January 21, 2020

VIA EMAIL

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

Re: Cheniere Energy, Inc.
Shareholder Proposal of Stewart Taggart
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Cheniere Energy, Inc. (the “Company”) intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders (collectively, the “2020 Proxy Materials”) a shareholder proposal (including the supporting statement provided therewith, the “Proposal”) received from Stewart Taggart (the “Proponent”).

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, we have:

• filed this letter with the Securities and Exchange Commission (the “Commission”) no later than 80 calendar days before the Company intends to file the 2020 Proxy Materials with the Commission; and
• concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder 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 any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be sent to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

PROPOSAL

The “Resolved” clause of the Proposal states:

RESOLVED: The company shall prepare a report discussing price, amortization and obsolescence risk to existing and planned Liquid Natural Gas capital investments posed by carbon emissions reductions of 50% or higher applied to Scope Two and Scope Three emissions by 2030 (in line with the Paris Accord’s 2C target) as well as “net zero” emissions targets by
2050, also called for in the *Paris Accord* and what the company plans to do about managing this risk.

The report shall be produced at reasonable cost, omit proprietary information and cite sources.

A copy of the Proposal and related correspondence is attached hereto as Exhibit A.

**BASES FOR EXCLUSION**

As discussed more fully below, the Company believes that it may properly exclude the Proposal from its 2020 Proxy Materials in reliance on:

- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading; and
- Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company’s ordinary business operations.

**ANALYSIS**

I. **The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite**

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission’s proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff has taken the position that a shareholder proposal may be excludable under Rule 14a-8(i)(3) for being misleading if the proposal “is so inherently vague or indefinite that neither the stockholders 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.” Section B.1 of Staff Legal Bulletin No. 14B (Sept. 15, 2004); see also *Dyer v. Sec. & Exch. Comm’n*, 287 F.2d 777, 781 (8th Cir. 1961) (supporting the Commission’s view that “the proposal, as drafted and submitted to the company is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail”); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion of a shareholder proposal under Rule 14a-8(i)(3) where the company argued that “there is a substantial likelihood that if the Proposal is included in the Proxy Statement and adopted, the actions taken by the Company to implement the Proposal would be significantly different from the actions envisioned by some of the shareholders voting on the Proposal”); *Fuqua Industries, Inc.* (avail. Mar. 12, 1991) (concurring in the exclusion of a proposal under Rule 14a-8(i)(3) where a company and its shareholders might interpret the proposal differently, such that “any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal”).

The rationale for excluding vague and ambiguous proposals is “twofold: (1) shareholders are entitled to know the breadth of the proposal on which they are asked to vote; and (2) the company must be able to comprehend what actions or measures the proposal requires of it.” *Trinity Wall Street v. Wal-Mart*
Stores, Inc., 792 F.3d 323, 355 (3d Cir. 2015). As further described below, the Proposal is excludable under Rule 14a-8(i)(3) because it is so vague and indefinite that it fails to provide shareholders or management with a clear understanding of what would be required to implement the Proposal.

A. The Proposal fails to provide shareholders or management with a clear understanding of what would be required to implement the Proposal.

The Proposal fails to provide shareholders or management with a clear understanding of what action is required because the Proposal contains conflicting statements as to the required scope of the analysis and discussion for the requested report. The “Resolved” clause asks the Company to address “risk to existing and planned Liquid Natural Gas capital investments” and “‘net zero’ emissions targets” but does not make clear whether the requested report should address such risks and targets as they apply to the liquid natural gas industry as a whole (the “LNG industry”) or to the Company specifically. The supporting statement, on one hand, indicates that the Proposal is requesting a report to address information and risks on an industry-wide basis—it expresses concern about business risks “for the Liquid Natural Gas industry,” “estimating fair value for the industry’s companies,” and reduction of “Liquid Natural Gas’ market competitiveness, compounding existing industry problems.” On the other hand, the supporting statement may be read to indicate that the Proposal expects management to address “stranding and write down risk” to the Company’s capital investments specifically.

As a result of these ambiguous and conflicting messages, neither the shareholders nor the Company would know with any reasonable certainty what actions or measures the Proposal requires. This lack of specificity and clarity in the focus of the Proposal’s request for reporting substantially deviates from the language in more typical shareholder proposals regarding emissions targets and carbon asset risk that request specific information about the company receiving the proposal. For example, in a shareholder proposal regarding carbon asset risk submitted to Continental Resources, Inc. in 2019, the resolved clause stated: “[s]hareholders request that Continental Resources . . . publish an assessment of the long-term impacts on the Company of public policies and technological advances that are consistent with limiting global temperature rise to no more than two degrees Celsius over preindustrial levels.” (Emphasis added.) Many other public companies received identical or comparable proposals in the 2019 proxy season that identified the receiving company as the focus of the requested reporting. See, e.g., Hess Corporation (avail. Apr. 11, 2019); Anadarko Petroleum Corporation (avail. Mar. 4, 2019); Martin Marietta Materials, Inc. (avail. Mar. 1, 2019).

The Proposal, in contrast to these examples, does not afford shareholders with comparable clarity about whether the analysis in the requested report would pertain to the LNG industry or the Company. As a result, neither the shareholders nor the Company would know with any reasonable certainty the actions or measures the Proposal requires.

This lack of clarity is material and problematic because a discussion of risks and emissions targets for the LNG industry on the one hand, and for the Company, on the other hand, are extremely different subjects in terms of breadth, in the sense indicated by Trinity Wall Street v. Wal-Mart Stores, Inc., 792 F.3d at 355. As in Fuqua Industries, Inc. (avail. Mar. 12, 1991), the Company and its
shareholders might interpret the proposal differently, such that the Company’s implementation of the Proposal could be significantly different from the actions envisioned by shareholders voting on the Proposal. The Staff addressed a similar defect in Microsoft Corporation (avail. Oct. 7, 2016), where the resolution in the shareholder’s proposal asked that the board “not take any action whose primary purpose is to prevent the effectiveness of shareholder vote[s].” Microsoft argued in its no-action request letter to the Staff that the proposal in question failed to provide clarity as to the “nature and scope of the Submission’s request.” To this end, Microsoft noted that “although [the proponent] may be able to identify whether the Submission would apply to a particular situation when they see it,” the proposal did not provide the company or its shareholders with a clear basis on which to make a comparable determination because the “[s]ubmission and its supporting statement . . . contain[] conflicting and ambiguous statements as to when a particular situation would be covered by the [s]ubmission.” The Staff concurred in the exclusion of the proposal, noting the company’s argument that “neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Similarly, here, the Company and shareholders cannot be reasonably certain as to the nature and scope of information that the Proposal expects the Company to research, analyze and publicly disclose, because the Proposal is not clear as to whether the requested report should address risks and targets for the LNG industry as a whole or the Company specifically.

Perhaps most significantly, due to the lack of clarity in the drafting of the Proposal, it is unclear to the Company, and it will be unclear to shareholders, whether the Proposal is requesting a report on (1) risks posed to LNG-related investments (be they to the Company or the LNG industry) or (2) targets and plans the Company is establishing to reduce emissions by 2030 and 2050. Further, the Proponent did not specify a baseline year for calculating emissions reductions of 50% or higher.

The Proposal, as written, can be read as requesting one or the other type of report. In the last five years, shareholder proposals made to public companies have been explicit as to whether they are seeking reporting on carbon asset risk or emissions reduction plans. The types of research and disclosures required by the two different types of requests (and reports) are significantly different, and as such neither the shareholders nor the Company will know with any reasonable certainty what actions or measures the Proposal requires. The failure to specify a baseline year for making projections related to carbon emissions reductions of 50% or higher is additionally problematic because the analysis would change substantially depending on the baseline year chosen.

B. The Proposal fails to define key terms relevant to its implementation.

The Staff has routinely concurred in the exclusion of proposals under Rule 14a-8(i)(3) where an undefined term was a central aspect of the proposal. For example, in Exxon Mobil Corporation (Naylor) (avail. Mar. 21, 2011) (“Exxon Mobil 2011”), the Staff concurred with the exclusion of a proposal requesting a report based on “guidelines from the Global Reporting Initiative” where the proposal did not sufficiently explain the standard. See also The Home Depot, Inc. (avail. Mar. 12, 2014, recon. denied Mar. 27, 2014) (“Home Depot 2014”) (concurring in exclusion of a proposal requesting a sustainability report where the company argued that the meaning of “benchmark objective footprint information” was unclear). In Moody’s Corp. (avail. Feb. 10, 2014), the Staff concurred in the exclusion of a proposal that requested a report on the feasibility of incorporating “ESG risk assessments” into credit rating methodologies without defining the term “ESG” or “ESG risk assessments.” In Dell Inc. (avail. Mar. 30,
2012), the Staff concurred in the exclusion of a proposal that would allow shareholders who satisfy the “SEC Rule 14a-8(b) eligibility requirements” to include board nominations in the company’s proxy, noting that the quoted language represented a central aspect of the proposal and that many shareholders “may not be familiar with the requirements and would not be able to determine the requirements based on the language of the proposal.”

Here, the Proposal is excludable under Rule 14a-8(i)(3) because its text fails to define two key terms in the “Resolved” clause: “net zero emissions” and “2C target.” Both of these undefined key terms on its own renders the Proposal vague and ambiguous under Rule 14a-8(i)(3) because each term is essential for shareholders and the Company to understand the Proposal.

“Net zero emissions.” Shareholders cannot evaluate the Proposal without an understanding of the central concept of “net zero emissions” that appears in the “Resolved” clause. The Proposal provides no explanation of the meaning of “net zero emissions.” This is in contrast to the array of shareholder proposals in recent years requesting reporting and targets related to emissions that have defined the meaning of “net zero emissions.” In a comparable shareholder proposal submitted to PayPal for its 2018 annual meeting, the proponent explained that “[a]chieving net-zero emissions essentially means reducing the level of greenhouse gases emitted each year to a level roughly equal to the amount of renewable energy created by an individual entity.” PayPal Holdings, Inc. (avail. Mar. 6, 2018). See also the shareholder proposals that were the subject of no-action requests in Amazon.com, Inc. (avail. Mar. 6, 2018), Verizon Communications, Inc. (avail. Mar. 6, 2018), Apple Inc. (Jantz) (avail. Dec. 21, 2017) (“Apple 2017”), PayPal Holdings, Inc. (avail. Mar. 13, 2017) and Deere & Company (avail. Dec. 27, 2017) (“Deere 2017”).

“2C target.” Shareholders also cannot evaluate the Proposal without an understanding of the central concept of “2C target,” which is referenced once in the “Resolved” clause and once in the supporting statement. In contrast to the scores of shareholder proposals that have been submitted to public companies in recent years under Rule 14a-8 requesting disclosures regarding carbon asset risk or emissions reductions targets, the Proposal does not provide any information that clearly explains and defines the term “2C target.” For example, in the shareholder proposal submitted to Marathon Oil Corporation for its 2019 annual meeting, the proponent notes that the Paris Agreement (adopted by consensus on December 12, 2015, the “Paris Agreement” or “Paris Accord”), has the “goal of keeping global temperature rise well below 2 degrees Celsius . . . .” Marathon Oil Corporation (avail. Feb. 21, 2019). Many other public companies received identical and comparable proposals in the 2019 proxy season that similarly explained, even if briefly, the concept of a 2 degrees Celsius target. See, e.g., Antero

---

Resources Corporation (2019); Concho Resources, Inc. (2019). See also, for comparison, Exxon Mobil Corporation (avail. Mar. 22, 2016) (declining concurrence on a Rule 14a-8(i)(3) basis for vagueness where the supporting statement had provided explanation and context to help shareholders understand the meaning of the term “2 degree target”).

C. The Proposal contains misleading statements that may unduly influence shareholders.

The Proposal may also unduly influence shareholders and garner support on a misleading basis because the Proposal casts the year “2050” as a fixed deadline for achieving net zero emissions under the Paris Agreement, a frequently celebrated and well-known international agreement. The “Resolved” clause refers to “‘net zero’ emissions targets by 2050” as being “called for in the Paris Accord.”

The Paris Agreement does not, however, call for net zero emissions targets by 2050 specifically. Article 2 of the Paris Agreement states that it is the aim of the parties to the agreement to “[h]old[] the increase in the global average temperature to well below 2°C above pre-industrial levels and pursu[e] efforts to limit the temperature increase to 1.5°C above pre-industrial levels . . . .” To this end, Article 4 of the Paris Agreement states that it is the aim of the parties “to undertake rapid reductions [in greenhouse gas emissions] . . . so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century . . . .” In other words, the Paris Agreement states that it is the aim of the parties to the agreement to reach “net zero” emissions worldwide during the second half of the present century, not necessarily by 2050.

It was not the Paris Agreement but instead the Intergovernmental Panel on Climate Change (the “IPCC”), an intergovernmental scientific body of the United Nations, that foregrounded the concept that global carbon dioxide emissions should reach net zero by around 2050 in order to limit global warming to 1.5 degrees Celsius. The IPCC set forth this claim in a 2018 scientific report that it published pursuant to an invitation by the parties to the Paris Agreement that was extended in 2016, at the time of the parties’ formal adoption of the Paris Agreement. Since that time, approximately eight countries have achieved, legally adopted or have proposed legislation to adopt net zero targets (with an additional nine countries having adopted net zero targets in policy documents) consistent with the IPCC report, whereas the Paris Agreement was signed by 195 parties. The IPCC’s report has been commonly recognized and cited since

3 Shareholder proposal of Mercy Investment Services, Inc. to Antero Resources Corporation for the 2019 annual meeting of shareholders and withdrawn prior to filing of the proxy statement. CERES Climate and Sustainability Shareholder Resolutions Database (“CERES”), https://engagements.ceres.org/ceres_engagementdetailpage?recID=a01H000000CDy7YQAT. Shareholder proposals cited hereafter and located on the CERES database were withdrawn prior to the issuer’s filing of a definitive proxy statement and without the submission of a no-action request to the Commission. All CERES citations were last accessed on Jan. 21, 2020.

4 Shareholder proposal of New York State Comptroller to Concho Resources, Inc. for the 2019 annual meeting. CERES, https://engagements.ceres.org/ceres_engagementdetailpage?recID=a01H000000CDy7YQAD.


its publication in 2018, but the report is not a part of the frequently celebrated and influential Paris Agreement.

Other shareholder proposals submitted to public companies in recent years regarding carbon asset risk and emissions targets have accurately attributed the 2050 target to the IPCC’s report. A shareholder proposal submitted to MGE Energy Inc. for its 2019 annual meeting, for example, specified that “the [IPCC] estimates that a 45% reduction in anthropogenic greenhouse gas emissions globally is needed by 2030 and net zero emissions by 2050 (from 2010 levels) to limit atmospheric temperature rise to 1.5 degrees Celsius over pre-industrial levels.” See also the shareholder proposals that were the subject of no-action requests in Hess Corporation (avail. Apr. 11, 2019), Exxon Mobil Corporation (avail. Apr. 3, 2019), Anadarko Petroleum Corporation (avail. Mar. 4, 2019), PayPal Holdings, Inc. (avail. Mar. 6, 2018), Amazon.com, Inc. (avail. Mar. 6, 2018) and PayPal Holdings, Inc. (avail. Mar. 13, 2017). While the IPCC’s report may be significant and frequently cited in its own right, shareholders may be unduly persuaded to support the Proposal’s request for reporting having been incorrectly informed by the Proposal that the Paris Agreement itself set 2050 as a target for net zero emissions.

Notably, the Paris Agreement also does not call for “carbon emissions reductions of 50% or higher applied to Scope Two and Scope Three emissions” by 2030—as indicated in the “Resolved” clause of the Proposal. The “Resolved” clause states that such targets would be “in line with the Paris Accord’s 2C target,” but these words may be easily construed to indicate that such targets are contained in the Paris Agreement.

In sum, shareholders may be unduly persuaded by these misleading statements to support the Proposal because the Proposal attributes certain emissions goals to the Paris Agreement that are in fact not contained the Paris Agreement.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To a Management Function

Rule 14a-8(i)(7) permits a company to exclude a proposal where it “deals with a matter relating to the company’s ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” refers to matters that are not necessarily “ordinary” in the common meaning of the word, but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”). The general policy objective underlying the “ordinary business exclusion” is to “confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at annual shareholders meetings.” Id.

In the 1998 Release, the Commission described the two central considerations underlying the ordinary business exclusion. The first was that certain tasks were “so fundamental to management’s ability to run a company on a day-to-day basis” that they could not be subject to direct shareholder oversight. The second consideration related to “the degree to which the proposal seeks to ‘micro-manage’

the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The 1998 Release identified a proposal that “seeks to impose specific time-frames or methods for implementing complex policies” as an example of a proposal that may micromanage the company. Id.

More recently, the Staff advised that the excludability of a proposal is determined “on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.” Staff Legal Bulletin No. 14J (Oct. 23, 2018). The Staff further explained that a “proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds,” and that it would, consistent with Commission guidance, “consider the underlying substance of the matters addressed by the study or report” in determining whether exclusion would be appropriate. See id. The Staff has also stated, with reference to shareholder proposals of 2019, that “where we concurred with a company’s micromanagement argument, it was not because we viewed the proposal as presenting issues that are too complex for shareholders to understand. Rather, it was based on our assessment of the level of prescriptiveness of the proposal.” Staff Legal Bulletin No. 14K (Oct. 16, 2019).

Although the Staff has stated that a proposal generally will not be excludable under Rule 14a-8(i)(7) where its underlying subject matter “transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote” (Staff Legal Bulletin 14E (Oct. 27, 2009)), a proposal that raises a significant policy issue may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micromanage the company by specifying in detail the manner in which the company should address the policy issue. See, e.g., Apple 2017 (proposal requesting that the Apple board prepare a report evaluating potential for Apple to achieve net-zero greenhouse gas emissions by a fixed date excludable for micromanaging despite Apple’s acknowledgment that reduction of greenhouse gas emissions, which the proposal sought to address, is a significant policy issue).

The Staff has also recognized that a shareholder’s casting of a proposal as a mere request for a report, rather than a request for a specific action, even when the proposal addresses a significant policy issue does not shield the proposal from being excluded for micromanaging the Company under Rule 14a-8(i)(7). See Johnson Controls, Inc. (avail. Oct. 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).”); see also Ford Motor Company (avail. Mar. 2, 2004) (proposal was excludable “as relating to ordinary business operations” where it requested the preparation and publication of scientific report regarding the existence of global warming or cooling, even though the Company recognized that global warming is a significant policy issue).

A. The Proposal seeks to micromanage the Company by imposing specific time frames and methods to implement complex policies to satisfy quantitative targets.

As noted above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion was “the degree to which the proposal seeks to ‘micromanage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The 1998 Release further states that “[t]his consideration may come into play in a number of circumstances, such as where the proposal
involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” The Staff has consistently concurred with exclusion of proposals that involve one or more of these issues.

As discussed in part I.A of this letter, it is uncertain whether the Proposal is requesting a report on (1) risks posed to LNG-related investments (be they to the Company or the LNG industry) or (2) targets and plans the Company is establishing to reduce emissions by 2030 and 2050, in line with goals established by the Paris Agreement. In either case, the Proposal is seeking to micromanage the Company.

In one reading, the Proposal is requesting disclosure about the Company’s plans to reduce emissions in line with certain targets and by certain target dates. The Proposal requests a report describing “what the Company plans to do about managing” the alleged “risk” of “carbon emissions reductions of 50% or higher applied to Scope Two and Scope Three emissions by 2030 (in line with the Paris Accord’s 2C target) as well as ‘net zero’ emissions targets by 2050, also called for in the Paris Accord.” In this regard, the Proposal addresses a complex issue by imposing (1) specific time frames, (2) to achieve specific and arbitrary standards (e.g., the call for evaluating the possibility or effects of reductions of 50% or higher applied to Scope 2 and 3 emissions), (3) measured by prescriptive standards that may differ from the approaches the Company deems best suited to the nature of the Company’s operations. The Proposal thus falls squarely within the scope of the 1998 Release by addressing intricate details, imposing specific time frames, and specifying a specific method for implementing complex policies, and therefore by seeking to “micro-manage” the Company by substituting the Proponent’s judgment in place of management’s judgment regarding emissions reduction strategy. The establishment of emissions reductions targets is a matter upon which the Company’s shareholders, as a group, would not be in a position to make an informed judgment.

Further, insofar as the Proposal is requesting disclosure about emissions reductions targets, it unduly limits the flexibility of the Board of Directors of the Company (the “Board”) and management and limits their ability to design emissions reduction methods and targets by imposing on their analysis a context of emissions targets so specific as “carbon emissions reductions of 50% or higher applied to Scope Two and Scope Three emissions by 2030 (in line with the Paris Accord’s 2C target) and ‘net zero’ emissions targets by 2050, also called for in the Paris Accord.”

The Company’s management, with oversight from the Board, considers environmental factors when analyzing the Company’s business and investment strategies. These are highly complex areas of analysis, given the Company’s varied operations involving, among other things, construction of major natural gas liquefaction and export facilities, pipeline operations and management of a global natural gas supply chain and delivery network. To achieve the Proposal’s objectives, the Board and management would be required to subject these day-to-day considerations to shareholder oversight, and specifically to construction and operational parameters imposed by the Proposal on the timing and nature of emissions reductions targets. The Board and management must be enabled to use their business judgment in determining the appropriate parameters and targets applied to their plans and disclosures regarding emissions and to operate the Company in the best interests of shareholders.

The Staff recently concurred that several proposals, similar to the present Proposal, imposing specific time-frames on complex policies to satisfy quantitative targets applicable to a company’s
business attempted to micromanage a company and were thus excludable under Rule 14a-8(i)(7). In Amazon.com, Inc. (avail. Mar. 6, 2018) ("Amazon 2018"), PayPal Holding, Inc. (avail. Mar. 6, 2018) ("PayPal 2018"), and Verizon Communications, Inc. (avail. Mar. 6, 2018) ("Verizon 2018"), the Staff concurred in the exclusions of proposals requesting that the companies “evaluate[] feasibility of . . . achieving by 2030 ‘net-zero’ emissions of greenhouse gases from” all aspects or parts “of the business directly owned and operated by” companies because the proposals sought to “micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” In Deere 2017, the Staff concurred in the exclusion of a proposal requesting that the company “prepare a report to shareholders by December 31, 2018 that evaluates the potential for the Company . . . to achieve[ ] ‘net-zero’ emissions of greenhouse gases by a fixed future target date” because the proposal sought to “micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” In Apple 2017, the Staff concurred in the exclusion of a proposal requesting that the company “prepare a report to shareholders by December 31, 2019 that evaluates the potential for the Company to achieve, by a fixed date, ‘net-zero’ emissions of greenhouse gases relative to operations directly owned by the company and major suppliers.” Similarly, in Deere & Company (avail. Dec. 5, 2016) ("Deere 2016") and Apple Inc. (avail. Dec. 5, 2016) ("Apple 2016"), the Staff concurred in the exclusion on Rule 14a-8(i)(7) micromanagement grounds for proposals requesting that the companies generate feasible plans to reach net zero greenhouse gas emissions for all aspects of their respective businesses directly owned and operated by the company by a fixed date. In EOG Resources, Inc. (avail. Feb. 26, 2018; recon. denied Mar. 12, 2018), the Staff concurred in the exclusion of a proposal requesting that the company “adopt company-wide, quantitative, time-bound targets for reducing greenhouse gas . . . emissions and issue a report, at reasonable cost and omitting proprietary information, discussing its plans and progress towards achieving these targets” because the proposal sought to “micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment”—even though the proposal did not specify specific outside dates for the requested “time-bound targets” for reducing greenhouse gas.

The proposals in Amazon 2018, PayPal 2018 and Verizon 2018 are especially relevant to the Proposal because they involved a specific time frame for achievement of emissions reduction targets—i.e., by the year 2030. The Proposal mirrors these proposals in its attempt to micromanage the Company by substituting management’s judgment on these complex, day-to-day issues with that of the Company’s shareholders, who as a group, are not in a position to make an informed judgment. Like the proposals cited above, the Proposal’s requested report would require the involvement and input of a number of cross-functional teams and management for all aspects of the business owned and operated by the Company, as well as input from third-party experts and specialists, to produce a report that discusses the Company’s plans to reduce emissions in line with a 2050 net zero emission target and carbon emissions reductions of 50% or higher applied to Scope Two and Scope Three emissions by 2030.

The Proposal, insofar as it is requesting disclosure regarding the Company’s plans to reduce emissions, additionally micromanages the Company because it would require the Company to adopt “targets aligned with goals established by” the Paris Agreement. To achieve these objectives, management would be required to subject its day-to-day considerations to shareholder oversight, even though such decisions are not well-suited to shareholder supervision. As such, the Proposal directly
implicates the micromanagement of complex issues that the 1998 Release addressed. In *Devon Energy Corporation* (avail. Mar. 4, 2019, recon. denied Apr. 1, 2019) ("Devon 2019") and *Exxon Mobil Corporation* (avail. Apr. 2, 2019) ("Exxon 2019"), the Staff considered whether the companies could properly exclude under Rule 14a-8(i)(7) shareholder proposals requesting that the companies, “in annual reporting from 2020, include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement to keep the increase in global average temperature to well below 2°C and to pursue efforts to limit the increase to 1.5°C.” In both cases the Staff concurred with the exclusions of these proposals on the basis of Rule 14a-8(i)(7), noting that the proposals “would require the [c]ompany to adopt targets aligned with goals established by the Paris Climate Agreement. The Staff further noted, in both cases, that “[b]y imposing this requirement, the Proposal would micromanage the [c]ompany by seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors.”

Similar to the proposals in Devon 2019 and Exxon 2019, the Proposal requests that the Company explain what it “plans to do” to manage its business in line with “carbon emissions reductions of 50% or higher applied to Scope Two and Scope Three emissions by 2030 (in line with the Paris Accord’s 2C target) as well as ‘net zero’ emissions targets by 2050, also called for in the Paris Accord.”

If the Proposal is deemed alternatively as a request for disclosure regarding carbon asset risk or other risks posed to LNG-related investments, then the Proposal stands alone among other carbon asset risk proposals that have been submitted to public companies in recent years insofar as the Proposal sets forth parameters and targets for an analysis so specific as “carbon emissions reductions of 50% or higher applied to Scope Two and Scope Three emissions by 2030 (in line with the Paris Accord’s 2C target) and ‘net zero’ emissions targets by 2050, also called for in the Paris Accord.” Shareholder proposals requesting disclosure regarding carbon asset risk generally allow the company to determine the scenarios it will use for its projections and discussions of risk. For example, in a proposal submitted to Marathon Oil Corporation for its 2019 annual meeting, the proponent requested “an assessment of the long-term impacts on the company of public policies and technological advances that are consistent with limiting global temperature rise to no more than 2 degrees Celsius over preindustrial levels.” *Marathon Oil Corporation* (avail. Feb. 21, 2019). Notably, in Marathon, the proposal did not require the company to exclusively utilize highly specific scenario parameters, set forth by the proposal itself, when conducting the requested risk analysis. The same was true for other carbon asset risk proposals presented to public companies during the 2019 and 2018 proxy seasons. See, e.g., *Martin Marietta Materials, Inc.* (avail. Mar. 1, 2019); *Diamondback Energy Inc.* (2019); 8 *PNM Resources, Inc.* (avail. Mar. 28, 2018); Devon Energy Corporation (2018). 9 In a small subset of cases, shareholder proposals requesting disclosures about carbon asset risk have asked that the company conduct its assessment under different scenarios of its choosing, “including” or “such as” “the International Energy Agency’s 450 climate change scenario.” See, e.g., *Exxon Mobil Corporation* (avail. Mar. 8, 2017). The Company is not aware of precedent shareholder proposals regarding carbon asset risk, submitted to public companies under Rule 14a-8, that have set forth scenario analysis parameters as specific and prescriptive as those posed by the Proposal.

---

8 Shareholder proposal of New York State Comptroller to Diamondback Energy Inc. for the 2019 annual meeting. *Id.*, https://engagements.ceres.org/ceres_engagementdetailpage?recID=a0l1H00000CDy7aQAD.

9 Shareholder proposal of George Gund Foundation to Devon Energy Corporation for the 2018 annual meeting. *Id.*, https://engagements.ceres.org/ceres_engagementdetailpage?recID=a0l1H00000C4RLeQAN.
Insofar as the Proposal is deemed a request for disclosure regarding carbon asset risk or other risks posed to LNG-related investments, it unduly limits the flexibility of the Board and management in evaluating business risk against the future scenarios it deems appropriate. There are numerous pathways to achieving goals in line with the Paris Agreement, and locking management to a specific set of hypothetical future inputs goes against the value of any scenario analysis. Management invests a significant amount of time, energy and effort, with oversight from the Board, in determining the Company’s short- and long-term strategies in light of potential future policies, regulation and other factors. To achieve the Proposal’s objectives, the Board and management would be required to subject these considerations to shareholder oversight, and specifically the parameters imposed by the Proposal’s narrow views on targets, future pricing and demand scenarios. The Board and management must be enabled to use their business judgment in determining the parameters and future pricing and demand scenarios applied to their strategies and disclosures related to long-term business planning and to operate the Company in the best interests of shareholders.

Overall, whether the Proposal is deemed a request for disclosure regarding emissions targets or carbon asset risk, the Proposal seeks to substitute the judgment of the Company’s management and micromanage the Company by imposing unduly specific and prescriptive targets and parameters on the requested analysis and report.

B. Any environmental interests underlying the Proposal are secondary to the Proposal’s focus on ordinary business matters and its effort to micromanage the Company.

As discussed above, the significant policy exception is limited in that, as is relevant here, a proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micromanage a company by specifying in detail the manner in which the company should address a policy issue, even if the proposal involves a significant policy issue. Here, although the Proposal’s reference to global carbon emissions may relate to significant policy considerations, any environmental interests underlying the Proposal are secondary to the Proposal’s efforts to micromanage the Company’s operations and processes in addressing this issue. The focus of this Proposal is that the Company publish a complex analysis and plans regarding the Company’s business, investment and financial decisions against the arbitrary and prescriptive assumption of “carbon emissions reductions of 50% or higher applied to Scope Two and Scope Three emissions by 2030 (in line with the Paris Accord’s 2C target) as well as ‘net zero’ emissions targets by 2050, also called for in the Paris Accord.”

Regardless of whether the Proposal is requesting reporting on plans to reduce the Company’s emissions or manage LNG-related investment risk, the Staff’s responses in Devon 2019, Exxon 2019, Amazon 2018, PayPal 2018, Verizon 2018, Deere 2017, Apple 2017, Deere 2016 and Apple 2016 are particularly relevant. In each case, the Staff concurred in the exclusion of proposals relating to greenhouse gas emissions, a significant policy issue, because the proposals intruded upon the day-to-day, ordinary business operations of the companies. Here, even though emissions are a significant policy issue, the Proposal may be read as requiring the Company to report on plans of the Company (or possibly the LNG industry as a whole) to achieve net zero emissions by 2050 or otherwise to revise its business model in light of projected carbon reductions of 50% or higher applied to Scope Two and Three emissions by 2030. The extent of intrusion by the Proposal on the Company’s ordinary operations, as discussed above, means that the subject matter does not “transcend[] the day-to-day business matters of the company,” and,
therefore, like the proposals cited above, the Proposal may be properly excluded under Rule 14a-8(i)(7).
The decisions of the Staff in these cases involving Devon, Exxon, Amazon, PayPal, Verizon, Deere and
Apple demonstrate that the Staff has consistently concurred in the exclusion of proposals that seek to
micromanage a company’s business operations, regardless of whether the proposals also relate to
significant policy issues.

CONCLUSION

For the foregoing reasons, the Company requests the Staff concur that it will take no enforcement
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. If we can be of any further assistance, please do not hesitate to
contact me at the telephone number or email address appearing on the first page of this letter.

Very truly yours,

George J. Vlahakos

Encl.

cc: Sean N. Markowitz
General Counsel & Corporate Secretary
Cheniere Energy, Inc.

Leonard Wood
Sidley Austin LLP

Stewart Taggart
Exhibit A
Dear Secretary:

Please accept the resolution below for a vote by shareholders at the company's 2020 Annual General Meeting.

The resolution seeks the company's views on the competitive longevity of the Liquid Natural Gas (LNG) industry and the company's LNG investments given the Paris Accord's 2C objective of attaining 'net zero' emissions after 2050.

Such insight is critical for investors to develop fair value assessments for the company's shares should investors deem carbon emissions relevant to corporate valuation.

An expanding number of credible, independent parties routinely quantify 'social costs' of carbon. There is also an expanding history of traded market costs such as those from the European Union Emissions Trading Scheme, the California Cap and Trade system, the US Regional Greenhouse Gas Initiative and others.

What's missing now is discussion by the company and others in the Liquid Natural Gas industry of how they view carbon pricing risk and/or mandated and/or civil society compelled emissions reductions in the company's sunk and proposed investments.

For their part, two Federal Energy Regulatory Commission (FERC) commissioners (Richard Glick and Cheryl LaFleur) both see merit in broadening FERC’s focus from Scope One to Scopes Two and Three in evaluating LNG projects.

Central bankers also care about this as can be seen by the creation of the Bank of France's Network for Greening the Financial System.

If FERC and central banks care, shareholders are in good company. Their shared interest demonstrates that the resolution falls outside 'micro-management' or frivolous interference. Instead, the resolution seeks the company's views regarding declining-value sunk cost and obsolescence risks as energy markets move away from the company product over time.

I have contacted DTC Participant Pershing (DTC #0443) to get written confirmation of my required shareholding. I will send a printed copy by Fedex when I receive it. Naturally, it will postdate your receipt of this letter and resolution.

I commit to holding my existing shares through the next Annual General Meeting and beyond.

The best way to contact me is by email at

Sincerely,

Stewart Taggart
RESOLUTION

WHEREAS: Global efforts to reduce global carbon emissions creates risk for the Liquid Natural Gas industry. Investors must evaluate this risk in estimating fair value for the industry's companies.

'Scope Three' (or life-cycle) carbon emissions from Liquid Natural Gas are 0.61-0.84 tonnes of carbon equivalent per megawatt hour of electricity generated, according to the US Department of Energy. This includes upstream mining, fugitive emissions, pipelining, liquefying, shipping, regasifying, power plant delivery and electricity combustion.

Coal's Scope Three emissions are 1.0-1.1 tonnes per megawatt hour, the department says. Solar photovoltaic's emissions are around 0.40 tonnes per megawatt hour with wind around 0.12 tonnes, according to financial adviser and asset manager Lazard.

The United States 'social' (or 'negative externality') cost of carbon is $45 per tonne (in 2018 dollars), forecast to rise to $100 per tonne in 2040, according to the US General Accounting Office. The International Monetary Fund estimates market or administratively equivalent carbon prices of $70 (or higher) by 2030 are required to meet the Paris Climate Accord's 2050 2°C targets.

Applying the carbon pricing and/or target emissions reductions above to Scope Three emissions reduces Liquid Natural Gas' market competitiveness, compounding existing industry problems like long lead times, slipping commission dates and ballooning cost overruns.

This matters because new build wind and solar installations are now cheaper, faster to deploy and more efficient to operate than natural gas plants, according to the Rocky Mountain Institute, Lazard and others. Wind and solar, however, face intermittency and storage challenges natural gas does not.

The question becomes: what carbon pricing, intermittency cost and/or administrative emission reductions levelizes low-emission energy's (like wind and solar's) intermittency and storage challenges with Liquid Natural Gas' Scope Three emissions challenges to mid century and beyond?

Elaboration by management on this is material. It addresses stranding and write down risk of huge capital investment as financial, regulatory and investment trends encourage or mandate carbon emission reductions.

To cite one example, the central bankers group Network for Greening the Financial System seeks to have climate-related risks better evaluated at corporate board levels, used in risk management and applied in investment and strategy decisions.

To cite another, two Federal Energy Regulatory Commission members (LaFleur and Glick) advocate carbon emissions be more closely examined in approving Liquid Natural Gas projects.

RESOLVED: The company shall prepare a report discussing price, amortization and obsolescence risk to existing and planned Liquid Natural Gas capital investments posed by carbon emissions reductions of 50% or higher applied to Scope Two and Scope Three emissions by 2030 (in line with the Paris Accord's 2°C target) as well as 'net zero' emissions targets by 2050, also called for in the Paris Accord and what the company plans to do about managing this risk.

The report shall be produced at reasonable cost, omit proprietary information and cite sources.
June 19, 2019

VIA ELECTRONIC MAIL AND FEDEX

Stewart Taggart

Re: Letter of June 7, 2019

Dear Mr. Taggart:

This letter confirms receipt on June 10, 2019 of your letter giving notice of your intent to present a shareholder proposal at the 2020 Annual Meeting of Shareholders of Cheniere Energy, Inc. (the “Company,” “we” or “our”).

In accordance with the regulations of the U.S. Securities and Exchange Commission (the “SEC”), we are required to notify you of any eligibility or procedural deficiencies related to your proposal. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provides that shareholder 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 the one-year period preceding and including the date the proposal is submitted.

As of the date of this letter, we have not received your proof of ownership of the Company’s common stock. According to our records, you are not a registered holder of our common stock. As explained in Rule 14a-8(b), if you are not a registered holder of the Company’s common stock, you may provide proof of ownership by submitting either:

- a written statement from the “record” holder of your shares (usually a bank or broker) verifying that you continuously held the requisite number or amount of shares of the Company’s common stock for the one-year period preceding and including, the date you submitted your proposal; or

- if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the required number or amount of shares of the Company’s common stock as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, any subsequent amendments reporting a change in your ownership level and a written statement that you continuously held the required number or amount of shares for the one-year period.
If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (the “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 Bulletins No. 14F, dated October 18, 2011 (“SLB 14F”) and 14G, dated October 16, 2012 (“SLB 14G”), only DTC participants or affiliated 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/client-center/dtc-directories. You can obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- 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 shares of the Company’s common stock for the one-year period preceding and including the date you submitted your proposal.

- 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 shares of the Company’s common stock for the one-year period preceding and including the date you submitted your proposal. 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 the date you submitted your proposal, the required number or amount of shares of the Company’s common stock were continuously held: (1) one from your broker or bank confirming your ownership and (2) the other from the DTC participant confirming the broker or bank’s ownership.

As discussed above, in order for your proposal to be eligible, you must provide proof of beneficial ownership of the Company’s common stock from the record holder of your shares verifying continuous ownership of at least $2,000 in market value, or 1%, of the Company’s common stock for the one-year period preceding and including June 7, 2019, the date of your letter.

The SEC’s Rule 14a-8 requires that your proof of ownership that satisfies the requirements of Rule 14a-8 be postmarked or transmitted electronically to the Company no later than 14 calendar days from the date you receive this letter. Please direct any response to me using the following contact information:
Finally, please note that in addition to the eligibility deficiency cited above, the Company reserves the right in the future to raise any further bases upon which your proposal may be properly excluded under Rule 14a-8(i) of the Exchange Act.

If you have any questions regarding this matter, I can be reached at Sean.Markowitz@cheniere.com. For your reference, I have enclosed copies of Rule 14a-8, SLB 14F and SLB 14G.

Sincerely,

Sean N. Markowitz
General Counsel & Corporate Secretary

cc: George Vlahakos, Sidley Austin LLP

Enclosures
§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://www.sec.gov/forms/corp_fin_interpretive](https://www.sec.gov/forms/corp_fin_interpretive).

A. The purpose of this bulletin

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

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

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

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

1. Eligibility to submit a proposal under Rule 14a-8
To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.\footnote{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.\footnote{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.\footnote{3}

\section{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.\footnote{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.\footnote{5}

\section{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.\footnote{6} Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC’s securities position listing, Hain Celestial has required companies to
accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent’s records or against DTC’s securities position listing.

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

We believe that taking this approach as to who constitutes a “record” holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 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.

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

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

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

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

---

1 See Rule 14a-8(b).

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

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


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

Techne Corp. (Sept. 20, 1988).

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

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

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

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

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


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

16 Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.
Division of Corporation Finance  
Securities and Exchange Commission  

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

Action: Publication of CF Staff Legal Bulletin  

Date: October 16, 2012  

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

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

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

A. The purpose of this bulletin  

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

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

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

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

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

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

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.

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

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

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

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

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

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

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

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

D. Use of website addresses in proposals and supporting statements

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

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

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

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

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

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

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

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

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

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

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

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

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

http://www.sec.gov/interps/legal/cfslb14g.htm
In response to your letter of June 19, please see the below.
A paper copy is enroute to you by Federal Express.
I plan to hold these shares until the 2020 AGM and well beyond.
June 18, 2019

RE: STEWART WATERWORTH TAGGART & REBECCA WHITE TAGGART JT TEN,
THE STEWART W TAGGART & REBECCA W TAGGART JT REV TR
UAD 08/29/17, STEWART WATERWORTH TAGGART & REBECCA
WHITE TAGGART TTEES

To Whom It May Concern:

Pershing LLC is a DTC Participant with a DTC number of 0443. Pershing LLC carries
the above referenced accounts for Stewart W. Taggart and Rebecca W. Taggart who, as
Owners or Trustees, as of the date of this letter, hold and have held continuously since
16411R208.

Sincerely,

[Signature]

Pershing LLC

[Signature]

Jorge Quiroz, VP

300 COLONIAL CENTER PARKWAY, LAKE MARY, FLORIDA 32746

IMPORTANT: This message is intended only for the use of the individual or entity to whom it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. postal service. Thank you.
September 30, 2019

Dear Mr. Markowitz or Corporate Secretary

Earlier this year, I filed a shareholder resolution with the company for consideration by the company's shareholders at the next annual general meeting.

Enclosed is my proof of ownership of sufficient company shares for the required amount of time to enable this entitlement.

I intend to hold the shares through the next annual general meeting and beyond.

Should you have any questions, I can be reached at the mailing or email address above.

Sincerely,

Stewart Taggart
September 27, 2019

RE: STEWART WATERWORTH TAGGART & REBECCA WHITE TAGGART JT TEN, THE STEWART W TAGGART & REBECCA W TAGGART JT REV TR UAD 08/29/17, STEWART WATERWORTH TAGGART & REBECCA WHITE TAGGART TTEES

To Whom It May Concern:

Pershing LLC is a DTC Participant with a DTC number of 0443. Pershing LLC carries the above referenced accounts for Stewart W. Taggart and Rebecca W. Taggart who, as Owners or Trustees, as of the date of this letter, hold and have held continuously since June 8, 2017, 70 shares of Cheniere Energy Inc. Common Stock, Cusip 16411R208.

Sincerely,

[Signature]

Jorge Quiroz
Vice President

300 COLONIAL CENTER PARKWAY, LAKE MARY, FLORIDA 32746

IMPORTANT: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. postal service. Thank you.