August 20, 2020

U.S. SECURITIES AND EXCHANGE COMMISSION
DIVISION OF CORPORATION FINANCE
OFFICE OF CHIEF COUNSEL
100 F STREET, N.E.
WASHINGTON, D.C. 20549

Re: NextDecade Corporation 2021 Annual Meeting

Re: Stockholder Proposal of Stewart Taggart

Ladies and Gentlemen:

NextDecade Corporation (the "**Company**") submits this letter to notify the staff (the "**Staff**") of the Division of Corporation Finance of the Securities and Exchange Commission (the "**Commission**") that the Company hereby withdraws the no-action request submitted by the Company to the Staff on July 16, 2020 (the "**No-Action Request**"). The No-Action Request sought confirmation that the Staff would not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended, the Company excluded from its proxy materials for its 2021 Annual Meeting of Stockholders a stockholder proposal and supporting statement submitted on June 19, 2020 to the Company (the "**Proposal**") by Stewart Taggart (the "**Proponent**"). The Company is withdrawing the No-Action Request because the Proponent has withdrawn the Proposal via correspondence to the Company dated August 13, 2020. A copy of the correspondence from the Proponent indicating the withdrawal of the Proposal is attached hereto as **Exhibit A**.

Please do not hesitate to call me at (832) 779-5679 or Sean Jones of K&L Gates, LLP, the Company's counsel, at (704) 331-7400.

Sincerely,

Gabriel Gutierrez
Associate General Counsel

1000 Louisiana Street, Suite 3900
Houston, Texas 77002
+1 713-574-1880
www.next-decade.com

Exhibit A

(see attached)

Gabe Gutierrez

From: Stewart Taggart***
Sent: Thursday, August 13, 2020 10:56 AM
To: Gabe Gutierrez
Subject: Re: NextDecade Corporation - 2021 Annual Meeting of Stockholders - Proposal

Mr. Gutierrez,

In response to your Aug 12 email below, I withdraw my June 19, 2020 and July 28 proposals submitted to Next Decade

> On Aug 12, 2020, at 5:31 AM, Gabe Gutierrez <ggutierrez@next-decade.com> wrote:
>
> Dear Mr. Taggart,
>
> I have received the letter, dated August 4, 2020, you sent to NextDecade Corporation ("NextDecade"). Per such letter, you state that the proposal you submitted on July 28, 2020 replaces the proposal you sent on June 19, 2020. In addition, such letter was accompanied by a letter from Fiduciary Trust Company related to your ownership of common stock in NextDecade. Again, as stated in the email below, the proposal you submitted on July 28, 2020 does not cure your failure to provide proper ownership information within the 14-day deadline for the proposal you submitted on June 19, 2020 (such failure was acknowledged by you in your letters dated July 28, 2020 and August 4, 2020) and, therefore, pursuant to SEC Exchange Act Rule 14a-8, you are not permitted to submit such proposal for NextDecade's 2021 Annual Meeting of Stockholders. Consequently, NextDecade asks that you withdraw the proposals that you submitted to NextDecade, which will spare NextDecade the time and expense of continuing the no-action process. **You can withdraw your proposals by replying to this email and stating that you withdraw the June 19, 2020 and July 28, 2020 proposals that you submitted to NextDecade.**
>
> Regards,
>
> **Gabriel A. Gutierrez**
> **Associate General Counsel,** *Corporate & Compliance*
>
> **NextDecade Corporation**
> 1000 Louisiana Street, Suite 3900
> Houston, Texas 77002
> United States of America
>
> **Office:** + 1 832-779-5679
> **Email:** ggutierrez y@next-decade.com
> www.Next-Decade.com

From: Stewart Taggart
To: ShareholderProposals
Subject: Shareholder Resolution Filer Kneecapped by JP Morgan, seeks SEC advice
Date: Friday, July 17, 2020 4:40:33 PM
Attachments: CHENIERE[1].pdf

Dear SEC,

In the last month I filed shareholder resolutions with Next Decade, Chevron and a few others for their 2021 Annual General Meeting using shares held by JP Morgan, which says it can't verify the holdings because even it doesn't know it has them (!).

This situation has arisen because when I filed last years' resolution (which got 27% in favor!), my shares were held with Pershing. Since then, I've switched institutions and my shares are now held by JP Morgan, which says it uses a 'omnibus' system (?) in which it can't confirm anything about who owns what (!)

Here's my last year's proof of ownership letter from Pershing.

And below is the obfuscation I'm getting from JP Morgan via Franklin Resources this year regarding why they can't confirm I own the stock because —even though they are custodians — even THEY don't know I own the stock— due to their a 'omnibus' system (whatever that is). See message below.

Surely this kind of outcome can't be the objective of SEC policy. Can you help?

The problem is that Franklin Resources (parent of Fiduciary) can confirm the holdings, but that's not good enough: it has to come from custodian JP Morgan. Or so I've been told. Naturally, if Franklin Resources' confirmation is sufficient proof for the SEC, I'll need an SEC letter to that effect to keep the subjects of my shareholder resolutions from giving me the runaround.

Can help? Thanks!

> On Jul 17, 2020, at 7:47 AM, Imbriale, Nicholas <Nick.Imbriale@ftci.com> wrote:
>
> Hi Stewart,
>
> Thank you for the email. I heard back from JP Morgan this morning whom advised that they are unable to draft a letter utilizing verbiage they are unable to verify. As well as they are unable to digitally sign the documents.
>
> JPM can draft the letters according to what they indicated below in yellow.

To Whom it May Concern, **Dominion Energy**

~~Stewart Taggart, as trustee of the Stewart and Rebecca Taggart Revocable Trust held by Fiduciary Trust International (FTI), has owned continuously to this day and without interruption 40 shares of Dominion Energy Inc. since June 8, 2017~~.

The shares are held on Fiduciary's behalf by JP Morgan, a DTC participant, in an omnibus structure that does not allow JP Morgan to see or know the name of the underlying beneficial owner account at Fiduciary.
As a result, Fiduciary is the only party that can confirm the claimed share numbers of Dominion stock are held on behalf of Stewart and Rebecca Taggart in the specified account, and we confirm the continuous holdings above.

Thanks,
Nick

Nicholas Imbriale
(212)-632-3323

In filing shareholders

Pershing

An affiliate of The Bank of New York

July 29, 2018

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.

Sincerely,

Authorized Signature

Daniel Brunell – V.P

(CRPAC4)

X0004432

NYSE INC. MEDALLION SIGNATURE PROGRAM

300 COLONIAL CENTER PARKWAY, LAKE MARY, FLORIDA 32746

July 16, 2020

U.S. SECURITIES AND EXCHANGE COMMISSION
DIVISION OF CORPORATION FINANCE
OFFICE OF CHIEF COUNSEL
100 F STREET, N.E.
WASHINGTON, D.C. 20549

Re: NextDecade Corporation 2021 Annual Meeting

Re: Omission of Stockholder Proposal of Stewart Taggart

Ladies and Gentlemen:

We are writing pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), to request that the Staff of the Division of Corporation Finance (the "**Staff**") of the U.S. Securities and Exchange Commission (the "**Commission**") concur with our view that, for the reasons stated below, NextDecade Corporation ("**NextDecade**"), a Delaware corporation, may exclude the stockholder proposal and supporting statement (the "**Proposal**") submitted by Mr. Stewart Taggart from the proxy materials to be distributed by NextDecade in connection with its 2021 annual meeting of stockholders (the "**2020 Proxy Materials**"). Mr. Taggart is sometimes referred to as the "**Proponent**."

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("**SLB 14D**"), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Exchange Act Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of NextDecade's intent to omit the Proposal from the 2021 proxy materials.

Exchange Act Rule 14a-8(k) and Section E of SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the stockholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if he submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned.

I. The Proposal

The text of the resolution in the Proposal is set forth below:

> "RESOLVED: The company shall produce a report at reasonable expense and without revealing propriety information discussing price, amortization, technology and climate change risk from rising carbon prices, advancing

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Houston, Texas 77002
+1 713-574-1880
www.next-decade.com

renewable energy technology and potential rising seas in coastal areas such as Brownsville where it plans LNG plants."

II. Basis for Exclusion

We hereby respectfully request that the Staff concur in our view that NextDecade may exclude the Proposal from the 2021 Proxy Materials pursuant to Exchange Act Rule 14a-8(b)(1), Exchange Act Rule 14a-8(b)(2), and Exchange Act Rule 14a-8(f)(1) because the Proponent failed to provide proof of the requisite common stock ownership and failed to provide NextDecade with a written statement that the Proponent intends to continue to hold the common stock through the date of NextDecade's 2021 annual meeting of shareholders.

III. Background

On June 22, 2020, NextDecade received the Proposal, dated June 19, 2020, accompanied by a cover letter from the Proponent. On June 29, 2020, NextDecade sent a letter to the Proponent, via email and overnight courier, requesting that the Proponent submit (i) sufficient proof verifying that the Proponent beneficially owned the requisite number of shares of NextDecade common stock continuously for at least one year preceding and including June 19, 2020, the date the Proposal was submitted to NextDecade, and (ii) a written statement of the Proponent's intent to continue to hold the required number of shares of NextDecade common stock through the date of NextDecade's 2021 annual meeting of stockholders (the "**First Deficiency Letter**").

On July 6, 2020, NextDecade received emails from the Proponent - one email contained an unsigned letter from J.P. Morgan, dated June 30, 2020 (the "**JPM Letter**"), as proof of Proponent's ownership of NextDecade securities in response to the First Deficiency Letter and another email asked NextDecade if the JPM Letter satisfied the requirements set forth in the First Deficiency Letter. On July 6, 2020, NextDecade sent a letter to the Proponent, via email, stating that the JPM Letter did not satisfy the requirements set forth in the First Deficiency Letter and again requested that the Proponent submit (i) sufficient proof verifying that Mr. Taggart beneficially owned the requisite number of shares of NextDecade common stock continuously for at least one year preceding and including June 19, 2020, the date the Proposal was submitted to NextDecade, and (ii) a written statement of the Proponent's intent to continue to hold the required number of shares of NextDecade common stock through the date of NextDecade's 2021 annual meeting of stockholders (the "**Second Deficiency Letter**"). On July 10, 2020, NextDecade received an email from the Proponent regarding the nature of his beneficial ownership of shares of NextDecade common stock. In response to this email, NextDecade, by email to the Proponent sent on July 10, 2020, referred the Proponent to the First Deficiency Letter and Staff Legal Bulletin No. 14F (CF), which was attached thereto.

Copies of the Proposal, the First Deficiency Letter, the JPM Letter, the Second Deficiency Letter, and related correspondence are attached hereto as **Exhibit A**.

IV. The Proposal May Be Excluded Pursuant to Exchange Act Rule 14a-8(b)(1) and Exchange Act Rule 14a-8(f)(1) Because the Proponent Failed to Provide Proof of the Requisite Stock Ownership of NextDecade Common Stock After Receiving Notices of Such Deficiency.

Exchange Act Rule 14a-8(b)(1) provides that, in order to be eligible to submit a proposal, a stockholder 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 for at least one year by the date the proposal is submitted and must continue to hold those securities through the date of the meeting. Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that it meets the eligibility requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the deficiency and the proponent fails to correct the deficiency within 14 days of receiving such notice.

Here, the JPM Letter states that as of June 21, 2018 and April 24, 2020, Fiduciary Trust Company International account *** held 600 units and 1,500 units in the Company, respectively, which it "continually hold until this day of proposal 6/30/2020." The JPM Letter fails to identify the owner of Fiduciary Trust Company International account *** In addition, the JPM Letter states that Fiduciary Trust Company International account *** held "units" but then provides the CUSIP for NextDecade's common stock. NextDecade does have units issued and outstanding, however, based on a review of NextDecade's unit register, NextDecade units have only ever been held by no more than two holders of record and the Proponent has never been listed as one of those two holders of record. Furthermore, the JPM Letter states that Fiduciary Trust Company International account *** continuously held the units "until this day of proposal 6/30/2020," however, NextDecade's records indicate that the Proposal was submitted on June 19, 2020 and, therefore, the JPM Letter fails to state the proper date (i.e., June 19, 2020) for the one year holding period required by Exchange Act Rule 14a-8(b)(1).

NextDecade sent the Second Deficiency Letter stating that, because the JPM Letter (i) was unsigned, (ii) did not identify the Proponent as the legal holder of shares of NextDecade common stock entitled to vote on the Proposal for at least one year as of the date the Proposal was submitted (i.e., June 19, 2020), and (iii) did not state that the Proponent held the shares of NextDecade common stock entitled to vote on the Proposal for at least one year as of the date the Proposal was submitted (i.e., June 19, 2020), the JPM Letter was deficient and, therefore, the Proponent needed to provide a new proof of ownership letter verifying that the Proponent had continuously held at least $2,000 in market value, or 1%, of shares of NextDecade common stock for the one-year period preceding and including the date the Proponent submitted the Proposal (i.e., June 19, 2020) to cure this deficiency. The Proponent failed to cure the deficiency within 14 days of receiving the First Deficiency Letter. The Company's records indicate that the Proponent received the First Deficiency Letter on June 29, 2020.

Accordingly, for the reasons discussed above, we believe that the Proposal may be excluded pursuant to Exchange Rule 14a-8(b)(1) and Rule 14a-8(f)(1) as the Proponent has failed to provide timely proof of the requisite stock ownership after receiving notice of such deficiency.

V. The Proposal May Be Excluded Pursuant to Exchange Act Rule 14a-8(b)(2) and Exchange Act Rule 14a-8(f)(1) Because the Proponent Failed to Provide A Written Statement of the Proponent's Intent to Continue to Hold the Required Number of Shares of NextDecade Common Stock Through the Date of NextDecade's 2021 Annual Meeting of Stockholders After Receiving Notices of Such Deficiency.

Exchange Act Rule 14a-8(b)(2) provides that a stockholder is required to provide the company with a written statement of his or her intention to continue to hold the securities through the date of the meeting of shareholders. Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that it meets the eligibility requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the deficiency and the proponent fails to correct the deficiency within 14 days of receiving such notice.

Here, NextDecade informed the Proponent in the First Deficiency Letter and the Second Deficiency Letter that the Proponent had failed to provide a written statement of the Proponent's intent to continue to hold the required number of shares of NextDecade common stock through the date of NextDecade's 2021 annual meeting of stockholders. The Proponent failed to cure such deficiency within 14 days of receiving the First Deficiency Letter. The Company's records indicate that the Proponent received the First Deficiency Letter on June 29, 2020.

Accordingly, for the reason discussed above, we believe that the Proposal may be excluded pursuant to Exchange Rule 14a-8(b)(2) and Rule 14a-8(f)(1) as the Proponent has failed to provide a written statement of the Proponent's intent to continue to hold the required number of shares of NextDecade common stock through the date of NextDecade's 2021 annual meeting of stockholders after receiving notice of such deficiency.

V. Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if NextDecade excludes the Proposal from its 2021 Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of NextDecade's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact me at (832) 403-2198 or Sean M. Jones of K&L Gates, LLP at (704) 331-7400.

Sincerely,

Krysta De Lima
General Counsel

Exhibit A

Proposal

(see attached)

Stewart Taggart
***

email: ***

Corporate Secretary
NextDecade
1000 Louisiana Street
Suite 3900
Houston, Texas, USA 77002
Phone: (713) 574-1880

June 19, 2020

Dear Secretary

Enclosed please find a resolution below to be submitted to a shareholder vote at the company's 2021 Annual General Meeting.

The resolution seeks elaboration on the competitive longevity of the company's Liquid Natural Gas (LNG) investments given the *Paris Accords'* objective of attaining 'net zero' global emissions post 2050. Such elaboration is critical for investors to make long-term fair value assessments for the company's shares if investors consider carbon emissions relevant to corporate valuation.

An expanding number of credible, independent parties routinely quantify 'social costs' of carbon. There's 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 is detailed discussion from companies in the Liquid Natural Gas industry how these credible and rising carbon price estimates generate substitution risk from renewable energy led by falling wind and solar prices, government mandated emissions reductions and/or civil society divestment pressure.

At the *Federal Energy Regulatory Commission (FERC),* commissioner Richard Glick and commissioner Cheryl LaFleur (during her time at *FERC*) both have stressed the merits of broadening *FERC's* focus from *Scope One* emissions to *Scopes Two* and *Three* in evaluating LNG projects. To this investor, it looks like writing on the wall.

Central bankers, multilateral institutions and ratings agencies also care. The *Bank of France* has created the *Network for Greening the Financial System*. The *International Monetary Fund* advises investors to take heed of climate change risks in investment decisions. *Moodys* warns climate change threatens fossil fuel producer creditworthiness.

If central bankers, *FERC,* the *IMF* and *Moodys* see issues, shareholders would be dilatory not see a few, too. Such shared interest between monetary and regulatory bodies as well as individual and institutional investors demonstrates resolutions like this are *not* efforts at 'micro-management' or frivolous interference.

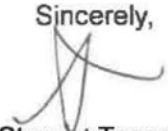
They represent legitimate, existential longevity concerns requiring answers *in detail* and *with numbers.*

In sum, I seek more information about declining-value and obsolescence risks to the company's sunk and/ or proposed LNG investments as markets inevitably shift away from the company's LNG product over time.

I will almost certainly present a revised version later in the year depending upon events. Between now and then, however, I'd love to hear your views if you're willing to engage.

I have contacted my share custodian. I will be confirming my shareholding in coming days date-marked after your *Fedex* receipt of this letter and the resolution. The *only* way to reach me is via email.

Sincerely,



Stewart Taggart

WHEREAS: *Next Decade's Rio Grande* and Galveston Liquid Natural Gas plants are market late comers. *Rio Grande* is not expected to come on line before 2024; Galveston not until 2027.

With combined capacity of 43.2 million tonnes per year, both face premature obsolescence risk as Paris Accord post mid-century net zero goals approach.

Other risks also loom:

Next Decade's sole Liquid Natural Gas contract is price-pegged to oil (generating hedging risk), ends in 2043 (generating longevity risk) involves less than five percent of the company's planned natural gas production capacity (generating off take risk) while *Next Decade's* sole buyer, *Shell,* plans to be net zero by 2050 (generating counter party risk)

In coming years, potential gas market outcomes could include $63-65 per tonne implicit or explicit carbon prices per tonne by 2030 estimated by the *US General Accounting Office*, the *US Environmental Protection Agency* and *Exxon,* among others.

This suggests carbon price-adjusted Liquid Natural Gas generated electricity could drive up electricity costs markedly in European and Asian markets against a backdrop of continually falling renewable energy prices due to rapid technological advances unmatched by Liquid Natural Gas.

This matters since organizations ranging from *Moody's* to the *International Monetary Fund* now warn global investors to take greater heed of climate change risks in making investment decisions.

It may also lead to mandates from major downstream buyers for upstream emission reductions and/or application of offset costs levied on consumers -- raising the price of gas-generated electricity.

Also important to include are rapidly falling renewable energy prices in wind and solar, expected to compete Liquid Natural Gas on Scope Three emissions basis within 15 years, according to data from *Bloomberg New Energy Finance,* among others.

Given the above, one competitive possibility for *Next Decade* is greater investment by parent *Exelon* -- America's largest operator of nuclear plants -- in nuclear-generated hydrogen shipped internationally.

Japan's *Kawasaki Heavy Industry*, for instance, plans to ship hydrogen from Australia to Japan in compressed Liquid Natural Gas-type tankers in time for the 2021 *Tokyo Olympics*. That suggests a glide path for potentially obsolete Liquid Natural Gas shipping infrastructure.

RESOLVED: The company shall produce a report at reasonable expense and without revealing propriety information discussing price, amortization, technology and climate change risk from rising carbon prices, advancing renewable energy technology and potential rising seas in coastal areas such as Brownsville where it plans LNG plants.

First Deficiency Letter

(see attached)

June 29, 2020

VIA EMAIL AND OVERNIGHT MAIL

Stewart Taggart
***

Email: ***

Dear Mr. Taggart:

On June 22, 2020, NextDecade Corporation (the "**Company**") received your letter dated June 19, 2020 giving notice to the Company of your intent to present a stockholder proposal at the Company's 2021 Annual Meeting of Stockholders (the "**Proposal**"). The Proposal contains certain procedural deficiencies, as set forth below, which Securities and Exchange Commission ("**SEC**") regulations require us to bring to your attention.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), provides that each stockholder proponent must submit sufficient proof that such stockholder has continuously held at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company's stock records do not indicate that you are the record owner of sufficient shares to satisfy this requirement. In addition, to date, the Company has not received proof that you have satisfied Exchange Act Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company. The Company's records indicate that you submitted the Proposal on June 19, 2020.

To remedy this defect, you must submit sufficient proof of your continuous ownership of the required number or amount of Company shares for the one-year period preceding and including June 19, 2020, the date the Proposal was submitted to the Company. As explained in Exchange Act Rule 14a-8(b) and in SEC staff guidance, sufficient proof may be in one of the following forms:

(i) a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that, as of the date the Proposal was submitted (i.e., June 19, 2020), you continuously held the required number of Company shares for the one-year period preceding and including June 19, 2020; or

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

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

(i) 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 of Company shares for the one-year period preceding and including June 19, 2020; or

(ii) 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 Company shares are held verifying that you continuously held the required number of Company shares for the one-year period preceding and including June 19, 2020. 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 Company 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 June 19, 2020, the required number of Company shares were continuously held: (a) one from your broker or bank confirming your ownership and (b) the other from the DTC participant confirming the broker or bank's ownership.

As discussed above, under Exchange Rule 14a-8(b), a stockholder 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 stockholders' meeting for at least one year as of the date the Proposal was submitted to the Company and must provide to the Company a written statement of the stockholder's intent to continue to hold the required number of shares through the date of the stockholders' meeting at which the Proposal will be voted on by the stockholders. Your letter did not include such a statement. To remedy this defect, you must submit a written statement that you intend to continue holding the required number of Company shares through the date of the Company's 2021 Annual Meeting of Stockholders.

For your reference, I have attached a copy of Exchange Act Rule 14a-8 and Staff Legal Bulletin No. 14F.

The SEC's rules require that any response to this letter, correcting all procedural deficiencies described in this letter, be postmarked or transmitted electronically no later than fourteen (14) calendar days from the date you receive this letter. Please address any response to me at NextDecade Corporation, 1000 Louisiana Street, Suite 3900, Houston, 77002. Alternatively, you may transmit any response by email to me at ggutierrez@next-decade.com.

If you have any questions with respect to the foregoing, please email me at ggutierez@next-decade.com.

Sincerely,

Gabriel Gutierrez
Associate General Counsel

1000 Louisiana Street, Suite 3900
Houston, Texas 77002
+1 713-574-1880
www.next-decade.com

U.S. Securities and Exchange Commission

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.

A. The purpose of this bulletin

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

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

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

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

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

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

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[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[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

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

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

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

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~/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.[9]

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

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC

participant?

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

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

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

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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

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

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

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

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

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

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

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

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

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

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act

on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

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

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[1] *See* Rule 14a-8(b).

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

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

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

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

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

[8] *Techne Corp.* (Sept. 20, 1988).

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

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

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

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

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

the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[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.

http://www.sec.gov/interps/legal/cfslb14f.htm

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Rule 14a–8 Shareholder proposals.

Effective: September 20, 2011

17 C.F.R. § 240.14a–8

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.

Credits

[41 FR 53000, Dec. 3, 1976, as amended at 43 FR 58530, Dec. 14, 1978; 44 FR 68456, 68770, Nov. 29, 1979; 48 FR 38222, Aug. 23, 1983; 50 FR 48181, Nov. 22, 1985; 51 FR 42062, Nov. 20, 1986; 52 FR 21936, June 10, 1987; 52 FR 48983, Dec. 29, 1987; 63 FR 29119, May 28, 1998; 63 FR 50622, Sept. 22, 1998; 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 75 FR 56782, Sept. 16, 2010; 75 FR 64641, Oct. 20, 2010; 76 FR 6045, Feb. 2, 2011; 76 FR 58100, Sept. 20, 2011]

SOURCE: 50 FR 27946, July 9, 1985; 50 FR 28394, July 12, 1985; 50 FR 37654, Sept. 17, 1985; 50 FR 41870, Oct. 16, 1985; 50 FR 42678, Oct. 22, 1985; 51 FR 8801, March 14, 1986; 51 FR 12127, April 9, 1986; 51 FR 14982, April 22, 1986; 51 FR 18580, May 21, 1986; 51 FR 25882, July 17, 1986; 51 FR 36551, Oct. 14, 1986; 51 FR 44275, Dec. 9, 1986; 52 FR 3000, Jan. 30, 1987; 52 FR 8877, March 20, 1987; 52 FR 9154, March 23, 1987; 52 FR 16838, May 6, 1987; 52 FR 27969, July 24, 1987; 52 FR 42279, Nov. 4, 1987; 53 FR 26394, July 12, 1988; 53 FR 33459, Aug. 31, 1988; 53 FR 37289, Sept. 26, 1988; 54 FR 23976, June 5, 1989; 54 FR 28813, July 10, 1989; 54 FR 30031, July 18, 1989; 54 FR 35481, Aug. 28, 1989; 54 FR 37789, Sept. 13, 1989; 55 FR 23929, June 13, 1990; 55 FR 50320, Dec. 6, 1990; 56 FR 7265, Feb. 21, 1991; 56 FR 9129, March 5, 1991; 56 FR 12118, March 22, 1991; 56 FR 19156, April 25, 1991; 56 FR 28322, June 20, 1991; 56 FR 30067, July 1, 1991; 57 FR 18218, April 29, 1992; 57 FR 32168, July 21, 1992; 57 FR 36501, Aug. 13, 1992; 57 FR 47409, Oct. 16, 1992; 58 FR 14682, March 18, 1993; 59 FR 10985, March 9, 1994; 59 FR 55012, Nov. 2, 1994; 59 FR 66709, Dec. 28, 1994; 61 FR 48328, Sept. 12, 1996; 62 FR 543, Jan. 3, 1997; 62 FR 6071, Feb. 10, 1997; 62 FR 12749, March 18, 1997; 62 FR 35340, July 1, 1997; 63 FR 8102, Feb. 18, 1998; 63 FR 13944, March 23, 1998; 65 FR 76087, Dec. 5, 2000; 66 FR 21659, May 1, 2001; 66 FR 43741, Aug. 20, 2001; 66 FR 55837, 55838, Nov. 2, 2001; 67 FR 247, Jan. 2, 2002; 67 FR 57288, Sept. 9, 2002; 67 FR 58299, Sept. 13, 2002; 68 FR 4355, Jan. 28, 2003; 68 FR 5364, Feb. 3, 2003; 68 FR 18818, April 16, 2003; 68 FR 36665, June 18, 2003; 68 FR 64970, Nov. 17, 2003; 68 FR 67009, Nov. 28, 2003; 68 FR 69221, Dec. 11, 2003; 71 FR 65407, Nov. 8, 2006; 71 FR 74708, Dec. 12, 2006; 71 FR 76596, Dec. 21, 2006; 72 FR 4166, Jan. 29, 2007; 74 FR 68365, Dec. 23, 2009; 75 FR 2794, Jan. 19, 2010; 75 FR 9081, Feb. 26, 2010; 75 FR 54477, Sept. 8, 2010; 75 FR 64653, Oct. 20, 2010; 76 FR 4511, Jan. 26, 2011; 76 FR 6045, Feb. 2, 2011; 76 FR 34363, June 13, 2011; 76 FR 34590, June 14, 2011; 76 FR 41685, July 15, 2011; 76 FR 46620, Aug. 3, 2011; 76 FR 71876, Nov. 21, 2011; 77 FR 30751, May 23, 2012; 77 FR 38454, June 27, 2012; 77 FR 41647, July 13, 2012; 77 FR 48356, Aug. 13, 2012; 77 FR 56362, Sept. 12, 2012; 77 FR 56417, Sept. 12, 2012; 77 FR 66285, Nov. 2, 2012; 77 FR 73305, Dec. 10, 2012; 78 FR 4783, Jan. 23, 2013; 78 FR 42450, July 16, 2013; 78 FR 67633, Nov. 12, 2013; 79 FR 1548, Jan. 8, 2014; 79 FR 39159, July 9, 2014; 79 FR 47369, Aug. 12, 2014; 79 FR 55261, Sept. 15, 2014; 79 FR 57344, Sept. 24, 2014; 80 FR 14550, March 19, 2015; 80 FR 49013, Aug. 14, 2015; 81 FR 8637, Feb. 19, 2016; 81 FR 28705, May 10, 2016; 81 FR 30142, May 13, 2016; 81 FR 70900, Oct. 13, 2016; 82 FR 17555, April 12, 2017; 84 FR 33491, July 12, 2019; 84 FR 33629, July 12, 2019; 84 FR 44041, Aug. 22, 2019; 84 FR 55055, Oct. 15, 2019, unless otherwise noted.

AUTHORITY: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 et seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub.L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub.L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.; Section 240.3a4–1 also issued under secs. 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121 as amended;; Section 240.3a12–8 also issued under 15 U.S.C. 78a et seq., particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), and 23(a), 15 U.S.C. 78w(a);; Section 240.3a12–10 also issued under 15 U.S.C. 78b and c;; Section 240.3a12–9 also issued under secs. 3(a)(12), 7(c), 11(d)(1), 15 U.S.C. 78c(a)(12), 78g(c), 78k(d)(1);; Sections 240.3a43–1 and 240.3a44–1 also issued under sec. 3; 15 U.S.C. 78c;; Sections 3a67–1 through 3a67–9 and 3a71–1 and 3a71–2 are also issued under Pub.L. 111–203, §§ 712, 761(b), 124 Stat. 1841 (2010).; Section 240.3a67–10, 240.3a71–3, 240.3a71–4, 240.3a71–5, and 240.3a71–6 are also issued under Pub.L. 111–203, secs. 712, 761(b), 124 Stat. 1754 (2010), and 15 U.S.C. 78dd(c).; Sections 240.3a71–3 and 240.3a71–5 are also issued under Pub.L. 111–203, sec. 761(b), 124 Stat. 1754 (2010), and 15 U.S.C. 78dd(c).; Section 240.3b–6 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).; Section 240.3b–9 also issued under secs. 2, 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121, as amended (15 U.S.C. 78b, 78c, 78*o*);; Section 240.9b–1 is also issued under sec. 2, 7, 10, 19(a), 48 Stat. 74, 78, 81, 85; secs. 201, 205, 209, 120, 48 Stat. 905, 906, 908; secs. 1–4, 8, 68 Stat. 683, 685; sec. 12(a), 73 Stat. 143; sec. 7(a), 74 Stat. 412; sec. 27(a), 84 Stat. 1433; sec. 308(a)(2), 90 Stat. 57; sec. 505, 94 Stat. 2292; secs. 9, 15, 23(a), 48 Stat. 889, 895, 901; sec. 230(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; sec. 2, 52 Stat. 1075; secs. 6, 10, 78 Stat. 570–574, 580; sec. 11(d), 84 Stat. 121; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 77b, 77g, 77j, 77s(a), 78i, 78*o*, 78w(a);; Section 240.10b–10 is also issued under secs. 2, 3, 9, 10, 11, 11A, 15, 17, 23, 48 Stat. 891, 89 Stat. 97, 121, 137, 156, (15 U.S.C. 78b, 78c, 78i, 78j, 78k, 78k–1, 78*o*, 78q).; Section 240.12a–7 also issued under 15 U.S.C. 78a et seq., particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), 6, 15 U.S.C. 78(f), 11A, 15 U.S.C. 78k, 12, 15 U.S.C. 78(l), and 23(a)(1), 15 U.S.C. 78(w)(a)(1).; Sections 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended,

894, 895, as amended; 15 U.S.C. 78c, 78*l*, 78m, 78*o*;; Section 240.12b–15 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.12b–25 is also issued under 15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37.; Section 240.12g–3 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).; Section 240.12g3–2 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).; Section 240.13a–10 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.13a–11 is also issued under secs. 3(a) and 306(a), Pub.L. 107–204, 116 Stat. 745.; Section 240.13a–14 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.13a–15 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.13d–3 is also issued under Public Law 111–203 § 766, 124 Stat. 1799 (2010).; Sections 240.13e–4, 240.14d–7, 240.14d–10 and 240.14e–1 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(d) and 14(e), 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(d) and 78n(e) and sec. 23(c) of the Investment Company Act of 1940, 15 U.S.C. 80a–23(c);; Sections 240.13e–4 to 240.13e–101 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e), 15(c)(1), 48 Stat. 882, 889, 891, 894, 895, 901, sec. 8, 49 Stat. 1379, sec. 5, 78 Stat. 569, 570, secs. 2, 3, 82 Stat. 454, 455, secs. 1, 2, 3–5, 84 Stat. 1497, secs. 3, 18, 89 Stat. 97, 155; 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(e), 78*o*(c)

sec. 23(c) of the Investment Company Act of 1940; 54 Stat. 825; 15 U.S.C. 80a–23(c);; Section 240.13f–2(T) also issued under sec. 13(f)(1) (15 U.S.C. 78m(f)(1));; Section 240.13p–1 is also issued under sec. 1502, Pub.L. 111–203, 124 Stat. 1376.; Section 240.13q–1 is also issued under sec. 1504, Pub.L. 111–203, 124 Stat. 2220.; Sections 240.14a–1, 240.14a–3, 240.14a–13, 240.14b–1, 240.14b–2, 240.14c–1, and 240.14c–7 also issued under secs. 12, 15 U.S.C. 781, and 14, Pub.L. 99–222, 99 Stat. 1737,15 U.S.C. 78n;; Sections 240.14a–3, 240.14a–13, 240.14b–1 and 240.14c–7 also issued under secs. 12, 14 and 17, 15 U.S.C. 781, 78n and 78g;; Sections 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n;; Section 240.14d–1 is also issued under 15 U.S.C. 77g, 77j, 77s(a), 77ttt(a), 80a–37.; Section 240.14e–2 is also issued under 15 U.S.C. 77g, 77h, 77s(a), 77sss, 80a–37(a).; Section 240.14e–4 also issued under the Exchange Act, 15 U.S.C. 78a et seq., and particularly sections 3(b), 10(a), 10(b), 14(e), 15(c), and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78j(a), 78j(b), 78n(e), 78*o*(c), and 78w(a)).; Section 240.15a–6, also issued under secs. 3, 10, 15, and 17, 15 U.S.C. 78c, 78j, 78*o*, and 78q;; Section 240.15b1–3 also issued under sec. 15, 17; 15 U.S.C. 78*o*78q;; Sections 240.15b1–3 and 240.15b2–1 also issued under 15 U.S.C. 78*o*, 78q;; Section 240.15b2–2 also issued under secs. 3, 15; 15 U.S.C. 78c, 78*o*;; Sections 240.15b10–1 to 240.15b10–9 also issued under secs. 15, 17, 48 Stat. 895, 897, sec. 203, 49 Stat. 704, secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78*o*, 78q, 12 U.S.C. 241 nt.;; Section 240.15c2–6, also issued under secs. 3, 10, and 15, 15 U.S.C. 78c, 78j, and 78*o*.; Section 240.15c2–11 also issued under 15 U.S.C. 78j(b), 78*o*(c), 78q(a), and 78w(a).; Section 240.15c2–12 also issued under 15 U.S.C. 78b, 78c, 78j, 78*o*, 78*o*–4 and 78q.; Section 240.15c3–1 is also issued under 15 U.S.C. 78*o*(c)(3), 78*o*–10(d), and 78*o*–10(e).; Section 240.15c3–3 is also issued under 15 U.S.C. 78c–5, 78*o*(c)(2), 78(c)(3), 78q(a), 78w(a); sec. 6(c), 84 Stat. 1652; 15 U.S.C. 78fff.; Section 240.15c3–3a is also issued under Pub.L. 111–203, §§ 939, 939A, 124. Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78*o*–7 note).; Section 240.15c3–3(o) is also issued under Pub.L. 106–554, 114 Stat. 2763, section 203.; Section 240.15d–5 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).; Section 240.15d–10 is also issued under 15 U.S.C. 80a–20(a) and 80a–37(a), and secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.15d–11 is also issued under secs. 3(a) and 306(a), Pub.L. 107–204, 116 Stat. 745.; Section 240.15d–14 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.15d–15 is also issued under secs. 3(a) and 302, Pub.L. No. 107–204, 116 Stat. 745.; Section 240.15*l*–1 is also issued under Pub.L. 111–203, sec. 913, 124 Stat. 1376, 1827 (2010).; Sections 240.15Ba1–1 through 240.15Ba1–8 are also issued under sec. 975, Public Law 111–203, 124 Stat. 1376 (2010). ; Section 240.15Bc4–1 is also issued under sec. 975, Public Law 111–203, 124 Stat. 1376 (2010). ; Sections 240.15Ca1–1, 240.15Ca2–1, 240.15Ca2–2, 240.15Ca2–3, 240.15Ca2–4, 240.15Ca2–5, 240.15Cc1–1 also issued under secs. 3, 15C; 15 U.S.C. 78c, 78o–5;; Sections 240.15Fh–1 through 240.15Fh–6 and 240.15Fk–1 are also issued under sec. 943, Pub.L. 111–203, 124 Stat. 1376.; Section 240.15Ga–1 is also issued under sec. 943, Pub.L. 111–203, 124 Stat. 1376.; Section 240.15Ga–2 is also issued under sec. 943, Pub.L. 111–203, 124 Stat. 1376.; Section 240.16a–1(a) is also issued under Public Law 111–203 § 766, 124 Stat. 1799 (2010).; Section 240.17a–3 also issued under secs. 2, 17, 23a, 48 Stat. 897, as amended; 15 U.S.C. 78d–1, 78d–2, 78q; secs. 12, 14, 17, 23(a), 48 Stat. 892, 895, 897, 901; secs. 1, 4, 8, 49 Stat. 1375, 1379; sec. 203(a), 49 Stat. 704; sec. 5, 52 Stat. 1076

sec. 202, 68 Stat. 686; secs. 3, 5, 10, 78 Stat. 565-568, 569, 570, 580; secs. 1, 3, 82 Stat. 454, 455; secs. 28(c), 3–5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 14, 18, 89 Stat. 117, 118, 137, 155; 15 U.S.C. 78*l*, 78n, 78q, 78w(a); ; Section 240.17a–4 also issued under secs. 2, 17, 23(a), 48 Stat. 897, as amended; 15 U.S.C. 78a, 78d–1, 78d–2; sec. 14, Pub.L. 94–29,

89 Stat. 137 (15 U.S.C. 78a); sec. 18, Pub.L. 94–29, 89 Stat. 155 (15 U.S.C. 78w);; Section 240.17a–14 is also issued under Public Law 111–203, sec. 913, 124 Stat. 1376 (2010).; Section 240.17a–23 also issued under 15 U.S.C. 78b, 78c, 78*o*, 78q, and 78w(a).; Section 240.17f–1 is also authorized under sections 2, 17 and 17A, 48 Stat. 891, 89 Stat. 137, 141 (15 U.S.C. 78b, 78q, 78q–1);; Section 240.17g–7 is also issued under sec. 943, Pub.L. 111–203, 124 Stat. 1376.; Section 240.17g–8 is also issued under sec. 938, Pub.L. 111–203, 124 Stat. 1376.; Section 240.17g–9 is also issued under sec. 936, Pub.L. 111–203, 124 Stat. 1376.; Section 240.17h–1T also issued under 15 U.S.C. 78q.; Sections 240.17Ac2–1(c) and 240.17Ac2–2 also issued under secs. 17, 17A and 23(a); 48 Stat. 897, as amended, 89 Stat. 137, 141 and 48 Stat. 901 (15 U.S.C. 78q, 78q–1, 78w(a));; Section 240.17Ad–1 is also issued under secs. 2, 17, 17A and 23(a); 48 Stat. 841 as amended, 48 Stat. 897, as amended, 89 Stat. 137, 141, and 48 Stat. 901 (15 U.S.C. 78b, 78q, 78q–1, 78w);; Sections 240.17Ad–5 and 240.17Ad–10 are also issued under secs. 3 and 17A; 48 Stat. 882, as amended, and 89 Stat. (15 U.S.C. 78c and 78q–1);; Section 240.17Ad–7 also issued under 15 U.S.C. 78b, 78q, and 78q–1.; Section 240.17Ad–17 is also issued under Pub.L. 111–203, section 929W, 124 Stat. 1869 (2010).; Section 240.17Ad–22 is also issued under 12 U.S.C. 5461 et seq.; Sections 240.18a–1, 240.18a–1a, 240.18a–1b, 240.18a–1c, 240.18a–1d, 240.18a–2, 240.18a–3, and 240.18a–10 are also issued under 15 U.S.C. 78*o*–10(d) and 78*o*–10(e).; Section 240.18a–4 is also issued under 15 U.S.C. 78c–5(f).; Section 240.19b–4 is also issued under 12 U.S.C. 5465(e).; Sections 240.19c–4 also issued under secs. 6, 11A, 14, 15A, 19 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–3, and 78s);; Section 240.19c–5 also issued under Sections 6, 11A, and 19 of the Securities Exchange Act of 1934, 48 Stat. 885, as amended, 89 Stat. 111, as amended, and 48 Stat. 898, as amended, 15 U.S.C. 78f, 78k–1, and 78s.; Section 240.21F is also issued under Pub.L. 111–203, § 922(a), 124 Stat. 1841 (2010).; Section 240.31–1 is also issued under sec. 31, 48 Stat. 904, as amended (15 U.S.C. 78ee).

End of Document

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	8:50 PM	Arrived at Facility San Antonio TX US
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The JPM Letter

(see attached)

J.P.Morgan

Kevin Thompson
Vice President
Corporate & Investment Bank

June 30th, 2020

To whom it may concern,

This letter is to confirm that Fiduciary Trust Company International held in custody account *** at JPMorgan Next Decade – Cusip 65342K105 600 units as of 6/21/2018 and 1,500 units as of 4/24/2020 and continually hold until this day of proposal 6/30/2020.

Sincerely,

Kevin Thompson
Vice President

4 Metro Tech Center, Brooklyn, NY 11245
Telephone: +1 212 623 8522 lorenzo.saia@jpmorgan.com
J.P. Morgan

Second Deficiency Letter

(see attached)

July 7, 2020

VIA EMAIL

Stewart Taggart
***

Email: ***

Dear Mr. Taggart:

On July 6, 2020, you sent to NextDecade Corporation (the "**Company**") an unsigned letter from J.P. Morgan, dated June 30, 2020 (the "**JPM Letter**"), as proof of your ownership of Company securities in response to the Company's letter to you, dated June 29, 2020 (the "**Initial Company Letter**"), with respect to your letter, dated June 19, 2020, giving notice to the Company of your intent to present a stockholder proposal at the Company's 2021 Annual Meeting of Stockholders (the "**Proposal**"). As explained below, the proof of ownership submission is deficient under Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**").

1. Ownership Verification

As stated in the Initial Company Letter, Exchange Act Rule 14a-8(b) provides that a stockholder proponent must submit sufficient proof that such stockholder has continuously held at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. Please refer to the Initial Company Letter which outlines the two ways a stockholder proponent can provide sufficient proof of ownership.

The JPM Letter states that as of June 21, 2018 and April 24, 2020, Fiduciary Trust Company International account *** held in trust 600 units and 1,500 units in the Company, respectively, which it "continually hold until this day of proposal 6/30/2020." The JPM Letter does not state the name of the of the beneficiary of such trust held by Fiduciary Trust Company International. As you will know, the legal title to trust assets is held by the trustee, not the beneficiary, so for the Company's purposes, Fiduciary Trust Company International is the stockholder, rather than you, if you are indeed the trust beneficiary.

In addition, it is not clear to the Company what is meant by "units" in the JPM Letter because the JPM Letter states that the securities held in trust by Fiduciary Trust Company International are "units" but then provides the CUSIP for the Company's common stock. Based on a review of the Company's securities registers, the Company notes that its units have only ever been held by no more than two holders of record and you have never been listed as one of those two holders of record.

Given that the JPM Letter (i) is unsigned, (ii) does not identify you as the legal holder of shares of Company common stock entitled to vote on the Proposal for at least one year as of the date the Proposal was submitted (i.e., June 19, 2020) and (iii) does not state that you held the shares of Company common stock entitled to vote on the Proposal for at least one year as of the date the Proposal was submitted (i.e., June 19, 2020), the JPM Letter is deficient and, therefore, you will need to provide a new proof of ownership letter verifying that you have continuously held at least $2,000 in market value, or 1%, of shares of Company common stock for the one-year period preceding and including the date you submitted the Proposal (i.e., June 19, 2020) to cure this deficiency.

2. Continued Ownership Statement

As stated in the Initial Company Letter, Exchange Act Rule 14a-8(b) requires that a stockholder must include in its proposal a written statement of the stockholder's intent to continue to hold the required number of shares through the date of the stockholders' meeting at which such proposal will be voted on by the stockholders. As of the date of this letter, you have not submitted a written statement to the Company that you intend to continue holding the required number of shares of Company common stock through the date of the Company's 2021 Annual Meeting of Stockholders. To remedy this deficiency, you must submit a written statement that you intend to continue holding the required number of shares of Company common stock through the date of the Company's 2021 Annual Meeting of Stockholders.

3. JPM Letter Irregularities

The JPM Letter has not been signed by Kevin Thompson. In addition, the JPM Letter appears to be on the letterhead of Lorenzo Saia but the signatory is Kevin Thompson. The Company will require a new proof of ownership verifying that you have continuously held at least $2,000 in market value, or 1%, of shares of Company common stock for at least one year as of the date the Proposal was submitted (i.e., June 19, 2020) and such proof of ownership needs to be signed by an authorized signatory on such signatory's letterhead. In addition, please provide the signatory's contact information so the Company may verify the information with such signatory.

A response curing all procedural deficiencies described in the Initial Company Letter and this letter must be postmarked or transmitted electronically no later than fourteen (14) calendar days from the date you received the Initial Company Letter. Alternatively, given that the JPM Letter does not comply with Exchange Act Rule 14a-8, the Company respectfully asks that you withdraw the Proposal in order to save the Company and its stockholders the time and expense associated with the Company submitting a no-action request to the Securities and Exchange Commission.

Please address any response to me at NextDecade Corporation, 1000 Louisiana Street, Suite 3900, Houston, 77002. Alternatively, you may transmit any response by email to me at ggutierrez@next-decade.com.

Sincerely,

Gabriel Gutierrez
Associate General Counsel

1000 Louisiana Street, Suite 3900
Houston, Texas 77002
+1 713-574-1880
www.next-decade.com

Correspondence

(see attached)

From: Gabe Gutierrez
To: Stewart Taggart
Subject: RE: NextDecade Corporation - 2021 Annual Meeting of Stockholders - Proposal
Date: Friday, July 10, 2020 1:50:00 PM

Mr. Taggart,

I refer you to the letter, dated June 29, 2020 (the "First Company Letter"), NextDecade Corporation sent to you on June 29, 2020 and Staff Legal Bulletin No. 14F (CF) released by the Securities and Exchange Commission (attached to the First Company Letter), which outline the documentation that is required to verify proof of ownership.

Regards,

Gabriel A. Gutierrez
Associate General Counsel, *Corporate & Compliance*

NextDecade Corporation
1000 Louisiana Street, Suite 3900
Houston, Texas 77002
United States of America

Office: + 1 832-779-5679
Email: ggutierrez@next-decade.com
www.Next-Decade.com

From: Stewart Taggart < *** >
Sent: Friday, July 10, 2020 12:36 PM
To: Gabe Gutierrez <ggutierrez@next-decade.com>
Subject: Re: NextDecade Corporation - 2021 Annual Meeting of Stockholders - Proposal

Gabe,

Apologies. Please know I'm stil working on this shareholder proof stuff.

The issue at this point is that my financial organization (Fiduciary Trust, owned by Franklin Resources) in turn has my shares actually held by custodian JP Morgan.

But JP Morgan advises it operates under an 'omnibus structure' preventing JP Morgan from seeing or knowing the underlying beneficial owners of stocks it is custodian of. That in turn means Franklin Resources probably has to make the confirmation.

Given the above, a letter from Franklin specifying my retail holdings with them held by JP Morgan in

an omnibus structure may be about as good as we can get.

Would that be OK?

I'm not sure there's much else we can do...

Advice?

On Jul 7, 2020, at 10:16 AM, Gabe Gutierrez <ggutierrez@next-decade.com> wrote:

Dear Mr. Taggart,

Please find attached NextDecade Corporation's response to your question on whether the proof of ownership you submitted on July 6, 2020 satisfies the proof of ownership requirements.

Regards,

Gabriel A. Gutierrez
Associate General Counsel, *Corporate & Compliance*

NextDecade Corporation
1000 Louisiana Street, Suite 3900
Houston, Texas 77002
United States of America

From: Stewart Taggart *** >
Sent: Monday, July 6, 2020 3:52 PM
To: Gabe Gutierrez <ggutierrez@next-decade.com>
Subject: Re: NextDecade Corporation - 2021 Annual Meeting of Stockholders - Proposal

Mr. Gutierrez,

Can you also **please confirm it satisfies your requirements in this respect?**

On Jul 6, 2020, at 10:41 AM, Gabe Gutierrez <ggutierrez@next-decade.com> wrote:

Mr. Taggart,

I have received the PDF letter you have sent.

Regards,

Gabriel A. Gutierrez
Associate General Counsel, *Corporate & Compliance*

NextDecade Corporation
1000 Louisiana Street, Suite 3900
Houston, Texas 77002
United States of America

Office: + 1 832-779-5679
Email: ggutierrez@next-decade.com
www.Next-Decade.com

From: Stewart Taggart < *** >
Sent: Monday, July 6, 2020 11:37 AM
To: Gabe Gutierrez <ggutierrez@next-decade.com>
Subject: Re: NextDecade Corporation - 2021 Annual Meeting of Stockholders - Proposal

Mr Gutierrez,

In a moment, you'll get an encrypted email from ***

To open the email and read the PDF attached to it, use ***

Please confirm you were able to get the PDF and open it. It contains the required proof of share ownership mentioned below.

Thanks!

> On Jun 29, 2020, at 5:44 AM, Gabe Gutierrez <ggutierrez@next-decade.com> wrote:

Dear Mr. Taggart,

I realized I included the initial from your first name in the spelling of your last name. Please excuse my incorrect spelling of your last name.

Regards,

Gabriel A. Gutierrez
Associate General Counsel, *Corporate & Compliance*

NextDecade Corporation
1000 Louisiana Street, Suite 3900
Houston, Texas 77002
United States of America

Office: + 1 832-779-5679
Email: ggutierrez@next-decade.com
www.Next-Decade.com

From: Gabe Gutierrez
Sent: Monday, June 29, 2020 10:41 AM
To: ' *** ' < *** >
Subject: NextDecade Corporation - 2021 Annual Meeting of Stockholders - Proposal

Dear Mr. Staggart,

Please find attached a letter from NextDecade Corporation in response to your letter to NextDecade Corporation dated June 19, 2020 containing a proposal to be included in NextDecade Corporation's 2021 Annual Meeting of Stockholders. A hard copy of the letter has also been sent to you today via UPS.

Regards,

Gabriel A. Gutierrez
Associate General Counsel, *Corporate & Compliance*

NextDecade Corporation
1000 Louisiana Street, Suite 3900
Houston, Texas 77002
United States of America

To open the email and read the PDF attached to it, use ***

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>
> **Gabriel A. Gutierrez**
> **Associate General Counsel,** *Corporate & Compliance*
>
> **NextDecade Corporation**
> 1000 Louisiana Street, Suite 3900
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> United States of America
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> **Office:** + 1 832-779-5679
> **Email:** ggutierrez@next-decade.com
> www.Next-Decade.com
>
> ---
>
> **From:** Gabe Gutierrez
> **Sent:** Monday, June 29, 2020 10:41 AM
> **To:** ' *** ' < *** >
> **Subject:** NextDecade Corporation - 2021 Annual Meeting of Stockholders - Proposal
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> Dear Mr. Staggart,
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> Regards,

Gabriel A. Gutierrez
Associate General Counsel, *Corporate & Compliance*

NextDecade Corporation
1000 Louisiana Street, Suite 3900
Houston, Texas 77002
United States of America

This e-mail and any information included within any attached document are private and confidential and intended solely for the addressee. NextDecade Corporation does not accept any legal responsibility for the contents of this message and any attached documents. If you are not the intended addressee, it is forbidden to disclose, use, copy, or forward any information within the message or engage in any activity regarding the contents of this message. In such case please notify the sender and delete the message from your system immediately. NextDecade Corporation also denounces any legal responsibility for any amendments made on the electronic message and the outcome of these amendments, as well as any error and/or defect, virus content and any damage that may be given to your system.

From: StartMail
To: Gabe Gutierrez
Subject: Encrypted Email from *** - Subject: Share holder proof
Date: Monday, July 6, 2020 11:44:43 AM
Attachments: startmail.png

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start.mail

You have received an encrypted message from ***

Stewart Taggart has sent you a secure email via StartMail's encrypted message feature.

SUBJECT: Share holder proof
SENT: Monday, July 6, 2020 at 6:37:51 AM HST

This message has been encrypted with Q&A encryption that requires you to correctly answer a question to view the message. To decrypt the message, simply follow this link and answer the security question.

The message will be available until Monday, July 20, 2020 at 6:37:51 AM HST.

Decrypt and view the message here.

If you cannot answer the question, consider contacting the sender through a means other than email, such as in person or by phone, to arrange a Q&A that works for you both.

Sincerely,

The StartMail Team

StartMail - *Encryption Made Easy*
https://www.startmail.com

From: Stewart Taggart
To: Gabe Gutierrez
Subject: Re: NextDecade Corporation - 2021 Annual Meeting of Stockholders - Proposal
Date: Monday, June 29, 2020 11:17:40 AM

Galadriel:

No biggie about the spelling: happens all the time (look at your name above!).

We're all human...

I've got the documentation in train, and have for weeks now. Should be able to get it in the next week or so.

These things must be burped up from the deepest caves of the most hidden internal bureacracies and take time, I've found.

My custodian advises it's all in train, and should show up soon.

For its part, **the SEC has showed it's sympathetic to this black hole and generally advises companies to go easy on being absolute sticklers** on the time limit.

Please know I'm on it.

Can I just email it to you as a PDF attachment, or do you insist upon a ink-signed Fedex paper copy?

> On Jun 29, 2020, at 5:44 AM, Gabe Gutierrez <ggutierrez@next-decade.com> wrote:
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> Dear Mr. Taggart,
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> I realized I included the initial from your first name in the spelling of your last name. Please excuse my incorrect spelling of your last name.
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