



DIVISION OF  
CORPORATION FINANCE

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

February 2, 2022

John P. Kelsh  
Sidley Austin LLP

Re: Abbott Laboratories (the "Company")  
Incoming letter dated December 17, 2021

Dear Mr. Kelsh:

This letter is in response to your correspondence concerning the shareholder proposals (the "Proposals") submitted to the Company by Kenneth Steiner and John Chevedden (the "Proponents") 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 Proposals under Rule 14a-8(c) because neither of the Proponents submitted more than one proposal, directly or indirectly, to the Company.

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  
Kenneth Steiner



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ONE SOUTH DEARBORN  
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December 17, 2021

**By Email**

Shareholderproposals@sec.gov  
Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Abbott Laboratories - Shareholder Proposals Submitted by John Chevedden and Kenneth Steiner

Dear Ladies and Gentlemen:

On behalf of Abbott Laboratories (“Abbott” or the “Company”) and pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, we hereby request confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) will not recommend enforcement action if, in reliance on Rule 14a-8(c), Abbott excludes each of (i) a proposal submitted on October 24, 2021 by Kenneth Steiner appointing John Chevedden as his proxy, as revised by the proposal submitted on November 11, 2021 (together with the supporting statement, the “Independent Board Chairman Proposal”), and (ii) a proposal submitted on October 27, 2021 by John Chevedden (together with the supporting statement, the “Special Shareholder Meeting Threshold Proposal” and together with the Independent Board Chairman Proposal, the “Proposals”) from the proxy materials (the “2022 Proxy Materials”) for Abbott’s 2022 annual shareholders’ meeting (the “2022 Annual Meeting”), which Abbott expects to file in definitive form with the SEC on or about March 18, 2022.

Pursuant to Rule 14a-8(j),

- (a) a copy of the Proposals is attached hereto as Exhibit A;
- (b) a copy of all relevant correspondence exchanged with Mr. Chevedden and Mr. Steiner with respect to the Proposals is attached hereto as Exhibit B; and

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(c) a copy of this letter is being sent to notify Mr. Chevedden and Mr. Steiner of Abbott's intention to omit the Proposals from the 2022 Proxy Materials.

Pursuant to *Staff Legal Bulletin No. 14D* (Nov. 7, 2008), this letter and its exhibits are being submitted to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov).

On behalf of Abbott, we hereby request that the Staff concur with the omission of the Proposals from the 2022 Proxy Materials for the reasons set forth in this letter.

## BACKGROUND

### **I. Correspondence with Mr. Steiner and Mr. Chevedden**

On October 24, 2021, Mr. Steiner submitted the initial version of the Independent Board Chairman Proposal to the Company and appointed Mr. Chevedden as his proxy.

On October 27, 2021, Mr. Chevedden submitted the Special Shareholder Meeting Threshold Proposal to the Company.

On November 1, 2021, the Company sent two letters by email and Federal Express to Mr. Chevedden, notifying him (and Mr. Steiner who was copied on the letter regarding the Independent Board Chairman Proposal) of the violation of the "one proposal" rule in Rule 14a-8(c), among other procedural deficiencies, and notifying him that if he did not withdraw one of the Proposals within the fourteen (14) calendar day response period as required by the rule (the "Deficiency Notice"), then the Company intended to seek omission of both Proposals from the 2022 Proxy Materials for the 2022 Annual Meeting.

Later that evening on November 1, 2021, Mr. Chevedden responded to the Company by email, stating:

"Your letter seems to say when a shareholder submits a proposal and appoints a proxy that appointing a proxy cancels out his submits [sic] of the proposal."

On November 8, 2021, Mr. Chevedden responded again to the Company by email without including Mr. Steiner in the email distribution, stating:

**"I do not now represent a rule 14a-8 proposal for the 2022 ABT AGM by Mr. Kenneth Steiner. I continue to represent Mr. Steiner at companies where I do not submit a proposal on my behalf. I am not precluded from giving advice to Mr. Steiner on his proposal."** (emphasis added)

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On November 11, 2021, the Company received an email containing a revised version of the Independent Board Chairman Proposal from Mr. Steiner.

On November 12, 2021, the Company received an email containing a revised version of the Special Shareholder Meeting Threshold Proposal from Mr. Chevedden.

## ARGUMENT

### **The Proposals May be Excluded Under Rule 14a-8(c) and Rule 14a-8(f)(1) Because Mr. Chevedden Already Submitted a Proposal for the 2022 Annual Meeting As Proxy for Mr. Steiner and May Not Submit More than One Proposal for the Annual Meeting.**

Rule 14a-8(c) provides that “[e]ach **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.” (emphasis added)

In the release accompanying the amendment to Rule 14a-8(c), the Commission explained that “[u]nder the new rule, a shareholder-proponent will not be permitted to submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder’s behalf for consideration at the same meeting . . . Using the rule in this way undermines the one-proposal limit. The amended rule text will more effectively apply the one-proposal limit to shareholders and representatives of shareholders.” *Exchange Act Release No. 34-89964 (Sep. 23, 2020)* (the “2020 Release”).

The 2020 Release makes clear that new Rule 14a-8(c) expressly prohibits Mr. Chevedden from submitting a shareholder proposal directly and also submitting a shareholder proposal **indirectly** as a representative for the same shareholders’ meeting.

Notwithstanding new Rule 14a-8(c), Mr. Chevedden submitted the Independent Board Chairman Proposal to the Company indirectly as a representative on October 24, 2021, and three days later, he submitted the Special Shareholder Meeting Threshold Proposal to the Company. Therefore, Mr. Chevedden submitted more than one proposal to the Company. Abbott advised Mr. Chevedden of this violation in the Deficiency Notice on November 1, 2021.

Mr. Chevedden has not formally withdrawn as Mr. Steiner’s representative, nor did Mr. Steiner formally withdraw his designation of Mr. Chevedden as his proxy. Rather, in Mr. Chevedden’s November 8 email (in which he did not include Mr. Steiner in the email distribution), Mr. Chevedden merely stated: “I do not now represent a rule 14a-8 proposal for the

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2022 ABT AGM by Mr. Kenneth Steiner.” This statement from Mr. Chevedden is not a notification of withdrawal. He is misstating that he does not represent Mr. Steiner; however, he did not indicate in that communication, nor in any other communication, that he had withdrawn as Mr. Steiner’s proxy. He is merely making an assertion – that he is not Mr. Steiner’s representative for the Independent Board Chairman Proposal – that is simply false. In fact, the revised Independent Board Chairman Proposal sent on November 11, 2021 includes a request in the “Notes” to the submission that Abbott contact Mr. Chevedden’s email address to acknowledge receipt, which evidences that Mr. Steiner continues to view Mr. Chevedden as his representative for the Independent Board Chairman Proposal. Mr. Chevedden has not withdrawn either of the Proposals. Therefore, Abbott requests that the Staff concur in Abbott’s view that it may exclude the Proposals pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1).

If the Staff nevertheless finds that Mr. Chevedden has technically withdrawn as Mr. Steiner’s proxy for the Independent Board Chairman Proposal, then the Company believes that Mr. Chevedden has failed to cure the one-proposal limit deficiency. It is clear that Mr. Chevedden wrote the Independent Board Chairman Proposal. The dates, the headers and footers of each Proposal are identical. Further, in the original submissions of the Proposals, the lengthy, detailed “Notes” sections following the supporting statements were also identical to one another. Further, when Mr. Chevedden stated in his November 8 email that “I continue to represent Mr. Steiner at companies where I do not submit a proposal on my behalf”, he in effect acknowledged that he is the proponent in all but name of the Independent Board Chairman shareholder proposals submitted by Mr. Steiner to all companies. Accordingly Mr. Steiner is only the nominal proponent of the Independent Board Chairman Proposal who is purporting to submit what is in fact Mr. Chevedden’s shareholder proposal in order to assist Mr. Chevedden’s clumsy effort to avoid the “one proposal” limitation. In doing so, Mr. Chevedden is continuing to function as a representative of Mr. Steiner for the Independent Board Chairman Proposal and is, directly or indirectly, submitting more than one proposal for Abbott’s 2022 Annual Meeting.

Since the 2010 proxy season, Mr. Steiner has submitted 11 shareholder proposals to Abbott. In each instance, he appointed Mr. Chevedden to be his proxy, and Mr. Chevedden represented Mr. Steiner in all correspondence and other communications with Abbott, including virtually presenting shareholder proposals at Abbott’s 2020 and 2021 annual shareholders’ meetings. Further, Mr. Chevedden submitted multiple shareholder proposals to Abbott in three of the last four proxy seasons, directly and indirectly, through a combination of Mr. Chevedden submitting a shareholder proposal and Mr. Steiner submitting a shareholder proposal appointing Mr. Chevedden to be his proxy.

It is well-known that Mr. Chevedden, directly or indirectly, submits hundreds of shareholder proposals each proxy season, far more than any other shareholder proposal proponent. In the 2021 proxy season, the Chevedden group (which includes Mr. Chevedden, Mr. Steiner, William Steiner, Myra Young, and James McRitchie) submitted 252 shareholder

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proposals, which accounts for nearly one-third of all shareholder proposals submitted during the last proxy season. *See 2021 Annual Corporate Governance Review, Georgeson.* To Abbott's knowledge, there have been at least 104 instances since 2011 in which Mr. Chevedden, directly or indirectly, submitted multiple shareholder proposals to a company, through a combination of acting individually and/or as a proxy, for consideration at such company's annual meeting. Moreover, there are an additional 129 instances since 2011, to Abbott's knowledge, in which Mr. Chevedden and a member of Mr. Chevedden's group submitted multiple shareholder proposals to a company, but it is not discernible from public information, including the proxy disclosure, if Mr. Chevedden was a proxy for the shareholder proposal submitted by the member of Mr. Chevedden's group. Further, the shareholder proposals are nearly identical across industries, whether or not submitted in Mr. Chevedden's own name or as a proxy for Mr. Steiner or another member of Mr. Chevedden's group.

Mr. Chevedden's initial response to being notified by the Company of his violation of Rule 14a-8(c) on November 1 evidenced his lack of understanding of new Rule 14a-8(c) and an acknowledgment that he had submitted two shareholder proposals to Abbott. In his November 8 email, Mr. Chevedden stated that "I continue to represent Mr. Steiner at companies where I do not submit a proposal on my behalf", which was a confession by Mr. Chevedden that he is the driving force behind the Independent Board Chairman shareholder proposals nominally submitted by Mr. Steiner and is relying on the securities holdings of Mr. Steiner for the purpose of meeting the eligibility requirements to, directly or indirectly, submit multiple proposals for Abbott's 2022 Annual Meeting in contravention of Rule 14a-8(c).

In the 2020 Release, the Commission made clear that the same concerns recognized by the Commission in 1976 when it adopted the one proposal restriction, i.e., that "some proponents may attempt to evade the new limitations through various maneuvers", are still risks that threaten to "undermin[e] the purpose of the one-proposal limit." *2020 Release.* The Commission cited these procedural gymnastics as the basis for the new rule that provides that a person may only submit one proposal, whether "directly or indirectly", for a particular shareholders' meeting. *Id.*

Abbott is aware that the Staff views submission of a shareholder proposal by proxy as consistent with Rule 14a-8 and is not challenging Mr. Steiner's right to submit a proposal and designate a proxy. However, Abbott asserts that, under these circumstances, Mr. Chevedden is a proponent in all but name of the Independent Board Chairman Proposal by functionally acting as the representative of Mr. Steiner for the Independent Board Chairman Proposal, and as such, that Mr. Chevedden has "indirectly" submitted the Independent Board Chairman Proposal. Abbott is also aware that in a number of 2009 no-action letters, the Staff did not concur with the exclusion of multiple shareholder proposals under Rule 14a-8(c) that were submitted by Mr. Chevedden individually and as designated proxy. *See, e.g., Bank of America Corporation* (avail. Feb. 26, 2009) and *The Dow Chemical Company* (avail. Mar. 6, 2009). Abbott also acknowledges that the Staff disagreed with similar arguments that Abbott has made previously regarding Mr.

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Chevedden. *See Abbott Laboratories* (avail. Feb. 28, 2019) and *Abbott Laboratories* (avail. Jan. 29, 2020).

However, since that time, Rule 14a-8 was amended to make clear that a “person” (not a shareholder) may not submit more than one proposal “directly or indirectly” for a particular shareholders’ meeting or “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.” *Rule 14a-8(c)*.

Further, the Staff’s historical views on this topic indicate that a shareholder cannot do indirectly what may not be done directly. For example, in cases where a shareholder has submitted multiple proposals and then has had family members, friends, or other associates submit the same or similar proposals shortly after being notified of the one-proposal rule, the Staff repeatedly has concurred that such tactics will entitle the company to no-action relief in reliance on Rule 14a-8(c), even under prior iterations of the rule that lacked the “directly or indirectly” limitation. *See, e.g., Staten Island Bancorp, Inc.* (avail. Feb. 27, 2002) (concurring in the exclusion under Rule 14a-8(c) of five shareholder proposals, all of which were initially submitted by one proponent, and when notified of the one-proposal rule, the proponent, a daughter, close friends, and neighbors resubmitted similar and, in some cases, identical proposals); *Spartan Motors, Inc.* (avail. Mar. 12, 2001) (permitting the omission of two proposals under Rule 14a-8(c) that were initially submitted by the proponent where, after he was made aware of the one-proposal rule, two identical proposals were resubmitted under his name and his wife’s name); *Dominion Resources, Inc.* (avail. Feb. 24, 1993) (concurring under the predecessor to Rule 14a-8(c) in the exclusion of three shareholder proposals that were initially submitted by one shareholder and when he was notified by the company of the one-proposal limitation, the shareholder had two identical proposals, each created on the same typewriter or word processor and each sent by certified mail with consecutive serial numbers, nominally submitted by two different individuals).

Moreover, the Staff has interpreted Rule 14a-8(c), again even under its prior formulation, to permit exclusion of all of a group of multiple proposals submitted by related parties when circumstances show that the nominal proponents “are acting on behalf of, under the control of, or alter ego of the [proponent].” *Weyerhaeuser Co.* (avail. Dec. 20, 1995); *International Business Machines Corp.* (avail. Jan. 26, 1998); *Banc One Corporation* (avail. Feb. 2, 1993); *BankAmerica Corp.* (avail. Feb. 8, 1996); *Occidental Petroleum Corp.* (avail. Mar. 27, 1984); *Peregrine Pharmaceuticals, Inc.* (avail. July 28, 2006); and *General Electric Company* (avail. Jan. 10, 2008). Similarly, the Staff has permitted exclusion of a proposal pursuant to Rule 14a-8(c) based on the breadth and discretion granted to the proxy. *See, e.g., Alaska Air Group, Inc.* (avail. Mar. 5, 2009, recon. denied).

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Similar to *Dominion Resources, Inc.*, the shareholder proposals submitted to Abbott by Mr. Steiner and Mr. Chevedden since the 2010 proxy season, including the Proposals, have the same formatting, layout, font, and text size. Besides the dates, the headers and footers of each document are identical. In the original submissions of the Proposals, the lengthy, detailed “Notes” sections following the supporting statements were also identical to one another. The “Notes” section included in the revised Independent Board Chairman Proposal sent on November 11, 2021 even contained Mr. Chevedden’s email address. Specifically, in the “Notes” section, the company is directed to contact Mr. Chevedden in order to acknowledge receipt of the Independent Board Chairman Proposal.<sup>1</sup>

Furthermore, the relationship between Mr. Chevedden and Mr. Steiner with respect to the specific subject matters of these shareholder proposals is not limited to Abbott. In a letter recently submitted to the Staff by Baxter International Inc. (“Baxter”) on December 1, 2021, Baxter outlines a sequence of events nearly identical to the events described in this letter for shareholder proposals submitted by Mr. Chevedden and Mr. Steiner requesting an independent board chair and a lower special meeting threshold. Clearly, Mr. Chevedden is the driving force behind the many shareholder proposals submitted to companies that are nearly identical to the Proposals. Having been notified of his violation of the one-proposal rule, Mr. Chevedden now attempts to make course-corrections to obfuscate the fact that he is the architect of the Independent Board Chairman shareholder proposals nominally submitted by Mr. Steiner, including the Independent Board Chairman Proposal, in the hopes of evading the express restrictions of Rule 14a-8(c).

Mr. Chevedden’s involvement with the Independent Board Chairman Proposal goes well beyond providing drafting advice to Mr. Steiner or advising Mr. Steiner on strategic engagement with Abbott, which is permitted under revised Rule 14a-8(c). Mr. Chevedden’s extensive involvement is a level of control that the Staff historically viewed as a circumvention of Rule 14a-8(c), even under its prior formulation. While Mr. Chevedden is entitled to “assist [Mr. Steiner] with drafting the proposal, advising on steps in the submission process, and engaging with the company”, as outlined in the 2020 Release, it is clear that Mr. Chevedden is the conductor of the Independent Board Chairman shareholder proposals nominally submitted by Mr. Steiner, including Independent Board Chairman Proposal, and that Mr. Steiner is merely acting as Mr. Chevedden’s “alter ego.”

Thus, based on revised Rule 14a-8(c)’s explicit prohibition on submitting more than one proposal “directly or indirectly” for a particular shareholders’ meeting, whether for oneself as a shareholder or in reliance “on the securities holdings of another person”, the Commission’s expressed desire to combat the “undermin[ing of] the purpose of the one-proposal limit” per the

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<sup>1</sup> All references in the “Notes” section in the proposals in Exhibits A and B to an email address are to Mr. Chevedden’s email address which has been redacted to this submission as personally identifiable information.



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2020 Release, and the Staff's historical views regarding unacceptable levels of control over multiple proposals, Abbott believes that both of the Proposals are excludable in reliance on Rule 14a-8(c) and Rule 14a-8(f)(1) for exceeding the "one proposal" limitation.

## CONCLUSION

For the foregoing reasons, on behalf of Abbott, we request your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposals are omitted from the 2022 Proxy Materials for the reasons described in this letter.

If the Staff has any questions, or if for any reason the Staff does not agree that Abbott may omit the Proposals from its 2022 Proxy Materials, please contact me at (312) 853-7097 or [jkelsh@sidley.com](mailto:jkelsh@sidley.com) or Anika Hermann Bargfrede at (312) 853-7044 or [abargfrede@sidley.com](mailto:abargfrede@sidley.com).

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Sincerely yours,

A handwritten signature in blue ink that reads "John P. Kelsh". The signature is written in a cursive style.

John P. Kelsh

Enclosure: Exhibits

cc: John Chevedden  
Kenneth Steiner

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## **Exhibit A**

### **The Proposals**

*[See attached.]*

[ABT – Rule 14a-8 Proposal, October 18, 2021, Revised November 10, 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 an enduring 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.

The Chairman shall not be a former CEO of the company.

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 33%-support at our 2021 annual meeting. This 33%-support likely represented 40+%-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 becomes 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 office of the CEO and then the lead director can simply rubber-stamp it.

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.

In an example from a company whose share price went from \$130 to \$200 in 10 months, the 2020 Lowe's annual meeting proxy said Lowe's independent directors determined that having a separate Chairman and Chief Executive Officer allows the Chairman to devote his time and attention to Board oversight and governance.

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

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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.



[ABT – Rule 14a-8 Proposal, October 27, 2021, Revised November 12, 2021]]

[This line and any line above it is not for publication.]

**Proposal 4 – Special Shareholder Meeting Improvement**

Shareholders ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 10% of our outstanding common stock the power to call a special shareholder meeting. This includes that each shareholder shall have an equal right per share to formally participate in the calling for a special shareholder meeting.

Currently it takes a theoretical 20% of all shares outstanding to call for a special shareholder meeting. This theoretical 20% of all shares outstanding translates into 26% of the shares that vote at our annual meeting.

It would be hopeless to think that shares that do not have the time to vote would have the time to go through the special procedural steps to call for a special shareholder meeting.

A more reasonable shareholder right to call for a special shareholder meeting to could be used to elect a new director. It could also be an incentive for our directors to take their jobs more seriously. The following directors received a substantial number of negative votes at our 2021 annual meeting:

Glenn Tilton	74 million negative	
Roxanne Austin	87 million negative	Chair of Management Pay Committee
Miles White	130 million negative	23-years long-tenure
William Osborn	182 million negative	Chair of Governance Committee
Nancy McKinstry	297 million negative	

The number of negative votes increased compared to 2020 for each above director.

This is a best practice governance proposal in the same spirit as the 2020 simple majority vote proposal to reform our undemocratic 67% shareholder voting thresholds that won our 84% support and was adopted in 2021.

Shareholder votes for shareholder proposals are having a positive impact.

Please vote yes:

**Special Shareholder Meeting Improvement – Proposal 4**

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

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## **Exhibit B**

### **Additional Correspondence Regarding The Proposals**

*[See attached.]*

From: [Kenneth Steiner](#)  
To: [Paik, Jessica](#)  
Cc: [Rice, Aaron](#); [Teliga, Heather A](#); [REDACTED]@abbott.com  
Subject: 18102021\_2.pdf. Rule 14a-8 proposal (ABT)  
Date: Sunday, October 24, 2021 8:59:57 PM  
Attachments: [18102021\\_2.pdf](#)

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**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

Dear Ms. Paik,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long term shareholder value at de minimis upfront 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,

Kenneth Steiner



Kenneth Steiner

PII

Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
North Chicago IL 60064-6400  
PH: [REDACTED]

Dear Mr. Allen,

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:

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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 [REDACTED]

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.

PII

10/12/21

Date

cc: Jessica Paik [REDACTED]@abbott.com>  
Senior Counsel Securities & Benefits  
Aaron Rice [REDACTED]@abbott.com>  
Heather Teliga [REDACTED]@abbott.com>  
John A. Berry [REDACTED]@abbott.com>

ABT – 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 33%-support at our 2021 annual meeting. This 33%-support likely represented 40+%-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 becomes 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 office of the CEO and then the lead director can simply rubber-stamp it.

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.

In an example from a company whose share price went from \$130 to \$200 in 10 months, the 2020 Lowe's annual meeting proxy said Lowe's independent directors determined that having a separate Chairman and Chief Executive Officer affords the CEO the opportunity to focus his time and energy on managing the business and allows the Chairman to devote his time and attention to Board oversight and governance.

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.



**FOR**

*Shareholder  
Rights*



Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
North Chicago IL 60064-6400  
PH: [REDACTED]

Dear Mr. Allen,

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

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

This proposal is for the next annual shareholder meeting.

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

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

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

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

PII

*October 27, 2021*  
Date

cc: Jessica Paik [REDACTED]@abbott.com>  
Senior Counsel Securities & Benefits  
Aaron Rice [REDACTED]@abbott.com>  
Heather Teliga [REDACTED]@abbott.com>  
John A. Berry [REDACTED]@abbott.com>

[ABT – Rule 14a-8 Proposal, October 27, 2021]  
[This line and any line above it is not for publication.]  
**Proposal 4 – Special Shareholder Meeting Improvement**

Shareholders ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 10% of our outstanding common stock the power to call a special shareholder meeting. This includes that each shareholder shall have an equal right per share to formally participate in the calling for a special shareholder meeting.

Currently it takes a theoretical 20% of all shares outstanding to call for a special shareholder meeting. This theoretical 20% of all shares outstanding translates into 26% of the shares that vote at our annual meeting.

It would be hopeless to expect that shares that do not have time to vote would have the time to go through the special procedural steps to call for a special shareholder meeting.

A more reasonable shareholder right to call for a special shareholder meeting to could be used to elect a new director. It could also be an incentive for our directors to take their jobs more seriously. The following directors received a substantial number of negative votes at our 2021 annual meeting:

Glenn Tilton	74 million negative	
Roxanne Austin	87 million negative	Chair of Management Pay Committee
Miles White	130 million negative	23-years long-tenure
William Osborn	182 million negative	Chair of Governance Committee
Nancy McKinstry	297 million negative	

For each director the number of negative votes increased compared to 2020.

This is a best practice governance proposal in the same spirit as the 2020 simple majority vote proposal to reform our undemocratic 67% shareholder voting thresholds that won our 84% support and was adopted in 2021.

Shareholder votes for shareholder proposals are having a positive impact.

Please vote yes:

**Special Shareholder Meeting Improvement – 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: [Rice, Aaron](#)  
To: [John Chevedden](#)  
Cc: [Teliga, Heather A](#); [Paik, Jessica](#); [Kenneth Steiner](#)  
Subject: RE: 18102021\_2.pdf. Rule 14a-8 proposal (ABT)  
Date: Monday, November 1, 2021 6:44:48 PM  
Attachments: [image001.jpg](#)  
[2021.11.01 - Acknowledgement Letter to J. Chevedden re SH Proposal on behalf of K. Steiner.pdf](#)

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Dear Mr. Chevedden,

Please find attached a letter acknowledging Abbott's receipt of the shareholder proposal submitted by Mr. Steiner, designating you as his proxy. The attachments referenced in the letter are also attached. The original letter and hard copies of the attachments are being sent to your attention via Federal Express. A copy of the letter and a hard copy of the attachments are being sent to Mr. Steiner's attention via Federal Express. Thank you.

Best regards,  
Aaron



**Aaron N. Rice**  
Senior Counsel  
Securities and Governance

Abbott  
100 Abbott Park Road  
Dept. 32L/Bldg. AP6A-1  
Abbott Park, IL 60064-6092

O: [REDACTED]  
F: [REDACTED]  
M: [REDACTED] [@abbott.com](mailto:[REDACTED]@abbott.com)

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This communication may contain information that is proprietary, confidential, or exempt from disclosure. If you are not the intended recipient, please note that any other dissemination, distribution, use or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

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**From:** Kenneth Steiner [REDACTED] PII  
**Sent:** Sunday, October 24, 2021 8:00 PM  
**To:** Paik, Jessica [REDACTED]@abbott.com>  
**Cc:** Rice, Aaron [REDACTED]@abbott.com>; Teliga, Heather A [REDACTED]@abbott.com>; [REDACTED]@abbott.com  
**Subject:** 18102021\_2.pdf. Rule 14a-8 proposal (ABT)

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

Dear Ms. Paik,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long term shareholder value at de minimis upfront 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,

Kenneth Steiner





Aaron N. Rice  
Senior Counsel  
Securities and Governance

Abbott Laboratories  
Securities and Benefits  
Dept. 032L; Bldg. AP6A-1  
100 Abbott Park Road  
Abbott Park, IL 60064-6092

T: [REDACTED]  
F: [REDACTED]  
[REDACTED]@abbott.com

November 1, 2021

Via Federal Express and Email

Mr. John Chevedden

PII

Dear Mr. Chevedden:

I am writing to you on behalf of Abbott Laboratories (“we,” “us,” “our” or the “Company”) to acknowledge receipt of the shareholder proposal (the “Proposal”) submitted by Kenneth Steiner, who has designated you as his proxy. Our 2022 Annual Meeting of Shareholders is currently scheduled to be held on Friday, April 29, 2022.

In accordance with the regulations of the U.S. Securities and Exchange Commission (the “SEC”), we are required to notify you of any eligibility or procedural deficiencies related to your proposal.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provides that, in order to be eligible to submit a shareholder proposal under Rule 14a-8, shareholder proponents must supply proof of requisite ownership pursuant to such rule of a company’s shares entitled to vote on the proposal. In addition, Rule 14a-8(b) sets forth that shareholder proponents must provide the company with a written statement that such proponent 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 shareholder proposal. Mr. Steiner has not met either of these requirements, as more fully explained below.

In addition, Rule 14a-8(c) provides that “[e]ach 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.” Mr. Steiner appointed you to be his proxy for the Proposal and on October 27, 2021, you submitted another shareholder proposal to us. Accordingly, you must reduce the number of proposals you have submitted to us to one. If you do not withdraw one of these two shareholder proposals, the Company intends to seek omission of both shareholder proposals from the Company’s proxy materials for the 2022 Annual Meeting of Shareholders in accordance with SEC rules.

Rule 14a-8(b)(1)(i) under the Exchange Act requires that the proponent submit verification of securities ownership to be eligible to submit a proposal for the 2022 Annual Meeting of Shareholders. We await a proof of ownership letter verifying that Mr. Steiner has 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 preceding and including October 24, 2021 (the date on which the Proposal was submitted); 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 preceding and including October

24, 2021 (the date on which the Proposal was submitted); 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 preceding and including October 24, 2021 (the date on which the Proposal was submitted). Because Mr. Steiner is not listed on the Company's share register as a registered owner of the Company's common shares, we are unable to confirm whether he has met these requirements.

As an alternative to the ownership requirements in Rule 14a-8(b)(1)(i) described above, Rule 14a-8(b)(3) provides that if Mr. Steiner 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 Mr. Steiner has continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the Proposal was submitted to the Company (i.e., October 24, 2021), then you would be eligible to submit a proposal for the 2022 Annual Meeting of Shareholders, provided that Mr. Steiner provides the required documentation of such ownership, as further described below.

According to our records, Mr. Steiner is not a registered holder of our common shares. As explained in Rule 14a-8(b)(2), if Mr. Steiner is an unregistered owner, he may provide proof of ownership (whether relying on the ownership requirements of Rule 14a-8(b)(1)(i) or Rule 14a-8(b)(3)) by submitting either:

- a written statement from the record holder of Mr. Steiner's shares verifying that Mr. Steiner continuously held the requisite amount of the Company's securities entitled to vote on the proposal pursuant to Rule 14a-8(b) for the one-, two-, or three-year period (as applicable) preceding and including October 24, 2021 (the date on which the Proposal was submitted). Please be aware that in accordance with the SEC's Staff Legal Bulletin No. 14F ("[SLB 14F](#)") and SEC Staff Legal Bulletin No. 14G ("[SLB 14G](#)"), when the shareholder is a beneficial owner of securities, an ownership verification statement must come from a DTC participant or its affiliate. The Depository Trust Company (DTC a/k/a Cede & Co.) is a registered clearing agency that acts as a securities depository. Mr. Steiner can confirm whether his broker or bank is a DTC participant by asking them, or by checking DTC's participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. If Mr. Steiner's bank or broker is not a DTC participant or its affiliate, he may need to satisfy the proof of ownership requirements by obtaining multiple statements, for example (1) one from his bank or broker confirming its ownership and (2) another from the DTC participant confirming the bank or broker's ownership; or
- if Mr. Steiner has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting Mr. Steiner's ownership of the requisite amount of shares of the Company's securities entitled to vote on the proposal pursuant to Rule 14a-8(b) for the one-, two-, or three-year period (as applicable) preceding and including October 24, 2021 (the date on which the Proposal was submitted), a copy of the schedule and/or form, any subsequent amendments reporting a change in Mr. Steiner's ownership level and a written statement that Mr. Steiner continuously held the required amount of shares for the requisite holding periods.

If you intend to rely on the alternative ownership requirement provided by Rule 14a-8(b)(3), then, pursuant to such rule, the proof of ownership that you submit to the Company pursuant to the guidance above must instead demonstrate that: (i) Mr. Steiner 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 October 24, 2021 (the date on which the Proposal was submitted).

If the Company is not provided the proof of ownership as described in this letter, the Company intends to seek omission of the Proposal from the Company's proxy materials for the 2022 Annual Meeting of Shareholders in accordance with SEC rules.

Further, Rule 14a-8(b)(1)(iii) under the Exchange Act requires that you provide us with a written statement that you are able to meet with the Company, either in person or via teleconference, to discuss the Proposal, no less than 10 calendar days, nor more than 30 calendar days, after October 24, 2021. In this written statement, you must include specific times on such dates that are within the regular business hours of the Company's principal executive offices when you are available to meet with the Company and your contact information. If you do not provide such a written statement, the Company intends to seek omission of the Proposal from the Company's proxy materials for the 2022 Annual Meeting of Shareholders in accordance with SEC rules.

To recap what you need to do for the Proposal to be eligible, you must provide the Company within 14 days from the date you receive this letter:

1. adequate proof of beneficial ownership of the Company's common shares, from the record holder of your shares, verifying requisite ownership of the Company's common shares,
2. a written statement that
  - a. provides your availability to meet with the Company to discuss the Proposal, and
  - b. withdraws either the Proposal or the other shareholder proposal you submitted to us on October 27, 2021.

As required by Rule 14a-8, please submit this information to the Company no later than 14 calendar days from the day you receive this letter. Please direct any response to me using the following contact information:

Aaron N. Rice  
Senior Counsel  
Abbott Laboratories  
Securities and Benefits  
Dept. 032L; Bldg. AP6A-1  
100 Abbott Park Road  
Abbott Park, IL 60064-6092  
T: [REDACTED]  
F: [REDACTED]  
[REDACTED]@abbott.com

The Company has not yet reviewed the Proposal to determine if it complies with the other requirements for shareholder proposals found in Rules 14a-8 and 14a-9 under the Exchange Act. The Company reserves the right to take appropriate action to the extent that the Proposal does not comply with such rules.

For your convenience, we have enclosed copies of Rule 14a-8, SLB No. 14F, and SLB 14G.

Please let me know if you have any questions. Thank you.

Very truly yours,



Aaron N. Rice  
Senior Counsel  
Securities and Governance

cc: Kenneth Steiner



Displaying title 17, up to date as of 10/26/2021. Title 17 was last amended 10/07/2021.

# 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]*

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**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.

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# 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](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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

## **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.<sup>4</sup> The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.<sup>5</sup>

## **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.<sup>6</sup> Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8<sup>7</sup> 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,<sup>8</sup> under which brokers and banks

that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

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

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

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

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

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

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

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

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

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

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

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).<sup>10</sup> 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]."<sup>11</sup>

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).<sup>12</sup> 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.<sup>13</sup>

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

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

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

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,<sup>14</sup> it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement

that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder “fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder’s] proposals from its proxy materials for any meeting held in the following two calendar years.” With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.<sup>15</sup>

## **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.<sup>16</sup>

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

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

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

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

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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> 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.”).

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

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

<sup>7</sup> 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.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

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

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

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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



<sup>15</sup> 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.

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

*Modified: Oct. 18, 2011*

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# 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](https://www.sec.gov/forms/corp_fin_interpretive).

## A. The purpose of this bulletin

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

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

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

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

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

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which

means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)...."

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

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.<sup>1</sup> 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.<sup>2</sup> If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

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

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

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

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

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the

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

## **D. Use of website addresses in proposals and supporting statements**

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

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.<sup>3</sup>

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.<sup>4</sup>

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

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

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

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

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

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

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

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<sup>1</sup> 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.

<sup>2</sup> Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

<sup>3</sup> 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.

<sup>4</sup> 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.

From: [Rice, Aaron](#)  
To: [John Chevedden](#)  
Cc: [Teliga, Heather A](#); [Paik, Jessica](#)  
Subject: RE: Rule 14a-8 Proposal (ABT)``  
Date: Monday, November 1, 2021 6:45:17 PM  
Attachments: [image001.jpg](#)  
[image002.jpg](#)  
[2021.11.01 - Acknowledgement Letter to J. Chevedden re SH Proposal.pdf](#)

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Dear Mr. Chevedden,

Please find attached a letter acknowledging Abbott's receipt of the shareholder proposal submitted by you. The attachments referenced in the letter are also attached. The original letter and hard copies of the attachments are being sent to your attention via Federal Express. Thank you.

Best regards,  
Aaron

---



**Aaron N. Rice**  
Senior Counsel  
Securities and Governance

Abbott  
100 Abbott Park Road  
Dept. 32L/Bldg. AP6A-1  
Abbott Park, IL 60064-6092

O: [REDACTED]  
F: [REDACTED]  
M: [REDACTED] [@abbott.com](mailto:[REDACTED]@abbott.com)

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This communication may contain information that is proprietary, confidential, or exempt from disclosure. If you are not the intended recipient, please note that any other dissemination, distribution, use or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

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**From:** John Chevedden [REDACTED] PII  
**Sent:** Wednesday, October 27, 2021 3:21 PM  
**To:** Paik, Jessica [REDACTED]@abbott.com>  
**Cc:** Rice, Aaron [REDACTED]@abbott.com>; Teliga, Heather A [REDACTED]@abbott.com>; John A. Berry [REDACTED]@abbott.com>  
**Subject:** Rule 14a-8 Proposal (ABT)``

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.



Dear Ms. Paik,

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



**Aaron N. Rice**  
Senior Counsel  
Securities and Governance

Abbott Laboratories  
Securities and Benefits  
Dept. 032L; Bldg. AP6A-1  
100 Abbott Park Road  
Abbott Park, IL 60064-6092

T: [REDACTED]  
F: [REDACTED]  
[REDACTED]@abbott.com

November 1, 2021

Via Federal Express and Email

Mr. John Chevedden

PII

Dear Mr. Chevedden:

I am writing to you on behalf of Abbott Laboratories (“we,” “us,” “our” or the “Company”) to acknowledge receipt of the shareholder proposal (the “Proposal”) submitted by you. Our 2022 Annual Meeting of Shareholders is currently scheduled to be held on Friday, April 29, 2022.

In accordance with the regulations of the U.S. Securities and Exchange Commission (the “SEC”), we are required to notify you of any eligibility or procedural deficiencies related to your proposal.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provides that, in order to be eligible to submit a shareholder proposal under Rule 14a-8, shareholder proponents must supply proof of requisite ownership pursuant to such rule of a company’s shares entitled to vote on the proposal. In addition, Rule 14a-8(b) sets forth that shareholder proponents must provide the company with a written statement that such proponent 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 shareholder proposal. You have not met either of these requirements, as more fully explained below.

In addition, Rule 14a-8(c) provides that “[e]ach 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.” You submitted the Proposal to us and Mr. Steiner appointed you to be his proxy for another shareholder proposal that he submitted to us on October 24, 2021. Accordingly, you must reduce the number of proposals you have submitted to us to one. If you do not withdraw one of these two shareholder proposals, the Company intends to seek omission of both shareholder proposals from the Company’s proxy materials for the 2022 Annual Meeting of Shareholders in accordance with SEC rules.

Rule 14a-8(b)(1)(i) under the Exchange Act requires that the proponent submit verification of securities ownership to be eligible to submit a proposal for the 2022 Annual Meeting of Shareholders. We await a proof of ownership letter verifying that you 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 preceding and including October 27, 2021 (the date on which the Proposal was submitted); 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 preceding and including October



27, 2021 (the date on which the Proposal was submitted); 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 preceding and including October 27, 2021 (the date on which the Proposal was submitted). Because you are not listed on the Company's share register as a registered owner of the Company's common shares, we are unable to confirm whether you have met these requirements.

As an alternative to the ownership requirements in Rule 14a-8(b)(1)(i) described above, Rule 14a-8(b)(3) provides that if 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 you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the Proposal was submitted to the Company (i.e., October 27, 2021), then you would be eligible to submit a proposal for the 2022 Annual Meeting of Shareholders, provided that you provide the required documentation of such ownership, as further described below.

According to our records, you are not a registered holder of our common shares. As explained in Rule 14a-8(b)(2), if you are an unregistered owner, you may provide proof of ownership (whether relying on the ownership requirements of Rule 14a-8(b)(1)(i) or Rule 14a-8(b)(3)) by submitting either:

- a written statement from the record holder of your shares verifying that you continuously held the requisite amount of the Company's securities entitled to vote on the proposal pursuant to Rule 14a-8(b) for the one-, two-, or three-year period (as applicable) preceding and including October 27, 2021 (the date on which the Proposal was submitted). Please be aware that in accordance with the SEC's Staff Legal Bulletin No. 14F ("SLB 14F") and SEC Staff Legal Bulletin No. 14G ("SLB 14G"), when the shareholder is a beneficial owner of securities, an ownership verification statement must come from a DTC participant or its affiliate. The Depository Trust Company (DTC a/k/a Cede & Co.) is a registered clearing agency that acts as a securities depository. You can confirm whether your broker or bank is a DTC participant by asking them, or by checking DTC's participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. If your bank or broker is not a DTC participant or its affiliate, you may need to satisfy the proof of ownership requirements by obtaining multiple statements, for example (1) one from your bank or broker confirming its ownership and (2) another from the DTC participant confirming the bank or broker's ownership; or
- if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the requisite amount of shares of the Company's securities entitled to vote on the proposal pursuant to Rule 14a-8(b) for the one-, two-, or three-year period (as applicable) preceding and including October 27, 2021 (the date on which the Proposal was submitted), a copy of the schedule and/or form, any subsequent amendments reporting a change in your ownership level and a written statement that you continuously held the required amount of shares for the requisite holding periods.

If you intend to rely on the alternative ownership requirement provided by Rule 14a-8(b)(3), then, pursuant to such rule, the proof of ownership that you submit to the Company pursuant to the guidance above must instead 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 October 27, 2021 (the date on which the Proposal was submitted).

If the Company is not provided the proof of ownership as described in this letter, the Company intends to seek omission of the Proposal from the Company's proxy materials for the 2022 Annual Meeting of Shareholders in accordance with SEC rules.

Further, Rule 14a-8(b)(1)(iii) under the Exchange Act requires that you provide us with a written statement that you are able to meet with the Company, either in person or via teleconference, to discuss the Proposal, no less than 10 calendar days, nor more than 30 calendar days, after October 24, 2021. In this written statement, you must include specific times on such dates that are within the regular business hours of the Company's principal executive offices when you are available to meet with the Company and your contact information. If you do not provide such a written statement, the Company intends to seek omission of the Proposal from the Company's proxy materials for the 2022 Annual Meeting of Shareholders in accordance with SEC rules.

To recap what you need to do for the Proposal to be eligible, you must provide the Company within 14 days from the date you receive this letter:

1. adequate proof of beneficial ownership of the Company's common shares, from the record holder of your shares, verifying requisite ownership of the Company's common shares,
2. a written statement that:
  - a. provides your availability to meet with the Company to discuss the Proposal, and
  - b. withdraws either the Proposal or the other proposal Mr. Steiner submitted to us on October 24, 2021.

As required by Rule 14a-8, please submit this information to the Company no later than 14 calendar days from the day you receive this letter. Please direct any response to me using the following contact information:

Aaron N. Rice  
Senior Counsel  
Abbott Laboratories  
Securities and Benefits  
Dept. 032L; Bldg. AP6A-1  
100 Abbott Park Road  
Abbott Park, IL 60064-6092  
T: [REDACTED]  
F: [REDACTED]  
[REDACTED]@abbott.com

The Company has not yet reviewed the Proposal to determine if it complies with the other requirements for shareholder proposals found in Rules 14a-8 and 14a-9 under the Exchange Act. The Company reserves the right to take appropriate action to the extent that the Proposal does not comply with such rules.

For your convenience, we have enclosed copies of Rule 14a-8, SLB No. 14F, and SLB 14G.

Please let me know if you have any questions. Thank you.

Very truly yours,



Aaron N. Rice  
Senior Counsel  
Securities and Governance



Displaying title 17, up to date as of 10/26/2021. Title 17 was last amended 10/07/2021.

# 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]*

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**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.

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# 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](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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

## **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.<sup>4</sup> The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.<sup>5</sup>

## **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.<sup>6</sup> Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8<sup>7</sup> 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,<sup>8</sup> under which brokers and banks

that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

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

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

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

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

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

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

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

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

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

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

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).<sup>10</sup> 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]."<sup>11</sup>

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).<sup>12</sup> 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.<sup>13</sup>

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

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

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

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,<sup>14</sup> it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement

that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder “fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder’s] proposals from its proxy materials for any meeting held in the following two calendar years.” With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.<sup>15</sup>

## **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.<sup>16</sup>

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

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

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

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

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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> 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.").

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

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

<sup>7</sup> 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.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

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

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

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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

<sup>15</sup> 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.

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

*Modified: Oct. 18, 2011*



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# 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](https://www.sec.gov/forms/corp_fin_interpretive).

### A. The purpose of this bulletin

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

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

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

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

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

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which

means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)...."

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

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.<sup>1</sup> 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.<sup>2</sup> If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

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

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

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

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

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the

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

## **D. Use of website addresses in proposals and supporting statements**

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

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.<sup>3</sup>

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.<sup>4</sup>

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

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

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

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

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

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

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

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<sup>1</sup> 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.

<sup>2</sup> Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

<sup>3</sup> 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.

<sup>4</sup> 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.

From: [John Chevedden](#)  
To: [Rice, Aaron](#)  
Cc: [Teliga, Heather A](#); [Paik, Jessica](#)  
Subject: Rule 14a-8 Proposal (ABT) blb  
Date: Monday, November 1, 2021 9:33:45 PM  
Attachments: [01112021\\_6.pdf](#)

---

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

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

From: [John Chevedden](#)  
To: [Rice, Aaron](#)  
Subject: (ABT)  
Date: Monday, November 1, 2021 10:38:31 PM

---

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

Mr. Rice,

Your letter seems to say when a shareholder submits a proposal and appoints a proxy that appointing a proxy cancels out his submittal of the proposal.

John Chevedden

From: [John Chevedden](#)  
To: [Rice, Aaron](#); [Teliga, Heather A](#); [Paik, Jessica](#)  
Subject: (ABT) dcd  
Date: Tuesday, November 2, 2021 9:53:29 AM

---

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

Kenneth Steiner and John Chevedden available for off the record  
discussion of Rule 14a-8 Proposal

Nov. 15 10:30 am PT

Nov. 16 10:30 am PT

Please confirm by:

Nov. 8

Please provide the names of no more than 2 company employees.

We have no need for a discussion.

PII

From: [John Chevedden](#)  
To: [Rice, Aaron](#); [Teliga, Heather A](#); [Paik, Jessica](#)  
Subject: (ABT)  
Date: Monday, November 8, 2021 10:45:46 PM

---

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

Mr. Rice,

I do not now represent a rule 14a-8 proposal for the 2022 ABT AGM by Mr. Kenneth Steiner.

I continue to represent Mr. Steiner at companies where I do not submit a proposal on my behalf.

I am not precluded from giving advice to Mr. Steiner on his proposal.

John Chevedden



From: [John Chevedden](#)  
To: [Rice, Aaron](#); [Teliga, Heather A](#); [Paik, Jessica](#)  
Subject: (ABT) blb  
Date: Tuesday, November 9, 2021 8:08:27 PM  
Attachments: [09112021\\_11.pdf](#)

---

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

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

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**From:** Rice, Aaron [REDACTED] <[REDACTED]@abbott.com>  
**Sent:** Tuesday, November 9, 2021 7:15 PM  
**To:** John Chevedden [REDACTED] PII  
**Cc:** Teliga, Heather A [REDACTED] <[REDACTED]@abbott.com>; Paik, Jessica [REDACTED] <[REDACTED]@abbott.com>  
**Subject:** RE: (ABT) blb

Mr. Chevedden, I acknowledge receipt of your e-mail below. Thank you.

Best regards,  
Aaron



**Aaron N. Rice**  
Senior Counsel  
Securities and Governance

Abbott  
100 Abbott Park Road  
Dept. 32L/Bldg. AP6A-1  
Abbott Park, IL 60064-6092

O: [REDACTED]  
F: [REDACTED]  
M: [REDACTED] <[REDACTED]@abbott.com>

---

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---

**From:** John Chevedden [REDACTED] PII  
**Sent:** Tuesday, November 9, 2021 7:08 PM  
**To:** Rice, Aaron [REDACTED] <[REDACTED]@abbott.com>; Teliga, Heather A [REDACTED] <[REDACTED]@abbott.com>; Paik, Jessica [REDACTED] <[REDACTED]@abbott.com>  
**Subject:** (ABT) blb

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

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

From: [Kenneth Steiner](#)  
To: [Paik, Jessica](#)  
Cc: [Rice, Aaron](#); [Teliga, Heather A](#)  
Subject: Kenneth Steiner Rule 14a-8 proposal revision for Abbott Laboratories (ABT)  
Date: Thursday, November 11, 2021 7:13:18 AM  
Attachments: [10112021\\_2.pdf](#)

---

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

Rule 14a-8 Proposal (ABT)``

(This is a revision.)

Jessica Paik [REDACTED]@abbott.com>  
Aaron Rice [REDACTED]@abbott.com>  
Heather Teliga [REDACTED]@abbott.com>

-----  
Kenneth Steiner

[REDACTED]  
PII  
[REDACTED]

Mr. Hubert L. Allen  
Corporate Secretary  
Abbott Laboratories (ABT)  
100 Abbott Park Rd  
North Chicago IL 60064-6400  
PH: [REDACTED]

Dear Ms. Allen,

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.

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

cc: Jessica Paik [REDACTED]@abbott.com>  
Senior Counsel Securities & Benefits  
Aaron Rice [REDACTED]@abbott.com>  
Heather Teliga [REDACTED]@abbott.com>

[ABT – Rule 14a-8 Proposal, October 18, 2021, Revised November 10, 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 an enduring 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.

The Chairman shall not be a former CEO of the company.

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 33%-support at our 2021 annual meeting. This 33%-support likely represented 40+%-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 becomes 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 office of the CEO and then the lead director can simply rubber-stamp it.

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.

In an example from a company whose share price went from \$130 to \$200 in 10 months, the 2020 Lowe's annual meeting proxy said Lowe's independent directors determined that having a separate Chairman and Chief Executive Officer allows the Chairman to devote his time and attention to Board oversight and governance.

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 [PII]  
**Sent:** Friday, November 12, 2021 4:46 PM  
**To:** Paik, Jessica <[REDACTED]@abbott.com>; Rice, Aaron <[REDACTED]@abbott.com>; Teliga, Heather A <[REDACTED]@abbott.com>  
**Subject:** Rule 14a-8 Proposal (ABT)`` REVISED

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

Dear Ms. Paik,

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.

Please confirm receipt.

Sincerely,

John Chevedden



[ABT – Rule 14a-8 Proposal, October 27, 2021, Revised November 12, 2021]]

[This line and any line above it is not for publication.]

**Proposal 4 – Special Shareholder Meeting Improvement**

Shareholders ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 10% of our outstanding common stock the power to call a special shareholder meeting. This includes that each shareholder shall have an equal right per share to formally participate in the calling for a special shareholder meeting.

Currently it takes a theoretical 20% of all shares outstanding to call for a special shareholder meeting. This theoretical 20% of all shares outstanding translates into 26% of the shares that vote at our annual meeting.

It would be hopeless to think that shares that do not have the time to vote would have the time to go through the special procedural steps to call for a special shareholder meeting.

A more reasonable shareholder right to call for a special shareholder meeting to could be used to elect a new director. It could also be an incentive for our directors to take their jobs more seriously. The following directors received a substantial number of negative votes at our 2021 annual meeting:

Glenn Tilton	74 million negative	
Roxanne Austin	87 million negative	Chair of Management Pay Committee
Miles White	130 million negative	23-years long-tenure
William Osborn	182 million negative	Chair of Governance Committee
Nancy McKinstry	297 million negative	

The number of negative votes increased compared to 2020 for each above director.

This is a best practice governance proposal in the same spirit as the 2020 simple majority vote proposal to reform our undemocratic 67% shareholder voting thresholds that won our 84% support and was adopted in 2021.

Shareholder votes for shareholder proposals are having a positive impact.

Please vote yes:

**Special Shareholder Meeting Improvement – Proposal 4**

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

December 17, 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**  
**Abbott Laboratories (ABT)**  
**Special Shareholder Meeting Improvement**  
**John Chevedden**

Ladies and Gentlemen:

This is a counterpoint to the December 17, 2021 no-action request.

This proposal is my one proposal for 2022.

A rule 14a-8 proposal can easily be excluded for attempting to micromanage a company. Now companies are trying to micromanage how shareholder proposals are drafted and formatted. According to Abbott management it is suspicious if a proposal is drafted and formatted a certain way.

Abbott wants to limit division of labor for well-established rule 14a-8 proposal proponents in the rule 14a-8 proposal process. To the contrary management forces proponents to share rule 14a-8 proposal text because management makes a big deal out of minor nuances in wording in the hope of hitting the jackpot with one little word and thereby exclude a proposal.

Management's objective is to make rule 14a-8 proponents novices as much as possible so that it will be as easy as shooting fish in a barrel to exclude rule 14a-8 proposals by using a \$1 Billion law firm.

What use are so-called precedents such as *Staten Island Bancorp, Inc.* (February 27, 2002)? Mr. Steiner has been involved in shareholder proposals since at least the 1990s. None of the proponents in *Staten Island* had more than 2 decades experience with rule 14a-8 proposals.

Management failed to acknowledge that Mr. Steiner was involved with rule 14a-8 proposals long before contact with Mr. Chevedden.

Management did not cite any decision that might have overturned *ATT Inc.* (February 19, 2008).

Abbott management made no attempt to meet with Mr. Steiner to test its claims about Mr. Steiner.

Sincerely,

  
John Chevedden

cc: Kenneth Steiner

Aaron Rice <aaron.rice@abbott.com>

From: [Kenneth Steiner](#)  
To: [ShareholderProposals](#); [aaron.rice@abbott.com](mailto:aaron.rice@abbott.com); [olmsted](#)  
Subject: #1" Rule 14 a-8 Proposal Counterpoint for Abbott Laboratories (ABT) Independent Board Chairman from Kenneth Steiner  
Date: Tuesday, January 18, 2022 7:24:53 AM  
Attachments: [17012022.pdf](#)

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Kenneth Steiner

January 17, 2022

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

# 1 Rule 14a-8 Proposal  
Abbott Laboratories (ABT)  
Independent Board Chairman  
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 17, 2021 no-action request.

Attached is evidence taken from the company exhibits that I submitted my 2022 rule 14a-8 proposal directly to the company.

Management never asked me to cure any defect in my proposal.

Plus the company provided no precedents that could possibly show that a proponent being copied on a letter to another shareholder was purportedly an adequate deficiency notice.

Sincerely,

Kenneth Steiner

cc: John Chevedden

Aaron Rice

**From:** [Kenneth Steiner](#)  
**To:** [Paik, Jessica](#)  
**Cc:** [Rice, Aaron](#); [Teliga, Heather A](#); [REDACTED]@abbott.com  
**Subject:** 18102021\_2.pdf. Rule 14a-8 proposal (ABT)  
**Date:** Sunday, October 24, 2021 8:59:57 PM  
**Attachments:** 18102021\_2.pdf

---

**EXTERNAL EMAIL:** Only click links or open attachments if you recognize the sender and know the content is safe.

Dear Ms. Paik,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long term shareholder value at de minimis upfront 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,

Kenneth Steiner

January 21, 2022

**By Email**

[Shareholderproposals@sec.gov](mailto:Shareholderproposals@sec.gov)  
Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Independent Board Chairman proposal (the "Proposal") Submitted to Abbott Laboratories

Dear Ladies and Gentlemen:

This letter responds to Mr. Steiner's January 18, 2022 email to the Securities and Exchange Commission (the "SEC") regarding the Proposal.

Mr. Steiner incorrectly asserts that Abbott Laboratories ("Abbott") did not ask him to cure any defect in the Proposal. On November 1, 2021, Abbott sent a deficiency notice letter that addressed all of the Proposal's deficiencies, including the violation of Rule 14a-8(c) ("Deficiency Notice"). Abbott sent the Deficiency Notice to Mr. Chevedden and copied Mr. Steiner, per Mr. Steiner's specific instructions. In fact, as noted below, both of Mr. Steiner's communications to Abbott have instructed Abbott to communicate with Mr. Chevedden on Mr. Steiner's behalf regarding the Proposal.

In his initial October 24, 2021 Proposal submission, Mr. Steiner appointed Mr. Chevedden as his proxy and instructed that all communications be directed to Mr. Chevedden. Mr. Steiner stated: "This is my proxy for John Chevedden and/or his designee 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 . . . meeting... Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden."

In his November 11, 2021 revised Proposal submission, Mr. Steiner requested that Abbott send acknowledgment of the Proposal to Mr. Chevedden. In the "Notes" accompanying the Proposal, Mr. Steiner stated: "Please acknowledge this proposal promptly by email [*Mr.*

# SIDLEY

Shareholderproposals@sec.gov

January 21, 2022

Page 2

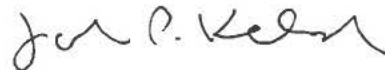
*Chevedden's email address redacted per SEC instructions]*". We note that this instruction was given after Mr. Chevedden's November 8, 2021 email misstating that he does "not now represent a rule 14a-8 proposal for the 2022 ABT AGM by Mr. Kenneth Steiner."

On December 17, 2021, we submitted a letter to the SEC, on behalf of Abbott, to seek no-action relief in reliance on Rule 14-8(c). Both Mr. Steiner and Mr. Chevedden were provided email copies and hard copies of this submission.

Finally, we note that Mr. Steiner continues to include Mr. Chevedden in correspondence related to the Proposal and he never formally withdrew his designation of Mr. Chevedden as his proxy. Mr. Steiner copied Mr. Chevedden on his January 18, 2022 email to the SEC, further evidencing that Mr. Chevedden remains Mr. Steiner's proxy for the Proposal. Mr. Chevedden has not withdrawn either the Proposal or the proposal he submitted on October 27, 2021, as revised by the proposal submitted on November 12, 2021 (together with the Proposal, the "Proposals"). Therefore, Abbott requests that the Staff concur in Abbott's view that it may exclude the Proposals pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1).

Should you have any questions please contact me at (312) 853-7097 or jkelsh@sidley.com or Anika Hermann Bargfrede at (312) 853-7044 or abargfrede@sidley.com.

Sincerely yours,



John P. Kelsh

cc: John Chevedden PII

Kenneth Steiner

From: [Kenneth Steiner](#)  
To: [ShareholderProposals](#); [aaron.rice@abbott.com](mailto:aaron.rice@abbott.com); [olmsted](#)  
Subject: #2 Rule 14 a-8 Proposal Counterpoint for Abbott Laboratories (ABT) Independent Board Chairman from Kenneth Steiner  
Date: Sunday, January 23, 2022 11:49:13 PM

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Kenneth Steiner

January 23, 2022

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

# 2 Rule 14a-8 Proposal  
Abbott Laboratories (ABT)  
Independent Board Chairman  
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 17, 2021 no-action request.

The management January 21, 2022 letter fails to provide any possible precedent that when a shareholder, such as myself, submits a rule 14a-8 proposal directly to a company that a company can get credit for voicing its objections in a letter that is addressed primarily to another shareholder.

Management now belatedly objects for the first time to part of my submittal letter and part of the “Notes” section of the proposal I submitted directly to the company.

Sincerely,

Kenneth Steiner

cc: John Chevedden

Aaron Rice



From: [Kenneth Steiner](#)  
To: [ShareholderProposals](#); [aaron.rice@abbott.com](mailto:aaron.rice@abbott.com); [olmsted](#)  
Subject: #3 Rule 14 a-8 Counterpoint to no-action request from Abbott Laboratories (ABT) re Independent Board Chairman proposal from Kenneth Steiner  
Date: Monday, January 31, 2022 4:03:56 PM  
Attachments: [31012022\\_10.pdf](#)

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Kenneth Steiner

January 23, 2022

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100 F Street, NE  
Washington, DC 20549

# 3 Rule 14a-8 Proposal  
Abbott Laboratories (ABT)  
Independent Board Chairman  
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 17, 2021 no-action request.

The management so-called precedents are out of date. None of the proponents in the so-called precedents had to run the gauntlet of the circled items on the attachment which include stock ownership of up to \$25,000.

Sincerely,

Kenneth Steiner

cc: John Chevedden

Aaron Rice

## §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

From: [Kenneth Steiner](#)  
To: [ShareholderProposals](#); [aaron.rice@abbott.com](mailto:aaron.rice@abbott.com); [olmsted](#)  
Subject: #3 Rule 14 a-8 Counterpoint (Revised) to Abbott Laboratories ((ABT) no action request for Independent Board Chairman proposal from Kenneth Steiner  
Date: Tuesday, February 1, 2022 11:43:50 AM  
Attachments: [31012022\\_12.pdf](#)

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Kenneth Steiner

January 31, 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 (Revised)  
Abbott Laboratories (ABT)  
Independent Board Chairman  
Kenneth Steiner

Ladies and Gentlemen:

This is a counterpoint to the December 17, 2021 no-action request.

The management so-called precedents are out of date. None of the proponents in the so-called precedents had to run the gauntlet of the circled items on the attachment which include stock ownership of up to \$25,000 and an offer to meet with management which in practice means that a proponent can face 3 representatives of management.

Sincerely,

Kenneth Steiner

cc: John Chevedden

Aaron Rice

## §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.

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(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

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