proxy statement.

You submitted to the Company along with the Proposal a letter on Morgan Stanley letterhead dated December 10, 2019 (the “Letter”) and addressed to you, verifying that as of December 10, 2019, a certain Account *** “held and has held continuously, for at least one year” 180 shares of MetLife securities. The Letter includes in the footer a reference to “Morgan Stanley Smith Barney LLC, Member SIPC.” Attached to, and referenced
in, the Letter is a “Gain/Loss Statement” dated as of December 9, 2019, which sets forth details about securities, including MetLife securities, acquired by you. The Letter does not provide proof of ownership as required by Rule 14a-8(b) because it does not cover the entire one-year period preceding and including the Proposal submission date of December 12, 2019. Rather, the Letter speaks as of a date before the Proposal was submitted, thereby leaving a gap between the date of the purported verification (December 10, 2019) and the date you submitted the Proposal (December 12, 2019). Moreover, while the Gain/Loss Statement sets forth several of your trades in MetLife securities, it does not state your ownership of MetLife securities. In addition, the Letter is on Morgan Stanley letterhead and its statement as to your ownership of MetLife securities refers to the “above referenced Morgan Stanley account”, but the entity “Morgan Stanley” is not included on the DTC participant list discussed below. In addition, while the Letter refers to “Morgan Stanley Smith Barney LLC” in the footer, the Letter does not state that Account *** is held with Morgan Stanley Smith Barney LLC, which is a DTC participant.

The Company’s stock records do not indicate that you meet the minimum ownership requirements under Rule 14a-8. Under Rule 14a-8(b), you must therefore prove your eligibility to submit a proposal in one of two ways: (1) by submitting to the Company a written statement from the “record” holder of your stock (usually a broker or bank) verifying that you have continuously held the requisite number of securities entitled to be voted on the Proposal for at least the one-year period prior to and including December 12, 2019, which is the date the Proposal was submitted, along with a written statement from you that you intend to continue ownership of the securities through the date of the 2020 Annual Meeting; or (2) by submitting to the Company a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 filed by you with the Securities and Exchange Commission (the “SEC”) that demonstrates your ownership of the requisite number of securities as of or before the date on which the one-year eligibility period begins, along with a written statement from you that: (i) you have continuously owned such securities for the one-year period as of the date of the statement and (ii) you intend to continue ownership of the securities through the date of the 2020 Annual Meeting.

With respect to the first method of proving eligibility to submit a proposal as described in the preceding paragraph, please note that most large brokers and banks acting as “record” holders deposit the securities of their customers with the Depository Trust Company (“DTC”). The staff of the SEC’s Division of Corporation Finance (the “Staff”) in 2011 issued further guidance on its view of what types of brokers and banks should be considered “record” holders under Rule 14a-8(b). In Staff Legal Bulletin No. 14F (October 18, 2011) (“SLB 14F”), the Staff stated, “[W]e 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.” In 2012, the Staff clarified, as stated in Staff Legal Bulletin No. 14G (“SLB 14G”) that a written statement establishing proof of ownership may also come from an affiliate of a DTC participant. SLB 14G also clarified that 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.

You can confirm whether your broker, bank or other securities intermediary is a DTC participant by checking the DTC participant list, which is available on DTC’s website (currently, at http://dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx). If your broker, bank or other securities intermediary is a DTC participant or an affiliate of a DTC participant, then you will need to submit a written statement from your broker, bank or other securities intermediary verifying that, as of the date the Proposal was submitted, you continuously held the requisite amount of securities for at least one year. If your broker, bank or other securities intermediary is not on the DTC participant list or is not an affiliate of a DTC participant, you will need to ask your broker, bank or other securities intermediary to identify the DTC participant or affiliate of a DTC participant through which your securities are held and have that DTC participant or affiliate provide the verification detailed above. You may also be able to identify this DTC participant or affiliate from your account statements because the clearing broker listed on your statement will generally be a DTC participant. If the DTC participant or affiliate knows the broker, bank or other securities intermediary’s holdings but does not know your holdings, you can satisfy the requirements of Rule 14a-8 by submitting two proof of ownership statements verifying that, at the time the Proposal was submitted, the required amount of securities was continuously held for at least one year: (i) one statement from your broker, bank or other securities intermediary confirming your ownership and (ii) one statement from the DTC participant or an affiliate of a DTC participant confirming the broker, bank or other securities intermediary’s ownership.

You have not yet submitted evidence establishing that you satisfy these eligibility requirements set forth in Rule 14a-8(b). Please note that if you intend to submit such evidence, such response must be postmarked, or transmitted electronically, no later than 14 calendar days from the date you receive this letter. For your reference, copies of Rule 14a-8, SLB 14F and SLB 14G are attached to this letter as Exhibit A, Exhibit B and Exhibit C, respectively.

If you have any questions concerning the above, please do not hesitate to reach out to me by phone at (212) 578-3988, or by email at jpin1@metlife.com. Thank you for your investment in MetLife.

Sincerely yours,

Jeannette N. Pina
Vice President and Secretary, MetLife, Inc.

Attachments
Title 17: Commodity and Securities Exchanges

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.14a-8 Shareholder proposals.

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

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

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

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

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

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

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

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

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

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

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

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

(e) Question 5: What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company’s annual meeting, you can in most cases find the deadline in last year’s proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year’s meeting, you can usually find the deadline in one of the company’s quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

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

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

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company’s notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company’s properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

(g) Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

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

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

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

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

(i) Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?
(1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization;

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

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

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

(3) Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

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

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

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

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

(8) Director elections: If the proposal:

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

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

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

   (iv) Seeks to include a specific individual in the company’s proxy materials for election to the board of directors; or
(v) Otherwise could affect the outcome of the upcoming election of directors.

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

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

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

Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K ($229.402 of this chapter) 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 §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 §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;

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

(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.

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

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

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

(2) However, if you believe that the company’s opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §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 files definitive copies of its proxy statement and form of proxy under §240.14a-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://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

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

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

• The Division’s new process for transmitting Rule 14a-8 no-action responses by email.

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

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

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

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

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)(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

\(^{1}\) 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.”).
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)(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.

3 If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

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


In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8\(^7\) 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,\(^8\) 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.

---

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

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC’s participant list, which is currently available on the Internet at [http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf](http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf).

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

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder’s broker or bank.\(^9\)

---

\(^7\) See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company’s non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

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

\(^9\) In addition, if the shareholder’s broker is an introducing broker, the shareholder’s account statements should include the clearing broker’s identity and telephone number. See *Net Capital Rule Release*, at Section II.C.(iii). The clearing broker will generally be a DTC participant.
If the DTC participant knows the shareholder’s broker or bank’s holdings, but does not know the shareholder’s holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder’s broker or bank confirming the shareholder’s ownership, and the other from the DTC participant confirming the broker or bank’s ownership.

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

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

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

---

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

---

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

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

13 This position will apply to all proposals submitted after an initial proposal but before the company’s deadline for receiving proposals, regardless of whether they are explicitly labeled as “revisions” to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, additional proposal for inclusion in the company’s proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company’s deadline for submission, we will no longer follow Layne Christensen Co. (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.
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.15

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

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

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal

---


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.
request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company’s no-action request.16

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

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

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

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.

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

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.

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

A. The purpose of this bulletin

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

- the parties that can provide proof of ownership under Rule 14a-8(b) (2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.
You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission’s website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D, SLB No. 14E and SLB No. 14F.

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

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

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

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

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

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

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

---

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.
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

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

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

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute “good cause” for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company’s request that the 80-day requirement be waived.
January 6, 2020

Walter O. Garcia
Gaby Garcia & Maria Luis Garcia

Re: account

This letter will confirm that Morgan Stanley is a participant of DTC. Morgan Stanley's DTC number is 0015. The December 2018 and the December 2019 statements were sent to you today, via secure email, that will confirm that 180 shares of MetLife have been held continuously since December 11, 2018, and were held on December 12, 2019 continuously, for over one year.

Regards,

[Signature]

John L. Hagadorn
Assistant Vice President
Complex Risk Officer

The information and data contained in this report are from sources considered reliable, but their accuracy and completeness is not guaranteed. This report has been prepared for illustrative purposes only and is not intended to be used as a substitute for monthly transaction statements you receive on a regular basis from Morgan Stanley Smith Barney LLC. Please compare the data on this document carefully with your monthly statements to verify its accuracy. The Company strongly encourages you to consult with your own accountants or other advisors with respect to any tax questions.