



DIVISION OF
CORPORATION FINANCE

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

February 15, 2022

Richard B. Alsop
Shearman & Sterling LLP

Re: Dow Inc. (the "Company")
Incoming letter dated December 13, 2021

Dear Mr. Alsop:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Andrew Behar (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(e)(2) because the Company's Office of the Corporate Secretary received it after the deadline for submitting proposals. We note that the Proponent attempted to email the Proposal to the Company's Office of the Corporate Secretary, but used an incorrect email address. To avoid controversy with respect to proper email delivery of shareholder proposals, we encourage shareholder proponents to contact the company to obtain the correct email address for submitting proposals. We also encourage companies to provide email addresses upon request. *See* Staff Legal Bulletin No. 14L (Nov. 3, 2021). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(e)(2). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Conrad MacKerron
As You Sow

SHEARMAN & STERLING LLP

599 Lexington Avenue
New York, NY 10022-6069
+1.212.848.4000

December 13, 2021

VIA ELECTRONIC MAIL

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

Re: *Dow Inc.*
Stockholder Proposal of Andrew Behar – Single-Use Plastics Report
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Dow Inc., a Delaware corporation (“Dow”), pursuant to Rule 14a-8(b)(1) under the Securities Exchange Act of 1934, intends to omit the stockholder proposal and statements in support thereof (the “Proposal”) received from As You Sow as representative (the “Representative”) on behalf of Andrew Behar (the “Proponent”), from its proxy statement (the “2022 Proxy Statement”) and form of proxy (collectively, the “2022 Proxy Materials”) for its 2022 Annual Meeting of Stockholders (the “2022 Annual Meeting”). A copy of the Proposal is attached hereto as Exhibit A.

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before Dow intends to file its definitive 2022 Proxy Materials with the Commission; and
- simultaneously sent copies of this correspondence to the Representative on behalf of the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 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 Representative that if the Proponent, or the Representative on his behalf, 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 Dow pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by stockholders at the 2022 Annual Meeting:

Resolved: Shareholders request that Dow’s Board issue an audited report addressing whether and how a significant reduction in virgin plastic demand, as set forth in *Breaking the Plastic Wave’s System Change Scenario* to reduce ocean plastic pollution, would affect the Company’s financial position and assumptions underlying its financial statements. The report should be at reasonable cost and omit proprietary information.

Supporting Statement: Proponents recommend that, in the Board’s discretion, the report include:

- Quantification (in tons and/or as a percentage of total) of the company’s polymer production for SUP markets;
- A summary or list of the company’s existing and planned investments that may be materially impacted by the SCS;
- Any future plans or goals to shift its business model from virgin to recycled plastics.

See Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in Dow’s view that the Proposal may be excluded from Dow’s 2022 Proxy Materials for the 2022 Annual Meeting pursuant to:

- Rule 14a-8(e)(2) because the Proposal was received by Dow at its principal executive offices after the deadline for submitting stockholder proposals for inclusion in Dow’s 2022 Proxy Materials; and
- Rules 14a-8(b) and 14a-8(f)(1) because the information provided by the Proponent’s proof of requisite stock ownership did not sufficiently demonstrate his eligibility to submit a shareholder proposal after receiving proper notice of such deficiency from Dow.

PROCEDURAL BACKGROUND

On March 5, 2021, Dow filed with the Commission, and commenced distribution to its stockholders of, its proxy statement (the “2021 Proxy Statement”) and form of proxy (collectively, the “2021 Proxy Materials”) for its 2021 Annual Meeting of Stockholders (the “2021 Annual Meeting”). As required by Rule 14a-5(e), Dow included in its 2021 Proxy Materials the deadline for receiving stockholder proposals submitted for inclusion in its 2022 Proxy Materials for the its

2022 Annual Meeting, calculated in the manner prescribed in Rule 14a-8(e). Specifically, the following disclosure appeared on page X of the 2021 Proxy Statement:

Future Stockholder Proposals

If you satisfy the requirements of the rules and regulations of the SEC and wish to submit a proposal to be considered for inclusion in the Company's proxy materials for the 2022 Annual Meeting of Stockholders of Dow Inc. ("2022 Meeting"), pursuant to Rule 14a-8, please send it to *the Office of the Corporate Secretary at 2211 H.H. Dow Way, Midland, Michigan 48674. Under SEC Exchange Act Rule 14a-8, these proposals must be received no later than the close of business on November 5, 2021.* (emphasis added)

A copy of page X of the 2021 Proxy Statement is attached to this letter as Exhibit B. As described below, Dow had calculated the November 5, 2021 deadline in the manner prescribed in Rule 14a-8(e) and Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14").

On November 5, 2021 at 5:32 PM Eastern Time (the "Submission Date"), the Representative sent an e-mail which included a written statement from the Proponent dated November 2, 2021 and the Proposal dated November 5, 2021, but did not include any proof of ownership of the Proponent. The Proposal was sent via e-mail only. See Exhibit A.

As required by Rule 14a-8(f), Dow sent a proper notice of deficiency (the "Deficiency Notice," which is included in Exhibit C to this letter) to the Representative by overnight courier and e-mail on November 17, 2021, which was within 14 calendar days of receipt of the Proposal. In the Deficiency Notice, Dow had informed the Proponent of the eligibility requirements of Rule 14a-8 and how he could cure the procedural deficiencies identified and noted in the accompanying email to the Representative that "[t]his email is not intended as a waiver of any rights or claims Dow may have to seek to exclude the proposal under applicable SEC rules and regulations." Specifically, the Deficiency Notice stated, among other matters:

- (i) that Dow had not received acceptable documentation verifying appropriate proof of ownership pursuant to Rule 14a-8(b);
- (ii) the Ownership Requirements of Rule 14a-8(b);
- (iii) the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including the requirement for the statement to verify that the Proponent continuously held the requisite amount of shares to satisfy at least one of the Ownership Requirements of Rule 14a-8(b); and
- (iv) copies of Rule 14a-8, Staff Legal Bulletin No. 14F, dated October 18, 2011, and Staff Legal Bulletin No. 14G, dated October 16, 2012.

On November 26, 2021, within the required 14 calendar day timeframe, the Proponent responded to the Deficiency Notice by submitting a copy of a letter from RBC Capital Markets, LLC dated November 23, 2021 (the “Broker Letter”), which indicated that the Proponent has beneficially held 83.9953 shares of Dow representing a market value of approximately \$4,970.84 since September 22, 2011. See Exhibit D.

The Proponent could not have held Dow’s common shares since September 22, 2011 as noted in the Broker Letter because such shares were not issued and outstanding before April 2, 2019, which was the effective date (the “Effective Date”) of Dow’s separation from DowDuPont Inc. (“DowDuPont”).

No further information has been provided by the Proponent to (i) indicate the requisite number of shares of DowDuPont’s common stock held and the duration of time the Proponent has continuously held such shares before the Effective Date or (ii) clarify whether the Proponent has held Dow’s common stock since the Effective Date to the Submission Date and whether the Proponent continuously held 83.9953 shares of Dow’s common stock representing a market value of approximately \$4,970.84 since the Effective Date.

ANALYSIS

I. The Proposal May Be Excluded from the 2022 Proxy Materials Pursuant to Rule 14a-8(e)(2) Because the Proposal Was Received by Dow at its Principal Executive Offices After the Deadline for Submitting Stockholder Proposals for Inclusion in the 2022 Proxy Materials

Under Rule 14a-8(f)(1) a company may exclude a stockholder proposal if the proponent fails to follow one of the eligibility or procedural requirements contained in Rule 14a-8. Ordinarily, a company may exclude a proposal on this basis only after it has timely notified the proponent of an eligibility or procedural problem and the proponent has timely failed to adequately correct the problem. However, as per Rule 14a-8(f)(1), a company “need not provide [the proponent] such notice of a deficiency if the deficiency cannot be remedied, *such as if [the proponent] fail[s] to submit a proposal by the company’s properly determined deadline*” (emphasis added).

One of the eligibility or procedural requirements contained in Rule 14a-8 is the requirement to deliver a proposal by the applicable deadline. If a proponent is submitting a proposal “for the company’s annual meeting, [the proponent] can, in most cases, find the deadline in [the prior] year’s proxy statement.” See Rule 14a-8(e)(1). Under Rule 14a-8(e)(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.¹

SLB 14, Section C.3.b indicates that, to calculate the deadline, a company should “[i] start with the release date disclosed in the previous year’s proxy statement; [ii] increase the year by one; and [iii] count back 120 calendar days.” Consistent with this guidance, to calculate the deadline for receiving stockholder proposals submitted for its 2022 Annual Meeting, Dow (i) started with the release date of its 2021 Proxy Statement (i.e., March 5, 2021), (ii) increased the year by one (i.e., March 5, 2022), and (iii) counted back 120 calendar days. As per SLB 14, Section C.3.b, “day one” for purposes of this calculation was March 4, 2022, resulting in a deadline of “close of business on November 5, 2021” for receiving stockholder proposals submitted for inclusion in Dow’s 2022 Proxy Materials, as disclosed on page X of the 2021 Proxy Statement. See Exhibit B.

The close of business at Dow’s principal executive offices is 5:00 PM Eastern Time. As noted above and demonstrated in Exhibit A to this letter, Dow did not receive the Representative’s email including the Proposal until 32 minutes after close of business on November 5, 2021, but in any event such notice was not properly submitted. Dow’s 2021 Proxy Statement specifically states that stockholders should send proposals to the Office of the Corporate Secretary’s physical mailing address by close of business on November 5, 2021 and does not provide a specific e-mail address that is used for such purpose. The Representative attempted to submit the Proposal via e-mail only to Dow’s General Counsel and Corporate Secretary but used an erroneous e-mail address, and thus the Proposal was never received in the General Counsel and Corporate Secretary’s e-mail inbox. The Representative also submitted the Proposal via e-mail only to a generic e-mail address used by Dow’s Investor Relations department, which is not part of the Office of Corporate Secretary. These e-mail addresses are not designed to receive stockholder proposals nor monitored for the purpose of timely responding to such proposals. Thus, not only was the Proposal sent after the close of business on November 5, 2021, but it was also sent to email addresses that were not designed specifically to receive stockholder proposals, resulting in Dow’s Office of Corporate Secretary not knowing it had received the Proposal until Monday, November 8, 2021, which was three days after the deadline for submission.

The Staff strictly construes the deadline for stockholder proposals under Rule 14a-8, permitting companies to exclude from proxy materials those proposals received at companies’ principal executive offices after the deadline. See, e.g., *Walgreen Boots Alliance, Inc.* (avail October 12, 2021) (concurring with the exclusion of a proposal received two days after the submission deadline); *Hewlett Packard Enterprise Co.* (avail. Jan. 15, 2021) (concurring with the exclusion of a proposal received two days after the submission deadline); *General Dynamics Corp.*

¹ Also under Rule 14a-8(e)(2), “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.” This portion of Rule 14a-8(e)(2) is not applicable here because Dow’s 2021 Annual Meeting was held on April 15, 2021 and Dow’s 2022 Annual Meeting will be held within 30 days of the anniversary of that date.

(avail. Jan. 8, 2021, *recon. denied* Mar. 17, 2021) (concurring with the exclusion of a proposal received four days after the submission deadline); *DTE Energy Co. (Moore)* (avail. Dec. 18, 2018) (concurring with the exclusion of a proposal received two days after the submission deadline); *Verizon Communications, Inc.* (avail. Jan. 4, 2018) (concurring with the exclusion of a proposal received one day after the submission deadline); *Dean Foods Co.* (avail. Jan. 27, 2014) (concurring with the exclusion of a proposal received three days after the submission deadline); *PepsiCo, Inc.* (avail. Jan. 3, 2014) (same); *Tootsie Roll Industries, Inc.* (avail. Jan. 14, 2008) (concurring with the exclusion of a proposal received two days after company's deadline, even when deadline fell on a Saturday).

Here, Dow had properly disclosed in its 2021 Proxy Statement the deadline of "close of business on November 5, 2021" for receipt of stockholder proposals for its 2022 Annual Meeting and the physical mailing address for such submissions. However, the Proposal was only received by Dow after the properly calculated and noticed deadline to submit stockholder proposals for inclusion in the 2022 Proxy Materials. In addition, the Representative submitted the Proposal via e-mail only, instead of sending the Proposal to the physical address as Dow specifically instructed its shareholders in the 2021 Proxy Statement. The e-mail addresses used by the Representative are not designed to receive stockholder proposals nor monitored for the purpose of timely responding to such proposals, resulting in Dow's Office of Corporate Secretary not knowing it had received the Proposal until three days after the deadline for submission. The Proponent was on notice of where and when to send the Proposal but did not follow the instructions set forth in the 2021 Proxy Statement for submission of stockholder proposals. Question C.3.d of SLB 14 encourages stockholders to "submit a proposal by a means that allows him or her to determine when the proposal was received at the company's principal executive offices," and the Proponent's email was not received until 32 minutes after Dow's stockholder proposal submission deadline.

Accordingly, consistent with the foregoing precedents, Dow intends to exclude the Proposal from its 2022 Proxy Materials for its 2022 Annual Meeting because it was not received by Dow within the time frame required under Rule 14a-8(e)(2) as indicated in its 2021 Proxy Statement.

II. The Proposal May Be Excluded Under Rule 14a-8(b) and Rule 14a-8(f)(1) Because the Proponent Failed to Demonstrate Eligibility to Submit the Proposal.

Rule 14a-8(b) requires that in order to be eligible to submit a proposal for inclusion in Dow's proxy statement for its 2022 Annual Meeting, the Proponent must, among other things, demonstrate that the Proponent continuously held:

- (1) at least \$2,000 in market value of Dow's common stock entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) at least \$15,000 in market value of Dow's common stock entitled to vote on the Proposal for at least two years preceding and including the Submission Date;

- (3) at least \$25,000 in market value of Dow's common stock entitled to vote on the Proposal for at least one year preceding and including the Submission Date; or
- (4) at least \$2,000 in market value of Dow's common stock entitled to vote on the Proposal for at least one year as of January 4, 2021 and continuously maintained a minimum investment of at least \$2,000 of such common stock from January 4, 2021 through the Submission Date (each, an "Ownership Requirement," and collectively, the "Ownership Requirements").

The Broker Letter stated that the Proponent has beneficially held 83.9953 shares of Dow's common stock since September 22, 2011, representing a market value of approximately \$4,970.84. Such ownership of the Proponent is not possible since no such shares of Dow were issued and outstanding at the time.

On April 1, 2019, DowDuPont announced that it had completed the separation, distribution and related internal reorganization transactions of its materials science division (the "Separation"). Pursuant to the Separation, holders of DowDuPont common stock received one share of Dow common stock for three shares of DowDuPont common stock they held as of the close of business on March 21, 2019 in addition to cash in lieu of fractional shares of Dow common stock held. Once the Separation was completed, as of the Effective Date, Dow became an independent, publicly traded company and its common stock began trading on the New York Stock Exchange under the symbol "DOW." According to the Broker Letter, the Proponent appears to have received shares of Dow's common stock in connection with the Separation, but the Broker Letter does not indicate the requisite number of DowDuPont's common shares held or the duration of time the Proponent continuously held such shares before the Effective Date. Similarly, the Broker Letter does not clarify when the Proponent had started holding Dow's common shares on or after the Effective Date and whether the Proponent continuously held 83.9953 shares of Dow's common stock on or after the Effective Date to the Submission Date.

Rule 14a-8(f)(1) 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 deficiency and the proponent fails to correct the deficiency within the required time. Dow had properly requested the Proponent to provide acceptable documentation that demonstrates that the Proponent has held the requisite amount of shares for the necessary time period to satisfy at least one of the Ownership Requirements to be eligible to submit the Proposal for inclusion in Dow's proxy statement for its 2022 Annual Meeting. Notably, the Broker Letter does not provide any information on the Proponent's beneficial ownership of DowDuPont's common stock before the Separation and Dow's common stock after the Separation. Thus, the Proponent failed to provide the necessary information to correct the deficiency within the required time to establish that he is eligible to submit a proposal for inclusion in Dow's 2022 Proxy Materials for its 2022 Annual Meeting.

In a similar context, when evaluating shareholder proposals submitted to companies that have recently completed merger transactions, the Staff has consistently taken the position that a former stockholder of a company that is acquired does not become a stockholder of the continuing company until the effective time of the merger. The rationale for such position is that acquisition of voting securities of a continuing company in connection with a plan of merger constitutes a separate sale and purchase of securities for the purposes of the federal securities laws. *See, e.g., AECOM* (avail. Nov. 18, 2015); *Eaton Corporation plc* (avail Feb. 11, 2014); *Merck & Co., Inc.* (avail. Mar. 16, 2011); *Wendy's/Arby's Group, Inc.* (avail Mar. 19, 2009); *Green Bankshares, Inc.* (avail. Feb. 13, 2008); *AT&T Corp.* (avail. Jan. 18, 2007); *ConocoPhillips* (avail. Mar. 24, 2003); and *Exelon Corporation* (avail Mar. 15, 2001).

In *Green Bankshares, Inc.* (avail. Feb. 13, 2008), the Staff concurred with the exclusion of a proposal under Rule 14a-8(b) where the proponent received shares of Green Bankshares, Inc. upon its acquisition of Civitas BankGroup, Inc. The merger was completed on May 18, 2007 and Green Bankshares, Inc. received the shareholder proposal on December 20, 2007. Even though the proponent held target company shares for over one year, the Staff concurred with the exclusion of the proposal, stating:

We note in particular that the proponent acquired shares of Green Bankshares voting securities in connection with a plan of merger involving Green Bankshares. In light of the fact that the transaction in which the proponent acquired these shares appears to constitute a separate sale and purchase of securities for the purposes of the federal securities laws, it is our view that the proponent's holding period for Green Bankshares shares did not commence earlier than May 18, 2007, the effective time of the merger.

Similarly, in *AT&T Corp.* (avail. Jan. 18, 2007), the Staff concurred with the exclusion of a proposal under Rule 14a-8(b) where the proponent originally held shares in AT&T Corp. and received shares of AT&T Inc. upon AT&T Corp.'s merger with a wholly-owned subsidiary of AT&T Inc. The merger was completed on November 18, 2005. In concurring with the exclusion, the Staff stated that "...it is our view that the proponent's holding period for AT&T Inc. shares did not commence earlier than November 18, 2005, the effective time of the merger." *See also ConocoPhillips* (avail. Mar. 24, 2003) (granting no-action relief under Rule 14a-8(b) where the proponent received shares in the company pursuant to a merger that took place three months before submitting proposal even though the proponent held target company shares for over a year); and *Exelon Corporation* (avail Mar. 15, 2001) (granting no-action relief under Rule 14a-8(b) where the proponent received shares in the company pursuant to a merger that took place three weeks before submitting proposal even though the proponent held target company shares for over three years).

As was the case in each of the no-action letters discussed above, the Proponent seems to have received Dow's common stock in connection with Dow's Separation from DowDuPont. Therefore, in the absence of clear information demonstrating (i) the requisite number of shares of DowDuPont's common stock held and the duration of time the Proponent continuously held such shares before the Effective Date and (ii) the requisite number of Dow's common stock held and

the duration of time the Proponent continuously held such shares on or after the Effective Date, the Proponent does not sufficiently demonstrate that he has continuously held the requisite amount of shares for the necessary time period to satisfy at least one of the Ownership Requirements of Rule 14a-8(b).

Although the Broker Letter stated that the Proponent has continuously held Dow's common stock since September 22, 2011, such holding period is not possible under the circumstances noted above. Dow's common stock has not been in existence for the past three years and the Proponent has not provided any additional information regarding the number of shares held and the duration of holding period for each of DowDuPont and Dow's common stock before and after the Separation, respectively.

Accordingly, consistent with the precedents cited above, Dow intends to exclude the Proposal from its 2022 Proxy Materials for its 2022 Annual Meeting. Despite receiving a timely and proper Deficiency Notice pursuant to Rule 14a-8(f)(1), the Proponent has not sufficiently demonstrated that he has continuously held the requisite number of shares for the necessary duration of time to satisfy at least one of the Ownership Requirements of Rule 14a-8(b).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur with Dow's view and confirm that the Staff will not recommend enforcement action to the Commission if Dow excludes the Proposal from its 2022 Proxy Materials. If the Staff does not concur with Dow's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its response. 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 Richard B. Alsop at (212) 848-7333 or Richard.Alsop@Shearman.com. Please let us know if we can be of any further assistance in this matter.

Office of Chief Counsel
Division of Corporation Finance
December 13, 2021
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Respectfully yours,

A handwritten signature in black ink that reads "Richard Alsop". The signature is written in a cursive, flowing style.

Richard B. Alsop

cc: Joshua Romo, Energy & Plastics Associate, c/o As You Sow
As You Sow, Representative
Andrew Behar, Proponent
Amy E. Wilson, General Counsel and Corporate Secretary, Dow Inc.
Jonathan P. Wendt, Assistant Secretary, Office of the Corporate Secretary, Dow Inc.

Attachments

Exhibit A



VIA EMAIL

November 5, 2021

Amy Wilson
General Counsel and Corporate Secretary
2211 H.H. Dow Way
Midland, MI 48674
awilson@dow.com

Dear Ms. Wilson,

As You Sow is filing a shareholder proposal on behalf of Andrew Behar (“Proponent”), a shareholder of Dow Inc, for inclusion in Dow Inc 2022 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.

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.

To schedule a dialogue, please contact me at mack@asyousow.org and my associate Joshua Romo at jromo@asyousow.org. Also please send all correspondence **with a copy to** shareholderengagement@asyousow.org.

Sincerely,

Conrad MacKerron
Waste Program Manager

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: ir@dow.com

Whereas: Plastics, with a lifecycle social cost at least ten times higher than its market price, actively threaten the world’s oceans, wildlife, and public health.¹ Concern about the growing scale and impact of global plastic pollution has elevated the issue to crisis levels.^{2,3} Of particular concern are single-use plastics (SUPs)⁴ which make up the largest component of the 11 million metric tons of plastic ending up in waterways annually.⁵ Without drastic action, this amount could triple by 2040.⁶

In response to the plastic pollution crisis, countries and major packaging brands are beginning to drive reductions in virgin plastic use.^{7,8,9}

Several studies demonstrate that a significant absolute reduction in virgin plastic demand is critical to curbing the flow of plastic into oceans.¹⁰ One of the most robust reduction pathways is presented in the widely-respected report, *Breaking the Plastic Wave*, which found that plastic leakage into the ocean can be feasibly reduced by 80% under its System Change Scenario (SCS), which is based on a significant absolute reduction of virgin SUPs.^{11,12}

BP has recognized the potential disruption that global SUP reductions could have on the oil industry in its *2019 Outlook*, where it found a global SUP ban by 2040 would reduce oil demand growth by 60%.¹³

The future under the SCS – one built on recycled plastics and circular business models – looks drastically different than today’s linear take-make-waste production model. Several implications of the SCS, including a one-third absolute demand reduction (mostly of virgin SUPs) and immediate reduction of new investment in virgin production, are at odds with Dow’s planned investments.¹⁴

Dow was recently identified as the 2nd largest global producer of SUP-bound polymers, with 5.6 million metric tons produced in 2019, an estimated 60% of its total polymer production.¹⁵ While Dow states a commitment “to stop the waste and close the loop,” it fails to meaningfully address the potential for regulatory restrictions and/or significant disruption in demand for virgin plastic, both of which could result in stranded assets.^{16,17}

¹ https://wwfint.awsassets.panda.org/downloads/wwf_pctsee_report_english.pdf

² <https://www.science.org/doi/10.1126/sciadv.abd0288>

³ <https://www.science.org/doi/10.1126/sciadv.1700782>

⁴ As defined by the European Union, a global pioneer in SUP reduction, at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0904&from=EN#page=8>

⁵ <https://www.minderoo.org/plastic-waste-makers-index/findings/executive-summary/>

⁶ <https://www.nationalgeographic.com/science/article/plastic-trash-in-seas-will-nearly-triple-by-2040-if-nothing-done>

⁷ <https://www.pbs.org/newshour/science/bold-single-use-plastic-ban-kicks-europes-plastic-purge-into-high-gear>

⁸ <https://www.unep.org/resources/report/legal-limits-single-use-plastics-and-microplastics>

⁹ <https://www.unilever.com/news/press-releases/2019/unilever-announces-ambitious-new-commitments-for-a-waste-free-world.html>

¹⁰ <https://www.theguardian.com/environment/2021/jul/01/call-for-global-treaty-to-end-production-of-virgin-plastic-by-2040>

¹¹ https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave_report.pdf

¹² <https://www.science.org/doi/full/10.1126/science.aba9475>

¹³ <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/energy-outlook/bp-energy-outlook-2019.pdf#page=18>

¹⁴ <https://www.chemanager-online.com/en/news/dow-aiming-rebuild-plastics-portfolio>

¹⁵ <https://www.minderoo.org/plastic-waste-makers-index/data/flows/#/sankey/global/10>

¹⁶ https://corporate.dow.com/documents/about/066-00338-01-2020-esg-report.pdf#AW_Dow%20ESG%20Report_2020_061821.indd%3AClimate%20Progress%3A886

¹⁷ <https://www.forbes.com/sites/scottcarpenter/2020/09/05/why-the-oil-industrys-400-billion-bet-on-plastics-could-backfire/?sh=6e099bd843fe>

Resolved: Shareholders request that Dow's Board issue an audited report addressing whether and how a significant reduction in virgin plastic demand, as set forth in *Breaking the Plastic Wave's* System Change Scenario to reduce ocean plastic pollution, would affect the Company's financial position and assumptions underlying its financial statements. The report should be at reasonable cost and omit proprietary information.

Supporting Statement: Proponents recommend that, in the Board's discretion, the report include:

- Quantification (in tons and/or as a percentage of total) of the company's polymer production for SUP markets;
- A summary or list of the company's existing and planned investments that may be materially impacted by the SCS;
- Any future plans or goals to shift its business model from virgin to recycled plastics.

November 2, 2021

Andrew Behar
CEO
As You Sow
2020 Milvia Street, Suite 500
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned (“Stockholder”) authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2022 proxy statement, The resolution at issue relates to the below described subject.

Stockholder: Andrew Behar

Company: Dow Inc

Subject: Petrochemical Risks: Single-Use Plastics

The Stockholder has continuously owned over \$2,000 worth of Company stock, with voting rights, since before January 4, 2020 and will hold the required amount of stock through the date of the Company’s annual meeting in 2022.

The Stockholder gives *As You Sow* the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available for a meeting with Dow Inc regarding this shareholder proposal, at the following days/times: between: 11/15/2021 - 12/3/2021 Monday – Friday and between the hours of 9:00am and 5:30pm, Central Time
Stockholder should provide 2 dates within the following time frame:

Date Monday 11/22/21 Time 3:00pm Central

Date Monday 11/29/21 Time 4:00 pm Central

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates: abehar@asyousow.org

Any correspondence regarding meeting dates must **also be sent to my representative:**

Conrad MacKerron, Waste Program Manager at mack@asyousow.org

Joshua Romo, Energy & Plastics Associate at jromo@asyousow.org

and to shareholderengagement@asyousow.org.

The Stockholder also authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:
ANDREW BEHAR
AE21D06EE67E4E1...

ANDREW BEHAR

Shareholder

From: [Gail Follansbee](#)
To: awilcon@dow.com; [Dow Investor Relations](#)
Cc: [Conrad MacKerron](#); [Joshua Romo](#); [Rachel Lowy](#)
Subject: Re: Dow - Shareholder Proposal.Filing
Date: Friday, November 05, 2021 5:32:52 PM
Attachments: [22.DOW.1 Filing Packet.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

RE-SENDING with the corrected date

Dear Ms. Wilson,

Attached please find filing documents submitting a shareholder proposal for inclusion in the company's 2022 proxy statement.

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

Thank you and best regards,
Gail

Gail Follansbee (she/her)

Coordinator, Shareholder Relations

As You Sow

2020 Milvia Street, Suite 500

Berkeley, CA 94704

(510) 735-8158 x 718 (work) ~ (650) 868-9828 (cell)

gail@asyousow.org | www.asyousow.org

Exhibit B

Additional Information

Future Stockholder Proposals

If you satisfy the requirements of the rules and regulations of the SEC and wish to submit a proposal to be considered for inclusion in the Company's proxy materials for the 2022 Annual Meeting of Stockholders of Dow Inc. ("2022 Meeting"), pursuant to Rule 14a-8, please send it to the Office of the Corporate Secretary at 2211 H.H. Dow Way, Midland, Michigan 48674. Under SEC Exchange Act Rule 14a-8, these proposals must be received no later than the close of business on November 5, 2021.

Future Annual Meeting Business

Under the Company's Bylaws, if you wish to raise items of proper business directly at an annual meeting (including Director nominations outside of the proxy access process) other than stockholder proposals presented under Rule 14a-8 for inclusion in the Company's proxy materials, you must give advance written notification to the Office of the Corporate Secretary at 2211 H.H. Dow Way, Midland, Michigan 48674. For the 2022 Meeting, written notice must be received by the Office of the Corporate Secretary between the close of business on November 5, 2021, and the close of business on December 5, 2021. However, as provided in the Bylaws, different deadlines apply if the 2022 Meeting is called for a date that is not within thirty days before or after the anniversary of the 2021 Meeting; in that event, written notice must be received by the Office of the Corporate Secretary no earlier than the close of business on the 120th day prior to the 2022 Meeting and no later than the close of business on the later of the 90th day prior to the 2022 Meeting or the 10th day following the date on which public disclosure of the date of such meeting is first made by the Company. Such notices must comply with the procedural and content requirements of the Bylaws. If notice of a matter is not received within the applicable deadlines or does not comply with the Bylaws, the chairman of the annual meeting may refuse to introduce such matter. If a stockholder does not meet these deadlines, or does not satisfy the requirements of Rule 14a-4 of the Exchange Act, the persons named as proxies will be allowed to use their discretionary voting authority when and if the matter is raised at the annual meeting. The full text of the Bylaws is available on the Company's website at investors.dow.com.

Future Director Nominees through Proxy Access

Under the Company's Bylaws, if you wish to nominate a director through proxy access, you must give advance written notification to the Office of the Corporate Secretary at 2211 H.H. Dow Way, Midland, Michigan 48674. For the 2022 Meeting, written notice must be received by the Office of the Corporate Secretary between the close of business on October 6, 2021, and the close of business on November 5, 2021. Such notices must comply with the procedural and content requirements of the Bylaws. The full text of the Bylaws is available on the Company's website at investors.dow.com.

Multiple Stockholders with the Same Address

In accordance with a notice sent previously to stockholders with the same surname who share a single address, only one notice or set of proxy materials will be sent to an address unless contrary instructions were received from any stockholder at that address. This practice, known as "householding," is designed to reduce printing and postage costs. If you did not respond that you did not want to participate in householding, you were deemed to have consented to the practice. If you are a registered stockholder, you may revoke your consent at any time by sending your name and your holder identification number to the Office of the Corporate Secretary at 2211 H.H. Dow Way, Midland, Michigan 48674. If you hold your stock with a bank or broker, you may revoke your consent to householding at any time by contacting



Exhibit C



November 17, 2021

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

As You Sow
2020 Milvia Street, Suite 500
Berkeley, California 94704
Attention: Conrad MacKerron, Waste Program Manager
mack@asyousow.org

Subject: Stockholder Proposal – Single Use Plastics

Dear Mr. MacKerron:

We received a written statement from Mr. Andrew Behar (the “Proponent”) dated November 2, 2021 including the stockholder proposal dated November 5, 2021 (the “Proposal”) that was purportedly submitted on behalf of Mr. Andrew Behar (the “Proponent”) to Dow Inc. (“Dow” or the “Company”) on November 5, 2021 (the “Submission Date”) pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) for inclusion in the proxy statement for Dow’s 2022 Annual Meeting of Stockholders (the “2022 Annual Meeting”). We received notice of the Proposal via e-mail only. We note that the Proposal was not directed to a valid email or the Office of the Corporate Secretary and was received after close of business on the deadline for submission as listed in our 2021 Proxy Statement. The contents of this letter, including without limitation acknowledging receipt of the Proposal or the request for appropriate proof of ownership is in no way intended as a waiver of any right of a basis to exclude the Proposal.

The written statement from the Proponent designates you to act on the Proponent’s behalf with regards to any and all aspects of the Proposal.

The Proposal contains a procedural deficiency, which Securities and Exchange Commission (“SEC”) regulations require us to bring to your attention.

Proof of Ownership

As of the date hereof, the Company has not received acceptable documentation verifying appropriate proof of ownership pursuant to Rule 14a-8(b), which is required to demonstrate that the Proponent is eligible to submit a proposal for inclusion in Dow’s proxy statement for its 2022 Annual Meeting. The Proponent’s written statement dated November 2, 2021 states that the Proponent has “continuously owned over \$2,000 worth of Company stock, with voting rights, since before January 4, 2020 and will hold the required amount of stock through the date of the Company’s annual meeting in 2022.” By this letter, I am requesting that you provide to us acceptable documentation that specifies the time period during which the Proponent has held Dow’s common stock and that the Proponent has continuously held such shares in an amount that satisfies at least one of the Ownership Requirements (defined below) to be eligible to submit the Proposal for inclusion in Dow’s proxy statement for its 2022 Annual Meeting.

Rule 14a-8(b) of the Exchange Act requires that in order to be eligible to submit a proposal for inclusion in Dow's proxy statement for its 2022 Annual Meeting, the Proponent must, among other things, demonstrate that the Proponent continuously held:

- (1) at least \$2,000 in market value of Dow's common stock entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) at least \$15,000 in market value of Dow's common stock entitled to vote on the Proposal for at least two years preceding and including the Submission Date;
- (3) at least \$25,000 in market value of Dow's common stock entitled to vote on the Proposal for at least one year preceding and including the Submission Date; or
- (4) at least \$2,000 in market value of Dow's common stock entitled to vote on the Proposal for at least one year as of January 4, 2021 and continuously maintained a minimum investment of at least \$2,000 of such common stock from January 4, 2021 through the Submission Date (each, an "Ownership Requirement," and collectively, the "Ownership Requirements").

Accordingly, Rule 14a-8(b) requires that a proponent of a proposal prove eligibility as a beneficial stockholder of the company that is the subject of the proposal by submitting either:

- a written statement from the "record" holder of the shares (usually a bank or broker) verifying that, at the Submission Date, the Proponent continuously held the requisite amount of shares to satisfy at least one of the Ownership Requirements above and a written statement that the proponent intends to continue to hold such requisite amount of shares through the date of the 2022 Annual Meeting; or
- if the Proponent was required to file, and has filed the relevant form with the SEC, a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms demonstrating that the Proponent has met at least one of the Ownership Requirements above, a copy of the schedules, forms and any subsequent amendments reporting a change in the Proponent's ownership of shares, a written statement that the Proponent continuously held the requisite amount of shares to satisfy at least one of the Ownership Requirements above and a written statement that the Proponent intends to continue ownership of the shares through the date of the 2022 Annual Meeting.

To help stockholders comply with the requirements when submitting proof of ownership to companies, the SEC's Division of Corporation Finance (the "Division") published Staff Legal Bulletin No. 14F ("SLB 14F"), dated October 18, 2011, and Staff Legal Bulletin No. 14G ("SLB 14G"), dated October 16, 2012. SLB 14F and SLB 14G provide that for securities held through The Depository Trust Company ("DTC"), only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. The Proponent can confirm whether his bank or broker is a DTC participant by checking DTC's participant list, which is currently available on the Internet at: <https://www.dtcc.com/client-center/dtc-directories>.

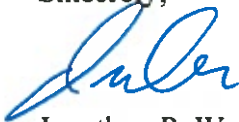
If the Proponent holds shares through a bank or broker that is not a DTC participant, he will need to obtain proof of ownership from the DTC participant through which the bank or broker holds the shares, or an affiliate of such DTC participant. The Proponent should be able to find the name of the DTC participant by asking his bank or broker. If the DTC participant that holds the Proponent's shares knows the holdings of its bank or broker, but does not know the Proponent's holdings, the Proponent may satisfy the proof of ownership requirements by submitting two proof of ownership statements — one from the Proponent's bank or broker confirming its ownership and the other from the DTC participant confirming the bank's or broker's ownership. Please review SLB 14F carefully before submitting proof of ownership to ensure that it is compliant.

Copies of Rule 14a-8, SLB 14F and SLB 14G are enclosed for your reference.

In order to meet the eligibility requirements for submitting a stockholder proposal, the SEC rules require that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. If we do not receive acceptable documentation regarding proof of ownership that remedies the deficiency noted in this letter within such time, we intend to request that the Proposal be excluded for failure to demonstrate eligibility under Rule 14a-8(b) to submit the Proposal for inclusion in Dow's proxy statement for its 2022 Annual Meeting.

Please address any response to me at jonathan.wendt@dow.com or the mailing address provided above with a copy to Amy E. Wilson at aewilson@dow.com and Richard B. Alsop richard.alsop@shearman.com.

Sincerely,



Jonathan P. Wendt
Assistant Secretary
Office of the Corporate Secretary
jonathan.wendt@dow.com
(989) 638-2343

cc: Joshua Romo, Energy & Plastics Associate, c/o As You Sow, jromo@asyousow.org
As You Sow, shareholderengagement@asyousow.org
Andrew Behar, Shareholder, c/o As You Sow, abehar@asyousow.org
Amy E. Wilson, Dow General Counsel and Corporate Secretary, aewilson@dow.com
Richard B. Alsop, Shearman & Sterling LLP, richard.alsop@shearman.com

Attachments



Title 17

§ 240.14a-8 Shareholder proposals.

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

- (a) **Question 1:** What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).
- (b) **Question 2:** Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?
 - (1) To be eligible to submit a proposal, you must satisfy the following requirements:
 - (i) You must have continuously held:
 - (A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or
 - (B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
 - (C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or
 - (D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and
 - (ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and
 - (iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:
 - (A) Agree to the same dates and times of availability, or
 - (B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and
 - (iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:
 - (A) Identifies the company to which the proposal is directed;
 - (B) Identifies the annual or special meeting for which the proposal is submitted;
 - (C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;
 - (D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;
 - (E) Identifies the specific topic of the proposal to be submitted;
 - (F) Includes your statement supporting the proposal; and
 - (G) Is signed and dated by you.
 - (v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.
 - (vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.
 - (2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:
 - (i) 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 requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

- (ii) 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:
- (A) 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 at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or
 - (B) The second way to prove ownership applies only if you were required to file, and 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, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:
 - (1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;
 - (2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and
 - (3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.
- (3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:
- (i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and
 - (ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.
 - (iii) This paragraph (b)(3) will expire on January 1, 2023.
- (c) **Question 3:** How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals 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 addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:
- (i) Less than 5 percent of the votes cast if previously voted on once;
 - (ii) Less than 15 percent of the votes cast if previously voted on twice; or
 - (iii) Less than 25 percent of the votes cast if previously voted on three or more times.
- (13) **Specific amount of dividends:** If the proposal relates to specific amounts of cash or stock dividends.
- (j) **Question 10:** What procedures must the company follow if it intends to exclude my proposal?
- (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.
 - (2) The company must file six paper copies of the following:
 - (i) The proposal;
 - (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
 - (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.
- (k) **Question 11:** May I submit my own statement to the Commission responding to the company's arguments?
- Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.
- (l) **Question 12:** If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?
- (1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
 - (2) The company is not responsible for the contents of your proposal or supporting statement.
- (m) **Question 13:** What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?
- (1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.
 - (2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
 - (3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
 - (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
 - (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE

Effective Date Note: At 85 FR 70294, Nov. 4, 2020, § 240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.



**Division of Corporation Finance
Securities and Exchange Commission**

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.⁶ Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to

accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8⁷ and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

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

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

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

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

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

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

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

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

participant?

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

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

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

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

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹ See Rule 14a-8(b).

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

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

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

⁵ See Exchange Act Rule 17Ad-8.

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

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

⁸ *Techne Corp.* (Sept. 20, 1988).

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

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

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

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

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

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

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

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

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

<http://www.sec.gov/interps/legal/cfs1b14f.htm>



**Division of Corporation Finance
Securities and Exchange Commission**

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Use of website addresses in proposals and supporting statements

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

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

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

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

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

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

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

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

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

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

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

¹ An entity is an “affiliate” of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

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

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

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

<http://www.sec.gov/interps/legal/cfs1b14g.htm>

From: [Wendt, Jon \(JP\)](#)
To: [Conrad MacKerron](#)
Cc: [Joshua Romo](#); investorengagement@asyousow.org; abehar@asyousow.org; [Wilson, Amy \(AE\)](#); [Richard Alsop](#)
Subject: Dow Shareholder Proposal
Date: Wednesday, November 17, 2021 5:27:46 PM
Attachments: [image002.jpg](#)
[Dow - AYS Deficiency Letter.pdf](#)

CONFIDENTIAL

Dear Mr. MacKerron – Attached please find correspondence regarding the shareholder proposal from Andrew Behar. We look forward to engaging with you and Mr. Romo as representatives of Mr. Behar and appreciate the opportunity for further dialogue with As You Sow. I will schedule a time for engagement under separate cover.

We look forward to a productive discussion.

Please note: This email is not intended as a waiver of any rights or claims Dow may have to seek to exclude the proposal under applicable SEC rules and regulations.

Regards,

Jonathan P. Wendt

Dow Inc.

**Director – Office of the Corporate Secretary
and Affiliated Companies**

2211 H.H. Dow Way | Midland, MI 48674

Office: 989.638.2343 | Mobile: 989.492.6104

Email: jonathan.wendt@dow.com



CONFIDENTIALITY STATEMENT: This electronic message contains information that may be confidential or privileged. The information is intended solely for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please notify me immediately at 989-638-2343 or by e-mail reply and delete this message. Thank you.

General Business

Exhibit D



**Wealth
Management**

November 23, 2021

Andrew Behar

PII

Dear Andrew,

RBC Capital Markets, LLC, acts as custodian for Andrew Behar.

We are writing to verify that our books and records reflect that, as of market close on November 11, 2021, you owned 83.9953 shares of Dow, Inc. (Cusip#260557-103) representing a market value of approximately \$4970.84 and that, you have owned such shares since September 22, 2011. We are providing this information at your request in support of your activities pursuant to rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me directly at 415-445-8230.

Sincerely,

A handwritten signature in black ink, appearing to read 'Justin Klueger', followed by a horizontal line.

Justin Klueger
Associate Vice President – Financial Advisor

From: Gail Follansbee <gail@asyousow.org>

Sent: Friday, November 26, 2021 4:34 PM

To: Wendt, Jon (JP) <jonathan.wendt@dow.com>

Cc: Conrad MacKerron <mack@asyousow.org>; Joshua Romo <jromo@asyousow.org>; Rachel Lowy <rlowy@asyousow.org>; Andrew Behar <abehar@asyousow.org>; Shareholder Engagement <shareholderengagement@asyousow.org>

Subject: Dow = Shareholder proposal

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Mr. Wendt,

Attached is the proof of ownership for your reference:

Proponent Andrew Behar 83.9953 shares

Please confirm receipt of this proof and that all deficiencies have been satisfied.

Thank you and best regards,

Gail

Gail Follansbee (she/her)

Coordinator, Shareholder Relations

As You Sow

2020 Milvia Street, Suite 500

Berkeley, CA 94704

(510) 735-8158 x 718 (work) ~ (650) 868-9828 (cell)

gail@asyousow.org | www.asyousow.org

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231

VIA ELECTRONIC MAIL

To shareholderproposals@sec.gov

January 13, 2022
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, NW
Washington, Dc 20549
shareholderproposals@sec.gov

Re: Dow Inc., (Dow)
Stockholder Proposal of Andrew Behar – Single-Use Plastics Report
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

Andrew Behar (the “Proponent”) is beneficial owner of common stock of Dow Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company.

I have been asked by the Proponent to respond to the letter dated December 13, 2021 (“Company Letter”) sent to the Securities and Exchange Commission by Richard. B. Alsop of Shearman and Sterling. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2022 proxy statement. A copy of this letter is being emailed concurrently to Richard. B. Alsop.

SUMMARY

The Company Letter seeks exclusion on procedural grounds. First, the Company argues that because the proposal was electronically delivered 30 minutes after the Company’s business hours, it was not delivered timely. The record shows that the proposal was received by the company on the date provided by Rule 14a-8(e)(2). Staff precedents demonstrate that companies are not able to confine the timing of delivery of a proposal beyond the requirements of the rule, and therefore the delivery was timely and the proposal is not excludable on this basis.

Secondly, the Company Letter asserts that it did not receive adequate proof of ownership of the shares of the proponent. The company has merged and its stock has split over the years. The Proponent has held the stock, but Proponent’s custodian provided proof of consistent ownership of company stock with sufficient value. The Company did not provide a deficiency notice to the proponent describing the specific defects in the proof of ownership, and therefore the proposal is not excludable on this basis.

ANALYSIS

Rule 14a-8(e)(2): Business Hours

Dow argues that the proposal should be excluded under Rule 14a-8(e)(2) because the proposal was electronically delivered after the close of business hours on the date of the proposal deadline. Nowhere in the request does Dow cite any precedent for its insistence that electronic submissions received on the correct date, but after the close of its business hours, should be excluded from the proxy statement.

Staff precedents

In its no action request, Dow cites eight irrelevant cases where delivery was not made until *after* the date of the deadline. In contrast, three other cases that fit the fact pattern at issue here demonstrate that no business hour cut off exists.

In *Schering-Plough Corp.* (avail. Feb. 6, 2006), the Staff was unable to concur in exclusion where a proposal was made via electronic email delivery at 8:27pm, some 3 hours and 27 minutes after the close of normal business hours. In *Marathon Oil Corp.* (avail. Jan. 12, 2004), Staff declined to concur with a request for exclusion where Marathon had included a statement in its prior year proxy statement indicating the close of business hours as the hard deadline on the due date for proposals. In that case, the electronic fax arrived at 5:15pm, 15 minutes after the company's self-determined hard deadline of 5pm, but was not excluded. In *Chevron Corp.* (avail. Mar. 22, 2021), despite Chevron also including in its prior year proxy statement the phrase "close of business" as the hard deadline for receipt of proposals, Staff declined to concur with exclusion where electronic email delivery occurred at 8:23pm, 2 hours and 23 minutes after the close of the company's business hours.

In all three of precedent cases, electronic delivery was made on the date of the deadline but after the close of normal business hours. In all three cases, the SEC declined to concur with the request for exclusion under 14a-8(e)(2).

Further discussion of company position

Dow essentially attempts to revise the written requirement of the rule by imposing a time-of-day limitation on the deadlines specified in the rule. As cited above, this time-of-day requirement is not recognized in prior staff precedents.

The company's purported time-of-day limitation to the deadline also fails to withstand scrutiny under any textual interpretation of Rule 14a-8(e)(2). Under Rule 14a-8(e)(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* (emphasis added) before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting.

Nowhere in Rule 14a-8(e)(2) does the phrase "close of business" appear. To the contrary, as emphasized above, the phrase "calendar days" is specifically used to denote an appropriate calculation of the deadline for acceptance of shareholder proposals. According to Merriam-Webster's dictionary: 'calendar day', a noun, is defined as "the time from midnight to midnight". It therefore follows that the inclusion of this specific phrase establishes the criteria of the calendar day as the deadline for accepting shareholder proposals. Dow violates the rule as written when it attempts to exclude a proposal that otherwise meets the calendar day deadline based on its own, arbitrary, 'close of business hours' constraint.

Electronic transmission of the proposal was roughly 6 hours and 28 minutes before midnight on the last calendar day for timely receipt of shareholder proposals. Because receipt was made on the calendar day of the deadline, as required by the Rule, receipt is therefore timely and there is no basis for Dow to omit the Proposal under Rule 14a-8(e)(2).

Considering these precedent determinations, Staff should deny Dow's request to omit the proposals under 14a-8(e)(2).

Rule 14a-8(b) and Rule 14a-8(f)(1): Proof of Ownership

The Company Letter asserts that the proponent did not provide proof of ownership on a timely basis. In its no action request, the proponent received for the first time the Company's assertion that the proof of ownership letter was defective.¹

The rule provides: "The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it." In this instance, the Company provided a deficiency notice prior to receiving the proof of ownership, and therefore did not identify the problem. The recent Staff Legal Bulletin 14L underscores this obligation:

Finally, we believe companies should identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s).

¹ Dow has undergone mergers and a spin off during the time that Proponent has owned the stock, complicating custodial reporting. The Company's no action request informed the proponent for the first time that: "The Broker Letter stated that the Proponent has beneficially held 83.9953 shares of Dow's common stock since September 22, 2011, representing a market value of approximately \$4,970.84. Such ownership of the Proponent is not possible since no such shares of Dow were issued and outstanding at the time."

This is not a new concern. Staff Legal Bulletin 14G previously flagged the issue of deficiency notices that fail to specify the problem identified by the company:

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

Moreover, the Staff has previously rejected proof of ownership exclusions where the Company failed to adequately identify the defect. For instance, *Ellsworth Fund Ltd.* (Nov. 6, 2014).

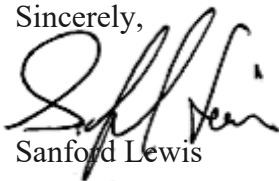
Therefore, we believe it is inappropriate to exclude the proposal. The Proponent provided to Dow timely proof of ownership from its custodian to demonstrate Proponent's continuous ownership of more than the required amount of stock. It was not given the opportunity to correct the defect identified by the Company.

We urge the Staff to deny the Company's proof of ownership assertion, since it failed to previously identify the specific problem in the proof of ownership documentation.

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2022 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action letter request.

Sincerely,



Sanford Lewis