December 20, 2019

VIA E-MAIL

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

Re: Bank of America Corporation  
Stockholder Proposal of Thomas Strobhar  
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Bank of America Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Stockholders (collectively, the “2020 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof received from Thomas Strobhar (the “Proponent”). A copy of the Proposal, together with the Proponent’s cover letter, is attached to this letter as Exhibit A.

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

• filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and

• concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.
BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(e)(2) because the Proposal was received by the Company at its principal executive offices after the deadline for submitting stockholder proposals for inclusion in the 2020 Proxy Materials.

BACKGROUND

On March 13, 2019, the Company filed with the Commission, and commenced distribution to its stockholders of, a proxy statement (the “2019 Proxy Statement”) and form of proxy for its 2019 Annual Meeting of Stockholders. As required by Rule 14a-5(e), the Company included in the 2019 Proxy Statement the deadline for receiving stockholder proposals submitted for inclusion in the Company’s proxy statement and form of proxy for the Company’s next annual meeting, calculated in the manner prescribed in Rule 14a-8(e). Specifically, the following disclosure appeared on pages 87-88 of the 2019 Proxy Statement:

Stockholder Proposals for our 2020 Annual Meeting

Stockholder proposals submitted for inclusion in the proxy statement for our 2020 annual meeting must comply with applicable requirements and conditions established by the SEC, including Rule 14a-8 of the Exchange Act, and must be received by our Corporate Secretary no later than the close of business on November 14, 2019.

... All stockholder proposals must be received by our Corporate Secretary at Bank of America Corporation, Hearst Tower, 214 North Tryon Street, NC1-027-18-05, Charlotte, North Carolina 28255 by the applicable dates specified above.

(emphases added)

A copy of pages 87-88 of the 2019 Proxy Statement is attached to this letter as Exhibit B.

As described below, the Company calculated the November 14, 2019 deadline in the manner prescribed in Rule 14a-8(e) and Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”).

On November 18, 2019, four days after the Company’s deadline for stockholder proposals, the Company received the Proposal. The Proposal, postmarked November 15, 2019, one day after the Company’s deadline for stockholder proposals, was sent via Priority Mail Express and was addressed
and delivered to the Company’s Corporate Secretary at 214 North Tryon Street by the United States Postal Service (“USPS”) at 8:44 am local time on November 18, 2019. A copy of the envelope, with tracking number affixed, and the USPS tracking information showing the date and time of delivery is attached to this letter as Exhibit C.

Although Rule 14a-8(f)(1) does not require that the Company have provided a notice of eligibility or procedural deficiency to the Proponent because the deficiency—untimeliness—cannot be remedied, the Company, as a courtesy to the Proponent, nonetheless notified him of the deadline for submitting proposals and that his submission was untimely and requested that he withdraw the Proposal unless he could demonstrate that it was timely received. This courtesy notification was delivered by UPS overnight mail on November 27, 2019. A copy of the Company’s courtesy notification is attached to this letter as Exhibit D. A copy of the tracking information showing the date and time of the delivery of the Company’s courtesy notification is attached to this letter as Exhibit E. The Company has had no response from or further contact with the Proponent as of the date of the filing of this letter.

ANALYSIS

The Proposal May Be Excluded From The 2020 Proxy Materials Pursuant To Rule 14a-8(e)(2) Because The Proposal Was Received By The Company At Its Principal Executive Offices After The Deadline For Submitting Stockholder Proposals For Inclusion In The 2020 Proxy Materials.

Under Rule 14a-8(f)(1) a company may exclude a stockholder proposal if the proponent fails to follow one of the eligibility or procedural requirements contained in Rule 14a-8. Ordinarily, a company may exclude a proposal on this basis only after it has timely notified the proponent of an eligibility or procedural problem and the proponent has timely failed to adequately correct the problem. However, as per Rule 14a-8(f)(1), a company “need not provide [the proponent] such notice of a deficiency if the deficiency cannot be remedied, such as if [the proponent] fail[s] to submit a proposal by the company’s properly determined deadline.” (emphasis added).

One of the eligibility or procedural requirements contained in Rule 14a-8 is timeliness, the requirement to submit a proposal by the applicable deadline. If a proponent is submitting a proposal “for the company’s annual meeting, [the proponent] can in most cases find the deadline in [the prior] year’s proxy statement.” See Rule 14a-8(e)(1). Under Rule 14a-8(e)(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.  

SLB 14, Section C.3.b indicates that, to calculate the deadline, a company should “[i] start with the release date disclosed in the previous year’s proxy statement; [ii] increase the year by one; and [iii] count back 120 calendar days.” Consistent with this guidance, to calculate the deadline for receiving stockholder proposals submitted for the Company’s 2020 Annual Meeting of Stockholders, the Company (i) started with the release date of its 2019 Proxy Statement (i.e., March 13, 2019), (ii) increased the year by one (i.e., March 13, 2020), and (iii) counted back 120 calendar days. As per SLB 14, Section C.3.b, “day one” for purposes of this calculation was March 12, 2020, resulting in a deadline for receiving stockholder proposals submitted for inclusion in the Company’s 2020 Proxy Materials of November 14, 2019, as disclosed on page 87 of the 2019 Proxy Statement. See Exhibit B. As noted above and as shown in Exhibit C to this letter, the Company received the Proposal four days after this deadline, on November 18, 2019.

The Staff strictly construes the deadline for stockholder proposals under Rule 14a-8, permitting companies to exclude from proxy materials those proposals received at companies’ principal executive offices after the deadline. See, e.g., Wal-Mart Stores, Inc. (avail. Feb. 13, 2017) (proposal received six days after company’s deadline); Whole Foods Market, Inc. (avail. Oct. 30, 2014) (proposal received two weeks after company’s deadline); BioMarin Pharmaceutical Inc. (avail. Mar. 14, 2014) (proposal received five days after company’s deadline); Dean Foods Company (avail. Jan. 27, 2014) (proposal received three days after company’s deadline); PepsiCo, Inc. (avail. Jan. 3, 2014) (proposal received three days after company’s deadline); Tootsie Roll Industries, Inc. (avail. Jan. 14, 2008) (proposal received two days after company’s deadline, even when deadline fell on a Saturday).

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1 Also under Rule 14a-8(e)(2), “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.” This portion of Rule 14a-8(e)(2) is not applicable in the instant case because the Company’s 2019 Annual Meeting of Stockholders was held on April 24, 2019, and, while the Company’s board of directors has not formally scheduled the date of the Company’s 2020 Annual Meeting of Stockholders, it currently plans to hold that meeting within 30 days of April 24, 2020.

Here, the Proposal was received at the Company’s principal executive offices on November 18, 2019, four days after the Company’s properly calculated and noticed deadline for stockholder proposals submitted for inclusion in the 2020 Proxy Materials, November 14, 2019. Accordingly, the Proposal is properly excludable from the 2020 Proxy Materials because it was not received at the Company’s principal executive offices within the time frame required under Rule 14a-8(e)(2).

The Company also believes that there are other procedural and substantive bases under Rule 14a-8 for excluding the Proposal from the 2020 Proxy Materials. The Company is addressing only the eligibility or procedural matter raised in this letter at this time as the Company does not believe that the Proposal is eligible for inclusion in the 2020 Proxy Materials because it was not timely received. The Company reserves the right, should it be necessary, to raise additional bases for excluding the Proposal from the 2020 Proxy Materials if the Staff declines to concur in the Company’s no-action request.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2020 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Ross E. Jeffries, Jr., the Company’s Corporate Secretary, at (980) 388-6878.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Ross E. Jeffries Jr., Bank of America Corporation
    Thomas Strobhar
November 14, 2019

Mr. Ross Jeffries
Corporate Secretary
Bank of America
Hearst Tower
214 North Tryon Street
NC1-027-18-05
Charlotte, NC 28255

Dear Ms. Madden:

I am the owner of 200 shares of Bank of America. I have owned them continuously for over a year and intend to hold them through the time of our next annual meeting. At that meeting I will make the following proposal:

Whereas, the Company’s charitable contributions, properly managed, are likely to enhance the reputation of the Company:

Whereas, increased disclosure regarding appropriate charitable contributions is expected to create goodwill for our company.

Whereas, making the benefits of our Company’s philanthropic programs broadly known is likely to promote the Company’s interests:

Whereas, transparency and corresponding feedback from shareholders, the philanthropic community and others, could be useful in guiding the Company’s future charitable decision making:

Resolved: The Proponent requests that the Board of Directors consider issuing a statement on the Company website, omitting proprietary information and at reasonable cost, disclosing the Company’s standards for choosing which organization receive the Company’s assets in the form of charitable contributions, and the rational, if any, for such contributions. Also, it is requested that any
recipient which receives $1,000 or more of direct contributions, excluding employee matching gifts, be listed on the Company website.

**Supporting Statement**

Absent a system of accountability and transparency, some charitable contributions may be handled unwisely, potentially harming the Company’s reputation and shareholder value. Corporate charitable contributions should be given as much exposure as possible, lest their intended impact on goodwill is diminished. For example, if we gave to the American Cancer Society potentially thousands of our stakeholders might approve of our interest in challenging this disease. Likewise, our support of Planned Parenthood could win the praise of millions of Americans who have had an abortion at one of their facilities. Educational organizations, like the Southern Poverty Law Center, have seen an increase in their funding since they included several conservative Christian organizations on their list of hate groups. Our stakeholders and customers might be similarly enthused if we supported them. Be it the Girl Scouts, American Heart Association, Boys and Girls Club of America, Red Cross or countless other possible recipients; our support should be publicly noted. Those who might disagree with our decisions can play a valuable role also.

Fuller disclosure would provide enhanced feedback opportunities from which our Company could make more fruitful decisions. Decisions regarding corporate philanthropy should be transparent to serve the interests of shareholders better.

Regards,

Thomas Strobhar
Based on its assessment of these factors and the particular characteristics of the company and our stockholders, our Board concluded that our current form of proxy access Bylaw appropriately balances stockholder rights to use proxy access with the best interests of all our stockholders. For example, the Bylaw provision addressed in this proposal provides stockholders the ability to nominate a director candidate in our proxy statement while limiting the ability of stockholders to use proxy access to re-nominate a recently considered director candidate who did not receive meaningful stockholder support for two years following the vote. This Bylaw provision does not prohibit stockholders from nominating a different proxy access director candidate in a subsequent year, or nominating the same candidate in a separate proxy statement that our stockholders do not have to fund. In light of the feedback we have received from our stockholders since 2015, and our ongoing review of the proxy access rights adopted by other companies, we continue to believe that our existing proxy access Bylaw is most appropriate for the company and our stockholders.

The requirement for proxy access nominees to receive a meaningful vote to qualify for re-nomination is in line with market practice; of those companies having adopted proxy access bylaws, a significant majority have a re-nomination threshold for proxy access nominees. The re-nomination limitation in our current proxy access Bylaw as described above is designed to prevent abuse of the proxy access process, and to avoid the repetitive nomination of candidates who are unable to obtain at least modest support from our stockholders. However, it does allow those nominees who receive important minority voting percentages of 20% or higher to again be nominated through our proxy access Bylaw. We note that our 20% threshold requirement is lower than the minimum vote requirement at most companies that have adopted proxy access bylaws. Of the 87 companies in the S&P 100 that have adopted proxy access bylaws, almost 70% include a re-nomination threshold for proxy access nominees, and 55% require nominees to receive at least 25% support to be re-nominated. We do not believe it is in stockholders’ interests to immediately re-consider a proxy access director nominee that a significant majority of our stockholders did not meaningfully support at the prior year’s annual meeting. The proposal would eliminate this important requirement altogether, which is not only contrary to current market practice, but contrary to the long-term interests of all of our stockholders.

We have strong corporate governance policies and procedures that empower our stockholders and encourage them to provide on-going feedback to our Board. Our proxy access Bylaw is only one of many provisions that help advance and protect the interests of our stockholders and provide them a meaningful ability to make their views known to the Board.

In addition to the proxy access Bylaw, one or more stockholders who own 10% or more of our outstanding stock are entitled to call a special meeting of stockholders. Our 10% stock ownership threshold for calling a special meeting represents a significant stockholder right for our company’s stockholders and is lower than the vast majority of S&P 500 companies that permit stockholders to call special meetings. Of the 303 S&P 500 companies that permit stockholders to call special meetings, more than 50% of the companies have a 25% or greater stock ownership threshold, with the most common stock ownership threshold set at 25% and no companies having a threshold lower than 10%.

Our Board and management engage and listen to our stockholders based on a systematic process of outreach. At least twice annually, management invites our 250 largest institutional investors, representing approximately 65% of our outstanding shares, to engage with us. As described in “Stockholder Engagement” on page 28, in 2018-9 management and our Board’s Lead Independent Director held approximately 80 meetings with stockholders representing approximately 35% of our outstanding common shares. At these meetings, we solicit their input on important performance, governance, executive compensation, human capital management, regulatory, environmental, social, and other matters. We maintain this dialogue to clarify and deepen our Board’s understanding of stockholder concerns, and provide stockholders with insight into our Board’s processes. Moreover, input received from our stockholders and other stakeholders as part of our year-round engagement program has resulted in a number of enhancements in our corporate governance, ESG, and executive compensation policies. See page 29 for actions we have taken as a result of our extensive stockholder engagement activities.

We also have adopted robust corporate governance policies that empower our stockholders, including the annual election of all directors; majority voting for director elections; and independent Board leadership by a strong Lead Independent Director. Moreover, our Board is committed to regular renewal and refreshment in alignment with our long-term strategy.

Accordingly, our Board recommends a vote “AGAINST” this proposal (Proposal 7).

Stockholder Proposals for our 2020 Annual Meeting

Stockholder proposals submitted for inclusion in the proxy statement for our 2020 annual meeting must comply with applicable requirements and conditions established by the SEC, including Rule 14a-8 of the Exchange Act, and must be received by our Corporate Secretary no later than the close of business on November 14, 2019.

Pursuant to our proxy access Bylaw provision, one, or a group of up to 20 stockholders who, in aggregate, own continuously for at least three years, shares of our company representing an aggregate of at least 3% of the voting power entitled to vote in the
election of directors, may nominate and include in our proxy materials director nominees constituting up to 20% of our Board, provided that the stockholder(s) and the nominee(s) satisfy the requirements in our Bylaws. Notice of proxy access director nominees must be received by our Corporate Secretary at the address below no earlier than October 15, 2019 and no later than the close of business on November 14, 2019, assuming we do not change the date of our 2020 annual meeting by more than 30 days before or 70 days after the anniversary date of our 2019 annual meeting.

If you would like to submit a matter for consideration at our 2020 annual meeting (including any stockholder proposal not submitted under Rule 14a-8 or any director nomination) that will not be included in the proxy statement for that annual meeting, it must be received by our Corporate Secretary no earlier than the close of business on December 26, 2019 and no later than the close of business on February 9, 2020, assuming we do not change the date of our 2020 annual meeting by more than 30 days before or 70 days after the anniversary date of our 2019 annual meeting. Any matter must comply with our Bylaws.

All stockholder proposals must be received by our Corporate Secretary at Bank of America Corporation, Hearst Tower, 214 North Tryon Street, NC1-027-18-05, Charlotte, North Carolina 28255 by the applicable dates specified above.

We encourage stockholders that are contemplating submitting a proposal for inclusion in our proxy statement to contact us beforehand at the address above to allow for a constructive discussion of their concerns and for additional information about our practices or policies.

**VOTING AND OTHER INFORMATION**

**Who Can Vote.** Only holders of record at the close of business on March 4, 2019 (the record date) will be entitled to notice of and to vote at our annual meeting. As of March 4, 2019, the following shares were outstanding and entitled to vote:

<table>
<thead>
<tr>
<th>SHARES(1)</th>
<th>NUMBER OF SHARES OUTSTANDING AND ENTITLED TO VOTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Stock</td>
<td>9,638,946,646</td>
</tr>
<tr>
<td>Series B Preferred Stock</td>
<td>7,110</td>
</tr>
<tr>
<td>Series 1 Preferred Stock</td>
<td>3,275</td>
</tr>
<tr>
<td>Series 2 Preferred Stock</td>
<td>9,967</td>
</tr>
<tr>
<td>Series 4 Preferred Stock</td>
<td>7,010</td>
</tr>
<tr>
<td>Series 5 Preferred Stock</td>
<td>14,056</td>
</tr>
</tbody>
</table>

(1) In 2018, our company redeemed all outstanding shares of the Series 3 Preferred Stock.

Each share of our common stock and Series B Preferred Stock is entitled to one vote. Although each share of the Series 1, 2, 4, and 5 Preferred Stock (Series 1–5 Preferred Stock) is entitled to 150 votes, we do not have “dual-class” voting as all stockholders vote together without regard to class, except as otherwise required by law. Holders of the Series 1–5 Preferred Stock hold their shares through depositary receipts that each represent 1/1200th of a share of Series 1–5 Preferred Stock (or a vote representing 0.125 shares of our common stock). Therefore the aggregate vote represented by the Series 1–5 Preferred Stock is de minimis. As of the record date, the Series 1–5 Preferred Stock represent 5,146,200 votes, or approximately 0.05% of the total eligible votes at the 2019 annual meeting of stockholders. We issued the Series 1–5 Preferred Stock as part of our merger with Merrill Lynch, that became effective January 1, 2009, as required under Delaware law to holders of respective outstanding shares of Merrill Lynch series 1–5 preferred stock. Since the issuance of the Series 1–5 Preferred Stock in 2009, our company has not issued any additional shares of Series 1–5 Preferred Stock, does not have any current plans to issue any additional shares of Series 1–5 Preferred Stock, and redeemed the Series 3 Preferred Stock in 2018.
Tracking Number: EL295344596US

Scheduled Delivery by

MONDAY
18 NOVEMBER 2019 by 12:00pm

☑ Delivered
November 18, 2019 at 8:44 am
Delivered
CHARLOTTE, NC 28255

Get Updates

Text & Email Updates

Proof of Delivery

Tracking History

November 18, 2019, 8:44 am
Delivered
CHARLOTTE, NC 28255

Your item was delivered at 8:44 am on November 18, 2019 in CHARLOTTE, NC 28255 to BANK OF AMER 28255. The item was signed for by L LITTLE.
November 16, 2019, 10:15 am
Available for Pickup
CHARLOTTE, NC 28228

November 16, 2019, 10:07 am
Arrived at Post Office
CHARLOTTE, NC 28228

November 16, 2019, 8:06 am
Arrived at USPS Regional Destination Facility
CHARLOTTE NC DISTRIBUTION CENTER

November 15, 2019, 8:18 pm
Departed USPS Regional Facility
DAYTON OH DISTRIBUTION CENTER

November 15, 2019, 7:30 pm
Arrived at USPS Regional Origin Facility
DAYTON OH DISTRIBUTION CENTER

November 15, 2019, 5:02 pm
Departed Post Office
ALPHA, OH 45301

November 15, 2019, 4:32 pm
USPS in possession of item
ALPHA, OH 45301

Can’t find what you’re looking for?
November 26, 2019

VIA OVERNIGHT MAIL
Thomas Strobhar
3183 Beaver Vu Drive, Ste A
Beavercreek, OH 45434-6398

Dear Mr. Strobhar:

I am writing on behalf of Bank of America Corporation (the “Company”), which on
November 18, 2019 received your letter dated November 14, 2019 giving notice of your intent to
present a stockholder proposal at the Company’s 2020 Annual Meeting of Stockholders (the
“Proposal”). It is unclear from your letter whether you were providing this notice pursuant to
Securities and Exchange Commission (“SEC”) Rule 14a-8 or pursuant to the advance notice
provisions of the Company’s Bylaws.

If you were providing notice pursuant to Rule 14a-8, please note that under Rule 14a-
8(e)(2) under the Securities Exchange Act of 1934, as amended, the deadline for proposals
submitted for inclusion in a company’s proxy statement for a 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.” As disclosed in the proxy statement for the Company’s 2019
Annual Meeting of Stockholders, which was first released to stockholders on March 13, 2019,
stockholder proposals submitted for inclusion in the Company’s proxy statement for the
Company’s 2020 Annual Meeting of Stockholders were required to be received by our Corporate
Secretary no later than the close of business on November 14, 2019.

The Proposal was received at the Company’s principal executive offices on November
18, 2019, four days after the deadline for proposals submitted pursuant to Rule 14a-8, and
appears to have been mailed to the Company on November 15, 2019, one day after the deadline
for receipt. Accordingly, we believe the Proposal was not timely received by the Company as
required under Rule 14a-8 and, unless you can demonstrate that the Proposal was timely
received, we respectfully request that you withdraw the Proposal to avoid the time and expense
of the Company having to notify the SEC that the Proposal was not timely received. By sending
this letter to you, the Company is not waiving its right to exclude the Proposal for not being
timely submitted.

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

To remedy this defect, you must submit sufficient proof of your continuous ownership of the required number or amount of Company shares for the one-year period preceding and including November 15, 2019, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

1. a written statement from the “record” holder of your shares (usually a broker or a bank) verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including November 15, 2019; or

2. if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the required number or amount of Company shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the “record” holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC’s participant list, which is available at http://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

1. If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the required
number or amount of Company shares for the one-year period preceding and including November 15, 2019.

(2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including November 15, 2019. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including November 15, 2019, the required number or amount of Company shares were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank’s ownership.

The SEC’s rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me care of Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue NW, Washington, DC 20036.

If you have any questions with respect to the foregoing, please contact me at 202-955-8500. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

Ronald O. Mueller

Enclosures
Rule 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 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. Instead, an introducing broker engages another broker, known as a “clearing broker,” to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC’s securities position listing, Hain Celestial has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent’s records or against DTC’s securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8(b)(2)(i), 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, under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

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

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

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

**What if a shareholder’s broker or bank is not on DTC’s participant list?**
The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.²

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

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC 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).¹⁰ We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date before the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date after the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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

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

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."11

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).12 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.13

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

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

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

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

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

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

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.
Given the availability of our responses and the related correspondence on the Commission’s website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission’s website copies of this correspondence at the same time that we post our staff no-action response.

1 See Rule 14a-8(b).

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

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.


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.

§ Techne Corp. (Sept. 20, 1988).

² 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.

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.

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.


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

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

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

**Tracking Number**
1Z2748260195109287

**Weight**
0.10 LBS

**Service**
UPS Next Day Air®

**Shipped / Billed On**
11/26/2019

**Delivered On**
11/27/2019 10:19 A.M.

**Delivered To**
DAYTON, OH, US

**Received By**
STROHBAR

**Left At**
Reception

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 11/27/2019 1:18 P.M. EST