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January 7, 2021

VIA E-MAIL

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

Re: *The Kraft Heinz Company*
Stockholder Proposal of Wallace Global Fund
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Kraft Heinz Company (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 relating to a report on plastic packaging (the "Proposal") and statements in support thereof received from As You Sow (the "Representative") purportedly on behalf of Wallace Global Fund (the "Proponent"). Pursuant to Rule 14a-8(j), we have concurrently sent copies of this correspondence to the Proponent.

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

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent (i) failed to provide the requisite proof of continuous stock ownership in response to the Company's proper request for that information and (ii) the

Representative failed to demonstrate authority to submit the Proposal on the Proponent's behalf.

BACKGROUND

The Proposal was submitted to the Company by the Representative via email and received by the Company on November 27, 2020. *See* Exhibit A. The Proponent did not include with such letter any documentary evidence of ownership of Company shares. In addition, the Company reviewed its stock records, which did not indicate that the Proponent was a record owner of Company shares. Further, the submission did not include any evidence of the Proponent's delegation of authority to the Representative.

Accordingly, the Company properly sought verification of stock ownership and other documentary support from the Proponent. Specifically, the Company sent the Representative a letter dated December 4, 2020, identifying the deficiencies, notifying the Proponent of the requirements of Rule 14a-8 and explaining how the Proponent could cure the procedural deficiencies (the "Deficiency Notice"). The Deficiency Notice, attached hereto as Exhibit B, provided detailed information regarding the "record" holder requirements, as clarified by Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F"), and attached a copy of Rule 14a-8 and SLB 14F. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient Company shares;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including "a written statement from the 'record' holder of [the Proponent's] shares (usually a broker or a bank) verifying that [the Proponent] continuously held the required number or amount of Company shares for the one-year period preceding and including November 27, 2020", the date the Proposal was submitted to the Company;
- that evidence of the Proponent authorizing the Representative to act on its behalf as of the date the Proposal was submitted was required per the guidance of Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB 14I"); and
- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Representative received the Deficiency Notice.

The Company sent the Deficiency Notice to the Representative via email and overnight delivery on December 4, 2020, which was within 14 calendar days of the Company's receipt of the Proposal. Overnight delivery service records confirm delivery of a physical copy of the Deficiency Notice to the Representative at 9:59 a.m. on December 7, 2020. *See* Exhibit C.

The Company received a response to the Deficiency Notice from the Representative via email on December 7, 2020, in which the Representative confirmed receipt of the Deficiency Notice and informed the Company that it intended to respond to the Deficiency Notice within 14 days of receipt, by December 18, 2020. *See* Exhibit D. However, no response to the Deficiency Notice was received. To date, more than thirty days from the date the Representative received the Deficiency Notice, the Company still has not received any documentary support from the Proponent regarding its eligibility to submit the Proposal.

Subsequently, on December 22, 2020, after the 14-day deadline to cure deficiencies passed, the Company sent a courtesy email to the Representative to inquire about the status of a response to the Deficiency Notice and whether such response had been sent via mail to the Company. *See* Exhibit E. In addition, the Company sent a second courtesy email to the Representative on January 4, 2021 informing the Representative that the Company had not yet received a response to the Deficiency Notice. *See* Exhibit F. As of the date of this letter, the Company has not received any further correspondence from the Representative or Proponent relating to the Proposal.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Timely Establish Eligibility To Submit The Proposal Despite Proper Notice.

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to substantiate its eligibility to submit the Proposal under Rule 14a-8(b). Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, [a stockholder] must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the stockholder] submit[s] the proposal." Staff Legal Bulletin No. 14 specifies that when the stockholder is not the registered holder, the stockholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the stockholder may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, Staff Legal Bulletin No. 14 (Jul. 13, 2001). Further, the Staff has clarified that these proof of ownership letters must come from the "record" holder of the Proponent's stock, and that only Depository Trust

Company ("DTC") participants are viewed as record holders of securities that are deposited at DTC. *See* SLB 14F. Rule 14a-8(f) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time.

Here, as established above, the Company satisfied its obligation under Rule 14a-8 by transmitting to the Representative in a timely manner the Deficiency Notice, which specifically set forth the information and instructions listed above and attached a copy of both Rule 14a-8 and SLB 14F. *See* Exhibit B. However, despite the clear explanation in the Deficiency Notice to provide the requisite documentary support, the Proponent failed to do so. As such, the Proposal may be excluded.

The Staff has consistently concurred with the exclusion of stockholder proposals based on a proponent's failure to provide satisfactory evidence of eligibility under Rule 14a-8(b) and Rule 14a-8(f)(1). *See Exxon Mobil Corp.* (avail. Feb. 13, 2017) (concurring with the exclusion of a stockholder proposal under Rule 14a-8(b) and Rule 14a-8(f) and noting that "the proponent appears to have failed to supply, within 14 days of receipt of ExxonMobil's request, documentary support sufficiently evidencing that she satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b)"); *Cisco Systems, Inc.* (avail. Jul. 11, 2011); *I.D. Systems, Inc.* (avail. Mar. 30, 2011); *Amazon.com, Inc.* (avail. Mar. 29, 2011); *Yahoo! Inc.* (avail. Mar. 24, 2011); *Alcoa Inc.* (avail. Feb. 18, 2009); *Qwest Communications International, Inc.* (avail. Feb. 28, 2008); *Occidental Petroleum Corp.* (avail. Nov. 21, 2007); *General Motors Corp*. (avail. Apr. 5, 2007); *Yahoo! Inc.* (avail. Mar. 29, 2007); *CSK Auto Corp.* (avail. Jan. 29, 2007); *Motorola, Inc.* (avail. Jan. 10, 2005); *Johnson & Johnson* (avail. Jan. 3, 2005); *Agilent Technologies* (avail. Nov. 19, 2004); *Intel Corp.* (avail. Jan. 29, 2004); *Moody's Corp.* (avail. Mar. 7, 2002).

Moreover, the Staff has consistently concurred with the exclusion of a stockholder proposal based on a proponent's failure to provide *any* evidence of eligibility to submit the stockholder proposal. For example, in *General Electric Co.* (avail. Mar. 1, 2019), the Staff concurred with exclusion of a proposal where the company sent a timely and proper deficiency notice to the proponent, which the proponent failed to cure. In particular, the Staff noted that "the [p]roponent appears not to have responded to the [c]ompany's request for documentary support indicating that the [p]roponent has satisfied the minimum ownership requirement for the one-year period required by [R]ule 14a-8(b)." The facts of *General Electric* are the same as those at issue here: the Company sent a timely and proper Deficiency Notice to the Representative, purportedly acting on behalf of the Proponent, and

failed to receive any response providing documentary support indicating that the Proponent has satisfied the ownership requirements of Rule 14a-8(b). Accordingly, consistent with *General Electric*, the Proposal is properly excludable. *See also salesforce.com, inc.* (avail. Feb. 14, 2017) (concurring with the exclusion of a proposal where the proponent failed to provide any response to a deficiency notice sent by the company); *Amazon.com, Inc.* (avail. Mar. 29, 2011) (same); *General Electric Co.* (avail. Dec. 28, 2010) (same); *General Motors Corp.* (avail. Feb. 19, 2008) (same).

As in the precedent cited above, the Proponent failed to provide *any* documentary evidence of ownership of Company shares, either with the Proposal or in response to the Company's timely Deficiency Notice, and has therefore not demonstrated eligibility under Rule 14a-8 to submit the Proposal. Accordingly, we ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

II. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Representative Failed to Demonstrate Authority To Submit The Proposal On Behalf Of The Proponent.

In SLB 14I, the Staff provided additional guidance as to what information must be provided under Rule 14a-8(b) where, as is the case with the Proposal, a stockholder submits a proposal through a representative (*i.e.*, a "proposal by proxy"). In SLB 14I, the Staff indicated that such submission by proxy is consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b) if the stockholder who submits a proposal by proxy provides sufficient documentation describing the stockholder's delegation of authority to the proxy. The Staff stated that where such sufficient documentation has not been provided, there "may be a basis to exclude the proposal under Rule 14a-8(b)." *See* Section D, SLB 14I. The Staff indicated it "would expect this documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder."

The Staff indicated that such documentation is intended to address concerns about proposals by proxy including, "whether [stockholders] may not know that proposals are being submitted on their behalf." *Id*. In addition, the Staff instructed companies seeking exclusion of a proposal under Rule 14a-8(b) based on a stockholder's failure to provide some or all of the information described above that the company "must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect." *Id.* n.12. The Staff has concurred with exclusion of proposals when the proposal was submitted by proxy and the company failed to receive evidence of proper authorization from such proxy. For example, in *Fitbit Inc.* (avail. Mar. 20, 2020), the Staff concurred with exclusion under Rules 14a-8(b) and (f) of a proposal where the authorization letter was deficient, noting that "it does not appear that the [p]roponent has provided the [c]ompany with clear documentation of his authorization for the [r]epresentative to [revise the proposal]." There, the Staff also noted that the company identified the foregoing deficiency in its deficiency notice.

Here, the Proponent did not submit *any* documentary evidence demonstrating the Proponent's proper delegation of authority to the Representative, either with the Proposal or in response to the Company's timely Deficiency Notice, and has therefore not demonstrated eligibility under Rule 14a-8 to submit the Proposal. As in *Fitbit* and as demonstrated above, the Company clearly identified this deficiency in the Deficiency Notice. Further, this situation is even more egregious than in *Fitbit* since there the company had a *deficient* authorization letter, and here the Representative has failed to provide the Company with *any* authorization letter. Accordingly, we ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

III. Waiver Of The 80-Day Requirement In Rule 14a-8(j)(1) Is Appropriate.

We further request that the Staff waive the 80-day filing requirement as set forth in Rule 14a-8(j) for good cause. Rule 14a-8(j)(1) requires that, if a 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." However, Rule 14a-8(j)(1) allows the Staff to waive the deadline if a company can show "good cause."

The Staff previously has granted waivers in similar circumstances where the reason for the delayed submission of a request for "no action" was that the company had been waiting for a response from the proponent to correct deficiencies in the proponent's submission. *See, e.g., Toll Brothers, Inc.* (avail. Jan. 10, 2006); *Toll Brothers, Inc.* (avail. Jan. 5, 2006); *E*TRADE Group, Inc.* (avail. Oct. 31, 2000); *PHP Healthcare Corp.* (avail. Aug. 25, 1998).

As discussed above, the Company repeatedly followed up with the Representative in good faith to give the Representative and Proponent the opportunity to cure the deficiencies, recognizing the potential for holiday- and pandemic-related delays. However, the Representative and Proponent failed to respond to the Company's correspondence. Accordingly, we believe that there is "good cause" for not satisfying the 80-day requirement, and we respectfully request that the Staff waive the 80-day requirement with respect to this letter, and concur in our view that the Proponent did not satisfy Rule 14a-8(b) and Rule 14a-8(f)(1).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the 2021 Proposal from its 2021 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 351-2309 or Heidi Miller, the Company's Assistant Corporate Secretary and Deputy General Counsel, Corporate Governance and Securities, at (773) 454-4735.

Sincerely,

Lori Zyskowski

Enclosures

cc: Rashida La Lande, The Kraft Heinz Company
Heidi Miller, The Kraft Heinz Company
Conrad MacKerron, As You Sow

EXHIBIT A

AS YOU SOW
2150 Kittredge St. Suite 450
Berkeley, CA 94704
www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

VIA COURIER & EMAIL

November 27, 2020

Rashida La Lande
Senior VP and Corporate Secretary
The Kraft Heinz Company
200 East Randolph St., Suite 7600
Chicago, Illinois 60601
Rashida.lalande@kraftheinzcompany.com

Dear Rashida La Lande,

As You Sow is a non-profit organization whose mission is to promote long-term shareholder value through corporate responsibility. We have participated in shareholder dialogues for several years with Kraft Heinz on beverage container recycling and more recently on plastic pollution. We appreciate the initial commitment the company made to begin to address plastic pollution by making all its packaging recyclable, reusable, or compostable by 2025.

However, a recent authoritative report from Pew Charitable Trusts concludes that current commitments by industry and government are far from adequate and if fully implemented, would reduce plastic deposition by only 7%. The report says that without immediate and sustained new commitments in eight areas of the plastics value chain, annual flow of plastic into oceans could nearly triple by 2040. Improved recycling will not be sufficient to stem the plastic tide, and must be coupled with upstream activities like reduction in demand, materials redesign, and substitution. Shareholders are concerned that failure to address these issues will increase risk to brand value.

We therefore call on the company to develop and report on expanded policies to meet the increased efforts called for in the Pew report. To preserve our right to inform shareholders about this urgent new information and the need for an aggressive company response, *As You Sow* is filing a shareholder proposal on behalf of Wallace Global Fund ("Proponent"), a shareholder of Kraft-Heinz for inclusion in Kraft-Heinz's 2021 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. We are happy to engage in dialogue on the issues raised in the proposal in hopes that an agreement can be reached that could result in its withdrawal.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent's concerns.

AS YOU SOW

To schedule a dialogue, please contact me at mack@asyousow.org. Also, please send all correspondence to me **with a copy to shareholderengagement@asyousow.org**.

Sincerely,

Conrad MacKerron
Sr. Vice President

Enclosures

- Shareholder Proposal

cc: ir@kraftheinzcompany.com

WHEREAS: The ocean plastics crisis continues unabated, fatally impacting 260 marine species, and causing up to $2.5 trillion in damage annually to marine ecosystems. Toxins adhere to plastics consumed by marine species, which potentially transfer to human diets. There could be more plastic than fish by weight in oceans by 2050.

Recently, Pew Charitable Trusts released a groundbreaking study, *Breaking the Plastic Wave*, which concluded that if all current industry and government commitments were met, ocean plastic deposition would be reduced by only 7%. Without immediate and sustained new commitments throughout the plastics value chain, annual flow of plastic into oceans could nearly triple by 2040.

Improved recycling will not be sufficient to stem the plastic tide, and must be coupled with upstream activities like reduction in demand, materials redesign, and substitution. "Brand owners, fast-moving consumer goods companies and retailers should lead the transition by committing to reduce at least one-third of plastic demand through elimination, reuse, and new delivery models," the report states, adding that reducing plastic production is the most attractive solution from environmental, economic, and social perspectives.

Competitor Unilever has taken the most significant corporate action to date, agreeing to cut plastic packaging use overall by 100,000 tons by 2025. PepsiCo has committed to substitute recycled content for 35% of virgin plastic in its beverage division. Kraft Heinz has no absolute nor virgin plastic reduction goal.

Companies should set high recycled plastic content goals to support a circular economy. Competitor Proctor & Gamble uses more than 6% recycled plastic content and competitor Nestle SA has a goal to use 15% recycled plastic content by 2025. Kraft Heinz has no recycled plastic content goal.

Up to 30% of Kraft Heinz's packaging is flexible plastic film, which cannot be recycled. Flexible packaging represents 59% of all plastic production but an outsized 80% of plastic leaking into oceans.

The company received a score of D- in an *As You Sow* study ranking corporate leadership on plastic pollution. This ranking demonstrates that Kraft Heinz lags in its commitments, specifically on overall cuts in plastic packaging, increasing use of recycled plastic content, and facilitating recyclability of flexible packaging by 2025.

BE IT RESOLVED: Shareholders request that the board of directors issue a report by December 2021 on plastic packaging, estimating the amount of plastics released to the environment by our use of plastic packaging, from the manufacture of plastic source materials, through disposal or recycling, and describing any company strategies or goals to reduce the use of plastic packaging to reduce these impacts.

SUPPORTING STATEMENT: Proponents note that the report should be prepared at reasonable cost, omitting confidential information, and include an assessment of the reputational, financial, and operational risks associated with continuing to use substantial amounts of plastic packaging while plastic pollution grows unabated. In the board's discretion, the report could also evaluate opportunities for dramatically reducing the amount of plastics used in our packaging through redesign or substitution.

From: Gail Follansbee <gail@asyousow.org>
Sent: Friday, November 27, 2020 8:53:54 PM
To: La Lande, Rashida <Rashida.LaLande@kraftheinz.com>; KraftHeinz Investor Relations <ir@kraftheinz.com>
Cc: Christy Spees <cspees@asyousow.org>; Conrad MacKerron <mack@asyousow.org>; Danielle Fugere <DFugere@asyousow.org>
Subject: Kraft-Heinz - Shareholder Proposals

External Mail

Dear Rashida La Lande,

Attached please find filing documents submitting two shareholder proposals for inclusion in the company's 2021 proxy statement. Paper copies of these documents were sent to your offices by courier service today addressed to yourself at the following address:

The Kraft Heinz Company
200 East Randolph St., Suite 7600
Chicago, Illinois 60601

The courier service arrived before 2pm Central time and was told by the building security that the offices were closed and that they would not accept any deliveries. This was very surprising, as your Investor Relations department was contacted on Wednesday 11/25 to confirm that there would be someone there to sign for these documents, and were told that there would be someone there in the mailroom, today Friday 11/27 to sign for the envelope. Since the courier was prevented from delivering these today, the paper copies will be will be delivered at your office Monday morning 11/30.

It would be much appreciated if you could please confirm receipt of this email.

Thank you very much,
Gail

Gail Follansbee (she/her)
Coordinator, Shareholder Relations
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704
(510)735-8139 (direct line) ~ (650)868-9828 (cell)
gail@asyousow.org | www.asyousow.org

EXHIBIT B

December 4, 2020

VIA OVERNIGHT MAIL AND EMAIL

Conrad MacKerron, Sr. Vice President
As You Sow
2150 Kittredge St. Suite 450
Berkeley, CA 94704
mack@asyousow.org
shareholderengagement@asyousow.org

Dear Mr. MacKerron:

I am writing on behalf of The Kraft Heinz Company (the "Company"), which received on November 27, 2020, the stockholder proposal you submitted on behalf of Wallace Global Fund (the "Proponent") pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2021 Annual Meeting of Stockholders (the "Proposal").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Your correspondence did not include documentation demonstrating that you had the legal authority to submit the Proposal on behalf of the Proponent as of the date the Proposal was submitted (November 27, 2020). In Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB 14I"), the SEC's Division of Corporation Finance ("Division") noted that proposals submitted by proxy, such as the Proposal, may present challenges and concerns, including "concerns raised that shareholders may not know that proposals are being submitted on their behalf." Accordingly, in evaluating whether there is a basis to exclude a proposal under the eligibility requirements of Rule 14a-8(b), as addressed below, SLB 14I states that in general the Division would expect any shareholder who submits a proposal by proxy to provide documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

The documentation that you provided with the Proposal raises the concerns referred to in SLB 14I. Specifically, the Proposal raises the concerns referred to in SLB 14I because no evidence was provided of the Proponent's delegation of authority to you. To remedy this defect, the Proponent should provide documentation that confirms that as of the date you submitted the Proposal, the Proponent had instructed or authorized you to submit the specific proposal to the Company on the Proponent's behalf. The documentation should address each of the bullet points listed in the paragraph above.

To the extent that the Proponent authorized you to submit the Proposal to the Company, please note the following. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that stockholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this defect, the Proponent must submit sufficient proof of the Proponent's continuous ownership of the required number or amount of Company shares for the one-year period preceding and including November 27, 2020, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

(1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 27, 2020; or

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

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

(1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the

Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 27, 2020.

(2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 27, 2020. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including November 27, 2020, the required number or amount of Company shares were continuously held: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 200 East Randolph Street, Suite 7600, Chicago, Illinois 60601. Alternatively, you may transmit any response by email to me at Heidi.Miller@kraftheinz.com.

If you have any questions with respect to the foregoing, please contact me at (773) 454-4735. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

Heidi T. Miller
Assistant Corporate Secretary and Deputy General Counsel, Corporate Governance and Securities

Enclosures

Rule 14a-8 – Shareholder Proposals

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

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

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

> (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.
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> (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.

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://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of

Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

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

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

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

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

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

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

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

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

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

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

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

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

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals.

Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

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

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

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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

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

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

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

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

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

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the

company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

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

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

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

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

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

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

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

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

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

EXHIBIT C

From: "Miller, Heidi" <Heidi.Miller@kraftheinz.com>
Date: Friday, December 4, 2020 at 11:42 AM
To: Conrad MacKerron <mack@asyousow.org>
Cc: Shareholder Engagement <shareholderengagement@asyousow.org>, "Fritz, Nicole" <Nicole.Fritz@kraftheinz.com>, "Smith, Jonah" <Jonah.Smith@kraftheinz.com>
Subject: KHC Stockholder Proposal - Wallace Global Fund

Dear Mr. MacKerron,

We are in receipt of the stockholder proposal you submitted on behalf of Wallace Global Fund. Please find attached a deficiency letter relating to the stockholder proposal.

If you have any questions with respect to the foregoing, please contact me at (773) 454-4735.

Best,
Heidi

Heidi Miller
Assistant Corporate Secretary and Deputy General Counsel,
Corporate Governance and Securities

The Kraft Heinz Company
200 E. Randolph Street
Suite 7600
Chicago, IL 60601
Office: 847.646.6016
Mobile: 773.454.4735
heidi.miller@kraftheinz.com

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399862622450

Delivered
Monday 12/07/2020 at 9:59 am

DELIVERED

Signature not required

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM	TO
Chicago, IL US	BERKELEY, CA US

Shipment Facts

TRACKING NUMBER 399862622450	**SERVICE** FedEx Priority Overnight	**WEIGHT** 0.5 lbs / 0.23 kgs
DELIVERED TO Residence	**TOTAL PIECES** 1	**TOTAL SHIPMENT WEIGHT** 0.5 lbs / 0.23 kgs
TERMS Shipper	**PACKAGING** FedEx Envelope	**SPECIAL HANDLING SECTION** Deliver Weekday, Residential Delivery
STANDARD TRANSIT 12/07/2020 by 10:30 am	**SHIP DATE** Fri 12/04/2020	**ACTUAL DELIVERY** Mon 12/07/2020 9:59 am

Travel History

Local Scan Time

Monday , 12/07/2020		
9:59 am	Berkeley, CA	Delivered Package delivered to recipient address - release authorized
7:39 am	EMERYVILLE, CA	On FedEx vehicle for delivery
6:59 am	EMERYVILLE, CA	At local FedEx facility
4:10 am	OAKLAND, CA	Departed FedEx location
Sunday , 12/06/2020		
4:29 pm	OAKLAND, CA	Arrived at FedEx location

2:52 pm	MEMPHIS, TN	Departed FedEx location
Saturday , 12/05/2020		
12:08 pm	MEMPHIS, TN	Arrived at FedEx location
Friday , 12/04/2020		
8:06 pm	CHICAGO, IL	Left FedEx origin facility
3:29 pm	CHICAGO, IL	Picked up
2:39 pm		Shipment information sent to FedEx
2:39 pm	CHICAGO, IL	Picked up Tendered at FedEx Office

EXHIBIT D

From: Shareholder Engagement <shareholderengagement@asyousow.org>
Sent: Monday, December 7, 2020 12:38 PM
To: Miller, Heidi <Heidi.Miller@kraftheinz.com>; Conrad MacKerron <mack@asyousow.org>
Cc: Fritz, Nicole <Nicole.Fritz@kraftheinz.com>; Smith, Jonah <Jonah.Smith@kraftheinz.com>; gail@asyousow.com
Subject: Re: KHC Stockholder Proposal - Wallace Global Fund

External Mail

Hello Heidi,

Confirming receipt of this Deficiency notice. We will respond within 14 days of receipt of this notice, so by 12/18.

Best,
Gail

Gail Follansbee (she/her)
Coordinator, Shareholder Relations
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704
(510) 735-8139 (direct line) ~ (650) 868-9828 (cell)
gail@asyousow.org | www.asyousow.org

EXHIBIT E

From: Fritz, Nicole
Sent: Tuesday, December 22, 2020 10:08 AM
To: Conrad MacKerron <mack@asyousow.org>; gail@asyousow.com
Cc: Smith, Jonah <Jonah.Smith@kraftheinz.com>; Shareholder Engagement <shareholderengagement@asyousow.org>; Miller, Heidi <Heidi.Miller@kraftheinz.com>
Subject: RE: KHC Stockholder Proposal - Wallace Global Fund

Dear Ms. Follansbee and Mr. MacKerron,

We wanted to follow up regarding your email from December 7. We have not received proof of ownership and wanted to confirm whether the broker letters are in the mail and we should expect to receive them soon.

Kind regards,
Nicole

Nicole Fritz
Counsel, Corporate & Securities | The Kraft Heinz Company
nicole.fritz@kraftheinz.com
she/her

EXHIBIT F

From: Fritz, Nicole <Nicole.Fritz@kraftheinz.com>
Sent: Monday, January 4, 2021 4:15 PM
To: Conrad MacKerron
Cc: Smith, Jonah; Shareholder Engagement; Miller, Heidi; gail@asyousow.com
Subject: RE: KHC Stockholder Proposal - Wallace Global Fund

Dear Mr. MacKerron,

I wanted to follow up on my email below given the holidays. We received an email undeliverable notification for Ms. Follansbee and a phone error message at her office number provided in correspondence below. We have not yet received proof of ownership for the stockholder proposal you submitted on behalf of Wallace Global Fund. Are you able to confirm whether a broker letter is in the mail, which we should expect to receive?

Kind regards,
Nicole

Nicole Fritz
Counsel, Corporate & Securities | The Kraft Heinz Company
nicole.fritz@kraftheinz.com
she/her