



DIVISION OF
CORPORATION FINANCE

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

February 16, 2022

Jennifer Gillcrist
The AES Corporation

Re: The AES Corporation (the "Company")
Incoming letter dated December 10, 2021

Dear Ms. Gillcrist:

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

The Proposal requests that the board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to aspects of compensation available only to senior executives and does not seek to micromanage the Company. The Proposal addresses the basic issue of severance and termination payments (often called "parachute payments") for departing executives. It does not seek to prohibit such payments but instead provides that such payments above a certain threshold be subject to shareholder approval. The Proposal does not therefore probe too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

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: John Chevedden

December 10, 2021

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: *The AES Corporation*
Omission of Stockholder Proposal of John R. Chevedden
Rule 14a-8 under the Securities Exchange Act of 1934

Ladies and Gentlemen:

This letter is to inform you that The AES Corporation (“AES” or the “Company”) intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Stockholders (collectively, the “2022 Proxy Materials”) a stockholder proposal and statement in support thereof (the “Proposal”) received by the Company from Mr. John R. Chevedden (the “Proponent”). We request confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend to the Securities and Exchange Commission (the “Commission”) that enforcement action be taken if the Company omits the Proposal from its 2022 Proxy Materials for the reasons discussed below.

In accordance with Section C of Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov in lieu of filing six paper copies of this request, as otherwise specified in Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the date that the Company intends to file its definitive 2022 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

This letter informs the Proponent of the Company’s intention to omit the Proposal from its 2022 Proxy Materials. Rule 14a-8(k) under the Exchange Act and Section E of 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. Accordingly, we are taking this opportunity to inform the Proponent that if he elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned, on behalf of the Company, pursuant to Rule 14a-8(k) and SLB 14D.

The AES Corporation | 4300 Wilson Blvd. | Arlington, VA 22203



The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 2

THE PROPOSAL

On November 9, 2021, the Company received the Proposal from the Proponent. The text of the Proposal is set forth below. A copy of the Proponent's letter submitting the Proposal to the Company is attached hereto as Exhibit A. Copies of all other correspondence with the Proponent related to the Proposal are attached hereto as Exhibit B.

Proposal 4 — Shareholder Ratification of Termination Pay

Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

"Severance or termination payments" include cash, equity or other compensation that is paid out or vests due to a senior executive's termination for any reason. Payments include those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans, but not life insurance, pension benefits, or deferred compensation earned and vested prior to termination.

"Estimated total value" includes: lump-sum payments; payments offsetting tax liabilities; perquisites or benefits not vested under a plan generally available to management employees; post-employment consulting fees or office expense; and equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

Generous performance-based pay can be good but shareholder ratification of "golden parachute" severance packages with a total cost exceeding 2.99 times base salary plus target bonus better aligns management pay with shareholder interests.

For instance at one company if the CEO is terminated without cause, whether or not his termination follows a change in control, he will receive an estimated \$39 million in termination payments, nearly 7-times his base salary plus short-term bonus.

It is in the best interest of AES shareholders to be protected from such lavish management termination packages for one person.

This proposal topic won 58% support at the 2021 FedEx annual meeting.

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 3

A 2015 General Electric shareholder proposal similar to the FedEx proposal won 40% GE shareholder support with 2.2 billion votes in favor. This may have represented 51% support from the GE shares that had access to independent proxy voting advice and are not forced to rely on the biased recommendations of management especially on issues of management pay.

Please vote yes:

Shareholder Ratification of Termination Pay — Proposal 4

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Company may properly exclude the Proposal from the 2022 Proxy Materials pursuant to (i) Rule 14a-8(i)(3) under the Exchange Act (“*Rule 14a-8(i)(3)*”), because the Proposal is inherently vague and indefinite, and subject to multiple interpretations, such that the Company and stockholders voting on the Proposal would not know with any reasonable certainty exactly what actions or measures the Proposal requires; and/or (ii) Rule 14a-8(i)(7) under the Exchange Act (“*Rule 14a-8(i)(7)*”), because the Proposal micromanages the Company.

ANALYSIS

I. Rule 14a-8(i)(3)—The Proposal is Vague and Indefinite

A. *Background*

Rule 14a-8(i)(3) permits a company to exclude a stockholder proposal “[i]f the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” The Staff has determined that stockholder proposals may be excluded pursuant to Rule 14a-8(i)(3) where “the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” See Staff Legal Bulletin 14B (September 15, 2004). In addition, the Staff has noted that a proposal may be excludable when “any action ultimately taken by the Company upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal.” See *Fuqua Industries, Inc.* (March 12, 1991). The Staff has also indicated that a proposal may be excludable under Rule 14a-8(i)(3) to the extent that the proposal fails to define key terms. See, e.g., *AT&T Inc.* (February 21, 2014) (concurring with the exclusion of a proposal as vague and indefinite where the proposal requested board review of policies and procedures related to the directors’ “moral, ethical and legal fiduciary duties and opportunities,” where such phrase was undefined). Finally, the courts have ruled that “shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote” and that a proposal should be excluded when “it [would be] impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.” See *New York City Employees’ Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961).

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 4

Under this standard, the Staff has routinely concurred with the exclusion of stockholder proposals, including stockholder proposals relating to executive compensation matters, where the meaning and application of key terms used in the proposal may be subject to differing interpretations or where the proposal otherwise fails to provide sufficient clarity or guidance to enable either stockholders or the company to understand how the proposal would be implemented. In these circumstances, because neither the company nor stockholders would be able to determine with any reasonable certainty what actions or measures the proposal requires, the Staff concurred that the proposal was impermissibly vague and indefinite and excludable under Rule 14a-8(i)(3).

For example, recently, the Staff has permitted companies to exclude, as vague and indefinite, stockholder proposals (i) requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" (without providing an explanation or definition of the key term "aerospace/aviation/engineering executive background") (see *The Boeing Company* (February 23, 2021)); (ii) requesting that the company's "balance sheet be strengthened significantly" (without providing an explanation or definition of the key terms "strengthened" or "significantly") (see *Philip Morris International Inc.* (November 26, 2020)); (iii) seeking to "improve guiding principles of executive compensation" (without providing an explanation or definition of the key term "executive compensation"), noting that the proposal lacked "sufficient description about the changes, actions or ideas for the company and its shareholders to consider that would potentially improve such guiding principles" (see *Apple Inc.* (December 6, 2019)); and (iv) requesting that the company "reform the Company's executive compensation committee" (without providing an explanation or definition of the key term "reform"), noting that "neither shareholders nor the Company would be able to determine with any reasonable certainty the nature of the "reform" the Proposal is requesting" and that, therefore, "the Proposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading" (see *eBay Inc.* (April 10, 2019)).

In addition, the Staff has consistently concurred with the exclusion of executive compensation-related proposals where the proposal failed to define key terms, an understanding of which was necessary for stockholders and the company to grasp the breadth of the proposal they were being asked to vote upon or implement, as applicable. See *The Boeing Company* (March 2, 2011) (concurring with the exclusion of a proposal as vague and indefinite where the proposal requested, among other things, that senior executives relinquish certain "executive pay rights" without sufficiently explaining the meaning of "executive pay rights," such that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal required); *General Electric Company* (January 21, 2011) (concurring with the exclusion of a proposal as vague and indefinite where the proposal requested that the compensation committee make specified changes to senior executive compensation, but when applied to the company, neither the stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal required); *Verizon Communications Inc.* (February 21, 2008) (concurring with the exclusion of a proposal as vague and indefinite where the proposal requested that the board take the necessary steps to adopt a new policy for the compensation of senior executives incorporating criteria specified in the proposal for future incentive compensation awards but failed to define critical terms and was internally inconsistent); *Prudential Financial, Inc.* (February 16, 2006) (concurring with the exclusion of a proposal as vague and indefinite where the proposal requested that the board of

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 5

directors seek shareholder approval for senior management compensation programs but failed to define critical terms and was subject to conflicting interpretations); *General Electric Company* (February 5, 2003) (concurring with the exclusion of a proposal as vague and indefinite where the proposal urged the board of directors to seek shareholder approval of certain compensation but failed to define critical terms or otherwise provide guidance concerning its implementation); and *General Electric Company* (January 23, 2003) (concurring with the exclusion of a proposal as vague and indefinite where the proposal sought an individual cap on salaries and benefits of one million dollars but failed to define the critical term “benefits” or otherwise provide guidance on how benefits should be measured for purposes of implementing the proposal). The Staff also concurred with excluding proposals that failed to adequately define whose compensation would be addressed under proposed compensation policies. See *General Motors Corporation* (March 26, 2009) (concurring with the exclusion of a proposal as vague and indefinite where the proposal referenced “the CEOs” and “an executive branch” without identifying who or which positions would be considered to be part of these categories); *International Business Machines Corporation* (February 2, 2005) (concurring with the omission of a proposal as vague and indefinite where the proposals requested “that the officers and directors responsible” for a reduced dividend pay-out have their compensation reduced but did not specify which specific officers and directors were intended to be covered); and *Woodward Governor Co.* (November 26, 2003) (concurring with the exclusion of a proposal as vague and indefinite where the proposal requested that the board “implement a policy for compensation for the executives in the upper management (that being plant managers to board members), based on stock growth” but incorrectly categorized executives and managers).

B. Analysis

1. The Proposal does not explain or define which employees would be subject to the stockholder approval requirement.

The Proposal fails to define the group of AES employees to which the stockholder approval requirement for severance pay packages would apply. Certain key terms in the Proposal—“senior manager” and “executive”—are vague, indefinite and undefined, resulting in the Proposal being subject to differing interpretations. A clear definition of the employee group to which the Proposal applies is critical to both stockholders’ ability to comprehend the matter they are being asked to vote on and the Company’s ability to implement the procedures requested by the Proposal (i.e., in what specific circumstances, AES would be required to submit an employee’s severance pay package for stockholder approval). As a result, the Proposal fails to provide sufficient guidance concerning its implementation.

The Proposal requests that “the Board seek shareholder approval of any *senior manager’s* new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the *executive’s* base salary plus target short-term bonus” (emphasis added). It is not clear *who* the Proponent intends to be subject to this stockholder approval requirement. The Proponent (i) refers to both “any senior manager’s” compensation and “the executive’s” compensation in the Proposal, and (ii) fails to define both “senior manager” and “executive.” It is ambiguous whether “senior manager” and “executive” are intended to refer to the same group of employees that the Proponent intends to be subject to the stockholder approval

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 6

requirement. Even if the Company were to assume these terms are meant to refer to the same group of employees, it is still unclear which precise group of employees at the Company these terms are meant to encompass and to which the Proposal is intended to apply.

It is critical for the stockholders in voting on the Proposal and, if the Proposal is approved, the Company in implementing the Proposal to understand the definitions of these terms, as they dictate the circumstances under which an employee's severance pay package would be required to be submitted for stockholder approval. The Proposal, as written, could be interpreted to apply to only a few employees, on the one hand, or to a very large number of employees, on the other hand. AES, which has approximately 8,200 employees globally, is a multinational, diversified power generation and utility company organized into four strategic business units ("SBUs"): US and Utilities (United States, Puerto Rico and El Salvador), South America (Chile, Colombia, Argentina, and Brazil), MCAC (Mexico, Central America and the Caribbean) and Eurasia (Europe and Asia). Each of the SBUs participates in one or both of AES' business lines (generation and utilities), which creates further complexity within the employee management organizational group structures throughout the Company. In light of AES' size and organizational complexity, the use of the general, undefined terms of "senior manager" and "executive" creates a significant ambiguity regarding the employees to which the Proposal, if adopted, applies. Without definition, these terms are subject to a number of different interpretations, including, but not limited to, various recognized definitions under the federal securities laws, federal tax laws, and other rules and regulations, such as:

- "named executive officers," as such term is defined in Item 402 of Regulation S-K;
- "executive officer," as such term is defined in Rule 3b-7 under the Exchange Act;
- "officer," as such term is defined in Rule 16a-1(f) under the Exchange Act;
- "disqualified individuals," as such term is defined in Section 280G of the Internal Revenue Code of 1986, as amended (the "Tax Code"), who are subject to the golden parachute tax provisions of the tax law;
- "specified employees," as such term is defined in Section 409A of the Tax Code, who are subject to a six-month delay with respect to deferred compensation payable upon a separation from service; and
- "covered employees," as such term is defined in Section 162(m) of the Tax Code, who are subject to a \$1 million annual limitation on the deductibility of compensation paid to such individuals.

As the Proposal is drafted, it could be interpreted to potentially apply to potentially a thousand employees who could be viewed as senior managers at the Company (e.g., managers at all levels of the organization, including, but not limited to, executive officers, segment leaders, department managers, persons with vice president in their title, or other titles, including manager and senior manager, denoting seniority within the Company). The Proposal does not provide any guidance as to whether it is intended to cover one or more of these groups, or another group altogether. Therefore, a stockholder voting on the Proposal cannot know with any reasonable certainty the meaning, breadth or impact of implementation of the Proposal. One stockholder might reasonably believe that he or she is voting for a Proposal that affects only a handful of the most senior executive officers of the Company, while another stockholder might just as reasonably believe

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 7

that he or she is voting for a Proposal that affects potentially a thousand senior employees of the Company.

The Proposal's lack of specificity would confuse stockholders attempting to ascertain the scope of the Proposal. Similarly, if the Proposal were approved, the Company's implementation of the Proposal could have very different consequences than stockholders envisioned in approving it. Accordingly, the Company believes that the Proposal is vague and indefinite, and, therefore, is excludable under Rule 14a-8(i)(3).

2. The definitions included in the Proposal for the key terms “severance or termination payments” and “estimated total value” are ambiguous and inconsistent.

The Proposal requests that “the Board seek shareholder approval of any senior manager’s new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive’s base salary plus target short-term bonus” (emphasis added). This “2.99 times” threshold (the “*2.99 Threshold*”) is presumably informed by Section 280G of the Tax Code because of the reference in the Proposal to “golden parachute” severance packages; Section 280G generally disallows a deduction for any excess parachute payment paid to a disqualified individual in connection with a change in control transaction of at least three times such person’s base amount. However, instead of defining the key terms “severance or termination payments” and “estimated total value” consistent with Section 280G of the Tax Code, the definitions provided in the Proposal are ambiguous and inconsistent, resulting in the Proposal being subject to differing interpretations.

The Proposal defines “severance or termination payments” to include “cash, equity or other compensation that is paid out or vests due to a senior executive’s termination for any reason.” This would appear to include cash payments with respect to vested benefits that are payable following an employee’s termination (such as the cash-out of a vested stock option). However, the Proposal separately defines “estimated total value” to include “lump-sum payments; payments offsetting tax liabilities; perquisites or benefits *not vested* under a plan generally available to management employees; post-employment consulting fees or office expense; and *equity awards if vesting is accelerated, or a performance condition waived, due to termination*” (emphasis added), which seems to be limited to unvested awards where vesting is accelerated or a performance condition is waived. Read together, these two definitions seemingly conflict with one another and create ambiguity regarding whether vested awards and payments, unvested awards and payments, or both are intended to be covered by the Proposal’s stockholder approval requirement.

Furthermore, neither the Proposal nor the Proposal’s definition of “estimated total value” provides any rules or guidance regarding how such estimated total value is meant to be calculated. The Proposal does not specify whether the calculation method would change depending on whether an equity award otherwise vests (i) solely based on continued service or (ii) only in the event certain performance conditions are achieved. In addition, the Proposal does not specify whether the estimated total value calculation would be impacted by (i) the length of time an award has

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 8

been outstanding at the time of termination or (ii) the extent of the services already provided by the employee that have contributed to the earning of an award.

Similar to the *Verizon Communications Inc.* and *Prudential Financial, Inc.* no-action letters cited above, the Proposal fails to appropriately define key terms, is internally inconsistent, and is subject to conflicting interpretations. As the Proposal is drafted, it can be read to apply to severance payments in multiple different ways and, further, is inconsistent with the prescribed requirements of the Tax Code that appear to be the basis for the 2.99 Threshold. These ambiguities and inconsistencies make it difficult to determine what actions the Company would be required to take in order to implement the Proposal and whether such actions would be in accordance with applicable laws, rules, and regulations, such as in the context of a change in control transaction in which Section 280G of the Tax Code applies. Accordingly, because neither the stockholders voting on the Proposal, nor the Company in implementing the Proposal (if approved), would be able to determine with any reasonable certainty exactly how to measure severance payments against the 2.99 Threshold, the Company believes that the Proposal is vague and indefinite, and, therefore, is excludable under Rule 14a-8(i)(3).

II. Rule 14a-8(i)(7)—The Proposal Micromanages the Company

A. *Background*

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

In the 1998 Release, the Commission identified the two central considerations underlying the general policy for the ordinary business exclusion. The first relates to the proposal's subject matter (i.e., whether the subject matter involves a matter of ordinary business). The Commission stated that, "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight;" "[h]owever, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable." *Id.*

The second consideration relates to the degree to which the proposal "micromanages" the company "by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* A proposal may involve micromanagement if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.* Determinations as to the excludability of proposals on the basis of micromanagement "will be made on a case-by-case basis, taking into

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 9

account factors such as the nature of the proposal and the circumstances of the company to which it is directed.” *Id.* The Commission has indicated that “the Staff will take a measured approach to evaluating companies’ micromanagement arguments” and “will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” See Staff Legal Bulletin 14L (November 3, 2021) (“*SLB 14L*”). In *SLB 14L*, the Staff also stated that “in order to assess whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment, [the Staff] may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.”

Regarding the first central consideration underlying the general policy for the ordinary business exclusion, the Commission and Staff have long held that a stockholder proposal may be excluded under Rule 14a-8(i)(7) if it relates to the company’s management of its workforce. The Commission recognized in the 1998 Release that “management of the workforce, such as the hiring, promotion, and termination of employees” is “fundamental to management’s ability to run a company on a day-to-day basis.” Similarly, in *United Technologies Corporation* (February 19, 1993), the Staff provided the following examples of topics that involve a company’s ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): “employee health benefits, *general compensation issues not focused on senior executives*, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation” (emphasis added). The Staff has consistently concurred in the exclusion of stockholder proposals under Rule 14a-8(i)(7) when the proposal relates to a company’s management of its workforce, and specifically, to general employee compensation rather than compensation of senior executive officers and directors. See Staff Legal Bulletin 14A (July 12, 2002). See also *Yum! Brands, Inc.* (February 24, 2015) (concurring with the exclusion of a proposal as relating to ordinary business operations where the proposal requested a report of the company’s executive compensation policies, including a comparison of the total compensation package of the top senior executives and employees’ median wage, related to compensation that may be paid to employees generally, and was not limited to compensation that may be paid to senior executive officers and directors); *ENGlobal Corporation* (March 28, 2012) (concurring with the exclusion of a proposal as relating to ordinary business operations where the proposal requested specific amendments of the company’s equity incentive plan, related to compensation that may be paid to employees generally and was not limited to compensation that may be paid to senior executive officers and directors); *International Business Machines Corporation* (January 22, 2009) (concurring with the exclusion of a proposal as relating to ordinary business operations where the proposal requested a limit for salary increases for employees “of a level equivalent to a 3rd Line Manager or above” and thus related to the company’s ordinary business operations (i.e., general compensation matters)); and *Ford Motor Company* (January 9, 2008) (concurring with the exclusion of a proposal as relating to ordinary business operations where the proposal, which could not be read to be limited to the company’s senior executives, requested that the company cease to offer any and all forms of stock options, and thus related to the company’s ordinary business operations (i.e., general compensation matters)).

Regarding the second central consideration underlying the general policy for the ordinary business exclusion, the Staff has consistently concurred in the exclusion of stockholder proposals

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 10

that attempt to micromanage a company by substituting stockholder judgment for that of management with respect to such complex day-to-day business operations that are beyond the knowledge and expertise of stockholders. In 2020, the Staff also permitted the exclusion of a proposal submitted to Republic Services, Inc. (“*Republic*”) that was very similar to the Proposal, concurring that such proposal micromanaged the company. See *Republic Services, Inc.* (February 14, 2020). See also *Eli Lilly and Company* (March 1, 2019) (concurring with the exclusion of a proposal on the basis of micromanagement where the proposal requested the board to implement a policy that it would not fund, conduct or commission the use of the “Forced Swim Test” and sought “to impose specific methods for implementing complex policies”); *SeaWorld Entertainment, Inc.* (April 23, 2018) (concurring with the exclusion of a proposal on the basis of micromanagement where the proposal requested a ban of all captive breeding programs and sought “to impose specific methods of implementing complex policies”); *SeaWorld Entertainment, Inc.* (March 30, 2017, reconsideration denied April 17, 2017) (concurring with the exclusion of a proposal on the basis of micromanagement where the proposal requested the replacement of live orca exhibits with virtual reality experiences and probed “too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment”).

In addition, the Staff has recently permitted exclusion of proposals under Rule 14a-8(i)(7) that involved matters related to senior executive compensation, on the basis that the proposals sought to micromanage the company. For example, in *AbbVie Inc.* (February 15, 2019) and *Johnson & Johnson* (February 14, 2019), the Staff granted relief under Rule 14a-8(i)(7) for proposals in which the proponents requested the companies adopt a policy that legal or compliance costs not be excluded from financial performance metrics used to evaluate performance for determining the amount or vesting of senior executive incentive compensation awards. The Staff granted relief pursuant to Rule 14a-8(i)(7) and concluded that each proposal “micromanage[d] the Company by seeking to impose specific methods for implementing complex policies. Similarly, in *JPMorgan Chase & Co.* (March 22, 2019), the Staff concurred in the exclusion of a proposal that the board adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service. The Staff granted relief under Rule 14a-8(i)(7) on the basis that the proposal “micromanage[d] the Company by seeking to impose specific methods for implementing complex policies.”

B. Analysis

1. The Proposal relates to AES’ management of its workforce, and specifically, to more general employee compensation rather than compensation of senior executive officers and directors only.

As described above, it is unclear which precise group of employees the Proposal is intended to cover; as drafted, the Proposal could be interpreted to cover potentially a thousand managers at all levels of AES’ global operations (including, but not limited to, executive officers, segment leaders, department managers, persons with vice president in their title, or other titles, including manager and senior manager, denoting seniority within the Company). As such, the Proposal directly relates to the Company’s general employee compensation policies and practices, which are a core component of the Company’s ordinary business as a large employer of approximately

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 11

8,200 individuals, and does not raise a sufficiently significant policy issue that is appropriate for a stockholder vote consistent with the guidance in the 1998 Release. Such matters are fundamental to management's ability to run the Company and manage a large, international workforce on a day-to-day basis, and are not suitable for stockholder oversight because stockholders are not in a position to determine the appropriateness of employees' severance compensation arrangements in the context of local, regional, national, and foreign labor markets; the circumstances of the Company's business; the dynamics of labor-management relations; the roles that various employees perform; and employees' overall compensation packages.

Similar to the *Yum! Brands, Inc.*, *ENGlobal Corporation*, *International Business Machines Corporation*, and *Ford Motor Company* no-action letters cited above, the Proposal targets compensation issues that are not focused on senior executives. Determinations regarding employee severance compensation and benefits for a significant portion of AES' workforce, which comprises approximately 8,200 employees located in over 15 countries, are a fundamental responsibility of the Company's Compensation Committee (the "*Compensation Committee*") of the Board of Directors (the "*Board*"), the Board and management, including AES' human resources professionals and their advisors in a multitude of jurisdictions. Furthermore, in many cases for AES, compensation-related decisions also bear directly on the terms and conditions of employment that must be and are collectively bargained for with scores of labor unions that represent thousands of Company employees who belong to bargaining units covered by many collective bargaining agreements across the world. As of December 31, 2020, approximately 45% of AES' U.S. employees and 65% of AES' non-U.S. employees were subject to collective bargaining agreements). Because the Company's approach to employees' severance compensation arrangements relates to the Company's workforce compensation decisions generally, the Proposal's request addresses matters relating to the day-to-day, ordinary business operations of the Company, which are fundamental to management's ability to run the Company and are not suitable for stockholder oversight.

2. The Proposal seeks to micromanage AES by substituting stockholder judgment for that of the Board and management with respect to complex day-to-day business operations that are beyond the knowledge and expertise of stockholders.

In seeking stockholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus (the "*Limit*"), the Proposal seeks to micromanage the Company by probing too deeply into matters about which stockholders as a group are not in a position to make an informed judgement, namely the analysis and decision-making with respect to employee severance compensation and benefits. As described above, it is unclear which precise group of employees the Proposal is intended to cover and, as drafted, the Proposal could be interpreted to cover potentially a thousand managers at all levels of AES' global operations. The Proposal seeks to micromanage multifaceted and complex decisions concerning severance compensation and benefits for a large number of AES' employees whose compensatory arrangements are subject to, and greatly influenced by, numerous laws, rules, and regulations of different foreign and U.S. federal and state jurisdictions in which AES' operations are based. Furthermore, as described above, in many cases for AES, compensation-related

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 12

decisions also bear directly on the terms and conditions of employment that must be and are collectively bargained for with labor unions that represent thousands of Company employees who belong to such unions. These are fundamental business matters for the Company's management and require an understanding of the business implications that could result from changes made to workforce policies, specifically, compensation and benefit policies. Consistent with SLB 14L, such determinations should not be subject to stockholder oversight because stockholders are not in a position to determine the appropriateness of employees' severance compensation arrangements in the context of the local, regional, national, and foreign labor markets; the circumstances of the Company's business; the dynamics of labor-management relations; the roles that various employees perform; and employees' overall compensation packages.

Given the inherent complexity of the decisions associated with the determination of the breadth of severance compensation and benefits to offer the Company's employees across the world, the decisions that the Proposal seeks to influence are properly within the discretion of the Company's Board and management and should not be the subject of direct stockholder oversight. The Proposal, however, seeks to supplant the discretion and judgement of the Compensation Committee, the Board and management, including AES' human resources professionals and their advisors in a multitude of jurisdictions, as to the design of severance compensation arrangements by submitting each new or renewed arrangement above the Limit to stockholder approval. The complexity of AES' business, with its approximately 8,200 employees located in over 15 countries, requires that AES have the flexibility and discretion to design severance arrangements with its senior managers to provide market competitive compensation to its employees without arbitrary limits, such as the Limit, which does not take into account local norms, collectively bargained agreements, and rules and regulations affecting compensation-related decision-making. Similar to the *Republic*, *AbbVie Inc.*, *Johnson & Johnson* and *JPMorgan Chase & Co.* no-action letters cited above, the Proponent is attempting to impose specific conditions around the Company's implementation of intricate compensation policies and programs. The actions requested in the Proposal involve the precise type of prescriptive approach to complex matters at the heart of the micromanagement prong of Rule 14a-8(i)(7), and "the level of granularity sought in the [P]roposal...inappropriately limits discretion of the [B]oard" and other persons at the Company as described in SLB 14L. If implemented, the Limit imposed by the Proposal would rise to the level of "probing too deeply into matters of a complex nature upon which shareholders, as a group, [are not] in a position to make an informed judgment." (1998 Release). This is precisely the type of effort that Rule 14a-8(i)(7) is intended to prevent.

Even if the Proposal was more clearly defined to apply to a specific senior executive management group at the Company, such as the "named executive officers," the charter of the Compensation Committee¹ states that the Compensation Committee reviews and approves any "severance or termination arrangements ... to be made between the Company and any of its executive officers." As provided in the Company's proxy statement for its 2021 annual meeting of stockholders (the "2021 Proxy Statement")², the Compensation Committee has included all of the Company's executive officers in an Executive Severance Plan (as amended, the "Plan"), the design of which is consistent with current market practices and which was developed after numerous

¹ Available at: <https://www.aes.com/sites/default/files/2021-10/Compensation-Committee-Charter-2021.pdf>

² Available at: <https://www.sec.gov/Archives/edgar/data/874761/000087476121000027/a2021definitivproxystatem.htm>

The Division of Corporation Finance
U.S. Securities and Exchange Commission
December 10, 2021
Page 13

consultations with the Compensation Committee's independent compensation consultant, Meridian Compensation Partners, LLC and other human resources professionals at the Company. The Plan provides severance benefits for qualifying terminations to enable the attraction and retention of key executive talent and to help align the executive officers' interests with those of the Company's stockholders by mitigating any uncertainties the executive officers may have about their ongoing employment in the case that a change in control is pursued (2021 Proxy Statement, pages 47-48). Given the Compensation Committee's mandate to review and approve any severance or termination arrangements to be made between the Company and any of its executive officers, even if it was more narrowly tailored, the Proposal attempts to supplant the judgement of the Compensation Committee and Board with that of stockholders. The actions requested in the Proposal involve the precise type of prescriptive approach to complex matters at the heart of the micromanagement prong of Rule 14a-8(i)(7) and impose specific conditions around the Company's implementation of intricate compensation policies and programs with "the level of granularity sought in the [P]roposal...inappropriately limit[ing] discretion of the [B]oard," as described in SLB 14L.

Consistent with the Staff's guidance and the no-action letters cited above, the Proposal would impermissibly micromanage the Company and, therefore, the Company believes it may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7).

CONCLUSION

As discussed above, the Company believes, based on the foregoing, that the Proposal may be excluded from its 2022 Proxy Materials. AES respectfully requests the Staff's concurrence in the Company's view or, alternatively, confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2022 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this matter. Correspondence regarding this letter should be sent to the undersigned at jennifer.gillcrist@aes.com, with a copy to paul.freedman@aes.com. If you have any questions with respect to the foregoing, please contact the undersigned at (571) 523-5385.

Sincerely,

DocuSigned by:

228CB45DFF1428
Jennifer Gillcrist
Assistant Secretary
Associate General Counsel, Securities,
Finance & Governance

Enclosures

cc: John R. Chevedden
Amy I. Pandit

Exhibit A

Proposal

JOHN CHEVEDDEN

PI

Mr. Paul Freedman
Secretary
AES Corp (AES)
4300 Wilson Boulevard
Suite 1100
Arlington, VA 22203
PH: 703-522-1315

Dear Mr. Freedman,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the next annual shareholder meeting.

I intend to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,


John Chevedden


Date

cc: Megan Campbell <megan.campbell@aes.com>
Ahmed Pasha <ahmed.pasha@aes.com>
PH: 703-682-6451

[AES: Rule 14a-8 Proposal, November 8, 2021]
[This line and any line above it – *Not* for publication.]
Proposal 4 – Shareholder Ratification of Termination Pay

Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

"Severance or termination payments" include cash, equity or other compensation that is paid out or vests due to a senior executive's termination for any reason. Payments include those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans, but not life insurance, pension benefits, or deferred compensation earned and vested prior to termination.

"Estimated total value" includes: lump-sum payments; payments offsetting tax liabilities; perquisites or benefits not vested under a plan generally available to management employees; post-employment consulting fees or office expense; and equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

Generous performance-based pay can be good but shareholder ratification of "golden parachute" severance packages with a total cost exceeding 2.99 times base salary plus target bonus better aligns management pay with shareholder interests.

For instance at one company if the CEO is terminated without cause, whether or not his termination follows a change in control, he will receive an estimated \$39 million in termination payments, nearly 7-times his base salary plus short-term bonus.

It is in the best interest of AES shareholders to be protected from such lavish management termination packages for one person.

This proposal topic won 58% support at the 2021 FedEx annual meeting.

A 2015 General Electric shareholder proposal similar to the FedEx proposal won 40% GE shareholder support with 2.2 billion votes in favor. This may have represented 51% support from the GE shares that had access to independent proxy voting advice and are not forced to rely on the biased recommendations of management especially on issues of management pay.

Please vote yes:
Shareholder Ratification of Termination Pay – Proposal 4
[The above line – *Is* for publication.]

Notes:

“Proposal 4” stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

PII

The color version of the below graphic is to be published immediately after the bold title line of the proposal.

Will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:

No management graphic in connection with the rule 14a-8 proposals in the proxy or ballot.

No proxy or ballot text suggesting that the proposal will be moot due to lack of presentation.

No ballot electioneering text repeating the negative management recommendation.

Management will give me the opportunity to correct any typographical errors.

Management will give me advance notice if it does a special solicitation that mentions this proposal.



Exhibit B

Proposal-Related Correspondence With Proponent

Exhibit B-1

Email Response to Proponent

Jennifer Gillcrist

From: Jennifer Gillcrist
Sent: Thursday, November 18, 2021 5:00 PM
To: [REDACTED] PII
Cc: Paul Freedman; Ahmed Pasha; Jennifer Gillcrist
Subject: Rule 14a-8 Proposal (AES)
Attachments: AES_-_Deficiency_Letter_to_J._Chevedden_[11.18.21].pdf

Dear Mr. Chevedden: Please see our attached response. Please confirm receipt.

Also, please note that Megan Campbell has left AES and I'm stepping into her responsibilities.

Thank you, Jennifer

Jennifer V. Gillcrist (she/her)
Associate General Counsel, Securities, Finance & Governance
Assistant Secretary
The AES Corporation
Mobile: +1.571.523.5385



Exhibit B-2

AES Deficiency Letter

November 18, 2021

VIA ELECTRONIC MAIL

Mr. John Chevedden

PII

Dear Mr. Chevedden:

I am writing on behalf of The AES Corporation (the “*Company*”). On November 9, 2021 (the “*Submission Date*”), the Company received the stockholder proposal that you submitted pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), for inclusion in the proxy statement for the Company’s 2022 Annual Meeting of Stockholders (the “*Proposal*”).

The Proposal contains certain procedural deficiencies, as set forth below, which the rules and regulations of the Securities and Exchange Commission (“*SEC*”) require us to bring to your attention. Unless these deficiencies can be remedied in the appropriate timeframe required under applicable SEC rules, the Company will be entitled to exclude the Proposal from its proxy materials for the Company’s 2022 Annual Meeting of Stockholders.

Proof of Ownership under Rule 14a-8(b)

Rule 14a-8(b) of the Exchange Act provides that stockholder proponents must submit sufficient proof of their continuous ownership of:

- at least \$2,000 in market value of the Company’s securities entitled to vote on the Proposal for at least three years preceding and including the Submission Date; or
- at least \$15,000 in market value of the Company’s securities entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or
- at least \$25,000 in market value of the Company’s securities entitled to vote on the Proposal for at least one year preceding and including the Submission Date; or
- 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 a continuously maintained minimum investment of at least \$2,000 of such securities from January 4, 2021 through the Submission Date (each, an “*Ownership Requirement*,” and, collectively, the “*Ownership Requirements*”).

The Company's stock records do not indicate that you are a record owner of sufficient shares of the Company's common stock (the "*Shares*") to satisfy any of the Ownership Requirements. In addition, to date, we have not received adequate proof that you have satisfied any of the Ownership Requirements as of the Submission Date.

To remedy this defect, you must submit sufficient proof that you have satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the "record" holder of your Shares (usually a broker or bank) verifying that, at the time you submitted the Proposal (the Submission Date), you continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements; or
- (2) if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4, and/or Form 5, or amendments to those documents or updated forms demonstrating that you met at least one of the Ownership Requirements, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements.

If you intend to demonstrate your ownership by submitting a written statement from the "record" holder of your Shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("*DTC*"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.), or an affiliate thereof. Under SEC Staff Legal Bulletin Nos. 14F and 14G, only DTC participants, or affiliates of DTC participants, are viewed as record holders of securities. You can confirm whether your broker or bank is a DTC participant or an affiliate of a DTC participant by asking your broker or bank or, in the case of DTC participants, by checking DTC's participant list, which is available at <https://www.dtcc.com/client-center/dtc-directories>. In these situations, stockholders need to obtain proof of ownership from the DTC participant or an affiliate of a DTC participant through which the securities are held, as follows:

- (1) If the broker or bank is a DTC participant or an affiliate of a DTC participant, then you need to submit a written statement from the broker or bank verifying that you continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements.

-
- (2) If the broker or bank is not a DTC participant or an affiliate of a DTC participant, then you need to submit proof of ownership from the DTC participant or affiliate of a DTC participant through which the Shares are held verifying that you continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant or affiliate of a DTC participant through your account statements, because the clearing broker identified on the account statements generally will be a DTC participant or an affiliate of a DTC participant. If the DTC participant or affiliate of a DTC participant that holds your Shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that you continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements: (i) one from your broker or bank confirming your ownership; and (ii) the other from the DTC participant or affiliate of a DTC participant confirming the broker or bank's ownership.

As discussed above, under Rule 14a-8(b) of the Exchange Act, you must provide the Company with a written statement of your intent to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Shares used to satisfy the applicable Ownership Requirement. As we have not yet received any proof of ownership from you, and therefore do not know with certainty which of the Ownership Requirements will be satisfied, we believe that your written statement in your letter accompanying the Proposal that you "intend to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement" is not adequate as it does not specify which requisite amount of Shares is applicable to you. To remedy this defect, you must submit a written statement that you intend to continue to hold the same requisite amount of Shares through the date of the Company's 2022 Annual Meeting of Stockholders as will be documented in your proof of ownership.

Meeting with the Company under Rule 14a-8(b)

Rule 14a-8(b) of the Exchange Act provides that stockholder proponents must provide the Company with a written statement that they 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 the Submission Date (a "Written Statement"). To date, we have not received a Written Statement from you. To remedy this defect, you must provide the Company with a Written Statement, which must include your contact information as well as business days and specific times (no less than 10 calendar days, nor more than 30 calendar days) after the Submission Date, 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 (i.e., between 9 a.m. and 5:30 p.m. Eastern Time).

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at jennifer.gillcrist@aes.com, The AES Corporation, 4300 Wilson Boulevard, Arlington, Virginia 22203, with a copy to paul.freedman@aes.com.

If you have any questions with respect to the foregoing, please contact me at the email address listed above. For your reference, I am enclosing copies of Rule 14a-8 and Staff Legal Bulletin Nos. 14F and 14G.

Sincerely,

DocuSigned by:

E289CB40DF67429...
Jennifer Gillcrist
Assistant Secretary
Associate General Counsel, Securities,
Finance & Governance

Enclosures

to the extent necessary to effectuate the communication or solicitation. The security holder shall return the information provided pursuant to paragraph (a)(2)(ii) of this section and shall not retain any copies thereof or of any information derived from such information after the termination of the solicitation.

- (e) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

Note 1 to § 240.14a-7.

Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

Note 2 to § 240.14a-7

When providing the information required by § 240.14a-7(a)(1)(ii), if the registrant has received affirmative written or implied consent to delivery of a single copy of proxy materials to a shared address in accordance with § 240.14a-3(e)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.

[57 FR 48292, Oct. 22, 1992, as amended at 59 FR 63684, Dec. 8, 1994; 61 FR 24657, May 15, 1996; 65 FR 65750, Nov. 2, 2000; 72 FR 4167, Jan. 29, 2007; 72 FR 42238, Aug. 1, 2007]

§ 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 it 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.

§240.14a-9 False or misleading statements.

- (a) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.
- (b) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.
- (c) No nominee, nominating shareholder or nominating shareholder group, or any member thereof, shall cause to be included in a registrant's proxy materials, either pursuant to the Federal proxy rules, an applicable state or foreign law provision, or a registrant's governing documents as they relate to including shareholder nominees for director in a registrant's proxy materials, include in a notice on Schedule 14N (§ 240.14n-101), or include in any other related communication, any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to a solicitation for the same meeting or subject matter which has become false or misleading.

Note:

The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

- a. Predictions as to specific future market values.
- b. Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.
- c. Failure to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter.
- d. Claims made prior to a meeting regarding the results of a solicitation.
- e. Failure to disclose material information regarding proxy voting advice covered by § 240.14a-1(l)(1)(iii)(A), such as the proxy voting advice business's methodology, sources of information, or conflicts of interest.

[31 FR 212, Jan. 7, 1966, as amended at 41 FR 19933, May 14, 1976; 44 FR 38815, July 2, 1979; 44 FR 68456, Nov. 29, 1979; 75 FR 56782, Sept. 16, 2010; 85 FR 55155, Sept. 3, 2020]

§240.14a-10 Prohibition of certain solicitations.

No person making a solicitation which is subject to §§ 240.14a-1 to 240.14a-10 shall solicit:

- (a) Any undated or postdated proxy, or
- (b) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.

[17 FR 11434, Dec. 18, 1952]

§240.14a-12 Solicitation before furnishing a proxy statement.

- (a) Notwithstanding the provisions of § 240.14a-3(a), a solicitation may be made before furnishing security holders with a proxy statement meeting the requirements of § 240.14a-3(a) if:
 - (1) Each written communication includes:
 - (i) The identity of the participants in the solicitation (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a-101)) and a description of their direct or indirect interests, by security holdings or otherwise, or a prominent legend in clear, plain language advising security holders where they can obtain that information; and
 - (ii) A prominent legend in clear, plain language advising security holders to read the proxy statement when it is available because it contains important information. The legend also must explain to investors that they can get the proxy statement, and any other relevant documents, for free at the Commission's web site and describe which documents are available free from the

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.

Modified: Oct. 18, 2011

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.

Exhibit B-3

Proponent's Broker Letter

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

November 19, 2021

John R. Chevedden

PII
[REDACTED]

Dear John R. Chevedden:

This letter is provided at the request of Mr. John R. Chevedden, a customer of Fidelity investments.

Please accept this letter as confirmation that as of the market close on November 18, 2021, Mr. Chevedden has continuously owned no fewer than the shares quantities of the securities shown on the below table since September 1, 2018:

Security	Symbol	Qty.
AES Corp	AES	200.000
JetBlue Airways Corporation	JBLU	200.000
Alaska Air Group, Inc.	ALK	100.000
AT&T Inc.	T	150.000
Laboratory Corporation of America Holdings	LH	25.000*
CVS Caremark Corporation	CVS	50.000
Southwest Airlines Co.	LUV	100.000
FleetCor Technologies, Inc.	FLT	25.000
Northrop Grumman Corporation	NOC	10.000

* Since at least December 15, 2019

These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number 0226) a Fidelity Investments subsidiary.

The DTC clearinghouse number for Fidelity is 0266.

I hope this information is helpful. For any other issues or general inquiries, please call your Private Client Group at 1-800-544-5704. Thank you for choosing Fidelity Investments.

Sincerely,

Kris Miner
Operations Specialist

Our File: W471182-15NOV21

Fidelity Brokerage Services LLC, Members NYSE, SIPC.

Exhibit B-4

Proponent's Confirmation of Intention to Hold

Jennifer Gillcrist

From: John Chevedden [REDACTED] PII
Sent: Wednesday, December 1, 2021 4:07 PM
To: Jennifer Gillcrist; Paul Freedman; Ahmed Pasha
Subject: (AES)

USE CAUTION: External Sender

I intend to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the Applicable Ownership requirement.

Exhibit B-5

Confirmation of Telephonic Meeting with Proponent

Jennifer Gillcrist

From: Jennifer Gillcrist
Sent: Tuesday, November 23, 2021 6:01 PM
To: John Chevedden; Paul Freedman; Ahmed Pasha
Subject: RE: (AES) 29

Thank you, Mr. Chevedden. We'd be pleased to speak with you on Nov. 30 at 7:00 am PT/ 10:00 am ET. Shall I call the number you've provided?

Best, Jennifer

Jennifer V. Gillcrist (she/her)
Associate General Counsel, Securities, Finance & Governance
Assistant Secretary
The AES Corporation
Mobile: +1.571.523.5385



From: John Chevedden [REDACTED] PII
Sent: Monday, November 22, 2021 10:12 PM
To: Jennifer Gillcrist <jennifer.gillcrist@aes.com>; Paul Freedman <paul.freedman@aes.com>; Ahmed Pasha <ahmed.b.pasha@aes.com>
Subject: (AES) 29

USE CAUTION: External Sender

Available for an off the record telephone meeting with one company employee:
Nov. 29 7:00 am PT
Nov. 30 7:00 am PT

Confirmation requested by:

Nov. 24

Please provide the name of the one company employee.

I have no need for a meeting.

[REDACTED] PII

December 12, 2021

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

1 Rule 14a-8 Proposal
AES Corp (AES)
Shareholder Ratification of Termination Pay
John Chevedden

Ladies and Gentlemen:

This is a counterpoint to the December 10, 2021 no-action request.

This is a classic example of management claiming that a rule 14a-8 proposal is vague by giving a vague reason why it thinks the proposal is vague.

This is also a classic example of management trying to score points in the no action process and thereby casting doubt on whether the company is under competent management.

Management vaguely suggests that it has “a thousand employees” out of “8,200 employees” that it considers qualified for “termination payments with an estimated value exceeding 2.99 times the sum of the executive’s base salary plus target short-term bonus.”

This raises a red flag that management is top heavy with managers.

Management needs to avoid vagueness and clarify whether it has “a thousand employees” out of “8,200 employees” that it considers qualified for “termination payments with an estimated value exceeding 2.99 times the sum of the executive’s base salary plus target short-term bonus.”

Management needs to use specifics and give its best estimate of the number of senior managers that may be qualified for “termination payments with an estimated value exceeding 2.99 times the sum of the executive’s base salary plus target short-term bonus.”

Sincerely,



John Chevedden

cc: Jennifer Gillerist <jennifer.gillcris@aes.com>

[AES: Rule 14a-8 Proposal, November 8, 2021]
[This line and any line above it – *Not* for publication.]
Proposal 4 – Shareholder Ratification of Termination Pay

Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

"Severance or termination payments" include cash, equity or other compensation that is paid out or vests due to a senior executive's termination for any reason. Payments include those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans, but not life insurance, pension benefits, or deferred compensation earned and vested prior to termination.

"Estimated total value" includes: lump-sum payments; payments offsetting tax liabilities; perquisites or benefits not vested under a plan generally available to management employees; post-employment consulting fees or office expense; and equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

Generous performance-based pay can be good but shareholder ratification of "golden parachute" severance packages with a total cost exceeding 2.99 times base salary plus target bonus better aligns management pay with shareholder interests.

For instance at one company if the CEO is terminated without cause, whether or not his termination follows a change in control, he will receive an estimated \$39 million in termination payments, nearly 7-times his base salary plus short-term bonus.

It is in the best interest of AES shareholders to be protected from such lavish management termination packages for one person.

This proposal topic won 58% support at the 2021 FedEx annual meeting.

A 2015 General Electric shareholder proposal similar to the FedEx proposal won 40% GE shareholder support with 2.2 billion votes in favor. This may have represented 51% support from the GE shares that had access to independent proxy voting advice and are not forced to rely on the biased recommendations of management especially on issues of management pay.

Please vote yes:
Shareholder Ratification of Termination Pay – Proposal 4
[The above line – *Is* for publication.]

JOHN CHEVEDDEN

January 2, 2022

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

2 Rule 14a-8 Proposal
AES Corp (AES)
Shareholder Ratification of Termination Pay
John Chevedden

Ladies and Gentlemen:

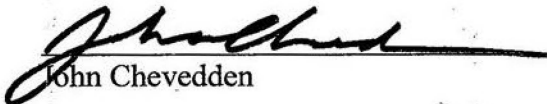
This is a counterpoint to the December 10, 2021 no-action request.

This could be called a domino no action request. If there are fault lines in the early pages then there is no foundation for the remaining pages.

Also the later pages contradict the earlier pages. Management claims that the proposal fails to give micromanagement implementation details to the Board. Then management turns around and says, "The Proposal Micromanages the Company."

Management concludes on page 13 with its get out of jail for free concept that as long as the Compensation Committee has a mandate to review and approve any severance or termination arrangement, then this is out of bounds for a rule 14a-8 proposal.

Sincerely,


John Chevedden

cc: Jennifer Gillcrist