

# BakerHostetler

## Baker&Hostetler LLP

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Suzanne K. Hanselman  
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February 19, 2020

**VIA E-MAIL: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

Office of Chief Counsel  
Division of Corporate Finance  
Securities and Exchange Commission  
100 F Street  
Washington D.C. 20549

***Re: Chesapeake Utilities No-Action Request***

Dear Ladies and Gentlemen:

I am writing on behalf of Chesapeake Utilities Corporation, a Delaware corporation (the "Company"), in reference to the letter dated February 14, 2020 (the "No-Action Request"), pursuant to which the Company requested that the Staff of the Division of Corporation Finance of the Securities and Exchange Commission concur with the Company's view that the potential proposal and supporting statement (the "Proposal") submitted by Pro Cap NYC LLC (the "Proponent") may be excluded from the proxy materials to be distributed by the Company in connection with its 2020 annual meeting of shareholders.

Following the submission of the No-Action Request, the Proponent clarified in an e-mail dated February 18, 2020 (attached hereto as Exhibit A) that the Proponent's initial correspondence to the Company, a copy of which was included in the No-Action Request, was not intended to be a Rule 14a-8 proposal. The Company hereby withdraws the No-Action Request on the basis that the Proposal is not a "proposal" within the meaning of Rule 14a-8(a) of the Securities Exchange Act of 1934.

Office of Chief Counsel  
February 19, 2020  
Page 2

Please contact me if you have any questions or would like to discuss.

Sincerely,

A handwritten signature in blue ink, appearing to read "Suzanne K. Hanselman".

Suzanne K. Hanselman

cc: James F. Moriarty, Executive Vice President,  
General Counsel and Corporate Secretary

Herbert A. Denton, President, Pro Cap NYC

**Hanselman, Suzanne**

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**From:** Bert Denton <Bert@procapnyc.com>  
**Sent:** Tuesday, February 18, 2020 12:06 PM  
**To:** Hanselman, Suzanne  
**Subject:** Re: Chesapeake Utilities Corporation No-Action Request

[External Email: Use caution when clicking on links or opening attachments.]

Suzanne

The Initial Correspondence was NOT intended to be a Rule 14a-8 Proposal.

Thank you very much for taking care of withdrawing the 'no action' letter.

Bert

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**From:** Hanselman, Suzanne <SHanselman@bakerlaw.com>  
**Sent:** Tuesday, February 18, 2020 10:54 AM  
**To:** Bert Denton  
**Cc:** jmoriarty@chpk.com  
**Subject:** Chesapeake Utilities Corporation No-Action Request

Mr. Denton-I am writing on behalf of our client, Chesapeake Utilities Corporation (the "Company"). The Company forwarded to us your e-mail regarding the intent of your correspondence dated September 7, 2019 (postmarked January 28, 2020) (the "Initial Correspondence"). While it could be called into question whether the Initial Correspondence was intended to constitute a shareholder proposal under Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), out of an abundance of caution, and in the event that the Initial Correspondence might be viewed as a Rule 14a-8 proposal, the Company submitted a no-action request to the SEC staff. If you respond to this e-mail to confirm that the Initial Correspondence was NOT intended to be a Rule 14a-8 proposal, the Company will take immediate action to withdraw its no-action request. If you have any questions, please contact me. Sincerely, Suzanne Hanselman

Suzanne Hanselman  
Partner

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February 14, 2020

By email to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: *Chesapeake Utilities Corporation: Potential Proposal Submitted by Pro Cap NYC llc*

Ladies and Gentlemen:

I am writing on behalf of Chesapeake Utilities Corporation, a Delaware corporation (the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission concur with our view that, for the reasons stated below, the Company may exclude the potential proposal and supporting statement (the "Potential Proposal") submitted by Pro Cap NYC llc (the "Proponent") from the proxy materials to be distributed by the Company in connection with its 2020 annual meeting of shareholders (the "2020 proxy materials").

In accordance with Staff Legal Bulletin No. 14D (November 7, 2008) this letter is being submitted by email to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). A copy of this letter is also being sent to the Proponent as notice of the Company's intent to omit the Potential Proposal from the Company's 2020 proxy materials.

### **THE POTENTIAL PROPOSAL**

The Potential Proposal states:

"For the following reasons Pro Cap NYC llc ("ProCap"), 'the shareholders investment bank', respectfully requests Chesapeake Utilities Corporation's Board of Directors ("Board") to offer themselves up for re-election annually:

- Each director has a fiduciary duty to oversee management on behalf of the shareholders. If only a minority of the directors are elected each year, the full Board's accountability to the shareholders is reduced which impairs each director's main purpose.
- The institutions that control a majority of Chesapeake Utilities Corporation's vote universally favor the annual election of all directors.
- Only a minority of Russell 3000 companies have classified Boards of Directors.

- The argument in support of a staggered board: that a board needs the ability to resist the wishes of a majority of shareholders makes little sense, and, at, best, is an affront to the skills and sophistication of the majority of Chesapeake Utilities Corporation's shareholder base.

As it infringes on the choice of shareholders without sufficient justification, ProCap believes that Chesapeake Utilities Corporation should resolve to eliminate its classified board for the benefit of said shareholders.”

The Proponent did not request that the Potential Proposal be included in the proxy materials for the Company's 2020 annual meeting, but rather stated:

“If ProCap's request is denied, we will consider submitting a resolution to the shareholders of Chesapeake Utilities Corporation at its May 2020 Annual Meeting to declassify its Board along with an alternative slate of Director Nominees.”

The Potential Proposal was dated September 7, 2019, postmarked on January 28, 2020, and received by the Company on or about February 5, 2020. A copy of the Proponent's submission, including the Potential Proposal, is attached as Exhibit A.

### **BASIS FOR EXCLUDING THE POTENTIAL PROPOSAL**

***The Potential Proposal May be Excluded from the 2020 Proxy Materials Pursuant to Rule 14a-8(e)(2) Because It Was Submitted After the Deadline for Submitting a Proposal.***

Although it is not clear if Potential Proposal is actually intended to be a “shareholder proposal” within the meaning of Rule 14a-8(a) of the Exchange Act, Rule 14a-8(e)(2) of the Exchange Act provides that a proposal submitted with respect to a company's regularly scheduled annual meeting “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.” The proxy statement for the Company's 2019 annual meeting of shareholders was released to shareholders on April 1, 2019. Accordingly, the deadline for submitting stockholder proposals for inclusion in the 2020 proxy materials was determined to be December 5, 2019, and that date was specified in the proxy statement for the Company's 2019 annual meeting.

Rule 14a-8(e)(2) provides that the 120-calendar day advance receipt requirement does not apply if the current year's annual meeting has been changed by more than 30 days from the date of the prior year's meeting. The Company's 2019 annual meeting of shareholders was held on May 8, 2019, and the 2020 Annual Meeting is scheduled for May 7, 2020. As the 2020 Annual Meeting has not been changed by more than 30 days from the date of the prior year's meeting, the deadline for shareholder proposals for inclusion in the Company's 2020 proxy statement remained December 5, 2019, as disclosed in the Company's 2019 proxy statement.

The Potential Proposal was dated September 7, 2019, postmarked on January 28, 2020, and received by the Company on or about February 5, 2020, two months after the applicable deadline.

The Staff has repeatedly concurred that a proposal may be excluded in its entirety under Rule 14a- 8(e)(2) when it is received after the applicable deadline for submitting a shareholder proposal. *See, e.g., Caterpillar Inc.* (Apr. 4, 2019); *Comcast Corporation* (Apr. 4, 2019); *FleetCor Technologies, Inc.* (Apr. 4, 2019); *HollyFrontier Corporation* (Feb. 11, 2019); *DTE Energy Company* (Dec. 18, 2018); *Sprint Corporation* (Aug. 1, 2018); *Bristol-Myers Squibb Company* (Jan. 22, 2018); *CoreCivic, Inc.* (Jan. 2, 2018); *PepsiCo, Inc.* (Jan. 3, 2014); *Newell Rubbermaid Inc.* (Jan. 24, 2012).

In accordance with Rule 14a-8(f)(1) and Section C.6.c of Staff Legal Bulletin No. 14 (July 13, 2001), the Company has not provided the Proponent with notice of the Potential Proposal's deficiency because the deficiency cannot be remedied.

### CONCLUSION

The Company believes the Potential Proposal may be omitted in its entirety from the Company's 2020 proxy materials under Rule 14a-8(e)(2) because the Proponent failed to timely submit the Potential Proposal. Accordingly, the Company respectfully requests the concurrence of the Staff that it will not recommend enforcement action against the Company if the Company excludes the Potential Proposal in its entirety from its 2020 proxy materials.

If you have any questions with respect to this matter, please contact me at (302) 734-6799 or by email at [jmoriarty@chpk.com](mailto:jmoriarty@chpk.com).

Sincerely,



James F. Moriarty  
Executive Vice President, General Counsel and Corporate Secretary

cc: Herbert A. Denton  
President, Pro Cap NYC IIc

**EXHIBIT A**

**Proposal**

*See attached.*

Pro Cap NYC llc  
1392 Madison Avenue #111  
New York, NY 10029  
+1-347-215-1406

Mr. Calvert A. Morgan, Jr.  
c/o Corporate Secretary  
Chesapeake Utilities Corporation  
909 Silver Lake Boulevard  
Dover, Delaware 19904

09/07/19

Dear Mr. Calvert A. Morgan, Jr.,

For the following reasons, Pro Cap NYC llc ("ProCap"), the 'shareholders' investment bank', respectfully requests Chesapeake Utilities Corporation's Board of Directors ("Board") to offer themselves up for re-election annually:

- Each director has a **fiduciary duty** to oversee management on behalf of the shareholders. If only a minority of the directors are elected each year, the full Board's accountability to the shareholders is reduced which impairs each director's main purpose.
- The institutions that control a **majority** of Chesapeake Utilities Corporation's vote universally favor the annual election of all directors.
- Only a minority of Russell 3000 companies have classified Boards of Directors.
- The argument in support of a staggered board: that a board needs the ability to resist the wishes of a majority of shareholders makes little sense and, at, best, is an affront to the skills and sophistication of the majority of Chesapeake Utilities Corporation's shareholder base.

As it infringes on the choice of the shareholders without sufficient justification, ProCap believes that Chesapeake Utilities Corporation should resolve to eliminate its classified board for the benefit of said shareholders.

Along with the members of Jefferies Group's M&A Department, I founded Providence Capital, Inc. in 1991 to represent the interests of shareholders. While at Jefferies and, later, at Providence Capital and now, at ProCap, I accomplished numerous results for the benefit of the shareholders, including:

- Managed three dozen proxy contests, as well as certain precursors, including Aetna, Campbell Soup, COMSAT, ICN Pharmaceuticals (twice due to its classified Board), Lockheed Martin, Time Warner (for CalPERS) and US Steel-Marathon Oil (for Carl C. Icahn).
- Challenged seven NYSE-listed companies' "poison pills" including Aetna, Toys 'R Us and Navistar. All seven challenges were successful.

- Served as a director of ten publicly listed companies and placed over 60 individuals as directors on over 30 Boards of Directors.

If ProCap's request is denied, we will consider submitting a resolution to the shareholders of Chesapeake Utilities Corporation at its May 2020 Annual Meeting to declassify its Board along with an alternative slate of Director Nominees.

Sincerely,

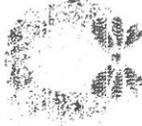
A handwritten signature in blue ink, appearing to read 'HARD', with a long, sweeping underline that extends to the right.

Herbert A. Denton  
President  
Pro Cap NYC llc

Cc: B. McNew, Cooch and Taylor P.A.



FOREVER 7 USA



28 JAN 2020 PM 5 1

Received  
2/5/2020  
[Signature]

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