



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 12, 2020

Thomas J. Kim
Sidley Austin LLP
thomas.kim@sidley.com

Re: Abbott Laboratories
Incoming letter dated December 20, 2019

Dear Mr. Kim:

This letter is in response to your correspondence dated December 20, 2019 and January 17, 2020 concerning the shareholder proposal (the "Proposal") submitted to Abbott Laboratories (the "Company") by the Vermont Pension Investment Committee (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 13, 2020. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>.

Sincerely,

M. Hughes Bates
Special Counsel

Enclosure

cc: Elizabeth A. Pearce
Vermont State Treasurer
tre.investments@vermont.gov

February 12, 2020

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Abbott Laboratories
Incoming letter dated December 20, 2019

The Proposal urges the board to adopt a policy that when the Company adjusts or modifies any generally accepted accounting principles (“GAAP”) financial performance metric for determining senior executive compensation, the Compensation Committee’s Compensation Discussion and Analysis shall include a specific explanation of the Committee’s rationale for each adjustment and a reconciliation of the adjusted metrics to GAAP.

We are unable to concur in your view that the Company may exclude the Proposal under rules 14a-8(b) and 14a-8(f). We note that the Proponent appears to have supplied, within 14 days of receipt of the Company’s request, documentary support sufficiently evidencing that it satisfied the minimum ownership requirement for the one-year period as required by rule 14a-8(b). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company to such a degree that exclusion of the Proposal would be appropriate. The Proposal seeks additional disclosure in order for investors to have a better understanding of why the Compensation Committee made adjustments to GAAP metrics and the extent of those adjustments, but does not prescribe the method or manner of presentation. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information that you have presented, it does not appear that the Company’s public disclosures compare favorably with the guidelines of the Proposal. While the Company has identified the nature of the adjustments made to the financial metrics in the Company’s 2019 Proxy Statement, the Company has neither provided a thorough explanation for why such adjustments are appropriate or any

disclosure describing the magnitude of such adjustments. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Michael Killoy
Attorney-Adviser



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
+1 312 853 7000
+1 312 853 7036

THOMAS J. KIM
+1 202 736 8615

AMERICA • ASIA PACIFIC • EUROPE

January 17, 2020

By Email

Shareholderproposals@sec.gov
Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Letter (the “Letter”) from Ms. Elizabeth A. Pearce, Vermont State Treasurer, dated January 13, 2020, Regarding a Shareholder Proposal Submitted to Abbott Laboratories (“Abbott”) by the Vermont Pension Investment Committee (the “Proponent”) on November 5, 2019 (together with the supporting statement, the “Proposal”).

Ladies and Gentlemen:

On behalf of Abbott, by letter dated December 20, 2019 (the “No-Action Request”), I requested confirmation that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend enforcement action if, in reliance on Rule 14a-8, Abbott excludes from the proxy materials for its 2020 annual shareholders’ meeting the Proposal submitted by the Proponent. This letter addresses several of the points made by the Proponent in its Letter.

I. The Proposal may be properly omitted from Abbott’s proxy materials under Rule 14a-8(i)(7) because the Proposal (a) deals with matters relating to Abbott’s ordinary business operations and (b) seeks to micromanage Abbott.

A. Ordinary Business Subject Matter

The Letter actually strengthens the argument in the No-Action Request that the Proposal’s underlying concern is not senior executive compensation, but rather, the quality of Abbott’s proxy disclosures, which are ordinary business and do not raise any significant policy issues.

In characterizing its own Proposal, the Proponent states, “Here, we suggest more disclosure on executive compensation would help investors make more informed decisions”; and “The Proposal asks the Company to provide shareholders with detail on how it calculated metrics for purposes of determining executive incentive pay since the GAAP calculation provides a very different result.” Tellingly, the Proponent compares its Proposal favorably to the Council of Institutional Investors’ rule petition calling for a “requirement for clear explanations and GAAP reconciliations that would permit a shareholder to

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January 17, 2020

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understand the company's approach and factor that into its say-on-pay vote and/or buy/sell decision." In other words, a rule petition for an amendment to Item 402 of Regulation S-K.

As noted in the No-Action Request, how a company chooses to comply with legal requirements is "so fundamental to management's ability to run a company on a day-to-day basis"¹ that it is not a proper subject matter for shareholder oversight.

The Proponent claims that the Proposal is "substantially similar" to *Johnson & Johnson* (available Feb. 2, 2018). However, the proposal in *Johnson & Johnson* was in fact about senior executive compensation, and not about improving the disclosure regarding senior executive compensation. The *Johnson & Johnson* proposal read as follows: "RESOLVED that shareholders of Johnson & Johnson ("JNJ") urge the Board of Directors to adopt a policy that no financial performance metric shall be adjusted to exclude Legal or Compliance Costs when evaluating performance for purposes of determining the amount or vesting of any senior executive Incentive Compensation award." A proposal requesting the adoption of a policy to modify certain metrics of executive compensation is fundamentally different from the Proposal, which is focused on disclosure requesting a "specific explanation of the Compensation Committee's rationale for each adjustment and a reconciliation of the adjusted metrics to GAAP."

B. Micromanagement

The Letter also reinforces the argument in the No-Action Request that the Proposal seeks to micromanage Abbott. The Letter confirms that, rather than requesting that the Compensation Committee provide a rationale for each non-GAAP performance metric used in Abbott's annual and long-term incentive plans, the Proposal requests "a rationale for each adjustment made to GAAP measures for the purposes of awarding executive compensation." This would require, in the Proponent's words, "providing [a] reconciliation between GAAP and adjusted GAAP in the proxy statement and providing a rationale for each line item."

Non-GAAP measures often have multiple adjustments and some non-GAAP measures have many adjustments, such as adjusted diluted EPS which the Proponent highlights in the Letter. Not even the SEC's rules regulating non-GAAP disclosures – Item 10(e) of Regulation S-K and Regulation G – require registrants to provide a rationale for each adjustment that a registrant makes to a GAAP financial measure to calculate a non-GAAP financial measure. As a result, the Proposal micromanages Abbott because it "seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board"² as well as, in this case, the judgment of the Commission.

¹ Release No. 34-40018 (May 21, 1998).

² Staff Legal Bulletin No. 14K.

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January 17, 2020

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II. The Proposal may be properly omitted from Abbott's proxy materials under Rule 14a-8(i)(i) because it has been substantially implemented.

In the Letter, the Proponent states that “the ask of the Proposal is precisely to enable shareholders to **make an informed judgement** on executive compensation.” (**emphasis in original**) The Proponent also acknowledges that in its Proposal, it “suggest[s] more disclosure on executive compensation would help investors make more informed decisions.” Further, the Proponent does not dispute that Abbott’s CD&A disclosure in its 2019 proxy statement is compliant with the Commission’s rules and regulations, stating that “expect[s] that Abbott acts in compliance at all times with the Commission’s rules and regulations.”

By providing extensive disclosure regarding non-GAAP financial measures used in Abbott’s compensation program in the CD&A section of Abbott’s 2019 proxy statement in compliance with the Commission’s rules and regulations, Abbott has substantially implemented the essential objective of the Proposal, which is disclosure regarding non-GAAP financial measures used in Abbott’s compensation program to enable shareholders to make an informed judgment on executive compensation.

III. The Proposal may be properly omitted from Abbott's proxy materials under Rule 14a-8(b) and Rule 14a-8(f) because the Proponent did not provide proper proof of eligibility.

Finally, the Letter bolstered the argument in the No-Action Request that the Proposal may be properly omitted from Abbott’s proxy materials under Rule 14a-8(b) and Rule 14a-8(f) because the Proponent did not provide proper proof of eligibility. In the Letter, the Proponent asserts that the date on which it corrected proof of ownership was on November 22, 2019, the date on which the Proponent emailed its second letter to Abbott. Under Rule 14a-8(f), the Proponent had 14 calendar days to respond to Abbott’s letter of deficiency submitted to the Proponent via email on November 7, 2019. The Proponent failed to do so by not responding until November 22, 2019, a day after the deadline.

Should you have any questions, please do not hesitate to contact me.

Best regards,



Thomas J. Kim

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Shareholderproposals@sec.gov

January 17, 2020

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Cc: Ms. Elizabeth A. Pearce
109 State Street
Montpelier, Vermont 056009-6200
Tre.Investments@vermont.gov

Cc: Katie.Green@vermont.gov
Eric.Henry@vermont.gov
Andy.Cook@vermont.gov

ELIZABETH A. PEARCE
STATE TREASURER



UNCLAIMED PROPERTY DIVISION
TEL: (802) 828-2407

RETIREMENT DIVISION
TEL: (802) 828-2305
FAX: (802) 828-5182

ACCOUNTING DIVISION
TEL: (802) 828-2301
FAX: (802) 828-2884

STATE OF VERMONT
OFFICE OF THE STATE TREASURER

January 13, 2020

Via e-mail at shareholderproposals@sec.gov
Securities and Exchange Commission
Office of the Chief Counsel
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549

Re: Request by Abbott Laboratories to omit proposal submitted by The Vermont Pension Investment Committee

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, The Vermont Pension Investment Committee ("VPIC" or the "Proponent") submitted a shareholder proposal (the "Proposal") to Abbott Laboratories ("Abbott" or the "Company"). The Proposal states:

RESOLVED, that shareholders of Abbott Laboratories (the "Company") urge the Board of Directors (the "Board") to adopt a policy that when the Company adjusts or modifies any generally accepted accounting principles ("GAAP") financial performance metric for determining senior executive compensation, the Compensation Committee's Compensation Discussion and Analysis shall include a specific explanation of the Compensation Committee's rationale for each adjustment and a reconciliation of the adjusted metrics to GAAP.

In a letter to the Division dated December 20, 2019 (the "No-Action Request"), Abbott stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2020 annual meeting of shareholders. Abbott argues that it is entitled to exclude the Proposal in reliance on:

- I. Rule 14a-8(i)(7), as ordinary business operations; and
- II. Rule 14a-8(i)(10), as substantially implemented; and
- III. Rule 14a-8(i)(3), as materially false and misleading by being vague and indefinite; and
- IV. Rule 14a-8(b) and Rule 14a-8(f) as lacking eligibility to file.

As discussed more fully below, Abbott has not met its burden of proving its entitlement to exclude the Proposal and we respectfully requests that Abbott's request for relief be denied.

I. The Proposal Does Not Relate to Ordinary Business

The Company argues that the proposal (a) deals with matters relating to Abbott's ordinary business operations and (b) seeks to micromanage Abbott. We find the Company's argument unconvincing for reasons outlined below.

(A) Ordinary Business Subject Matter

Abbott states that compliance with legal requirements is not a matter for shareholder oversight and therefore the proposal is excludable on ordinary business grounds because it questions the Company's legal compliance.

The Company states: "Hence, it is clear that the Proposal's focus is not on senior executive compensation. Instead the Proposal asks shareholders to vote on whether Abbott should do a better job in complying with Item 402(b) of Regulation S-K."

The recasting of the Proposal in this light is disingenuous. The Proposal makes no mention of Regulation S-K nor the Company's legal compliance with any regulation. Shareholder proponents are not set-up to police corporate compliance. Rather, we are focused on governance improvements that protect the beneficial owners' investment. Here, we suggest more disclosure on executive compensation would help investors make more informed decisions. We make this suggestion via a shareholder proposal to gauge the sentiment of the rest of the Company's owners.

Contrary to Abbott's misreading of the Proposal, its focus is on ensuring shareholders have the full picture when they are casting advisory votes on the Company's *executive* compensation. Abbott reported a 2018 EPS result of \$1.31 in its 2019 annual report, short of the \$2.85 target goal for *executive* incentive compensation awards. But unlike shareholders who received the \$1.31 EPS, executives had an inflated result. Abbott adjusted EPS for purposes of determining *executive* incentive compensation to \$2.88 for 2018.

We grant the Company's point that Abbott offers an explanation for the jump from \$1.31 to \$2.88, restated here: "Officer financial goals are based on adjusted measures that the Committee believes more accurately reflect the results of our ongoing operations and are determined based on the expected market growth of the businesses and markets in which we compete."

We ask the Staff: do the 39 words above **explain** a jump of 120 percent for EPS results?

We seek more detail to enable investors to determine if the incentive *executive* compensation was earned or if the bar was lowered. Investors may change their say-on-pay vote if they are educated on the precise exclusions.

Our perspective that more disclosure on adjusted GAAP metrics better inform say-on-pay votes is shared among many institutional investors. The Council of Institutional Investors filed a

petition with the SEC calling for transparency on the use of adjusted GAAP metrics for executive compensation. The petition seeks "...a requirement for clear explanations and GAAP reconciliations that would permit a shareholder to understand the company's approach and factor that into its say-on-pay vote and/or buy/sell decision."

Further, a collective of institutional investors--including the VPIC--that participate in the Say-on-Pay Working Group recently wrote to the S&P 500 firms on three issues that are top of mind for investors focused on *executive* compensation trends: the use of ESG metrics; executive stock sales tied to share buybacks and the use of adjusted GAAP metrics. The letter states: "We are troubled that the use of adjusted GAAP metrics for incentive pay can tilt the scales to unfairly help executives achieve their performance benchmarks.... We urge you to provide clear disclosure in the CD&A of any adjustments to GAAP performance metrics."

This letter was signed by 17 institutional investors with more than \$1 trillion in assets, including funds that represent such main street investors as firefighters and public servants as well professional financial firms such as Segal Marco Advisors and Trillium Asset Management. A copy of the letter is provided in Appendix A.

Abbott also acknowledges in its Dec. 20 letter that it: "received feedback indicating that, overall, shareholders viewed Abbott's executive compensation program favorably and that **additional enhancements to Abbott's proxy disclosure could further shareholder understanding of how pay decisions are made** and how the performance metrics Abbott uses are linked to business strategy and goals." (emphasis added).

Johnson & Johnson (available Feb. 2, 2018) challenged a proposal substantially similar to the Proposal on ordinary business grounds. Johnson & Johnson argued that the proposal's subject was the company's legal compliance program rather than senior executive compensation. The Staff declined to allow exclusion.

The precedents cited by Abbott are outside the scope of the Proposal. The request to *Eli Lilly and Company* (available Jan. 13, 2017) did not focus on executive compensation. Eli Lilly argued that implementation of that resolution would "implicate the company's legal strategy in closed and pending litigation." The resolution was expansive in its request: "Corporate Headquarter report for the previous five years in the Form 10-K section of the Annual Report 2017 any and all lawsuits the company has been involved in worldwide with active or former employees, regardless of their materiality and current state or outcome, and continues to do so for all subsequent years."

The Proposal simply asks the Company to provide shareholders with detail on how it calculated metrics for purposes of determining executive incentive pay since the GAAP calculation provides a very different result. The 2005 citation to *Amerinst Insurance Group, Ltd.* is not available on the SEC website for review. Based on the Abbott's description, however, the proposal likewise does not focus on executive compensation.

B. Micromanagement

The Company points to *Staff Legal Bulletin No. 14J (Oct. 23, 2018)* [The Company incorrectly cites the published year as 2008] to argue that the Proposal seeks to micromanage the Company and is therefore excludable. The Commission outlines in *Bulletin No. 14J* the central consideration for determining the degree to which the proposal micromanages the company. The question the Commission asks is: does the proposal micromanage the company “by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make **an informed judgment.**” (emphasis added)

Ironically, the ask of the Proposal is precisely to enable shareholders to make **an informed judgement** on executive compensation. For example, implementation of this proposal would allow a shareholder who believes executives should not be insulated from the cost of litigation related to opioids to vote against the say-on-pay at a Company that adjusts out those costs.

Several companies that received a similar proposal responded positively by adding more disclosure to their adjusted GAAP metrics or to change the calculation. In the case of Equifax in 2018 the Company determined to not adjust out of its EPS metric expenses related to the cybersecurity incident. In the case of Teva Pharmaceuticals the Company determined to not adjust out legal costs for a free cash flow incentive metric in 2018. It also decided to describe the factors and principles considered by the board in deciding whether to include or exclude litigation costs. The Company also committed to an explanation in the proxy statement should it choose to exclude those costs in future years. Additional companies that have enhanced disclosure in line of the request of the proposal include: AmerisourceBergen; CVS Health; and Cardinal Health.

Executive compensation is already full of intricate detail which investors are presented with in order to cast advisory votes on executive compensation. The CD&A section of Abbott’s most recent proxy statement is 37 pages. The Proposal recommends disclosure that will simplify the accounting of incentive metrics rather than keeping shareholders in the dark about how the sausage got made.

II. The Proposal Has Not Been Substantially Implemented

The Company is of two minds on this Proposal. On one hand, it argues that implementation of the proposal would be micromanagement because seemingly it would change how the Company reports adjusted GAAP information. On the other hand, it argues that it has already implemented the proposal. These perspectives are mutual exclusive. Both cannot be true at the same time.

Abbott argues: “As discussed, the Committee has provided extensive disclosure regarding non-GAAP financial measures used in Abbott’s compensation program in the CD&A section of Abbott’s 2019 proxy statement, and that disclosure is compliant with the

Commission’s rules and regulations.” We expect that Abbott acts in compliance at all times with the Commission’s rules and regulations. At issue here is the delta between legal compliance and the request of the Proposal.

Specifically, there is no reconciliation between GAAP and adjusted GAAP metrics in the CD&A or in elsewhere in the 2019 proxy statement. The 39 word rationale quoted above on page 2 of this letter to explain why adjustments are necessary is generic. The level of detail provided in the CD&A fails to provide investors with enough information to determine if Abbott is lowering the bar on *executive* incentive pay metrics. For example, with increased disclosure on the adjustments shareholders would be able to assess whether they agree with the Company’s view that the annual, recurring costs of acquisitions do not “reflect the results of our ongoing operations.”

It is worth highlighting that Abbott did provide a GAAP reconciliation chart in the appendix of its proxy statements for at least the three years prior to 2019.

Information needs to be accessible for shareholders to factor it into their proxy voting decisions. Particularly for investors that do not hire proxy advisors to dig through various corporate filings and present the information in an easily accessible format, the CD&A is the appropriate location for the Company to provide a full picture of how it arrived at the customized total for adjusted GAAP metrics.

III. The Proposal is Not False and Misleading by Being Vague and Indefinite

The Company argues the Proposal is vague because it is subject “to at least two interpretations” and then it provides merely two interpretations. The second interpretation is correct. The focus of the Proposal is to provide shareholders with a rationale for each adjustment made to GAAP measures for the purposes of awarding executive compensation. As the Company’s notes, the VPIC finds “Abbott’s explanation for using GAAP-adjusted metrics in its 2019 proxy statement was ‘vague and unsatisfactory...’

Rather than the 39 word generic rationale, the VPIC suggests Abbott provide a specific rationale for each adjustment to any GAAP measure used to calculate executive incentive compensation. In Abbott’s case implementation would mean providing reconciliation between GAAP and adjusted GAAP in the proxy statement and providing a rationale for each line item.

The Company’s first interpretation is contrived: “One could interpret the Proposal as requesting that the Committee provide a rationale for each non-GAAP performance metric used in Abbott’s annual and long-term incentive plans.” The Proposal does not ask for a rationale for *why* the Company choose each performance metric for the annual and long-term incentive plans and as noted much of that explanation is already provided in the proxy statement. The Proposal is silent on the selection of performance metrics. The phrase “non-GAAP” does not appear in the Proposal.

IV. The VPIC Provided Proof of Eligibility Under Rule 14a-8(b) and Rule 14a-8(f)

The VPIC has held more than the requisite ownership threshold in excess of one year as stated in the cover letter, along with the expressed intention to hold the stock past the date of the Company's Annual Meeting.

Abbott sent a notice of deficiency because the two custodians during the requisite holding period submitted their letters to the VPIC one day apart. Abbott requested confirmation that the shares were held on Nov. 5, 2019 since the letter from BlackRock was dated Nov. 4, 2019 and confirmed shares through that date.

The VPIC received the letter of deficiency in hardcopy on Monday, Nov. 11, 2019 and submitted a second letter on Nov. 22 from BlackRock that confirmed shares held on the initial filing date of Nov. 5, 2019. The VPIC's cover letter makes clear the letter of deficiency was received on Nov. 11, 2019.

Abbott emailed a copy of the deficiency after the close of business on Nov 7. Appendix B shows the email was sent to the VPIC at 5:03 pm. Therefore, the first opportunity for the staff representative to receive the email was the morning of Friday, Nov. 8. Therefore, the deficiency correction if counting from Nov. 11 or Nov. 8 to Nov. 22 was timely and within the 14 day period.

In *General Electric Co.* (avail. Jan. 2, 2018) the Proponent never respond to the deficiency notice. In *Walmart, Inc.* (avail. Mar. 28, 2019) the Proponent similarly did not respond to the deficiency notice at the time of the Company's request for no action. In that case, the Commission provided the Proponent additional time to submit the verification of eligibility and indeed that proposal went to a vote at Wal-Mart's 2019 annual stockholder's meeting. Neither of these cases involves a Proponent that provided a timely response to the deficiency notice.

* * *

For the reasons set forth above, Abbott has not satisfied its burden of showing that it is entitled to omit the Proposal. The VPIC thus respectfully requests that Abbott's request for relief be denied. The VPIC appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at Tre.Investments@vermont.gov

Sincerely,



Elizabeth A. Pearce
Vermont State Treasurer

cc: Thomas J. Kim
thomas.kim@sidley.com
Jessica Paik
jessica.paik@abbott.com
Aaron Rice
aaron.rice@abbott.com

Appendix A

Say on Pay Working Group

January 9, 2020

Board of Directors
c/o Corporate Secretary
Abbott Laboratories
100 Abbott Park Road D-322 Ap6d
Abbott Park, IL 60064-3500

Dear Board of Directors:

We are writing as investors to share our concerns about executive compensation among U.S. publicly traded firms. The undersigned cumulatively represent more than \$1 trillion in assets under management and advisement. We wish to draw your attention to three issues: the benefits of incorporating Environmental, Social and Governance (ESG) metrics into incentive pay; the need to limit executive stock sales following stock buybacks; and better disclosure of the use of “adjusted” GAAP metrics for incentive pay.

1. **ESG Pay Metrics**

We view the use of ESG metrics in incentive pay as a positive development for investors. A recent survey by Mercer of 135 companies in the United States and Canada found 30% of respondents use ESG metrics in their incentive compensation plans and an additional 21% are considering incorporating ESG metrics. In our view, companies that are able to integrate ESG data into their calculations for determining incentive pay are better able to measure progress and set achievable yet robust ESG goals. Furthermore, we view the inclusion of ESG metrics into incentive pay as one approach to implementing a commitment to stakeholders as outlined in the Business Roundtable’s “Statement on the Purpose of a Corporation.”¹ We encourage you to consider incorporating ESG metrics into your incentive pay structures to further your company’s sustainability goals.

2. **Stock Buybacks**

We are concerned that executives may be selling shares to take advantage of temporary increases in stock prices that occur after a stock buyback. In a June 11, 2018 speech, SEC Commissioner Rob Jackson said, “in half of the buybacks we studied, at least one executive sold shares in the month following the buyback announcement. In fact, twice as many companies have insiders selling in the eight days after a buyback announcement as sell on an ordinary

¹ Business Roundtable, “Statement on the Purpose of a Corporation,” September 6, 2019, available at: <https://opportunity.businessroundtable.org/wp-content/uploads/2019/09/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures-1.pdf>.

day.” We urge you to prohibit executive stock sales after buyback announcements to ensure that executives do not favor stock buybacks at the expense of long-term investment.

3. **“Adjusted” GAAP Metrics**

We are troubled that the use of adjusted GAAP metrics for incentive pay can tilt the scales to unfairly help executives achieve their performance benchmarks. The Council of Institutional Investors recently filed a petition with the SEC calling for transparency on the use of adjusted GAAP metrics for executive compensation. The petition seeks “...a requirement for clear explanations and GAAP reconciliations that would permit a shareholder to understand the company’s approach and factor that into its say-on-pay vote and/or buy/sell decision.” We urge you to provide clear disclosure in the CD&A of any adjustments to GAAP performance metrics.

Thank you for considering our views on these three important issue areas in executive compensation. Please direct any response to Maureen O’Brien, Vice President and Corporate Governance Director, Segal Marco Advisors who will share your response with the other signatories of this letter. Ms. O’Brien can be reached at (312) 612-8446; obrien@segalmarco.com or via mail at 550 W. Washington Blvd., Suite 900, Chicago, IL 60661.

Sincerely,



Maureen O’Brien
Corporate Governance Director
Segal Marco Advisors



Brandon Rees
Deputy Director, Corporations and Capital
Markets
AFL-CIO



Jonas D. Kron
Director of Shareholder Advocacy
Trillium Asset Management



Michael Frerichs
Treasurer
State of Illinois



Scott Stringer
New York City Comptroller



Beth Pearce
Treasurer
State of Vermont



George Wong
ESG Integration Manager
Office of the New York State Comptroller



Kevin Thomas
Executive Director
Shareholder Association for Research &
Education



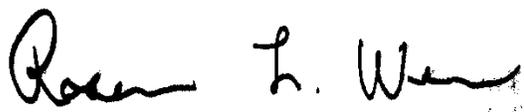
Meredith Miller
Chief Corporate Governance Officer
UAW Medical Benefits Trust



Kenneth W. Cooper
International Secretary-Treasurer
International Brotherhood of Electrical
Workers



Shawn T. Wooden
Treasurer
State of Connecticut



Rosanna Landis Weaver
Program Manager, CEO Pay
As You Sow



Barbara Davis
Retirement System Executive Officer
Kansas City Firefighters' Pension System



Carin Zelenko
Capital Strategies Department
Office of the General Secretary-Treasurer
International Brotherhood of Teamsters



Beth Pearce
The Vermont Pension Investment
Committee



Alejandro R. Fernandez
Trustee & Chairperson
Miami Firefighters Relief & Pension Fund



Dieter Waizenegger
Executive Director
CtW Investment Group

Appendix B

Green, Katie

From: Rice, Aaron <aaron.rice@abbott.com>
Sent: Thursday, November 07, 2019 5:03 PM
To: Green, Katie
Cc: Paik, Jessica; Teliga, Heather A; Cook, Andy; Henry, Eric
Subject: RE: Shareholder Resolution Filing by the Vermont Pension Investment Committee
Attachments: Acknowledgment Letter (Nov 7).pdf; Rule 14a-8.pdf; SLB 14F.pdf; SLB 14G.pdf

Dear Ms. Green,

Please find attached a letter acknowledging Abbott's receipt of the shareholder proposal that Vermont State Treasurer Elizabeth A. Pearce submitted on behalf of the Vermont Pension Investment Committee. The attachments referenced in the letter are also attached. The original letter and hard copies of the attachment are being sent to Ms. Pearce's attention via Federal Express. Thank you.

Best regards,
Aaron



Aaron N. Rice
Senior Counsel
Securities and Governance

Abbott
100 Abbott Park Road
Dept. 32L/Bldg. AP6A-1
Abbott Park, IL 60064-6092

O: +1 224-668-1038
F: +1 224-668-9492
M: +1 224 302 8252
aaron.rice@abbott.com

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From: Green, Katie <Katie.Green@vermont.gov>
Sent: Tuesday, November 5, 2019 2:33 PM
To: Paik, Jessica <jessica.paik@abbott.com>; Allen, Hubert L <hubert.allen@abbott.com>
Cc: Cook, Andy <>; Henry, Eric <Eric.Henry@vermont.gov>
Subject: Shareholder Resolution Filing by the Vermont Pension Investment Committee
Importance: High

Good Afternoon,

Attached please find a copy of the shareholder resolution filing materials from the Vermont Pension Investment Committee. We anticipate your office will receive the hard copies tomorrow, but we wanted to ensure you had an electronic copy for ease of reference. We would be appreciative if you could confirm receipt of both this email and the hard copies once received. Thank you and have a great week.

A hard copy has been mailed via FEDEX to:

Attention: Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
100 Abbott Park Road, D-364, AP6D
Abbott Park, Illinois 60064-6400

Best Regards,

Katie Green
Deputy Chief Investment Officer
Vermont State Treasurer's Office
109 State Street - 4th Floor
Montpelier, VT 05609-6200
(p) 802-828-3708
(f) 802-828-2772
Katie.Green@vermont.gov



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
+1 312 853 7000
+1 312 853 7036

AMERICA • ASIA PACIFIC • EUROPE

THOMAS J. KIM
+1 202 736 8615

December 20, 2019

By Email

Shareholderproposals@sec.gov
Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Abbott Laboratories - Shareholder Proposal Submitted by the Vermont Pension Investment Committee

Ladies and Gentlemen:

On behalf of Abbott Laboratories (“Abbott” or the “Company”) and pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, I hereby request confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) will not recommend enforcement action if, in reliance on Rule 14a-8, Abbott excludes from the proxy materials for Abbott’s 2020 annual shareholders’ meeting, which Abbott expects to file in definitive form with the Commission on or about March 13, 2020, a proposal submitted by the Vermont Pension Investment Committee (the “VPIC” or the “Proponent”) on November 5, 2019 (together with the supporting statement, the “Proposal”).

Pursuant to Rule 14a-8(j),

- (a) a copy of the Proposal is attached hereto as Exhibit A;
- (b) a copy of all relevant correspondence exchanged with the VPIC with respect to the Proposal is attached hereto as Exhibit B; and
- (c) a copy of this letter is being sent to notify the VPIC of Abbott’s intention to omit the Proposal from its 2020 proxy materials.

Pursuant to *Staff Legal Bulletin No. 14D (Nov. 7, 2008)*, this letter and its exhibits are being submitted via email to *shareholderproposals@sec.gov*.

On behalf of Abbott, I request that the Staff concur with the omission of the Proposal from Abbott’s 2020 proxy materials pursuant to Rule 14a-8 for the reasons set forth in this letter.

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The Proposal reads as follows:

“RESOLVED, that shareholders of Abbott Laboratories (the “Company”) urge the Board of Directors (the “Board”) to adopt a policy that when the Company adjusts or modifies any generally accepted accounting principles (“GAAP”) financial performance metric for determining senior executive compensation, the Compensation Committee’s Compensation Discussion and Analysis shall include a specific explanation of the Compensation Committee’s rationale for each adjustment and a reconciliation of the adjusted metrics to GAAP.

SUPPORTING STATEMENT:

Our Company selects several metrics to assess senior executive performance for purposes of determining incentive compensation. On page 33 of the 2019 Proxy Statement, the Company detailed the metrics used for the annual incentive plan that are intended align the incentives of executives with shareholders: Sales; diluted EPS; Return on Assets; and Operating Cash Flow. However, three-fourths of these metrics used an adjusted version of GAAP metrics.

The Company’s 2018 diluted EPS calculated under GAAP yielded a result of \$1.31, as reported on page 22 of the Company’s 2019 Form 10-K. However, the 2019 Proxy Statement presents an adjusted diluted EPS metric that yielded a result of \$2.88. The target goal was \$2.85 and since the *adjusted* result exceeded the goal, the CEO received an above target payout.

Similarly, on the Sales metric, the GAAP calculation yielded a result of \$30.6 billion according to page 22 of 2019 Form 10-K. However, the 2019 Proxy Statement presents an Adjusted Sales result of \$31.2 billion. The target goal for this metric was \$30.97 billion and since the *adjusted* result exceeded the goal, the chief executive received above target payout.

These two metrics account for 50% of the Company’s weighting for the annual incentive plan that provided the CEO with an award of \$4,779,688 in 2018. We are concerned that the use of GAAP-adjusted metrics may inflate senior executive compensation by overstating the Company’s financial performance as measured by GAAP. In our view, the Compensation Committee should provide a specific explanation for why these adjustments were made.

We believe that the Company's explanation on page 33 of 2019 Proxy Statement for using GAAP-adjusted metrics for executive pay was vague and unsatisfactory. The Company stated that "Officer financial goals are based on adjusted measures that the Committee believes more accurately reflect the results of our ongoing operations and are determined based on the expected market growth of the businesses and markets in which we compete."

Many investors believe that companies should do a better job disclosing the purpose of using adjusted-GAAP metrics for executive compensation. For example, the Council of Institutional Investors has petitioned the SEC to address this lack of transparency. The petition seeks "...a requirement for clear explanations and GAAP reconciliations that would permit a shareholder to understand the company's approach and factor that into its say-on-pay vote and/or buy/sell decision" (<https://www.sec.gov/rules/petitions/2019/petn4-745.pdf>).

For these reasons, we urge a vote FOR this resolution."

I. The Proposal may be properly omitted from Abbott's proxy materials under Rule 14a-8(i)(7) because the Proposal (a) deals with matters relating to Abbott's ordinary business operations and (b) seeks to micromanage Abbott.

Rule 14a-8(i)(7) permits a company to omit a proposal from its proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." The purpose of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *See Release No. 34-40018 (May 21, 1998)*. As explained by the Commission, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

There are two central components of the ordinary business exclusion. First, as it relates to the subject matter of the proposal, "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis" that they are not a proper subject matter for shareholder oversight. *Id.* The Commission has differentiated between these ordinary business matters and "significant social policy issues" that "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* The latter is not excludable as pertaining to ordinary business matters, and in assessing whether a particular

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proposal raises a “significant social policy issue,” the Staff will review the terms of the proposal as a whole, including the supporting statement. *Id.*

Second, as it relates to the implementation of the subject matter of the proposal, the ability to exclude a proposal “relates to the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* The Staff noted in *Staff Legal Bulletin No. 14K (Oct. 16, 2019)* that a proposal micromanages a company where it “seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” A proposal “that prescribes specific timeframes or methods for implementing complex policies” seeks to micromanage a company and is excludable under Rule 14a-8(i)(7). *Id.* For example, in *Devon Energy Corp.* (avail. Mar. 4, 2019, *recon. denied*) and *ExxonMobil* (avail. Apr. 2, 2019), the Staff permitted exclusion of proposals requiring the companies to adopt “short-, medium- and long-term” greenhouse gas targets consistent with the goals established by the Paris Climate Agreement because the proposals would micromanage the companies by “seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by the board of directors.”

A. Ordinary Business Subject Matter

Here, although the Proposal addresses the Company’s use of non-GAAP financial measures as performance metrics for the Company’s executive officer incentive compensation program, the focus of the Proposal is on disclosure. The Proposal asks shareholders to vote on whether Abbott’s Board of Directors should adopt a policy that requires the Compensation Discussion and Analysis (“CD&A”) to include a “specific explanation of the Compensation Committee’s (the “Committee’s”) rationale for each adjustment and a reconciliation of the adjusted metrics to GAAP.”

While the Staff has historically viewed senior executive compensation as a “significant social policy issue,” the Staff examines “whether the focus of a proposal is senior executive and/or director compensation, or whether its underlying concern relates primarily to ordinary business matters that are not sufficiently related to senior executive and/or director compensation. [The Staff has] concurred in the exclusion of proposals that, while styled as senior executive and/or director compensation proposals, have had as their underlying concern ordinary business matters.” *See Staff Legal Bulletin No. 14J (Oct. 23, 2018).*

For example, in *Delta Air Lines, Inc.* (avail. Mar. 27, 2012), the Staff permitted exclusion where a proposal involved a prohibition on the payment of incentive compensation to executive

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officers unless the company first adopted a process to fund the retirement accounts of certain retirees for having its focus on the ordinary business matter of employee benefits rather than senior executive compensation. In addition, in *AT&T Inc.* (avail. Jan. 29, 2019), the Staff agreed that a proposal involving the use of the company's debt rating as a performance metric for purposes of senior executive compensation was properly excludable for being primarily related to the ordinary business matter of the company's debt management rather than senior executive compensation.

The Proposal first asks for a "specific explanation of the Compensation Committee's rationale for each adjustment." Item 402(b) of Regulation S-K already requires such disclosure,¹ and the Proposal acknowledges that the Company provided such disclosure in quoting the following sentence from Abbott's CD&A in its 2019 proxy statement: "Officer financial goals are based on adjusted measures that the Committee believes more accurately reflect the results of our ongoing operations and are determined based on the expected market growth of the businesses and markets in which we compete."

The root of the Proposal is that the Proponent believes that the Company's explanation "for using GAAP-adjusted metrics for executive pay was vague and unsatisfactory." Moreover, the Proponent believes that public companies in general "should do be a better job disclosing the purpose of using adjusted-GAAP metrics for executive compensation." Hence, it is clear that the Proposal's focus is not on senior executive compensation. Instead, the Proposal asks shareholders to vote on whether Abbott should do a better job in complying with Item 402(b) of Regulation S-K. How a company chooses to comply with legal requirements is "so fundamental to management's ability to run a company on a day-to-day basis" that it is not a proper subject matter for shareholder oversight.

The second piece of information that the Proposal asks for is "a reconciliation of the adjusted metrics to GAAP." This is not required by Item 402(b). Indeed, Instruction 5 to Item

¹ See Item 402(b) of Regulation S-K ("(v) How the registrant determines the amount (and, where applicable, the formula) for each element to pay;...(v) What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions; (vi) How specific forms of compensation are structured and implemented to reflect these items of the registrant's performance, including whether discretion can be or has been exercised (either to award compensation absent attainment of the relevant performance goal(s) or to reduce or increase the size of any award or payout), identifying any particular exercise of discretion, and stating whether it applied to one or more specified named executive officers or to all compensation subject to the relevant performance goal(s);...(viii) Registrant policies and decisions regarding the adjustment or recovery of awards or payments if the relevant registrant performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment").

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402(b) of Regulation S-K states that “Disclosure of target levels that are non-GAAP financial measures will not be subject to Regulation G (17 CFR 244.100—102) and Item 10(e) (§229.10(e)); however, disclosure must be provided as to how the number is calculated from the registrant’s audited financial statements.” Here, the Proposal seeks to expand Abbott’s presentation of financial information by requesting additional disclosure regarding the reconciliation to GAAP of any non-GAAP financial metrics used in the determination of Abbott’s senior executive compensation. The Proposal’s underlying concern with respect to this particular information request is not senior executive compensation, but the Company’s disclosures relating to non-GAAP financial measures, which are ordinary business and do not raise any significant policy issues.

The Staff has previously concurred that proposals seeking to increase or modify a company’s disclosure regarding ordinary business matters were properly excludable under Rule 14a-8(i)(7). For example, in *Eli Lilly and Company* (avail. Jan. 13, 2017), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal relating to the disclosure of litigation information above and beyond what is required under the Commission’s rules. Also, in *Amerinst Insurance Group, Ltd* (avail. Apr. 14, 2005), the Staff permitted exclusion of a proposal requiring the company to provide disclosure of the accounting, each quarter, of its line items and amounts of operating and management expenses since it related to the ordinary business matter of the company’s presentation of its financial information.

B. Micromanagement

Even if the second piece of information requested by the Proposal related primarily to senior executive compensation, as it relates to the implementation of the subject matter of this portion of the Proposal, the Proponent seeks to micromanage Abbott by requesting “a specific explanation of the Compensation Committee’s rationale for *each adjustment*” (emphasis added). “Consistent with the [Staff’s] treatment of shareholder proposals on other topics, . . . the [Staff] may agree that proposals addressing senior executive . . . compensation that seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies can be excluded under Rule 14a-8(i)(7) on the basis of micromanagement.” *Staff Legal Bulletin No. 14J* (Oct. 23, 2008).

As noted below, this portion of the Proposal is subject to two different interpretations. One may interpret this as asking for an explanation as to why a non-GAAP financial measure was selected as a performance metric in Abbott’s compensation program. That disclosure is already required by Item 402(b) of Regulation S-K. Or, one may interpret this as asking for a rationale for each adjustment made with respect to each non-GAAP performance metric used in Abbott’s compensation program. The latter interpretation is micromanaging Abbott. Even the

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Commission's rules regarding the disclosure of non-GAAP financial measures when they are not used as compensation targets do not require registrants to describe a *rationale* for every line item that a registrant adds to or subtracts from a GAAP financial measure to arrive at a non-GAAP financial measure. Asking for disclosure of such "intricate detail" in any context, but particularly in the context of compensation disclosure, is micromanagement.

By requesting a "specific explanation of the . . . Committee's rationale for each adjustment . . . of the adjusted metrics to GAAP," the Proponent seeks a level of "intricate detail" that would micromanage Abbott by supplanting the Committee's discretion and judgment regarding the disclosure in its CD&A.

Based on the above, the Proposal is properly excludable as an ordinary business matter pursuant to Rule 14a-8(i)(7).

II. The Proposal may be properly omitted from Abbott's proxy materials under Rule 14a-8(i)(10) because it has been substantially implemented.

Rule 14a-8(i)(10) permits a company to omit a proposal from its proxy materials if the company has substantially implemented the proposal, so as "to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management." *Release No. 34-12598 (July 7, 1976)*. Originally, the Staff interpreted this narrowly and granted no-action relief only when proposals were "'fully' effected" by the company. *See Release No. 19135 (Oct. 14, 1982)*. However, the Commission later recognized that the "previous formalistic application of [the rule] defeated its purpose." *See Release No. 20091 (Aug. 16, 1983)*. The Staff now interprets this exclusion to apply when the company has taken actions to address satisfactorily the proposal's underlying concerns and its essential objective. *See, e.g., Bank of America Corp.* (avail. Jan. 19, 2018) and *Anheuser-Busch Cos., Inc.* (avail. Jan. 17, 2007). Differences between a company's actions and the actions requested by a shareholder proponent are permissible, so long as the company's actions satisfactorily address the proposal's essential objective. *See, e.g., Exxon Mobil Corp.* (avail. Mar. 19, 2010).

As noted above, the essential objective of the Proposal is disclosure regarding non-GAAP financial measures, specifically the non-GAAP financial measures used in Abbott's compensation program. As discussed, the Committee has provided extensive disclosure regarding non-GAAP financial measures used in Abbott's compensation program in the CD&A section of Abbott's 2019 proxy statement, and that disclosure is compliant with the Commission's rules and regulations.

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The Proposal asks that the Committee “include a specific explanation” of “the Committee’s rationale for each adjustment.” Abbott’s disclosures have already substantially implemented the request. The CD&A states that: “Officer financial goals are based on adjusted measures that the Committee believes more accurately reflect the results of our ongoing operations and are determined based on the expected market growth of the businesses and markets in which we compete.” The CD&A also includes a detailed chart describing each performance metric used in assessing both annual and long-term compensation and the strategic link between each performance metric and Abbott’s business. In addition:

- A detailed table in Abbott’s 2019 proxy statement explains the strategic link of each Company performance metric used in Abbott’s annual and long-term incentive plans (see page 33). The table covers the four Company performance metrics utilized in the annual incentive plan (Adjusted Sales, Adjusted Diluted EPS, Adjusted ROA and Operating Cash Flow), which is the Proponent’s focus. The table also provides the Company performance metrics used for the long-term incentive plan.
- Abbott’s 2019 proxy statement also describes that Abbott conducted extensive shareholder outreach during 2018 to discuss its compensation program (see pages 4 and 28). Abbott received feedback indicating that, overall, shareholders viewed Abbott’s executive compensation program favorably and that additional enhancements to Abbott’s proxy disclosure could further shareholder understanding of how pay decisions are made and how the performance metrics Abbott uses are linked to business strategy and goals. As a result, Abbott added enhanced disclosures to its 2019 proxy statement which provide two pages for each named executive officer, detailing the compensation decisions made for such named executive officer, including the individual performance metrics and Company performance metrics used in Abbott’s annual and long-term incentive plans (see pages 34 to 43). Shareholder responses to the enhanced disclosure were overwhelmingly positive.
- Footnotes to the enhanced tabular disclosure of annual incentive plan compensation for each named executive officer define each of Adjusted Sales, Adjusted Diluted EPS, Adjusted ROA and Operating Cash Flow and, in compliance with Instruction 5 to Item 402(b) of Regulation S-K, describe how each metric is calculated from Abbott’s audited financial statements (see pages 34 to 43).

Abbott’s proxy statement disclosure clearly accomplishes, and compares favorably to, the primary objective of the Proposal, which is disclosure regarding the use of non-GAAP financial

measures in Abbott's compensation program. Therefore, Abbott has substantially implemented the Proposal.

III. The Proposal may be properly omitted from Abbott's proxy materials under Rule 14a-8(i)(3) because it is materially false and misleading by being vague and indefinite.

Rule 14a-8(i)(3) permits a registrant to omit a proposal from its proxy materials where the proposal violates the Commission's proxy rules, including rules that prohibit "materially false or misleading statements," because the proposal is "so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. . . ." *Staff Legal Bulletin No. 14B (Sept. 15, 2004)*.

The Staff has repeatedly permitted exclusion of proposals that were sufficiently vague and indefinite such that the company and its shareholders would be unable to determine what the proposal entails or might interpret the proposal differently. For example, in *Fuqua Industries, Inc.* (avail. Mar. 12, 1991), the Staff concluded that a shareholder proposal may be excluded where the company and the shareholders could interpret the proposal differently such that "any action ultimately taken by the [c]ompany upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." *See also Walgreens Boots Alliance, Inc.* (avail. Oct. 7, 2016) (permitting exclusion of a proposal restricting the ability of the board of directors to "take[] any action whose primary purpose is to prevent the effectiveness of shareholder vote"). In addition, in *Prudential Financial Inc.* (avail. Feb. 16, 2007), the Staff permitted exclusion of a proposal that "contain[ed] several terms and phrases which [were] undefined, susceptible to differing interpretations, and likely to confuse the Company's shareholders."

The Proposal may be omitted because neither Abbott's shareholders nor Abbott can tell with any certainty what it requires when it states that the CD&A "shall include a specific explanation of the Compensation Committee's rationale for *each adjustment*" (emphasis added). The Proposal is subject to at least two different interpretations. One could interpret the Proposal as requesting that the Committee provide a rationale for each non-GAAP performance metric used in Abbott's annual and long-term incentive plans. Alternatively, the Proposal could be interpreted as requesting a rationale for each adjustment made with respect to each non-GAAP performance metric used in Abbott's annual and long-term incentive plans. Indeed, the language of the Proposal is "each adjustment", not "each non-GAAP financial measure" and typically, there are several adjustments to GAAP made with respect to any given non-GAAP financial measure.

However, the Supporting Statement is not at all concerned about individual adjustments to GAAP measures. Instead, it states that the VPIC is “concerned that the use of GAAP-adjusted metrics may inflate senior executive compensation by overstating the Company’s financial performance as measured by GAAP.” Further, the Supporting Statement states that the “Compensation Committee should provide a specific explanation for why these adjustments were made.” In other words, the VPIC is concerned with the use of non-GAAP performance metrics rather than GAAP performance metrics and seeks one explanation for why “these adjustments were made.” This is because the Proponent believes that Abbott’s explanation for using GAAP-adjusted metrics in its 2019 proxy statement was “vague and unsatisfactory,” and “[m]any investors believe that companies should do a better job disclosing the purpose of using adjusted-GAAP metrics for executive compensation” (emphasis added). As a result of these dual readings, it is unclear what action Abbott would need to take in order to adopt a policy to provide the requested disclosure in its CD&A.

Based on the above, the Proposal is so inherently vague, indefinite, and subject to multiple interpretations, that neither Abbott nor its shareholders would be able to determine with any reasonable certainty exactly what actions or measures it requires.

IV. The Proposal may be properly omitted from Abbott’s proxy materials under Rule 14a-8(b) and Rule 14a-8(f) because the VPIC did not provide proper proof of eligibility.

Rule 14a-8(b) requires that to be eligible to submit a proposal pursuant to Rule 14a-8, a shareholder “must have continuously held at least \$2,000 in market value, or 1% of the company’s securities . . . for at least one year by the date [the shareholder] submit[s] the proposal.” Rule 14a-8(b) also identifies proper methods for providing proof of ownership, including “to submit to the company a written statement from the ‘record’ holder of [the shareholder’s] securities (usually a broker or bank), verifying that, at the time [the shareholder] submitted [its] proposal, [it] continuously held the securities for at least one year.” Rule 14a-8(f) provides that the proponent’s response must be “postmarked, or transmitted electronically, no later than 14 days from the date [it] received the company’s notification.”

On November 5, 2019, the VPIC submitted the Proposal to the Company via email, with a hard copy arriving by mail the following day. The VPIC’s November 5 letter attached two letters regarding its ownership of Abbott’s shares in connection with the Proposal. The first letter, provided from JPMorgan Chase Bank, N.A., confirms ownership during the period from November 1, 2018 through June 16, 2019. The second letter, provided from BlackRock Institutional Trust Company, N.A., confirms ownership from the period “from June 4, 2019 – November 4, 2019.” Accordingly, while the letters collectively address the period from

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November 1, 2018 through November 4, 2019, neither letter confirms ownership by the VPIC as of November 5, 2019, the date that the VPIC submitted the Proposal.

When notifying a shareholder proponent of eligibility or procedural defects, *Staff Legal Bulletin No. 14 (Jul. 13, 2001)* requires that the company “send the notification by a means that allows the company to determine when the shareholder received the letter.” On November 7, 2019, two days after receipt of the Proposal, Abbott sent the VPIC a letter of deficiency via email with a hard copy via FedEx advising the VPIC of the above issues and instructing the VPIC to provide proper proof of ownership. Exhibit B evidences that Abbott submitted the notice of deficiency via email to the same individual who had submitted the Proposal via email on behalf of the VPIC, using the same email address. Abbott did not receive an electronic notice of a failure to deliver the November 7 email or a notice that the recipient was not currently available.

Under Rule 14a-8(f), the VPIC had 14 calendar days after receiving the notification to respond. The VPIC received Abbott’s letter of deficiency transmitted via email on November 7, 2019. Accordingly, the VPIC was required to provide a response correcting the deficiency by November 21, 2019. On November 22, 2019, a day after the deadline, the VPIC sent an email to Abbott responding to the November 7 notice of deficiency. The November 22 email from the VPIC was sent from the same email address to which Abbott emailed its deficiency notice on November 7.

The Staff has previously concurred with the exclusion of shareholder proposals based on a proponent’s failure to provide proper proof of eligibility when the company provided a deficiency notice only via email. For example, in *General Electric Co.* (avail. Jan. 2, 2018), the Staff concurred with exclusion of a proposal when the proponent did not respond to the company’s request submitted via email for proper proof of ownership. *See also Walmart, Inc.* (avail. Mar. 28, 2019). These examples evidence the principle that a company’s response via email to a proponent’s submission of a proposal via email is a satisfactory method of delivering a notice of deficiency, the receipt of which by the proponent begins the 14-day window in which the proponent is required to respond.

The Staff has also previously concurred with the exclusion of shareholder proposals based on a proponent’s failure to cure a deficiency regarding proper proof of eligibility when “the proponent appear[ed] to have failed to supply, within 14 days of receiving [the company’s] request, documentary support evidencing that [it] satisfied the minimum ownership requirement as required by rule 14a-8(b).” *See Newell Rubbermaid Inc.* (avail. Jan. 7, 2013).

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The VPIC did not provide proof of ownership for the period from November 4, 2019 through and including November 5, 2019, the date that it submitted the Proposal, on or before November 21, 2019. Therefore, Abbott may exclude the Proposal from its 2020 proxy materials in accordance with Rule 14a-8(b) and Rule 14a-8(f).

Abbott is aware that, in *Staff Legal Bulletin No. 14K (Oct. 19, 2019)*, the Staff indicated that it generally does not find arguments applying a technical reading of proof of ownership letters as a basis for exclusion as persuasive and that the Staff will take a “plain meaning” approach with respect to the proof of ownership requirements in the future. However, Abbott is not seeking to exclude the Proposal “based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.” *Id.* Rule 14a-8(f) provides that the shareholder’s “response must be postmarked, or transmitted electronically, no later than 14 days from the date [it] received the company’s notification.” A Staff Legal Bulletin cannot rewrite a rule adopted by the Commission. As noted above, the letters initially provided by the VPIC did not evidence the requisite minimum ownership requirements. Since the VPIC did not remedy this deficiency within 14 days of the date on which the VPIC received Abbott’s emailed notice of deficiency, Abbott believes that the Proposal may be properly excluded pursuant to Rule 14a-8(b) and Rule 14a-8(f).

V. Conclusion

For the foregoing reasons, on behalf of Abbott, I request your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from Abbott’s 2020 proxy materials for any of the reasons described in this letter.

If the Staff has any questions, or if for any reason the Staff does not agree that Abbott may omit the Proposal from its 2020 proxy materials, please contact me at (202) 736-8615 or thomas.kim@sidley.com. The VPIC’s November 5 letter indicates that Office of the State Treasurer of the State of Vermont may be reached at (802) 828-2301.

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Best regards,

A handwritten signature in blue ink, appearing to read 'TK', with a horizontal line extending to the left.

Thomas J. Kim

Enclosures

cc: Elizabeth A. Pearce
Vermont State Treasurer
State of Vermont, Office of the State Treasurer
109 State Street
Montpelier, Vermont 05609

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Exhibit A

The Proposal

[See attached.]

ELIZABETH A. PEARCE
STATE TREASURER



UNCLAIMED PROPERTY DIVISION
TEL: (802) 828-2407

RETIREMENT DIVISION
TEL: (802) 828-2305
FAX: (802) 828-5182

ACCOUNTING DIVISION
TEL: (802) 828-2301
FAX: (802) 828-2884

**STATE OF VERMONT
OFFICE OF THE STATE TREASURER**

November 5, 2019

Attention: Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
100 Abbott Park Road, D-364, AP6D
Abbott Park, Illinois 60064-6400

Dear Mr. Allen,

The Vermont Pension Investment Committee (VPIC) considers social, environmental, governance, and financial factors in our investment decisions. The VPIC has a long-term investment strategy consistent with the duration of Retirement System liabilities. It strives to be a thoughtful, analytical, and patient investor that believes portfolio risk management is a central fiduciary responsibility. The VPIC believes that good corporate governance is imperative for the long-term health and growth of shareholder value, and that it is vital to understand how the Company's financial performance metric is adjusted to ensure we can fully evaluate performance for purposes of determining the amount or vesting of any senior executive compensation award. The VPIC is filing this resolution with Abbot Laboratories with the belief that a Board of Directors being transparent about financial performance will protect long-term shareholder value and strengthen the corporation's governance structure.

Vermont Pension Investment Committee is the owner of more than \$2,000 of Abbott Laboratories stock held continuously for over one year. Vermont Pension Investment Committee intends to continue to hold this stock until after the upcoming Annual Meeting. I hereby notify Abbott Laboratories of Vermont Pension Investment Committee's intention to file this shareholder proposal as the "primary filer" for inclusion in the 2020 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. Additional shareholders may co-file this resolution as well.

A proof of ownership from a DTC participant is attached. We look forward to discussing the issues surrounding the requested report at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth A. Pearce", is written over a circular stamp.

Elizabeth A. Pearce
Vermont State Treasurer

RESOLVED, that shareholders of Abbott Laboratories (the "Company") urge the Board of Directors (the "Board") to adopt a policy that when the Company adjusts or modifies any generally accepted accounting principles ("GAAP") financial performance metric for determining senior executive compensation, the Compensation Committee's Compensation Discussion and Analysis shall include a specific explanation of the Compensation Committee's rationale for each adjustment and a reconciliation of the adjusted metrics to GAAP.

SUPPORTING STATEMENT:

Our Company selects several metrics to assess senior executive performance for purposes of determining incentive compensation. On page 33 of the 2019 Proxy Statement, the Company detailed the metrics used for the annual incentive plan that are intended align the incentives of executives with shareholders: Sales; diluted EPS; Return on Assets; and Operating Cash Flow. However, three-fourths of these metrics used an adjusted version of GAAP metrics.

The Company's 2018 diluted EPS calculated under GAAP yielded a result of \$1.31, as reported on page 22 of the Company's 2019 Form 10-K. However, the 2019 Proxy Statement presents an adjusted diluted EPS metric that yielded a result of \$2.88. The target goal was \$2.85 and since the *adjusted* result exceeded the goal, the CEO received an above target payout.

Similarly, on the Sales metric, the GAAP calculation yielded a result of \$30.6 billion according to page 22 of 2019 Form 10-K. However, the 2019 Proxy Statement presents an Adjusted Sales result of \$31.2 billion. The target goal for this metric was \$30.97 billion and since the *adjusted* result exceeded the goal, the chief executive received above target payout.

These two metrics account for 50% of the Company's weighting for the annual incentive plan that provided the CEO with an award of \$4,779,688 in 2018. We are concerned that the use of GAAP-adjusted metrics may inflate senior executive compensation by overstating the Company's financial performance as measured by GAAP. In our view, the Compensation Committee should provide a specific explanation for why these adjustments were made.

We believe that the Company's explanation on page 33 of 2019 Proxy Statement for using GAAP-adjusted metrics for executive pay was vague and unsatisfactory. The Company stated that "Officer financial goals are based on adjusted measures that the Committee believes more accurately reflect the results of our ongoing operations and are determined based on the expected market growth of the businesses and markets in which we compete."

Many investors believe that companies should do a better job disclosing the purpose of using adjusted-GAAP metrics for executive compensation. For example, the Council of Institutional Investors has petitioned the SEC to address this lack of transparency. The petition seeks "...a requirement for clear explanations and GAAP reconciliations that would permit a shareholder to understand the company's approach and factor that into its say-on-pay vote and/or buy/sell decision"

(<https://www.sec.gov/rules/petitions/2019/petn4-745.pdf>).

For these reasons, we urge a vote FOR this resolution.

Charles Callahan
Vice President
Investor Services

J.P.Morgan

November 5, 2019

Attention: Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
100 Abbott Park Road, D-364, AP6D
Abbott Park, Illinois 60064-6400

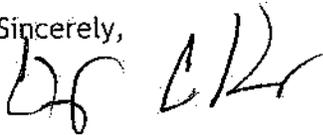
Abbott Laboratories
Re: State of Vermont Pension and Investment Committee

To whom it may concern:

As custodian of The State of Vermont Pension and Investment Committee (the "Fund"), we are writing to report that as of the close of business June 16, 2019 the Fund held 43,032.00 shares of Abbott Laboratories ("Company") stock in our account at Depository Trust Company and registered in its nominee name of Cede & Co. The Fund has held in excess of \$2,000 worth of shares in your Company continuously since November 1, 2018.

If there are any other questions or concerns regarding this matter, please feel free to contact me at 212-623-0407.

Sincerely,



Chuck Callahan
Vice President
JP Morgan Chase N.A.

November 4, 2019

Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
100 Abbott Park Road, D-364, AP6D
Abbott Park, Illinois 60064-6400

Abbott Laboratories
Re: State of Vermont Pension and Investment Committee

To whom it may concern:

As custodian of The State of Vermont, Vermont Pension Investment Committee (the “Fund”), we are writing to report that as of the close of business November 4, 2019 the Fund held 4,480 shares of Abbott Laboratories (“Company”) stock in our account at Depository Trust Company. The Fund has held in excess of \$2,000 worth of shares in your Company continuously from June 4, 2019 – November 4, 2019.

If there are any other questions or concerns regarding this matter, please feel free to contact me at 617-357-1219.

Sincerely,

BlackRock Institutional Trust Company, N.A.

By: 

Name: Donald Perault
Title: Managing Director

Date: November 4, 2019

SIDLEY

Shareholderproposals@sec.gov

December 20, 2019

Page 15

Exhibit B

Additional Correspondence Regarding the Proposal

[See attached.]

From: Green, Katie <Katie.Green@vermont.gov>
Sent: Tuesday, November 5, 2019 2:33 PM
To: Paik, Jessica <jessica.paik@abbott.com>; Allen, Hubert L <hubert.allen@abbott.com>
Cc: Cook, Andy <Andy.Cook@vermont.gov>; Henry, Eric <Eric.Henry@vermont.gov>
Subject: Shareholder Resolution Filing by the Vermont Pension Investment Committee
Importance: High

Good Afternoon,

Attached please find a copy of the shareholder resolution filing materials from the Vermont Pension Investment Committee. We anticipate your office will receive the hard copies tomorrow, but we wanted to ensure you had an electronic copy for ease of reference. We would be appreciative if you could confirm receipt of both this email and the hard copies once received. Thank you and have a great week.

A hard copy has been mailed via FEDEX to:

Attention: Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
100 Abbott Park Road, D-364, AP6D
Abbott Park, Illinois 60064-6400

Best Regards,

Katie Green
Deputy Chief Investment Officer
Vermont State Treasurer's Office
109 State Street - 4th Floor
Montpelier, VT 05609-6200
(p) 802-828-3708
(f) 802-828-2772
Katie.Green@vermont.gov

From: Rice, Aaron <aaron.rice@abbott.com>
Sent: Thursday, November 7, 2019 4:03 PM
To: Katie.Green@vermont.gov
Cc: Paik, Jessica; Teliga, Heather A; Andy.Cook@vermont.gov; Eric.Henry@vermont.gov
Subject: RE: Shareholder Resolution Filing by the Vermont Pension Investment Committee
Attachments: Acknowledgment Letter (Nov 7).pdf; Rule 14a-8.pdf; SLB 14F.pdf; SLB 14G.pdf

Dear Ms. Green,

Please find attached a letter acknowledging Abbott's receipt of the shareholder proposal that Vermont State Treasurer Elizabeth A. Pearce submitted on behalf of the Vermont Pension Investment Committee. The attachments referenced in the letter are also attached. The original letter and hard copies of the attachment are being sent to Ms. Pearce's attention via Federal Express. Thank you.

Best regards,
Aaron



Aaron N. Rice
Senior Counsel
Securities and Governance

Abbott
100 Abbott Park Road
Dept. 32L/Bldg. AP6A-1
Abbott Park, IL 60064-6092

O: +1 224-668-1038
F: +1 224-668-9492
M: +1 224 302 8252
aaron.rice@abbott.com

This communication may contain information that is proprietary, confidential, or exempt from disclosure. If you are not the intended recipient, please note that any other dissemination, distribution, use or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

From: Green, Katie <Katie.Green@vermont.gov>
Sent: Tuesday, November 5, 2019 2:33 PM
To: Paik, Jessica <jessica.paik@abbott.com>; Allen, Hubert L <hubert.allen@abbott.com>
Cc: Cook, Andy <>; Henry, Eric <Eric.Henry@vermont.gov>
Subject: Shareholder Resolution Filing by the Vermont Pension Investment Committee
Importance: High

Good Afternoon,

Attached please find a copy of the shareholder resolution filing materials from the Vermont Pension Investment Committee. We anticipate your office will receive the hard copies tomorrow, but we wanted to ensure you had an electronic copy for ease of reference. We would be appreciative if you could confirm receipt of both this email and the hard copies once received. Thank you and have a great week.

A hard copy has been mailed via FEDEX to:

Attention: Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
100 Abbott Park Road, D-364, AP6D
Abbott Park, Illinois 60064-6400

Best Regards,

Katie Green
Deputy Chief Investment Officer
Vermont State Treasurer's Office
109 State Street - 4th Floor
Montpelier, VT 05609-6200
(p) 802-828-3708
(f) 802-828-2772
Katie.Green@vermont.gov



Aaron N. Rice
Senior Counsel
Securities and Governance

Abbott Laboratories
Securities and Benefits
Dept. 032L; Bldg. AP6A-1
100 Abbott Park Road
Abbott Park, IL 60064-6092
T: +1 224-668-1038
F: +1 224-668-9492
aaron.rice@abbott.com

November 7, 2019

Via Federal Express and Email

State of Vermont, Office of the State Treasurer
Ms. Elizabeth A. Pearce, Vermont State Treasurer
109 State Street
Montpelier, Vermont 05609-6200

Dear Ms. Pearce:

This letter acknowledges receipt of the shareholder proposal you submitted (the "Proposal") on behalf of the Vermont Pension Investment Committee (the "VPIC"). Our 2020 Annual Meeting of Shareholders is currently scheduled to be held on Friday, April 24, 2020.

Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), requires that the proponent submit verification of stock ownership. As noted below, we await a proof of ownership letter verifying that the VPIC has continuously owned at least \$2,000 in market value, or 1%, of Abbott's securities entitled to be voted on the proposal at Abbott's annual meeting for at least one year preceding and including November 5, 2019 (the date that you submitted the Proposal). Because you are not listed on Abbott's share register as a registered owner of Abbott common shares, we are unable to confirm whether you have met these requirements.

If the VPIC is an unregistered (or beneficial) owner, pursuant to Exchange Act Rule 14a-8(b)(2), you must provide a written statement from the record holder of the shares verifying that the VPIC has owned the required amount of Abbott common shares continuously for at least one year preceding and including November 5, 2019 in accordance with the Securities and Exchange Commission ("SEC") Staff Legal Bulletin No. 14G ("SLB 14G"). Neither of the letters attached to the Proposal confirms VPIC's ownership of the required amount of Abbott common shares as of November 5, 2019.

Please be aware that in accordance with the SEC's Staff Legal Bulletin No. 14F ("SLB 14F") and SLB 14G, when the shareholder is a beneficial owner of securities, an ownership verification statement must come from a DTC participant or its affiliate. The Depository Trust Company (DTC a/k/a Cede & Co.) is a registered clearing agency that acts as a securities depository. You can confirm whether the VPIC's broker or bank is a DTC participant by asking them, or by checking DTC's participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. The VPIC's broker identified as "BlackRock Institutional Trust Company, N.A." from the letter dated November 4, 2019 is not included on the DTC participant list. If the VPIC's bank or broker is not a DTC participant or its affiliate, you may need to satisfy the proof of ownership requirements by obtaining multiple statements, for example (1) one from your bank or broker confirming its ownership and (2) another from the DTC participant

confirming the bank or broker's ownership. Please provide evidence that "BlackRock Institutional Trust Company, N.A." is an affiliate of either "J.P. Morgan Chase Bank NA/FBO BlackRock CTF" or "SSB – BlackRock Institutional Trust" by directly, or indirectly through one or more intermediaries, controlling, being controlled by, or being under common control with a listed DTC participant.

If you do not provide the proof of ownership as described in this letter, Abbott intends to seek omission of the proposal that you submitted to Abbott on November 5, 2019 from Abbott's proxy materials for the 2020 Annual Meeting of Shareholders in accordance with SEC rules.

As required by Rule 14a-8, please submit this information to Abbott no later than 14 calendar days from the day you receive this letter. You may send your response to my attention.

Abbott has not yet reviewed the Proposal to determine if it complies with the other requirements for shareholder proposals found in Rules 14a-8 and 14a-9 under the Exchange Act. Abbott reserves the right to take appropriate action to the extent that the Proposal does not comply with such rules.

For your convenience, we have enclosed copies of Rule 14a-8, SLB 14F and SLB 14G.

Please let me know if you have any questions. Thank you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "AR", is positioned above the typed name of the sender.

Aaron Rice
Senior Counsel
Securities and Governance

CC: Jessica Paik, Abbott Laboratories

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of November 4, 2019

Title 17 → Chapter II → Part 240 → §240.14a-8

Title 17: Commodity and Securities Exchanges

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

§240.14a-8 Shareholder proposals.

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

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

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

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

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

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

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

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

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

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

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

(e) *Question 5: What is the deadline for submitting a proposal?* (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

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

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?* (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

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

(h) *Question 8: Must I appear personally at the shareholders' meeting to present the proposal?* (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

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

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

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

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

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

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

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

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

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

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

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

(8) *Director elections*: If the proposal:

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

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

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

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

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

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

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

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

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

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

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

(i) The proposal;

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

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

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

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

(l) *Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?*

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

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

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

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

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]

Need assistance?



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-8⁷ 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.

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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Modified: 10/18/2011



U.S. Securities and Exchange Commission

Division of Corporation Finance Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.¹ By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

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

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.² If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

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

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

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to

correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

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

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

D. Use of website addresses in proposals and supporting statements

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

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

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

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

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the

exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

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

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

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

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

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

- ¹ An entity is an “affiliate” of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.
- ² Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is “usually,” but not always, a broker or bank.
- ³ Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.
- ⁴ A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

<http://www.sec.gov/interps/legal/cfslb14g.htm>

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Modified: 10/16/2012

From: Green, Katie <Katie.Green@vermont.gov>
Sent: Friday, November 22, 2019 3:52 PM
To: Paik, Jessica; Allen, Hubert L; Rice, Aaron
Cc: Henry, Eric; Cook, Andy
Subject: Requested Materials per Abbott's Response to VPIC's Shareholder Resolution
Attachments: Abbott_Response_VPIC.pdf

Importance: High

Good Afternoon Aaron,

Attached please find a copy of the requested materials per Abbott's response to the Vermont Pension Investment Committee's shareholder resolution. We anticipate your office will receive the hard copies tomorrow, but we wanted to ensure you had an electronic copy for ease of reference. We would be appreciative if you could confirm receipt of both this email and the hard copies once received. Thank you and have a great weekend.

Best Regards,

Katie Green
Deputy Chief Investment Officer
Vermont State Treasurer's Office
109 State Street - 4th Floor
Montpelier, VT 05609-6200
(p) 802-828-3708
(f) 802-828-2772
Katie.Green@vermont.gov

ELIZABETH A. PEARCE
STATE TREASURER



UNCLAIMED PROPERTY DIVISION
TEL: (802) 828-2407

RETIREMENT DIVISION
TEL: (802) 828-2305
FAX: (802) 828-5182

ACCOUNTING DIVISION
TEL: (802) 828-2301
FAX: (802) 828-2884

STATE OF VERMONT
OFFICE OF THE STATE TREASURER

November 22, 2019

Attention: Aaron Rice
Senior Counsel
Securities and Governance
Abbott Laboratories
100 Abbott Park Road, D-364, AP6D
Abbott Park, Illinois 60064-6400

Dear Mr. Rice,

The Vermont Pension Investment Committee (VPIC) received your letter on November 11, 2019. As such, please find attached an amended proof of ownership from a DTC participant indicating that the Vermont Pension Investment Committee is the owner of more than \$2,000 of Abbott Laboratories stock held continuously for over one year. Vermont Pension Investment Committee intends to continue to hold this stock until after the upcoming Annual Meeting.

A proof of ownership from a DTC participant is attached. We look forward to discussing the issues surrounding the requested report at your earliest convenience.

Sincerely,


Elizabeth A. Pearce
Vermont State Treasurer

Charles Callahan
Vice President
Investor Services

J.P.Morgan

November 5, 2019

Attention: Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
100 Abbott Park Road, D-364, AP6D
Abbott Park, Illinois 60064-6400

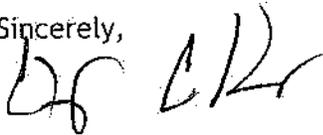
Abbott Laboratories
Re: State of Vermont Pension and Investment Committee

To whom it may concern:

As custodian of The State of Vermont Pension and Investment Committee (the "Fund"), we are writing to report that as of the close of business June 16, 2019 the Fund held 43,032.00 shares of Abbott Laboratories ("Company") stock in our account at Depository Trust Company and registered in its nominee name of Cede & Co. The Fund has held in excess of \$2,000 worth of shares in your Company continuously since November 1, 2018.

If there are any other questions or concerns regarding this matter, please feel free to contact me at 212-623-0407.

Sincerely,



Chuck Callahan
Vice President
JP Morgan Chase N.A.

November 22, 2019

Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
100 Abbott Park Road, D-364, AP6D
Abbott Park, Illinois 60064-6400

Abbott Laboratories
Re: State of Vermont Pension and Investment Committee

To whom it may concern:

As custodian of The State of Vermont, Vermont Pension Investment Committee (the “Fund”), we are writing to report that as of the close of business November 5, 2019 the Fund held 4,480 shares of Abbott Laboratories (“Company”) stock in our account at Depository Trust Company (account #3622). The Fund has held in excess of \$2,000 worth of shares in your Company continuously from June 4, 2019 – November 5, 2019.

If there are any other questions or concerns regarding this matter, please feel free to contact me at 617-357-1219.

Sincerely,

BlackRock Institutional Trust Company, N.A.

By: 
Name: Don Perault
Title: Managing Director

Date: November 22, 2019

From: Green, Katie <Katie.Green@vermont.gov>
Sent: Friday, December 13, 2019 1:42 PM
To: Paik, Jessica; Allen, Hubert L; Rice, Aaron
Cc: Henry, Eric; Cook, Andy
Subject: Follow-up re: the Vermont Pension Investment Committee's Shareholder Resolution
Attachments: VPIC Share Confirmations_JPMorgan.pdf

Good Afternoon Aaron,

Please find attached additional certifications from our custodian of the requisite shares held. Have a great weekend.

Sincerely,

Katie Green
Deputy Chief Investment Officer
Vermont State Treasurer's Office
109 State Street - 4th Floor
Montpelier, VT 05609-6200
(p) 802-828-3708
(f) 802-828-2772
Katie.Green@vermont.gov

December 11, 2019

Hubert L. Allen
Executive Vice President, General Counsel and Secretary
Abbott Laboratories
100 Abbott Park Road, D-364, AP6D
Abbott Park, Illinois 60064-6400

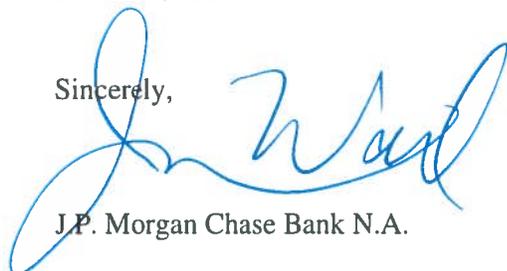
Abbott Laboratories
Re: State of Vermont Pension and Investment Committee

To whom it may concern:

We are writing to report that as of the close of business November 18, 2019, J.P. Morgan Chase Bank N.A. held 4,480 shares of Abbott Laboratories (“Company”) stock in our account at Depository Trust Company. J.P. Morgan Chase Bank N.A., as sub-custodian of The State of Vermont, Vermont Pension Investment Committee (“Fund”), holds the shares through the referenced DTC account on behalf of the Fund. The Fund has held in excess of \$2,000 worth of shares in your Company continuously from June 5, 2019 – November 18, 2019.

If there are any other questions or concerns regarding this matter, please feel free to contact me at 617-223-9063.

Sincerely,



J.P. Morgan Chase Bank N.A.

Date: December 11, 2019
Name: John Ward
Title: Executive Director