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January 28, 2021

Rule 14a-8(i)(7)
Rule 14a-8(i)(3)

VIA E-MAIL (shareholderproposals@sec.gov)
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

Re: Mid-Southern Bancorp, Inc. Shareholder Proposal Pursuant to Rule 14a-8 of the Securities Exchange Act of 1934.

Ladies and Gentlemen:

This letter is to inform you that, pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, our client, Mid-Southern Bancorp, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Stockholders (collectively, the "2021 Proxy Materials") a stockholder proposal (the "Proposal") received from William R. Dossenbach (the "Proponent").

In accordance with Rule 14a-8(j) and Staff Legal Bulletin No. 14D (CF) (Nov. 7, 2008) ("SLB 14D"), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company's intent to omit the Proposal from the Proxy Statement via e-mail and overnight mail. The Company intends to file its definitive 2021 proxy statement on April 23, 2021.

Pursuant to the Staff Legal Bulletin 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to James A. Giesel, on behalf of the Company, via e-mail at jgiesel@fbtlaw.com and to the Proponent via e-mail at *** l.

THE PROPOSAL

The Company received the Proposal on December 22, 2020. The Proposal reads in its entirety as follows:

Proposal: That Mid Southern Bancorp Inc. hire a nationally known investment banking firm to investigate and make recommendations, including but not limited to selling or merging Mid Southern Bancorp Inc., since the three year anniversary of the 2nd step conversion is July 12, 2021.

A full copy of the Proposal and related correspondence with the Proponent is attached to this letter as Exhibit A. Other than the language in the Proposal itself, the Proponent did not include a supporting statement.

BASES FOR EXCLUSION

On behalf of the Company, we hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the 2021 Proxy Materials pursuant to:

- Rule 14(a)-8(i)(7), because the Proposal relates to the Company's ordinary business operations.
- Rule 14(a)-8(i)(3), because the Proposal is inherently vague and indefinite.

ANALYSIS

I. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because The Proposal Deals With Matters Relating To The Company's Ordinary Business Operations.

The Proposal may be omitted because it relates to the Company's ordinary business operations and does not raise a significant policy issue that transcends the Company's ordinary business operations. Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations."¹ 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."² As explained by the Commission, the term "ordinary business" 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."³ When assessing proposals under Rule 14a-8(i)(7), the

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

² *Id.*

³ *Id.*

Staff considers the terms of the resolution and its supporting statement as a whole.⁴ The Proponent has not submitted a supporting statement, and therefore the Proposal is considered on its own.

As stated in the 1998 Release, a shareholder proposal is considered “ordinary business” when either:

- (i) it relates to matters that “are so fundamental to management’s ability to run a company on a day to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight”; or
- (ii) it “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.”⁵

In Staff Legal Bulletin No. 14A, the Staff clarified that to constitute ordinary business, a proposal must not raise a “significant social policy issue” which transcends the Company’s ordinary business operations.⁶ The Proposal that the Company “hire a nationally known investment banking firm to investigate and make recommendations, including but not limited to selling or merging” does not raise a significant social policy issue, but instead deals exclusively with the management and operation of the Company.

If the Proposal constitutes ordinary business and does not raise a “significant social policy issue” it may be excluded under Rule 14a-8(i)(7). However, even if one aspect of the proposal involves an extraordinary corporate transaction, the Staff has consistently concurred with excluding proposals that also implicate the company’s ordinary business. The Proposal here deals with the Company’s ordinary business operations, because it is related to exploring a variety of options for the Company, which does not transcend the Company’s ordinary business merely because it may include consideration of an extraordinary transaction.

The Staff has consistently found proposals which seek to increase shareholder value in ways not solely limited to extraordinary transactions excludable under Rule 14a-8(i)(7). In *Donegal Group, Inc.* (avail. Feb. 16, 2012), the Staff found that a proposal to hire an investment firm to “evaluate alternatives that could enhance shareholder value including, but not limited to, a merger or outright sale of DGI” was excludable, and stated that the “proposal appears to relate to both extraordinary transactions and non-extraordinary transactions.” The Staff further specifically stated: “Proposals concerning the exploration of strategic alternatives for maximizing shareholder value which relate to both extraordinary and nonextraordinary transactions are generally excludable under rule 14a-8(i)(7).” In *Bristol-Myers Squibb Company* (Feb. 22, 2006), the Staff allowed the exclusion of a proposal that required the board to “retain a nationally recognized investment bank to explore strategic alternatives to enhance the value of

⁴ See Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“SLB 14C”) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”).

⁵ *Id.*

⁶ See Staff Legal Bulletin No. 14A (July 12, 2002), Staff Legal Bulletin No. 14K (October 16, 2019).

the company, including, but not limited to, a possible sale, merger or other transaction,” finding that it related to both extraordinary and non-extraordinary transactions. Similarly, in *Analysts International Corp.* (avail. Mar. 11, 2013), the Staff allowed the exclusion of a proposal requesting that the board of directors “immediately engage the services of an investment banking firm to evaluate alternatives that could enhance shareholder value including, but not limited to, a merger or sale of the company, and . . . that the board take all other steps necessary to actively seek a sale or merger of the company on terms that will maximize share value for shareholders.”

Other examples include *Anchor Bancorp, Inc.* (July 11, 2013) (permitting the exclusion of a proposal under Rule 14a-8(i)(7) that requested that the board consider engaging the services of an investment banking firm to evaluate alternatives to “maximize shareholder value, including, but not limited to a sale of the Company as a whole, merger or other transaction for all or substantially all of the assets of the Company”); *Medallion Financial Corp.* (avail. May 11, 2004) (concurring in the company's exclusion of a proposal that the company retain an investment bank to evaluate alternatives to raise shareholder value); and *Central Federal Corp.* (Mar. 8, 2010) (permitting the exclusion of a proposal under Rule 14a-8(i)(7) that called for the board to both appoint an independent board committee and retain a leading investment banking firm to explore strategic alternatives for maximizing shareholder value, including the sale or merger of the company, and authorize the committee and the investment banker to solicit offers for the sale or merger of the company because “the proposal appear[ed] to relate to both extraordinary transactions and nonextraordinary transactions”).

Decisions where language similar to that of the Proposal were found not excludable were those which limited the scope of inquiry simply to extraordinary transactions, such as selling the company. For example, in *Allegheny Valley Bancorp, Inc.* (avail. Jan. 3, 2001), a proposal which directed the Bank’s board of directors to “retain an investment bank to solicit offers for the purchase of the Bank’s stock or assets” was not excludable.

Recent no-action letters continue this line of decisions that distinguish between exclusively extraordinary transactions and proposals that also involve some ordinary business decisions. In *Cerus Corp.* (avail. Apr. 13, 2018), the Staff did not concur with the exclusion under Rule 14a-8(i)(7) of the proposal, which requested that the subject company “begin an orderly process of retaining advisors to seriously study strategic alternatives, and empower a committee of its independent directors to evaluate those alternatives with advisors in exercise of their fiduciary responsibilities to maximize stockholder value.” The *Cerus* supporting statement clarified that the proposal was focused on the company becoming “part of a larger firm,” and only considered “strategic alternatives” in the form of a change in control transaction. However, in *Bank of America Corporation* (avail. Feb. 26, 2019), decided one year after *Cerus*, the Staff concurred with the exclusion under Rule 14a-8(i)(7) of the proposal, which requested that “the Bank of America begin an orderly process of retaining advisors to study strategic alternatives and empower a committee of its independent directors to evaluate those alternatives with advisors in exercise of their fiduciary responsibilities to maximize shareholder value,” essentially the same language as that used in *Cerus*. Unlike in *Cerus*, however, the statement of support in

Bank of America did not specify that the only appropriate alternatives to be considered were change of control transactions. The Staff found that the Proposal related to “both extraordinary transactions and non-extraordinary transactions,” and did not recommend action if the proposal was excluded.

Here, the Proposal unequivocally states that the investigation should be “including but not limited to” selling or merging the Company. In addition, unlike *Cerus* and *Allegheny*, the Proposal provides wide latitude for the investment banking firm to make recommendations for the company, many of which would be well within the Company’s ordinary business operations. Moreover, unlike *Cerus*, there is no statement of support specifying that the investment banking firm focus on change of control transactions. The Proposal does not “transcend” the Company’s day-to-day operations, because the Board of Directors (the “Board”) regularly considers a variety of options and business alternatives for the Company. As seen above, the Staff has consistently stated that “Proposals concerning the exploration of strategic alternatives for maximizing shareholder value which relate to both extraordinary and non-extraordinary transactions are generally excludable under rule 14a-8(i)(7).” The Proposal does not explicitly state the purpose of the investigation by the investment banking firm; the Proposal simply urges an investigation and recommendations by an investment banking firm which could include, but not be limited to, an extraordinary transaction; i.e., the recommendations could also include non-extraordinary transactions. Accordingly, the Proposal involves a decision that is an ordinary business decision and is properly excludable under Rule 14a-8(i)(7).

II. The Proposal May Be Excluded under Rule 14a-8(i)(3) Because the Proposal and Supporting Statement Are Inherently Vague and Indefinite and Thus Contrary to Rule 14a-9.

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff has interpreted Rule 14a-8(i)(3) to mean that proposals can be excluded if “the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.”⁷

A proposal is sufficiently vague and indefinite to justify exclusion where a company and its stockholders might interpret the proposal differently, such that “any action ultimately taken by the company upon implementation of the proposal could be significantly different from the actions envisioned by the shareholders voting on the proposal.” *Fuqua Industries, Inc.* (Mar. 12, 1991).

⁷ Staff Legal Bulletin No. 14B (CF) (September 15, 2004).

The Staff has consistently concurred in the exclusion of stockholder proposals under Rule 14a-8(i)(3) where substantive terms in the proposal were inherently vague and indefinite. For example, in *Citigroup, Inc.* (Mar 12, 2013), the proposal requested that "The Board of Directors should promptly appoint a committee...to explore extraordinary transactions that could enhance stockholder value, including but not limited to an extraordinary transaction resulting in the separation of one or more of Citigroup's businesses." The proposal further stated: "In carrying out its evaluation, the Stockholder Value Committee should avail itself of such independent legal, investment banking and such other third party advisers as the Stockholder Value Committee determines is necessary or appropriate in its sole discretion." The Staff in *Citigroup* found the proposal to be excludable as "vague and indefinite" despite the proposal defining extraordinary transactions as those requiring shareholder approval. The Staff stated in its decision: "in applying this particular proposal to Citigroup, neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." See also *Puget Energy, Inc.* (avail. Mar. 7, 2002), (concurring in the exclusion of a stockholder proposal under Rule 14a-8(i)(3) where the proposal requested that the company's board of directors implement "a policy of improved corporate governance" and included an array of unrelated topics that could be covered by such a policy); *AT&T Inc.* (avail. Feb. 21, 2014) (concurring in the exclusion of a proposal requesting that the board review the company's policies and procedures relating to the "directors' moral, ethical and legal fiduciary duties and opportunities," where the phrase "moral, ethical and legal fiduciary" was not defined or meaningfully described); *Bank of America Corp.* (avail. June 18, 2007) (concurring with the exclusion of a proposal calling for the board of directors to compile a report "concerning the thinking of the Directors concerning representative payees" as "vague and indefinite"); *Alaska Air Group, Inc.* (avail. Apr. 11, 2007) (concurring with the exclusion of a proposal requesting that the board amend the company's governing instruments to "assert, affirm and define the right of the owners of the company to set standards of corporate governance").

The language in this Proposal is substantially similar to that in *Citigroup*. There, a proposal requesting that the company "explore extraordinary transactions that could enhance stockholder value, including but not limited to an extraordinary transaction resulting in the separation of one or more of Citigroup's businesses" and "avail itself of such independent legal, investment banking and other such third party advisers as the Stockholder Value Committee determines is necessary" was found to be impermissibly vague. Here, the Proposal states that the Company should hire a nationally known investment banking firm to "investigate and make recommendations, including but not limited to selling or merging Mid Southern Bancorp." The Proposal does not specify the purpose of the recommendations. Presumably the phrase "since the three year anniversary of the 2nd step conversion is July 12, 2021" is a reference to the federal regulations which prohibit the acquisition of the Company for three years following the Company's conversion from mutual to a stock holding company structure in 2018. However, this possible inference does not limit the Proposal to extraordinary transactions, as the proposal specifically states the recommendations should be "not limited to selling or merging" the Company. The phrase also does not negate the inherent vagueness of the Proposal to a

shareholder or clarify what the resulting outcome would be for a shareholder asked to vote on the Proposal.

The Proponent did not include a supporting statement to clarify the purpose and desired outcome of the Proposal. The Proposal is inherently vague and indefinite because the Company, in implementing the Proposal, is not able to determine with any reasonable certainty what the investment banking firm's recommendations would be directed towards. Without a supporting statement, shareholders will have greater difficulty knowing what they are voting for, and the eventual actions of the Company taken to satisfy the requests of the Proposal could be significantly different from the actions that the Shareholders envision when voting on the Proposal. Therefore, the Company believes that it may properly exclude the Proposal from its 2021 Proxy Materials.

CONCLUSION

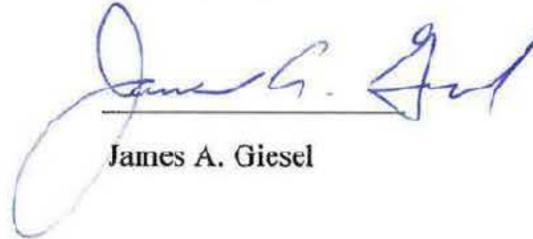
For the foregoing reasons, and consistent with the Staff's prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2021 Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the Proposal relates to the Company's ordinary business operations, and Rule 14a-8(i)(3), on the basis that the Proposal is inherently vague and indefinite.

We would be pleased to provide the Staff with any additional information and answer any questions that you may have regarding this letter. I can be reached at 502-568-0307 or jgiesel@fbtlaw.com. Please copy Alexander G. Babey, President and CEO, on any related correspondence at alex.babey@mid-southern.com.

We are sending the Proponent a copy of this submission. Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, the Proponent is respectfully reminded that if he elects to submit additional correspondence to the Staff with respect to this matter, a copy of that correspondence should concurrently be furnished directly to my attention at jgiesel@fbtlaw.com and to the attention of Alexander G. Babey, President and CEO of the Company, at alex.babey@mid-southern.com in accordance with Rule 14a-8(k).

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "James A. Giesel", is written over a horizontal line. The signature is stylized with a large initial 'J' and a prominent 'G'.

James A. Giesel

Enclosures

cc: William R. Dossenbach

Alexander G. Babey, Mid-Southern Bancorp, Inc.

Exhibit A
Proposal and Related Correspondence

From: "William DOSENBACH" *** >
Subject: Proxy Proposal
Date: 21 December 2020 19:35
To: "Erica Schmidt" <erica.schmidt@mid-southern.com>

WARNING: This email is from an external source. Do not click links or attachments unless you recognize the sender and know the content is safe.

William R Dossenbach

December 22, 2020

Mid-Southern Bancorp. Inc.
Attn: Corporate Secretary Erica Schmidt
300 North Water Street
Salem, Indiana 47167

Re: Shareholder proposal pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended.

Dear: Erica Schmidt

Below, please find a shareholder proposal for inclusion in the proxy statement to be prepared by Mid Southern Bancorp, Inc. for the 2021 annual meeting of shareholders. The proposal and accompanying supporting statement conform, in all respects, to the requirements of Rule 14a-8 of the Securities Exchange Act of 1934, as amended, under which Mid Southern Bancorp, Inc., Inc. is required to include the attached proposal and supporting statement in the proxy materials FSB Bancorp, Inc. sends to shareholders so that the shareholders may direct the proxy holder how to vote on the proposal.

Also, find attached a copy of my most recent brokerage statement from Morgan Stanley which shows I owned 10,000 shares on November 30, 2020 and a statement from one year ago dated November 30, 2019 showing I owned 10,000 shares to show I owned shares continuously for at

least one year and hold them on the on the date of submission of the proposal. These shares are worth more than \$2,000 in market value, as required by Rule 14a-8. By this letter, I state my intention to continue to hold the securities through the date of the 2021 annual meeting of shareholders.

My proposal is:

That Mid Southern Bancorp Inc. hire a nationally known investment banking firm to investigate and make recommendations, including but not limited to selling or merging Mid Southern Bancorp Inc., since the three year anniversary of the 2nd step conversion is July 12, 2021.

Please direct and comments or questions you have concerning this demand to me at ***

Sincerely yours,

William R. Dossenbach

William R, Dossenbach

Attachments (2)

