



DIVISION OF
CORPORATION FINANCE

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

February 15, 2022

Richard B. Alsop
Shearman & Sterling LLP

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

Dear Mr. Alsop:

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

We are unable to concur in your view that the Company may exclude the Proposal under Rules 14a-8(b) and 14a-8(f). We note that the Proponent appears to have supplied documentary support sufficiently evidencing the Proponent's eligibility to submit the Proposal.

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

SHEARMAN & STERLING LLP

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

December 13, 2021

VIA ELECTRONIC MAIL

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

Re: *Dow Inc.*
Stockholder Proposal of John Chevedden – Independent Board Chairman
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

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

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

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

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

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THE PROPOSAL

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

The shareholders request that the Board of Directors adopt a policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO as follows:

Selection of the Chairman of the Board. The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board.

If a temporary non-Independent Director is serving as Chairman of the Board at the time of any Company annual meeting of stockholders, the Company shall request that its stockholders vote on a proposal to ratify that a non-Independent Director continue to serve as Chairman of the Board while the Board is seeking an independent Chairman of the Board.

See Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in Dow's view that the Proposal may be excluded from Dow's 2022 Proxy Materials for the Annual Meeting pursuant to Rules 14a-8(b) and 14a-8(f)(1) because the information provided by the Proponent's proof of requisite stock ownership did not sufficiently demonstrate his eligibility to submit a shareholder proposal after receiving proper notice of such deficiency from Dow.

PROCEDURAL BACKGROUND

On October 18, 2021 (the "Submission Date"), Dow received notice of the Proposal via e-mail only, which was sent by the Representative on behalf of the Proponent. The e-mail included a written statement from the Proponent dated October 12, 2021 and the Proposal dated October 18, 2021 but did not include any proof of ownership of the Proponent.

On October 28, 2021, Dow received a copy of a letter from TD Ameritrade, Inc. dated October 27, 2021 (the "Original Broker Letter"), which indicated that the Proponent has beneficially held at least 100 shares of Dow's common stock continuously since at least September 1, 2018. See Exhibit B.

As required by Rule 14a-8(f), Dow sent a proper notice of deficiency (the “Deficiency Notice,” which is included in Exhibit C to this letter) to the Representative by overnight courier and e-mail on October 29, 2021, which was within 14 calendar days of receipt of the Proposal. In the Deficiency Notice, Dow had informed the Proponent of the eligibility requirements of Rule 14a-8 and how he could cure the procedural deficiencies identified. Specifically, the Deficiency Notice stated, among other matters:

- (i) that the Proponent could not have held Dow’s common shares since September 1, 2018 as noted in the Original Broker Letter because such shares were not issued and outstanding before April 2, 2019, which was the effective date (the “Effective Date”) of Dow’s separation from DowDuPont Inc. (“DowDuPont”);
- (ii) the Ownership Requirements of Rule 14a-8(b);
- (iii) the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including the requirement for the statement to verify that the Proponent continuously held the requisite amount of shares to satisfy at least one of the Ownership Requirements of Rule 14a-8(b); and
- (iv) copies of Rule 14a-8, Staff Legal Bulletin No. 14F, dated October 18, 2011, and Staff Legal Bulletin No. 14G, dated October 16, 2012.

On October 31, 2021, the Proponent submitted a revised Proposal (the “Revised Proposal”), which included the same subject matter but provided more detail on how such Proposal should be adopted. See Exhibit D.

On November 3, 2021, within the required 14 calendar day timeframe, the Proponent responded to the Deficiency Notice by submitting a revised letter from TD Ameritrade, Inc. dated November 3, 2021 (the “Revised Broker Letter,” which is included in Exhibit E to this letter), which stated, in pertinent part, the following:

“[T]his letter is to confirm that as of the date of this letter, Mr. Kenneth Steiner held and had held continuously since at least September 1, 2018, at least 200 shares of each of:

- Dow Inc. (DOW)
 - Spun out of DowDuPont (DWDP) on 04/02/2019”

No further information has been provided by the Proponent to (i) indicate the requisite number of shares of DowDuPont’s common stock held and the duration of time the Proponent has continuously held such shares before the Effective Date or (ii) clarify whether the Proponent has held Dow’s common stock since the Effective Date to the Submission Date and whether the Proponent continuously held at least 200 shares of Dow’s common stock since the Effective Date.

ANALYSIS

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

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

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

The Revised Broker Letter stated that the Proponent has beneficially held at least 200 shares of Dow's common stock continuously since at least September 1, 2018. Such ownership of the Proponent is not possible since no such shares of Dow were issued and outstanding at the time.

On April 1, 2019, DowDuPont announced that it had completed the separation, distribution and related internal reorganization transactions of its materials science division (the "Separation"). Pursuant to the Separation, holders of DowDuPont common stock received one share of Dow common stock for three shares of DowDuPont common stock they held as of the close of business on March 21, 2019 in addition to cash in lieu of fractional shares of Dow common stock held. Once the Separation was completed, as of the Effective Date, Dow became an independent, publicly traded company and its common stock began trading on the New York Stock Exchange under the symbol "DOW." According to the Revised Broker Letter, the Proponent appears to have received shares of Dow's common stock in connection with the Separation, but the Revised Broker Letter does not indicate the requisite number of DowDuPont's common shares held or the duration of time the Proponent continuously held such shares before the Effective Date. Similarly, the Revised Broker Letter does not clarify when the Proponent had started holding Dow's common shares on or after the Effective Date and whether the Proponent continuously held at least 200 shares of Dow's common stock on or after the Effective Date to the Submission Date.

Rule 14a-8(f)(1) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the deficiency and the proponent fails to correct the deficiency within the required time. Dow had properly requested the Proponent to provide acceptable documentation that demonstrates that the Proponent has held the requisite amount of shares for the necessary time period to satisfy at least one of the Ownership Requirements to be eligible to submit the Proposal for inclusion in Dow's proxy statement for its Annual Meeting. Even after Dow had explicitly notified the Proponent in its Deficiency Letter that ownership of Dow's common stock since September 1, 2018 is not possible since the Separation occurred on April 2, 2019, the Revised Broker Letter only states that the Proponent has "continuously held at least 200 shares of Dow's common stock since at least September 1, 2018" and the date that Dow had spun out of DowDuPont. Notably, the Revised Broker Letter does not provide any information on the Proponent's beneficial ownership of DowDuPont's common stock before the Separation and Dow's common stock after the Separation. Thus, the Proponent failed to provide the necessary information to correct the deficiency within the required time to establish that he is eligible to submit a proposal for inclusion in Dow's 2022 Proxy Materials for its Annual Meeting.

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

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

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

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

As was the case in each of the no-action letters discussed above, the Proponent does not sufficiently demonstrate whether or not it received Dow's common stock in connection with Dow's Separation from DowDuPont, and further whether the requisite number of shares were held for the required holding period under Rule 14a-8(b). Given that the Proponent consistently stated he has held Dow's common stock since September 1, 2018, but such three-year holding period is not possible under the circumstances noted above. Dow's common stock has not been in existence for the past three years and the Proponent has not provided any additional information regarding the number of shares held and the duration of holding period for each of DowDuPont and Dow's common stock before and after the Separation, respectively.

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

CONCLUSION

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

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

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

Richard B. Alsop

cc: John Chevedden, on behalf of Kenneth Steiner
Amy E. Wilson, General Counsel and Corporate Secretary, Dow Inc.
Jonathan P. Wendt, Assistant Secretary, Office of the Corporate Secretary, Dow Inc.

Attachments

Exhibit A

Kenneth Steiner

PII

Ms. Amy E. Wilson
Dow Inc. (DOW)
2211 H.H. Dow Way
Midland, MI 48674
PH: 989-636-1000

Dear Ms. Wilson,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I intent 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.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden at:

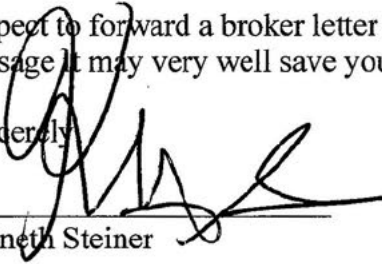
PII

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to PII

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

Sincerely,


Kenneth Steiner

10/12/21
Date

cc: Jon Wendt <jonathan.wendt@dow.com>
Kimberly Birch <KSBirch@dow.com>
Richard Alsop <richard.alsop@shearman.com>
Gina Lee <Gina.Lee@Shearman.com>

DOW – Rule 14a-8 Proposal, October 18, 2021
[This line and any line above it – *Not* for publication.]

Proposal 4 – Independent Board Chairman

The shareholders request that the Board of Directors adopt as policy, and amend the governing documents as necessary, to require the Chair of the Board of Directors to be an independent member of the Board. If an independent director is not available from inside or outside the company then a non-independent director from inside or outside the company, other than the CEO, can be named as Chairman for a term of 3 months to 6 months. This policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

This proposal topic won 52% support at Boeing and 54% support at Baxter International in 2020. Boeing then adopted this proposal topic in June 2020. The roles of Chairman and CEO are fundamentally different and should be held by 2 directors, a CEO and a Chairman who is completely independent of the CEO and our company.

This proposal topic won 44%-support at our 2012 annual meeting. This 44%-support likely represented 51%-support from the shares that have access to independent proxy voting advice.

The role of the CEO and management is to run the company.
The role of the Board of Directors is to provide independent oversight of management and the CEO.

Thus there is a potential conflict of interest for a CEO to have the oversight role of Chairman.

A CEO serving as Chair can result in excessive management influence on the Board and weaker oversight of management. The CEO gets comfortable being his own boss. With the current CEO serving as Chair this means giving up a substantial check and balance safeguard that can only occur with an independent Board Chairman.

A lead director is no substitute for an independent board chairman. A lead director cannot call a special shareholder meeting and cannot even call a special meeting of the board. A lead director can delegate most of his lead director duties to the CEO office and then the lead director can simply rubber-stamp it. There is no way shareholders can be sure of what goes on.

The lack of an independent Board Chairman is an unfortunate way to discourage new outside ideas and an unfortunate way to encourage the CEO to pursue pet projects that would not stand up to effective oversight. Plus Dow shareholders are restricted in bringing new ideas to management in a manner that has traction because Dow shareholders have no right to act by written consent.

One sign that Dow management does not believe in real engagement with shareholders is that Dow management sent out how to vote for dummies material after it distributed the 141-page annual meeting proxy in 2021.

Please vote yes:

Independent Board Chairman – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

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:

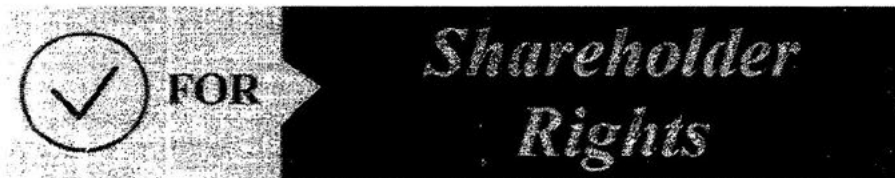
No management graphic in connection with the rule 14a-8 proposals in the proxy or ballot.

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.



From: [John Chevedden](#)
To: [Amy E. Wilson](#)
Cc: [Jon Wendt](#); [Kimberly Birch](#); [Gina Lee](#)
Subject: Rule 14a-8 Proposal (DOW)``
Date: Monday, October 18, 2021 7:26:35 PM
Attachments: [image001.jpg](#)
[18102021_4.pdf](#)

Dear Ms. Wilson,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

If you confirm proposal receipt in the next day a broker letter can be promptly forwarded that will save you from making a formal request.

Sincerely,

John Chevedden

Exhibit B



10/27/2021

Kenneth Steiner

PII

Re: Your TD Ameritrade account ending in PII

Dear Kenneth Steiner

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Mr. Kenneth Steiner held and had held continuously since at least September 1, 2018, at least 100 shares each of:

AbbVie Inc (ABBV)
ConocoPhillips (COP)
HollyFrontier Corporation (HFC)
Pfizer Inc. (PFE)
KeyCorp (KEY)
Dow Inc. (DOW)
The Mosaic Company (MOS)
Bristol-Myers Squibb Company (BMY)
Greenhill & Co., Inc. (GHL)

in the account ending in PII at TD Ameritrade.
The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to Client Services > Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Matthew Slamp
Resource Specialist
TD Ameritrade

TD Ameritrade understands the importance of protecting your privacy. From time to time we need to send you notifications like this one to give you important information about your account. If you've opted out of receiving promotional marketing communications from us, containing news about new and valuable TD Ameritrade services, we will continue to honor your request.

Market volatility, volume, and system availability may delay account access and trade execution.

TD Ameritrade, Inc., member FINRA/SIPC (www.finra.org, www.sipc.org), a subsidiary of The Charles

From: [John Chevedden](#)
To: [Wendt, Jon \(JP\)](#)
Cc: [Birch, Kimberly \(KS\)](#); [Gina Lee](#); [Richard Alsop](#); [Wilson, Amy \(AE\)](#)
Subject: (DOW) blb
Date: Thursday, October 28, 2021 10:36:13 PM
Attachments: [28102021_5.pdf](#)

Dear Mr. Wendt,
Please see the attached broker letter.
Please confirm receipt.
John Chevedden

Exhibit C



October 29, 2021

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Mr. John Chevedden

PII

Subject: Stockholder Proposal – Independent Board Chairman

Dear Mr. Chevedden:

We received a written statement from Mr. Kenneth Steiner (the “Proponent”) dated October 12, 2021 including the stockholder proposal dated October 18, 2021 (the “Proposal”) that was purportedly submitted on behalf of Mr. Kenneth Steiner (the “Proponent”) to Dow Inc. (“Dow” or the “Company”) on October 18, 2021 (the “Submission Date”) pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) for inclusion in the proxy statement for Dow’s 2022 Annual Meeting of Stockholders (the “2022 Annual Meeting”). We received notice of the Proposal via e-mail only. The Proposal names you or your designee to forward the Proposal to us and to act on the Proponent’s behalf with regards to the Proposal.

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

Proof of Ownership

On October 28, 2021, we received a copy of a letter from TD Ameritrade, Inc. dated October 27, 2021, which indicated that the Proponent has beneficially held at least 100 shares of Dow’s common stock continuously since at least September 1, 2018. Such ownership of the Proponent is not possible since no such shares were issued and outstanding at the time because the separation, distribution and related internal reorganization transactions of DowDuPont Inc. were not yet completed and Dow was not an independent, publicly traded company at such time. By this letter, I am requesting that you provide to us acceptable documentation that specifies the time period during which the Proponent has held Dow’s common stock and that the Proponent has continuously held such shares in an amount that satisfies at least one of the Ownership Requirements (defined below) to be eligible to submit the Proposal for inclusion in Dow’s proxy statement for its 2022 Annual Meeting.

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

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

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

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

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

If the Proponent holds shares through a bank or broker that is not a DTC participant, he will need to obtain proof of ownership from the DTC participant through which the bank or broker holds the shares, or an affiliate of such DTC participant. The Proponent should be able to find the name of

the DTC participant by asking his bank or broker. If the DTC participant that holds the Proponent's shares knows the holdings of its bank or broker, but does not know the Proponent's holdings, the Proponent may satisfy the proof of ownership requirements by submitting two proof of ownership statements — one from the Proponent's bank or broker confirming its ownership and the other from the DTC participant confirming the bank's or broker's ownership. Please review SLB 14F carefully before submitting proof of ownership to ensure that it is compliant.

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

Identification of Specific Times for Shareholder Engagement

Separately, Rule 14a-8(b)(1)(iii) of the Exchange Act requires that in order to be eligible to submit a proposal for inclusion in Dow's proxy statement for its 2022 Annual Meeting, the proponent or its representative must, among other things, provide the company with a written statement that the proponent or its representative is 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 proposal. The written statement must also include the proponent or its representative's contact information as well as business days and specific times of availability to discuss the proposal and that such times must be within regular business hours of the company's principal executive offices or between 9:00 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices.

The Proponent's written statement dated October 12, 2021 did not provide any specific dates and times of availability to discuss the Proposal. By this letter, I am requesting that the Proponent, or you on his behalf, provide a revised written statement providing the specific date and times of availability to discuss the Proposal within the timeframes specified under Rule 14a-8(b)(1)(iii) and the contact information of whoever will be available for the discussion in order to be eligible to submit the Proposal for inclusion in Dow's proxy statement for its 2022 Annual Meeting.

Identification of the Specific Proposal to be Submitted

In addition, if the proponent uses a representative to submit a shareholder proposal on the proponent's behalf, Rule 14a-8(b)(1)(iv) of the Exchange Act requires that in order to be eligible to submit a proposal for inclusion in Dow's proxy statement for its 2022 Annual Meeting, the proponent must, among other things, provide the company with written documentation that identifies the specific topic of the proposal to be submitted. Similarly, in Staff Legal Bulletin No. 141 (Nov. 1, 2017) ("SLB 141"), the Division noted that proposals submitted by proxy, such as the Proposal, may present challenges and concerns, including "that shareholders may not know that proposals are being submitted on their behalf." The documentation that you provided with the Proposal raises the concerns referred to in SLB 141.

The Proponent's written statement dated October 12, 2021, which purports to authorize you to act on the Proponent's behalf, does not specifically identify which proposal is being submitted. The documentation that you provided with the Proposal is dated October 18, 2021, a different date than the Proponent's written statement, and does not clearly indicate or refer in any way to the Proponent's written statement dated October 12, 2021 or demonstrate whether this is the

Mr. John Chevedden

October 29, 2021

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Proponent's proposal the Proponent had instructed or authorized you to submit to the Company on the Proponent's behalf.

To remedy this defect, the Proponent should provide a revised written statement that identifies the specific topic of the proposal that the Proponent had instructed or authorized you to submit on the Proponent's behalf and expressly identify the Company as the subject company of the Proposal to demonstrate eligibility to submit the Proposal for inclusion in Dow's proxy statement for its 2022 Annual Meeting.

A copy of SLB 141, which applies to "proposals by proxy," is enclosed for your reference.

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

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

Sincerely,



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

cc: Kenneth Steiner, [REDACTED] PII
Amy E. Wilson, General Counsel and Corporate Secretary, Dow Inc. (via email)
Richard B. Alsop, Shearman & Sterling LLP (via email)

Attachments



Title 17

§ 240.14a-8 Shareholder proposals.

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

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

- (ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
- (A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or
 - (B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:
 - (1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;
 - (2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and
 - (3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.
- (3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:
- (i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and
 - (ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.
 - (iii) This paragraph (b)(3) will expire on January 1, 2023.
- (c) **Question 3:** How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.
- (d) **Question 4:** How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.
- (e) **Question 5:** What is the deadline for submitting a proposal?
- (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.
 - (2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.
 - (3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.
- (f) **Question 6:** What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?
- (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).
 - (2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

- (g) **Question 7:** Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.
- (h) **Question 8:** Must I appear personally at the shareholders' meeting to present the proposal?
- (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.
 - (2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
 - (3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.
- (i) **Question 9:** If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?
- (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1):

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

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

Note to paragraph (i)(2):

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

- (3) **Violation of proxy rules:** If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
- (4) **Personal grievance; special interest:** If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;
- (5) **Relevance:** If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;
- (6) **Absence of power/authority:** If the company would lack the power or authority to implement the proposal;
- (7) **Management functions:** If the proposal deals with a matter relating to the company's ordinary business operations;
- (8) **Director elections:** If the proposal:
 - (i) Would disqualify a nominee who is standing for election;
 - (ii) Would remove a director from office before his or her term expired;
 - (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
 - (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
 - (v) Otherwise could affect the outcome of the upcoming election of directors.
- (9) **Conflicts with company's proposal:** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9):

A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

Note to paragraph (i)(10):

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

- (11) **Duplication:** If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;
- (12) **Resubmissions.** If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:
- (i) Less than 5 percent of the votes cast if previously voted on once;
 - (ii) Less than 15 percent of the votes cast if previously voted on twice; or
 - (iii) Less than 25 percent of the votes cast if previously voted on three or more times.
- (13) **Specific amount of dividends:** If the proposal relates to specific amounts of cash or stock dividends.
- (j) **Question 10:** What procedures must the company follow if it intends to exclude my proposal?
- (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.
 - (2) The company must file six paper copies of the following:
 - (i) The proposal;
 - (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
 - (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.
- (k) **Question 11:** May I submit my own statement to the Commission responding to the company's arguments?
- Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.
- (l) **Question 12:** If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?
- (1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
 - (2) The company is not responsible for the contents of your proposal or supporting statement.
- (m) **Question 13:** What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?
- (1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.
 - (2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
 - (3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
 - (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
 - (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

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

EFFECTIVE DATE NOTE

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



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

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.⁴ The name of the DTC participant, however, does not appear as the registered owner 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 participant. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participant 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 the question 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 broker and bank that are DTC participants are considered to be the record holder of securities on deposit with DTC when calculating the number of record holder for purposes of Section 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?

Shareholder and company 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/File/Download/clientcenter/DTC/alpha.alpha.html>.

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 proceed on 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 indicated a revision to a proposal,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 "fail[s] 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] proposal from its proxy material for any meeting held in the following two calendar year." With this provision 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 statement 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 purpose of Rule 14a-8(b), the submission date of a proposal will generally precede the company’s receipt date of the proposal, absent the use of electronic or other means of same day delivery.

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

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

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

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

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

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

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

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



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

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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 requirement 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 defect or explaining what a proponent must do to remedy defect in proof of ownership letter. 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 deficiency 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 proposal or in their supporting statement the address to website that provide more information about their proposal. 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)

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

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

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

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

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

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

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

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

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

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

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

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



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

Shareholder Proposals

Staff Legal Bulletin No. 14I (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 1, 2017

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 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 about the Division's view on:

- the scope and application of Rule 14a-8(i)(7);
- the scope and application of Rule 14a-8(i)(5);
- proposal submitted on behalf of shareholder; and
- the use of graphs and images consistent with Rule 14a-8(d).

You can find additional guidance about 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](#), [SLB No. 14F](#), [SLB No. 14G](#) and [SLB No. 14H](#).

B. Rule 14a-8(i)(7)

1. Background

Rule 14a-8(i)(7), the "ordinary business" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations." The purpose of the exception 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."^[1]

2. The Division's application of Rule 14a-8(i)(7)

The Commission has stated that the policy underlying the "ordinary business" exception rests on two central considerations. [2] The first relates to the proposal's subject matter; the second, the degree to which the proposal "micromanages" the company. Under the first consideration, proposals that raise matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" may be excluded, unless such a proposal focuses on a policy issue that is sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote. [3] Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operation. [4]

At issue in many Rule 14a-8(i)(7) no-action requests is whether a proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant. These determinations often raise difficult judgment calls that the Division believes are in the first instance matters that the board of directors is generally in a better position to determine. A board of directors, acting as steward with fiduciary duties to a company's shareholders, generally has significant duties of loyalty and care in overseeing management and the strategic direction of the company. A board acting in this capacity and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.

Accordingly, going forward, we would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned. We believe that a well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7).

C. Rule 14a-8(i)(5)

1. Background

Rule 14a-8(i)(5), the "economic relevance" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "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."

2. History of Rule 14a-8(i)(5)

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal." [5] The

Commission stated that this interpretation of the rule may have “unduly limit[ed] the exclusion,” and proposed adopting the economic tests that appear in the rule today.^[6] In adopting the rule, the Commission characterized it as relating “to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders’ rights, e.g., cumulative voting.”^[7]

Shortly after the 1983 amendment, however, the District Court for the District of Columbia in *Lovenheim v Iroquois Brand, Ltd*, 618 F. Supp. 554 (D.D.C. 1985) preliminarily enjoined a company from excluding a proposal regarding sale of a product line that represented only 0.05% of assets, \$79,000 in sales and a net loss of (\$3,121), compared to the company’s total assets of \$78 million, annual revenue of \$141 million and net earnings of \$6 million. The court based its decision to grant the injunction “in light of the ethical and social significance” of the proposal and on “the fact that it implicates significant level of sales.” Since that time, the Division has interpreted *Lovenheim* in a manner that has significantly narrowed the scope of Rule 14a-8(i)(5).

3. The Division’s application of Rule 14a-8(i)(5)

Over the years, the Division has only infrequently agreed with exclusion under the “economic relevance” exception. Under its historical application, the Division has not agreed with exclusion under Rule 14a-8(i)(5), even where a proposal has related to operations that accounted for less than 5% of total assets, net earnings and gross sales, where the company conducted business, no matter how small, related to the issue raised in the proposal. The Division’s analysis has not focused on a proposal’s significance to the company’s business. As a result, the Division’s analysis has been similar to its analysis prior to 1983, with which the Commission expressed concern.

That analysis simply considered whether a company conducted any amount of business related to the issue in the proposal and whether that issue was of broad social or ethical concern. We believe the Division’s application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because it has not fully considered the second prong of the rule as amended in 1982: the question of whether the proposal “deal[s] with a matter that is not significantly related to the issuer’s business” and is therefore excludable. Accordingly, going forward, the Division’s analysis will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal’s relevance to the company’s business.

Because the test only allows exclusion when the matter is not “otherwise significantly related to the company,” we view the analysis as dependent upon the particular circumstances of the company to which the proposal is submitted. That is, a matter significant to one company may not be significant to another. On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.

Where a proposal’s significance to a company’s business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is “otherwise significantly related to the company’s business.”^[8] For example, the proponent can provide information demonstrating that the proposal “may have a significant impact on other segments of the issuer’s business or subject the issuer to significant contingent liabilities.”^[9] The proponent could continue to raise social or ethical issues in its arguments,

but it would need to tie those to a significant effect on the company's business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the "total mix" of information about the issuer.

As with the "ordinary business" exception in Rule 14a-8(i)(7), determining whether a proposal is "otherwise significantly related to the company's business" can raise difficult judgment calls. Similarly, we believe that the board of directors is generally in a better position to determine these matters in the first instance. A board acting with the knowledge of the company's business and the implications for a particular proposal on that company's business is better situated than the staff to determine whether a particular proposal is "otherwise significantly related to the company's business." Accordingly, we would expect a company's Rule 14a-8(i)(5) no-action request to include a discussion that reflects the board's analysis of the proposal's significance to the company. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.

In addition, the Division's analysis of whether a proposal is "otherwise significantly related" under Rule 14a-8(i)(5) has historically been informed by its analysis under the "ordinary business" exception, Rule 14a-8(i)(7). As a result, the availability or unavailability of Rule 14a-8(i)(7) has been largely determinative of the availability or unavailability of Rule 14a-8(i)(5). Going forward, the Division will no longer look to its analysis under Rule 14a-8(i)(7) when evaluating arguments under Rule 14a-8(i)(5). In our view, applying separate analytical frameworks will ensure that each basis for exclusion serves its intended purpose.

We believe the approach going forward is more appropriately rooted in the intended purpose and language of Rule 14a-8(i)(5), and better helps companies, proponents and the staff determine whether a proposal is "otherwise significantly related to the company's business."

D. Proposals submitted on behalf of shareholders

While Rule 14a-8 does not address shareholders' ability to submit proposals through a representative, shareholders frequently elect to do so, a practice commonly referred to as "proposal by proxy." The Division has been, and continues to be, of the view that a shareholder's submission by proxy is consistent with Rule 14a-8.[\[10\]](#)

The Division is nevertheless mindful of challenges and concerns that proposals by proxy may present. For example, there may be questions about whether the eligibility requirements of Rule 14a-8(b) have been satisfied. There have also been concerns raised that shareholders may not know that proposals are being submitted on their behalf. In light of these challenges and concerns, and to help the staff and companies better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied, going forward, the staff will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder's delegation of authority to the proxy.[\[11\]](#) In general, we would expect this documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;

- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

We believe this documentation will help alleviate concerns about proposals by proxy, and will also help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal's submission by proxy. Where this information is not provided, there may be a basis to exclude the proposal under Rule 14a-8(b).^[12]

E. Rule 14a-8(d)

1. Background

Rule 14a-8(d) is one of the procedural bases for exclusion of a shareholder proposal in Rule 14a-8. It provides that a "proposal, including any accompanying supporting statement, may not exceed 500 words."

2. The use of images in shareholder proposals

Questions have recently arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.^[13] In two recent no-action decisions,^[14] the Division expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.^[15] Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.^[16]

The Division recognizes the potential for abuse in this area. The Division believes, however, that these potential abuses can be addressed through other provisions of Rule 14a-8. For example, exclusion of graphs and/or images would be appropriate under Rule 14a-8(i)(3) where they:

- make the proposal materially false or misleading;
- render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
- directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
- are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.^[17]

Exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphics, exceeds 500.

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

^[2] *Id.*

^[3] *Id.*

[4] See Staff Legal Bulletin No. 14H (Oct. 22, 2015), *citing* Staff Legal Bulletin No. 14E (Oct. 27, 2009) (stating that a proposal generally will not be excludable “as long as a sufficient nexus exists between the nature of the proposal and the company”).

[5] Release No. 34-19135 (Oct. 14, 1982).

[6] *Id.*

[7] Release No. 34-20091 (Aug. 16, 1983).

[8] Proponents bear the burden of demonstrating that a proposal is “otherwise significantly related to the company’s business.” See Release No. 34-39093 (Sep. 18, 1997), *citing* Release No. 34-19135.

[9] Release No. 34-19135.

[10] We view a shareholder’s ability to submit a proposal by proxy as largely a function of state agency law provided it is consistent with Rule 14a-8.

[11] This guidance applies only to proposals submitted by proxy after the date on which this staff legal bulletin is published.

[12] Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder’s failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. See Rule 14a-8(f)(1).

[13] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company’s proxy statement. See Release No. 34-12999 (Nov. 22, 1976).

[14] *General Electric Co.* (Feb. 3, 2017, *recon. granted* Feb. 23, 2017); *General Electric Co.* (Feb. 23, 2016).

[15] These decisions were consistent with a longstanding Division position. See *Ferrofluidics Corp.* (Sep. 18, 1992).

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder’s graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder’s graphics. If a company’s proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

[17] See *General Electric Co.* (Feb. 23, 2017).

<http://www.sec.gov/interps/legal/cfslb14i.htm>

From: "Wendt, Jon (JP)" <jonathan.wendt@dow.com>
Date: October 29, 2021 at 4:03:00 PM EDT
To: John Chevedden [REDACTED]
Cc: "/EXT Alsop, Richard (R)" <richard.alsop@shearman.com>, "Wilson, Amy (AE)" <AEWilson@dow.com>
Subject: RE: (DOW) blb

Mr. Chevedden – Attached please find correspondence relating to the shareholder proposal and supporting information you recently submitted. Copies have also been sent via Federal Express to Mr. Steiner and you.

Regards,

Jonathan Wendt
Attorney
Office: + 1 989-638-2343
Mobile: + 1 989-492-6104

Exhibit D

[DOW – Rule 14a-8 Proposal, October 18, 2021, Revised October 31, 2021]

[This line and any line above it – *Not* for publication.]

Proposal 4 – Independent Board Chairman

The shareholders request that the Board of Directors adopt a policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO as follows:

Selection of the Chairman of the Board The Board requires the separation of the offices of the Chairman of the Board and the Chief Executive Officer.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board.

If a temporary non-Independent Director is serving as Chairman of the Board at the time of any Company annual meeting of stockholders, the Company shall request that its stockholders vote on a proposal to ratify that a non-Independent Director continue to serve as Chairman of the Board while the Board is seeking an independent Chairman of the Board.

This proposal topic won 52% support at Boeing and 54% support at Baxter International in 2020. Boeing then adopted this proposal topic in June 2020. The roles of Chairman and CEO are fundamentally different and should be held by 2 directors, a CEO and a Chairman who is completely independent of the CEO and our company.

This proposal topic won 44%-support at our 2012 annual meeting. This 44%-support likely represented 51%-support from the shares that have access to independent proxy voting advice.

The role of the CEO and management is to run the company.

The role of the Board of Directors is to provide independent oversight of management and the CEO.

Thus there is a potential conflict of interest for a CEO to have the oversight role of Chairman.

A lead director is no substitute for an independent board chairman. A lead director can delegate most of his lead director duties to the CEO office and then the lead director can simply rubber-stamp it. There is no way shareholders can be sure of what goes on.

The lack of an independent Board Chairman is an unfortunate way to discourage new outside ideas and an unfortunate way to encourage the CEO to pursue pet projects that would not stand up to effective oversight. Plus Dow shareholders are restricted in bringing new ideas to management in a manner that has traction because Dow shareholders have no right to act by written consent.

One sign that Dow management does not believe in genuine engagement with shareholders is that Dow management sent out how to vote for dummies material after it distributed the 141-page annual meeting proxy in 2021. Shareholders do not have access to the deep pockets of the company to distribute a response.

Please vote yes:

Independent Board Chairman – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

From: [John Chevedden](#)
To: [Amy E. Wilson](#)
Cc: [Jon Wendt](#); [Kimberly Birch](#); [Gina Lee](#)
Subject: Rule 14a-8 Proposal (DOW)`` REVISED
Date: Sunday, October 31, 2021 11:52:52 PM
Attachments: [31102021_6.pdf](#)

REVISED

Dear Ms. Wilson,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,
John Chevedden

Exhibit E



11/3/2021

Kenneth Steiner

PII

Re: Your TD Ameritrade account ending in PII

Kenneth Steiner,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Mr. Kenneth Steiner held and had held continuously since at least September 1, 2018, at least 200 shares each of:

- The Allstate Corporation (ALL)
- The Carlyle Group Inc. (CG)
- Dow Inc. (DOW)
 - Spun out of Dow DuPont (DWDP) on 04/02/2019
- Greenhill & Co., Inc. (GHL)
- PPL Corporation (PPL)
- Truist Financial Corporation (TFC)

The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to Client Services > Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

<<Associate Name>>
Resource Specialist
TD Ameritrade

TD Ameritrade understands the importance of protecting your privacy. From time to time we need to send you notifications like this one to give you important information about your account. If you've opted out of receiving promotional marketing communications from us, containing news about new and valuable TD Ameritrade services, we will continue to honor your request.

Market volatility, volume, and system availability may delay account access and trade execution.

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Distributed by TD Ameritrade, Inc., 200 South 108th Avenue, Omaha, NE 68154-2631.

From: John Chevedden [REDACTED] PII
Sent: Wednesday, November 3, 2021 3:19 PM
To: Wendt, Jon (JP) <jonathan.wendt@dow.com>; Wilson, Amy (AE) <AEWilson@dow.com>
Subject: (DOW) blb

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

Dear Mr. Wendt,
Please see the attached broker letter.
Please confirm receipt.
John Chevedden

December 13, 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
Dow Inc. (DOW)
Independent Board Chairman
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 13, 2021 no-action request.

The proponent only needs to establish that he owns 200 shares of Dow Inc. (DOW) stock continuously since December 31, 2019. And the broker letter establishes that Mr. Steiner continuously owned 200 shares of DOW stock since April 2, 2019.

Management can claim that the broker letter is incorrect about the start date of Mr. Steiner's holdings. But the broker letter only needs to be correct that Mr. Steiner held company stock from at least December 31, 2019 until the date of the broker letter.

Sincerely,


John Chevedden

cc: Kenneth Steiner

Amy E. Wilson <aewilson@dow.com>

11/3/2021

Kenneth Steiner

PII

Re: Your TD Ameritrade account ending in PII

Kenneth Steiner,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Mr. Kenneth Steiner held and had held continuously since at least September 1, 2018, at least 200 shares each of:

- The Allstate Corporation (ALL)
- The Carlyle Group Inc. (CG)
- Dow Inc. (DOW)
 - Spun out of Dow DuPont (DWDP) on 04/02/2019
- Greenhill & Co., Inc. (GHL)
- PPL Corporation (PPL)
- Truist Financial Corporation (TFC)

The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to Client Services > Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

<<Associate Name>>

Resource Specialist
TD Ameritrade

TD Ameritrade understands the importance of protecting your privacy. From time to time we need to send you notifications like this one to give you important information about your account. If you've opted out of receiving promotional marketing communications from us, containing news about new and valuable TD Ameritrade services, we will continue to honor your request.

Market volatility, volume, and system availability may delay account access and trade execution.

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JOHN CHEVEDDEN

January 5, 2022

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

3 Rule 14a-8 Proposal
DuPont de Nemours, Inc. (DD)
Independent Board Chairman
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 6, 2021 no-action request.

The broker letter has the correct stock symbol.

“When a company issues securities to the public marketplace, it selects an available symbol for its shares, often related to the company name.”

“Investors and traders use the symbol to place trade orders.”

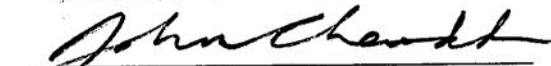
“A stock symbol is a unique series of letters assigned to a security for trading purposes.”

“In addition to saving time and capturing a specific stock price at the right time, stock symbols are useful when two or more companies have similar monikers.”

Source of all quotes:

<https://www.investopedia.com/terms/s/stocksymbol.asp>

Sincerely,



John Chevedden

cc: Kenneth Steiner

Peter Hennessey