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

DIVISION OF
CORPORATION FINANCE

November 8, 2022

Elizabeth A. Ising

Re: Visa Inc. (the "Company")
Incoming letter dated September 13, 2022

Dear Elizabeth A. Ising:

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

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(f) because the Proponent did not comply with Rule 14a-8(b)(1)(i). As required by Rule 14a-8(f), the Company notified the Proponent of the problem, and the Proponent failed to adequately correct it. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rules 14a-8(b)(1)(i) and 14a-8(f).

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

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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Washington, DC 20036-5306
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Eising@gibsondunn.com

September 13, 2022

***VIA E-MAIL***
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Visa Inc.*
*Stockholder Proposal of John Chevedden*
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Visa Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Stockholders (collectively, the "2023 Proxy Materials") a stockholder proposal (the "Proposal") and statements in support thereof received from John Chevedden (the "Proponent").

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

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

**BASIS FOR EXCLUSION**

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1)

because the Proponent failed to provide the requisite proof of continuous share ownership in response to the Company's proper request for that information.

## BACKGROUND

The Proposal was submitted to the Company via email on August 4, 2022 (the "Submission Date"), which was received by the Company on the same day. *See* Exhibit A. The Proponent's submission did not include with the letter any documentary evidence of his ownership of Company shares.[1] In addition, the Company reviewed its stock records, which did not indicate that the Proponent was a record owner of Company shares.

Accordingly, in a letter dated August 16, 2022, which was sent to the Proponent via email and by FedEx within 14 calendar days after the Company's receipt of the Proposal, the Company notified the Proponent of the requirements of Rule 14a-8, identifying the procedural deficiencies with the Proponent's submission, and explaining how he could cure the procedural deficiencies (the "First Deficiency Notice"). The First Deficiency Notice also attached a copy of Rule 14a-8 as amended, as well as copies of Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") and Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"). The First Deficiency Notice, together with proof of receipt of the hard copy by the Proponent at 3:43 p.m. local time on August 18, 2022, is attached hereto as Exhibit B.

On August 18, 2022, the Proponent responded by email correspondence to the First Deficiency Notice regarding his availability to meet with the Company to discuss the Proposal. *See* Exhibit C. Subsequently, on Saturday, August 20, 2022, the Proponent again responded by email correspondence to the First Deficiency Notice and transmitted a letter from Fidelity Investments dated August 18, 2022, verifying ownership of 30 Company shares for the continuous period from December 20, 2019 to August 17, 2022 (the "First Broker Letter"). *See* Exhibit D. As discussed in more detail below, the First Broker Letter contained a procedural deficiency: it did not provide verification that the Proponent satisfied one of the ownership requirements set forth in Rule 14a-8(b) for annual meetings to be held after January 1, 2023 because it verified continuous ownership of $7,580.10[2] in market value

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[1] The Proponent's submission also included two additional procedural defects under Rule 14a-8 concerning the Proponent's intent to hold shares and the Proponent's engagement availability. The Company also identified these defects in the Deficiency Notice. However, these deficiencies are not further discussed in this no-action request as the Proponent corrected these two deficiencies in subsequent correspondence.

[2] Staff Legal Bulletin No. 14 (Jul. 13, 2001) ("SLB 14") indicates that in order to determine whether a market value threshold is satisfied, the Staff looks at whether the threshold was satisfied "on any date with the 60 calendar days before the date the [stockholder] submits the proposal." During this 60-calendar-day period, the Company's high trading price was $252.67.

of the Company's shares for a period of two years and 227 days preceding and including the Submission Date.

Accordingly, the Company again properly sought verification of share ownership from the Proponent. Specifically, and in accordance with SLB 14L, the Company sent the Proponent a second letter dated August 25, 2022, which, among other things, identified the specific deficiencies in the First Broker Letter, notified the Proponent of the requirements of Rule 14a-8, and explained how the Proponent could cure the procedural deficiency (the "Second Deficiency Notice"). The Second Deficiency Notice also provided detailed information regarding the "record" holder requirements, as clarified by SLB 14F and SLB 14L, and attached another copy of Rule 14a-8, SLB 14F and SLB 14L. Specifically, the Second Deficiency Notice stated:

- the three ownership requirements (each an "Ownership Requirement," and collectively the "Ownership Requirements") that satisfy Rule 14a-8(b) for annual meetings to be held after January 1, 2023;

- that the First Broker Letter was insufficient to demonstrate ownership because it did not satisfy any of the Ownership Requirements: "while [the First Broker Letter] verifies ownership of 30 Company shares (the **"Shares"**) from December 19, 2019 to August 17, 2022, the [First Broker Letter] does not verify ownership of the Shares for the three-year period preceding and including the Submission Date, nor does it verify ownership of the requisite amount of Company shares to satisfy either of the Ownership Requirements set forth in clauses (2) or (3) in the paragraph above."

- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including "a written statement from the 'record' holder of your shares (usually a broker or a bank) verifying that, at the time [the Proponent] submitted the Proposal (the Submission Date), [the Proponent] continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above"; and

- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Second Deficiency Notice.

The Company sent the Second Deficiency Notice to the Proponent via email and FedEx on August 25, 2022 (which was only four business days and five calendar days after the Company's receipt of the First Broker Letter). A copy of the Second Deficiency Notice, together with proof of receipt of the hard copy by the Proponent at 11:25 a.m. local time on August 26, 2022, is attached hereto as Exhibit E.

On August 27, 2022, the Proponent responded by email correspondence to the Second Deficiency Notice regarding his alternative availability to meet with the Company to discuss the Proposal. *See* Exhibit F. However, in this correspondence, the Proponent did not address nor provide the requisite proof of continuous share ownership as described in the Second Deficiency Notice. Subsequently, on September 12, 2022, 18 days after the Company transmitted the Second Deficiency Notice and 27 days after the Company first notified the Proponent of the need to provide satisfactory ownership proof, the Company received an email from the Proponent, which included a second letter from Fidelity Investments, dated September 12, 2022, purporting to demonstrate the Proponent's ownership of the Company's shares (the "Second Broker Letter"). *See* Exhibit G.

## ANALYSIS

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

Rule 14a-8(b)(1) provides, in part, that to be eligible to submit a proposal for an annual meeting that is scheduled to be held on or after January 1, 2023, a stockholder proponent must satisfy one of the Ownership Requirements by having continuously held either:

(A) at least $2,000 in market value of the Company's securities entitled to vote on the proposal for at least three years (the "Three-Year Ownership Requirement");

(B) at least $15,000 in market value of the Company's securities entitled to vote on the proposal for at least two years (the "Two-Year Ownership Requirement"); or

(C) at least $25,000 in market value of the Company's shares entitled to vote on the proposal for at least one year (the "One-Year Ownership Requirement").

The First Broker Letter—which verified continuous ownership of $7,580.10 in market value of the Company's shares for a period two years and 227 days preceding and including the Submission Date—failed to satisfy any of the Ownership Requirements. Specifically, holding $7,580.10 in market value of the Company's shares for a period two years and 227 days preceding and including the Submission Date fails to satisfy the holding period in the Three-Year Ownership Requirement and fails to satisfy the requisite amount in either the Two-Year Ownership Requirement or the One-Year Ownership Requirement.

SLB 14 specifies that when the stockholder is not the registered holder, the stockholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the stockholder may do by one of the two ways provided in Rule 14a-8(b)(2). Further, the Staff has clarified that these proof of ownership letters must come from the "record" holder of the Proponent's stock, and that only Depository Trust Company ("DTC") participants are viewed as record holders of securities that are deposited at DTC. *See* SLB 14F. Rule 14a-8(f) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the Ownership Requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. Rule 14a-8(f)(1) is extremely clear with respect to the deadline for correcting the deficiency and includes, in pertinent part, the following language (emphasis added):

> 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*.

Here, as established above, the Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponent in a timely manner the First Deficiency Notice *and* the Second Deficiency Notice, the latter of which identified the specific deficiencies of the First Broker Letter and set forth the information and instructions listed above and attached a copy of Rule 14a-8, SLB 14F, and SLB 14L. *See* Exhibits B and E. However, despite the clear explanations in the Second Deficiency Notice to provide the requisite documentary support, the Proponent provided the Second Broker Letter 18 days after the Company transmitted the Second Deficiency Notice and 27 days after the Company first notified the Proponent of the need to provide satisfactory ownership proof, and thus failed to do so within the time period specified and as required by Rule 14a-8(f)(1). As such, the Proposal may be excluded.

Under well-established precedent, the First Broker Letter was insufficient because it failed to satisfy any of the Ownership Requirements set forth under Rule 14a-8(b)(1) and described in

the First Deficiency Notice. In *Cheniere Energy, Inc.* (avail. Apr. 7, 2022), the company received a broker letter verifying ownership by the proponent of shares of company common stock as of the date the letter was sent (August 3, 2021). However, the broker letter was silent regarding the proponent's continuous ownership for the applicable period in connection with the submission of the proposal, and also silent regarding the proponent's ownership on the date the Proposal was sent to the company (July 13, 2021). The Staff concurred with the exclusion of the proposal under Rule 14a-8(f) because the proponent "did not comply with Rule 14a8(b)(1)(i)" noting, "the proof of ownership . . . did not meet the requirements of Rule 14a-8(b)(1)(i) because it did not demonstrate ownership for the requisite period of time." *See also Amazon.com, Inc.* (avail. Apr. 2, 2021) (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for the 13 months preceding November 30, 2020, but the proponent submitted the proposal on December 17, 2020); *Exxon Mobil Corp.* (avail. Feb. 26, 2021); (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for the 12 months preceding November 30, 2020, but the proponent submitted the proposal on December 1, 2020); *Starbucks Corp.* (avail. Dec. 11, 2014) (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for one year as of September 26, 2014, but the proponent submitted the proposal on September 24, 2014); *Mondelēz International, Inc.* (avail. Feb. 11, 2014) (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for one year as of November 27, 2013, but the proponent submitted the proposal on November 29, 2013); *PepsiCo, Inc. (Albert)* (avail. Jan. 10, 2013) (concurring with the exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where the proponent's purported proof of ownership covered the one-year period up to and including November 19, 2012, but the proposal was submitted on November 20, 2012).

As with the precedents cited above, the Proponent failed to provide, along with his submission, sufficient verification of his ownership of the requisite number of Company shares as of the Submission Date from the record owner of those shares. Moreover, despite the Company's timely delivery to the Proponent of the Second Deficiency Notice, the Second Broker Letter does not cure this deficiency, because it was sent by the Proponent 18 days after the Company transmitted the Second Deficiency notice (and 17 days after the Proponent received a hard copy), and was therefore untimely. This is consistent with established Staff practice of concurring with the exclusion of proposals when proponents have failed, following a timely and proper request by a company, to timely furnish evidence of eligibility to submit the stockholder proposal pursuant to Rule 14a-8(b). For example, in *FedEx Corp.* (avail. June 5, 2019), the proponent submitted a proposal without any accompanying proof of ownership and did not provide any documentary support until 15 days following receipt of the company's deficiency notice. Despite being just one day late,

the Staff concurred with exclusion of the proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1). *See also KeyCorp.* (avail Feb. 8, 2022) (concurring with the exclusion of a proposal where the Proponent failed to provide documentary evidence of his ownership of company securities and instead submitted a new cover letter 31 days after the deadline for the Proponent to respond to the company's timely deficiency notice); *AT&T Inc.* (avail. Jan. 29, 2019) (concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 17 days after receiving the company's timely deficiency notice); *Prudential Financial, Inc.* (avail. Dec. 28, 2015) (concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 23 days after receiving the company's timely deficiency notice); and *Mondelēz International, Inc.* (avail. Feb. 27, 2015) (concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 16 days after receiving the company's timely deficiency notice). As discussed above, regardless of the content of the Second Broker Letter, it was not transmitted to the Company until 16 days after the Proponent's receipt of the Deficiency Notice, and, as with the above-cited precedent, the proof of ownership is therefore untimely.

SLB 14L suggests that the Staff considers it appropriate for a company to "identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s)." As discussed above, the Company sent the Second Deficiency Notice to the Proponent in a timely manner, which identified the specific deficiencies of the First Broker Letter, explained clearly how the Proponent could cure these procedural defects, and informed the Proponent of the timing requirements in transmitting a response to the Second Deficiency Notice. Regardless of the contents of the Second Broker Letter, it was not timely transmitted and, as demonstrated above, the Staff has consistently and strictly applied the timing requirements of Rule 14a-8.

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2023 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: John Chevedden
Simona Katcher, Visa Inc.

**EXHIBIT A**

**From:** John Chevedden < >
**Sent:** Thursday, August 4, 2022 7:54:37 AM (UTC-08:00) Pacific Time (US & Canada)
**To:** Corporate Secretary <corporatesecretary@visa.com>; Douglas Stewart < >
**Subject:** Rule 14a-8 Proposal (V)

Dear Ms. Tullier,
Please see the attached rule 14a-8 proposal.
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.
John Chevedden

**JOHN CHEVEDDEN**

Ms. Kelly Mahon Tullier
Corporate Secretary
Visa Inc. (V)
P.O. Box 8999
San Francisco, CA 94128-8999

Dear Ms. Tullier,

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

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

This proposal is for the next annual shareholder meeting.

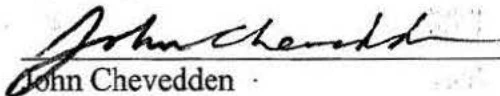
I intend to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

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

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

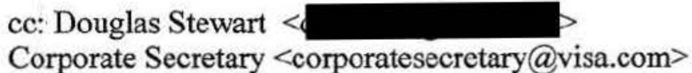
I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,



John Chevedden

August 4, 2022
Date



cc: Douglas Stewart <
Corporate Secretary <corporatesecretary@visa.com>

[V: Rule 14a-8 Proposal, August 4, 2022]
[This line and any line above it – *Not* for publication.]
**Proposal 4 – Shareholder Ratification of Termination Pay**

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

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

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

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

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

For instance at one company that does not have this policy if the CEO is terminated without cause and not pursuant to a change in control, he could receive $44 million in termination payments – over 10 times his base salary plus short-term bonus. In the event of a change in control, the same person could receive a whopping $124 million in accelerated equity payouts even if he remained employed.

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

It is important to have this policy in place so that Visa management stays focused on improving company performance as opposed to seeking a business combination to mostly to trigger a management golden parachute windfall.

This proposal is more important at Visa because 139 million shares voted against management pay in 2022. Plus 147 million shares voted against Lloyd Carney, who chaired the Audit and Risk Committee.

This proposal topic won 58% support at the 2021 FedEx annual meeting and 65% support at the 2022 Spirit AeroSystems (SPR) annual meeting.

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

Notes:
"Proposal 4" stands in for the final proposal number that management will assign.

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

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

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

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

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

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

The color version of the below graphic is to be published immediately after the bold title line of the proposal.
Will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:
No management graphic in connection with the rule 14a-8 proposals in the proxy or ballot.
No proxy or ballot text suggesting that the proposal will be moot due to lack of presentation.
No ballot electioneering text repeating the negative management recommendation.
Management will give me the opportunity to correct any typographical errors.
Management will give me advance notice if it does a special solicitation that mentions this proposal.

**EXHIBIT B**

**From:** Corporate Secretary <corporatesecretary@visa.com>
**Sent:** Tuesday, August 16, 2022 11:56 PM
**To:** John Chevedden < >
**Subject:** RE: Rule 14a-8 Proposal (V)

Good evening, Mr. Chevedden.

Please see attached letter.

Kind regards,
Simona

August 16, 2022

***<u>VIA OVERNIGHT MAIL AND EMAIL</u>***
John Chevedden

Dear Mr. Chevedden:

I am writing on behalf of Visa Inc. (the **"Company"**), which received on August 4, 2022, your stockholder proposal entitled "Shareholder Ratification of Termination Pay" that you submitted on August 4, 2022 (the **"Submission Date"**) pursuant to Securities and Exchange Commission (**"SEC"**) Rule 14a-8 for inclusion in the proxy statement for the Company's 2023 Annual Meeting of Stockholders (the **"Proposal"**).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention.

**1. Proof of Continuous Ownership**

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a stockholder proponent must submit sufficient proof of its continuous ownership of company shares. Thus, with respect to the Proposal, Rule 14a-8 requires that you demonstrate that you continuously owned at least:

(1) $2,000 in market value of the Company's shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;

(2) $15,000 in market value of the Company's shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date;

(3) $25,000 in market value of the Company's shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date; <u>or</u>

(4) $2,000 of the Company's shares entitled to vote on the Proposal for at least one year as of January 4, 2021, and that you have continuously maintained a minimum investment amount of at least $2,000 of such shares from January 4, 2021 through the Submission Date (each an **"Ownership Requirement,"** and collectively, the **"Ownership Requirements"**).

The Company's stock records do not indicate that you are the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date we have not received proof that you have satisfied any of the Ownership Requirements

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

(1) a written statement from the “record” holder of your shares (usually a broker or a bank) verifying that, at the time you submitted the Proposal (the Submission Date), you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or

(2) if you were required to and have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that you met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

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

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

**2. Intent to Hold Shares**

Under Rule 14a-8(b) of the Exchange Act, you must provide the Company with a written statement of your intent to continue to hold through the date of the Company's 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy at least one of the Ownership Requirements above. Your statement in this regard is insufficient. As we have not yet received any proof of ownership from you, and therefore do not know with certainty which of the Ownership Requirements above you intend to satisfy, we believe that your written statement in your August 4, 2022 correspondence that you "intend to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement" is not adequate to confirm that you intend to hold the required amount of the Company's shares through the date of the 2023 Annual Meeting of Stockholders because we do not know with certainty which of the Ownership Requirements above you intend to satisfy and because your statement makes reference to the Company's 2022 Annual Meeting of Stockholders. To remedy this defect, you must submit a written statement that you intend to continue holding the same required amount of Company shares through the date of the Company's 2023 Annual Meeting of Stockholders as will be documented in your ownership proof.

**3. Engagement Availability**

Rule 14a-8(b)(1)(iii) of the Exchange Act requires a stockholder to provide the company with a written statement that it 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 stockholder proposal, including the stockholder's contact information and the business days and specific times during the company's regular business hours that such stockholder is available to discuss the proposal with the company. We note that you have not provided such a statement to the Company. Accordingly, to remedy this defect, you must provide such a statement to the Company and include your contact information as well as business days and specific times between 10 and 30 days after the Submission Date that you are available to discuss the Proposal with the Company. As explained in Rule 14a-8(b), you must also identify times that are within the regular business hours of the Company's principal executive office (*i.e.*, between 9:00 a.m. and 5:00 p.m., Pacific Time).

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at P. O. Box 193243, San Francisco, CA 94100. Alternatively, you may transmit any response by email to me at corporatesecretary@visa.com. Please note that the SEC Staff has advised that you are responsible for confirming our receipt of any correspondence you transmit in response to this letter.

If you have any questions with respect to the foregoing, please contact me at [redacted]. For your reference, I enclose a copy of Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L.

Sincerely,

Simona Katcher
Senior Managing Counsel and Assistant Secretary

Enclosures

**Rule 14a-8 – Shareholder proposals.**

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

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

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) 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.

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

# Shareholder Proposals

## Staff Legal Bulletin No. 14F (CF)

**Action:** Publication of CF Staff Legal Bulletin

**Date:** October 18, 2011

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

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

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

### A. The purpose of this bulletin

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

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

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

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

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

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

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

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

**2. The role of the Depository Trust Company**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**D. The submission of revised proposals**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Announcement

# Shareholder Proposals: Staff Legal Bulletin No. 14L (CF)

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

**Action** Publication of CF Staff Legal Bulletin

**Date:** November 3, 2021

**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 Commi ion (the "Commi ion") Further, the Commi ion ha neither approved nor di approved it content Thi bulletin, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

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

## A. The Purpose of This Bulletin

The Division is rescinding Staff Legal Bulletin Nos. 14I, 14J and 14K (the "rescinded SLBs") after a review of staff experience applying the guidance in them. In addition, to the extent the views expressed in any other prior Division staff legal bulletin could be viewed as contrary to those expressed herein, this staff legal bulletin controls.

This bulletin outlines the Division's views on Rule 14a-8(i)(7), the ordinary business exception, and Rule 14a-8(i)(5), the economic relevance exception. We are also republishing, with primarily technical, conforming changes, the guidance contained in SLB No 14I and 14K relating to the u e of graphic and image , and proof of owner hip letters. In addition, we are providing new guidance on the use of e-mail for submission of proposals, delivery of notice of defects, and responses to those notices.

In Rule 14a-8, the Commission has provided a means by which shareholders can present proposals for the shareholders' consideration in the company's proxy statement. This process has become a cornerstone of shareholder engagement on important matters. Rule 14a-8 sets forth several bases for exclusion of such propo al Companie often reque t a urance that the taff will not recommend enforcement action if they omit a proposal based on one of these exclusions ("no-action relief"). The Division is issuing this bulletin to streamline and simplify our process for reviewing no-action requests, and to clarify the standards staff will apply when evaluating these requests.

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

## 1. Background

Rule 14a-8(i)(7), the ordinary business exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “deals with a matter relating to the company’ ordinary bu ine operation ” The purpo e of the e ception i “to confine the re olution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”[1]

## 2. Significant Social Policy Exception

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we recognize that an undue empha i wa placed on evaluating the ignificance of a policy i ue to a particular company at the expense of whether the proposal focuses on a significant social policy,[2] complicating the application of Commission policy to proposals. In particular, we have found that focusing on the significance of a policy issue to a particular company has drawn the staff into factual considerations that do not advance the policy objectives behind the ordinary bu ine e ception We have al o concluded that uch analy i did not yield con i tent, predictable results.

Going forward, the taff will realign it approach for determining whether a propo al relate to “ordinary bu ine ” with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues,[3] and which the Commission subsequently reaffirmed in the 1998 Release. This exception is essential for preserving shareholders’ right to bring important issues before other hareholder by mean of the company’ pro y tatement, while al o recognizing the board’ authority over mo t day-to-day business matters. For these reasons, staff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad ocietal impact, uch that they tran cend the ordinary bu ine of the company [4]

Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to rai e a policy i ue of ignificance for the company may no longer be viewed a e cludable under Rule 14a-8(i)(7). For example, proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.[5]

Because the staff is no longer taking a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7), it will no longer expect a board analysis as described in the rescinded SLBs as part of demon trating that the propo al i e cludable under the ordinary bu ine e clu ion Ba ed on our e perience, we believe that board analysis may distract the company and the staff from the proper application of the exclusion. Additionally, the “delta” component of board analysis – demonstrating that the difference between the company’s existing actions addressing the policy issue and the proposal’s request is insignificant – sometimes confounded the application of Rule 14a 8(i)(10)’ ub tantial implementation tandard

## 3. Micromanagement

Upon further consideration, the staff has determined that its recent application of the micromanagement concept, as outlined in SLB Nos. 14J and 14K, expanded the concept of micromanagement beyond the Commission’s policy directives. Specifically, we believe that the rescinded guidance may have been taken to mean that any limit on company or board di cretion con titute micromanagement

The Commission has stated that the policy underlying the ordinary business exception rests on two central con ideration The fir t relate to the propo al’ ubject matter; the econd relate to the degree to which the proposal “micromanages” the company “by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”[6] The Commission clarified in the 1998 Release that specific methods, timelines, or detail do not necessarily amount to micromanagement and are not di po itive of e cludability

Con i tent with Commi ion guidance, the taff will take a mea ured approach to evaluating companie ' micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement. Instead, we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would e pect the level of detail included in a hareholder propo al to be con i tent with that needed to enable inve tor to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Our recent letter to ConocoPhillips Company[7] provides an example of our current approach to micromanagement. In that letter the staff denied no-action relief for a proposal requesting that the company set targets covering the greenhouse gas emissions of the company's operations and products. The proposal reque ted that the company et emi ion reduction target and it did not impo e a pecific method for doing o The staff concluded this proposal did not micromanage to such a degree to justify exclusion under Rule 14a-8(i)(7).

Additionally, in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment,[8] we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. The staff may also consider reference to well e tabli hed national or international framework when a e ing propo al related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.

Thi approach i con i tent with the Commi ion' view on the ordinary bu ine e clu ion, which i de igned to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters. As the Commission stated in its 1998 Release:

> [In] the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micro-manage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or to impo e pecific method for implementing comple policie Some commenter thought that the e ample cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to 'ordinary business.' We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a rea onable level of detail without running afoul of the e con ideration

While the analysis in this bulletin may apply to any subject matter, many of the proposals addressed in the re cinded SLB reque ted companie adopt timeframe or target to addre climate change that the taff concurred were excludable on micromanagement grounds.[9] Going forward we would not concur in the exclusion of similar proposals that suggest targets or timelines so long as the proposals afford discretion to management as to how to achieve such goals.[10] We believe our current approach to micromanagement will help to avoid the dilemma many proponent faced when eeking to craft propo al with ufficient pecificity and direction to avoid being excluded under Rule 14a-8(i)(10), substantial implementation, while being general enough to avoid exclusion for "micromanagement."[11]

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

Rule 14a-8(i)(5), the "economic relevance" exception, permits a company to exclude a proposal that "relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwi e ignificantly related to the company' bu ine "

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we are returning to our long tanding approach, prior to SLB No 14I, of analyzing Rule 14a 8(i)(5) in a manner we believe i con i tent with Lovenheim v. Iroquois Brands, Ltd.[12] As a result, and consistent with our pre-SLB No. 14I approach and Lovenheim, proposals that raise issues of broad social or ethical concern related to the company's business may

not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5). In light of this approach, the staff will no longer expect a board analysis for its consideration of a no-action request under Rule 14a-8(i)(5).

## D. Rule 14a-8(d)[13]

### 1. Background

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

### 2. The Use of Images in Shareholder Proposals

Questions have arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.[14] The staff has expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.[15] Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.[16]

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

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

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

## E. Proof of Ownership Letters[18]

In relevant part, Rule 14a-8(b) provides that a proponent must prove eligibility to submit a proposal by offering proof that it "continuously held" the required amount of securities for the required amount of time.[19]

In Section C of SLB No. 14F, we identified two common errors shareholders make when submitting proof of ownership for purposes of satisfying Rule 14a-8(b)(2).[20] In an effort to reduce such errors, we provided a suggested format for shareholders and their brokers or banks to follow when supplying the required verification of ownership.[21] Below, we have updated the suggested format to reflect recent changes to the ownership thresholds due to the Commission's 2020 rulemaking.[22] We note that brokers and banks are not required to follow this format.

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

Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive. For example, we did not concur with the excludability of a proposal based on Rule 14a-8(b) where the proof of ownership letter deviated from the format set forth in SLB No. 14F.[23] In those cases, we concluded that the proponent nonetheless had supplied documentary support sufficiently evidencing the requisite minimum ownership requirements, as required by Rule 14a-8(b). We took a plain meaning approach to interpreting the text of the proof of ownership letter, and we expect companies to apply a similar approach in their review of such letters.

While we encourage shareholders and their brokers or banks to use the sample language provided above to avoid this issue, such formulation is neither mandatory nor the exclusive means of demonstrating the ownership requirements of Rule 14a-8(b).[24] We recognize that the requirements of Rule 14a-8(b) can be quite technical. Accordingly, companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.

We also do not interpret the recent amendments to Rule 14a-8(b)[25] to contemplate a change in how brokers or banks fulfill their role. In our view, they may continue to provide confirmation as to how many shares the proponent held continuously and need not separately calculate the share valuation, which may instead be done by the proponent and presented to the receiving issuer consistent with the Commission's 2020 rulemaking.[26] Finally, we believe that companies should identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s).

## F. Use of E-mail

Over the past few years, and particularly during the pandemic, both proponents and companies have increasingly relied on the use of emails to submit proposals and make other communications. Some companies and proponents have expressed a preference for emails, particularly in cases where offices are closed. Unlike the use of third-party mail delivery that provides the sender with a proof of delivery, parties should keep in mind that methods for the confirmation of email delivery may differ. Email delivery confirmations and company server logs may not be sufficient to prove receipt of emails as they only serve to prove that emails were sent. In addition, spam filters or incorrect email addresses can prevent an email from being delivered to the appropriate recipient. The staff therefore suggests that to prove delivery of an email for purposes of Rule 14a-8, the sender should seek a reply e-mail from the recipient in which the recipient acknowledges receipt of the e-mail. The staff also encourages both companies and shareholder proponents to acknowledge receipt of emails when requested. Email read receipts, if received by the sender, may also help to establish that emails were received.

### 1. Submission of Proposals

Rule 14a-8(e)(1) provides that in order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery. Therefore, where a dispute arises regarding a proposal's timely delivery, shareholder proponents risk exclusion of their proposals if they do not receive a confirmation of receipt from the company in order to prove timely delivery with email submissions. Additionally, in those instances where the company does not disclose in its proxy statement an email address for submitting proposals, we encourage shareholder proponents to contact the company to obtain the correct email address for submitting proposals before doing so and we encourage companies to provide such email addresses upon request.

### 2. Delivery of Notices of Defects

Similarly, if companies use email to deliver deficiency notices to proponents, we encourage them to seek a confirmation of receipt from the proponent or the representative in order to prove timely delivery. Rule 14a-8(f)(1) provides that the company must notify the shareholder of any defects within 14 calendar days of receipt of the proposal, and accordingly, the company has the burden to prove timely delivery of the notice.

## 3. Submitting Responses to Notices of Defects

Rule 14a-8(f)(1) also provides that a shareholder’s response to a deficiency notice must be postmarked, or transmitted electronically, no later than 14 days from the date of receipt of the company's notification. If a  hareholder u e  email to re pond to a company’  deficiency notice, the burden i  on the  hareholder or representative to use an appropriate email address (e.g., an email address provided by the company, or the email address of the counsel who sent the deficiency notice), and we encourage them to seek confirmation of receipt.

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[1] Release No. 34-40018 (May 21, 1998) (the “1998 Release”). Stated a bit differently, the Commission has explained that “[t]he ‘ordinary business’ exclusion is based in part on state corporate law establishing spheres of authority for the board of director  on one hand, and the company’   hareholder  on the other ” Relea e No  34 39093 (Sept. 18, 1997).

[2] For e ample, SLB No  14K e plained that the  taff “take  a company  pecific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally ‘significant.’” Staff Legal Bulletin No. 14K (Oct. 16, 2019).

[3] Release No. 34-12999 (Nov. 22, 1976) (the “1976 Release”) (stating, in part, “proposals of that nature [relating to the economic and safety considerations of a nuclear power plant], as well as others that have major implications, will in the future be considered beyond the realm of an issuer’s ordinary business operations”).

[4] 1998 Release (“[P]roposals . . . focusing on sufficiently significant social policy issues. . .generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy i  ue   o  ignificant that it would be appropriate for a  hareholder vote”)

[5] *See, e.g., Dollar General Corporation* (Mar. 6, 2020) (granting no-action relief for exclusion of a proposal reque ting the board to i  ue a report on the u e of contractual provi ion  requiring employee  to arbitrate employment-related claims because the proposal did not focus on specific policy implications of the use of arbitration at the company). We note that in the 1998 Release the Commission stated: “[P]roposals relating to [workforce management] but focusing on sufficiently significant social policy issues (e.g., significant discrimination matter ) generally would not be con idered to be e cludable, becau e the propo al  would tran cend the day to day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” Matters related to employment discrimination are but one example of the workforce management proposals that may rise to the level of transcending the company’s ordinary business operations.

[6] 1998 Release.

[7] *ConocoPhillips Company* (Mar. 19, 2021).

[8] *See* 1998 Relea e and 1976 Relea e

[9] *See, e.g.*, *PayPal Holdings, Inc.* (Mar. 6, 2018) (granting no-action relief for exclusion of a proposal asking the company to prepare a report on the fea ibility of achieving net zero emi  ion  by 2030 becau e the  taff concluded it micromanaged the company); *Devon Energy Corporation* (Mar. 4, 2019) (granting no-action relief for exclusion of a proposal requesting that the board in annual reporting include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the Paris Climate Agreement because the staff viewed the proposal a  requiring the adoption of time bound target )

[10] *See ConocoPhillips Company* (Mar. 19, 2021).

[11] To be more specific, shareholder proponents have expressed concerns that a proposal that was broadly worded might face exclusion under Rule 14a-8(i)(10). Conversely, if a proposal was too specific it risked exclusion under Rule 14a 8(i)(7) for micromanagement

[12] 618 F. Supp. 554 (D.D.C. 1985).

[13] Thi ection previou ly appeared in SLB No 14I (Nov 1, 2017) and i republi hed here with only minor, conforming changes.

[14] Rule 14a 8(d) i intended to limit the amount of pace a hareholder propo al may occupy in a company' proxy statement. *See* 1976 Release.

[15] *See General Electric Co* (Feb 3, 2017, Feb 23, 2017); *General Electric Co* (Feb 23, 2016) The e decisions were consistent with a longstanding Division position. *See Ferrofluidics Corp.* (Sept. 18, 1992).

[16]Companie hould not minimize or otherwi e dimini h the appearance of a hareholder' graphic For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

[18] This section previously appeared in SLB No. 14K (Oct.16, 2019) and is republished here with minor, conforming changes. Additional discussion is provided in the final paragraph.

[19] Rule 14a-8(b) requires proponents to have 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.

[20]Staff Legal Bulletin No. 14F (Oct. 18, 2011).

[21]The Division suggested the following formulation: "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]."

[22] Release No. 34-89964 (Sept. 23, 2020) (the "2020 Release").

[23] *See Amazon.com, Inc.* (Apr. 3, 2019); *Gilead Sciences, Inc.* (Mar. 7, 2019).

[24] *See* Staff Legal Bulletin No 14F, n 11

[25] *See* 2020 Release.

[26] 2020 Release at n.55 ("Due to market fluctuations, the value of a shareholder's investment in a company may vary throughout the applicable holding period before the shareholder submits the proposal. In order to determine whether the hareholder ati fie the relevant owner hip thre hold, the hareholder hould look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at the relevant threshold or greater. For these purposes, companies and shareholders should determine the market value by multiplying the number of securities the shareholder continuously held for the relevant period by the highe t elling price during the 60 calendar day before the hareholder ubmitted the proposal. For purposes of this calculation, it is important to note that a security's highest selling price is not necessarily the same as its highest closing price.") (citations omitted).

*Modified: Nov. 3, 2021*

September 13, 2022

Dear Customer,

The following is the proof-of-delivery for tracking number: 7776-8296-9324

**Delivery Information:**

| | | | |
|---|---|---|---|
| **Status:** | Delivered | **Delivered To:** | Residence |
| **Signed for by:** | Signature not required | **Delivery Location:** | |
| **Service type:** | FedEx Standard Overnight | | |
| **Special Handling:** | Deliver Weekday;<br>Residential Delivery | | |
| | | **Delivery date:** | Aug 18, 2022 15:43 |

**Shipping Information:**

| | | | |
|---|---|---|---|
| **Tracking number:** | 7776-8296-9324 | **Ship Date:** | Aug 17, 2022 |
| | | **Weight:** | 0.5 LB/0.23 KG |

**Recipient:**

**Shipper:**

Foster City, CA, US,

| | |
|---|---|
| **Reference** | Chevedden-def notice |
| **Purchase Order** | S.Katcher |
| **Department Number** | 18204 |

Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

Thank you for choosing FedEx

**EXHIBIT C**

**From:** John Chevedden < >
**Sent:** Thursday, August 18, 2022 12:45:50 PM (UTC-08:00) Pacific Time (US & Canada)
**To:** Douglas Stewart < >; Corporate Secretary <corporatesecretary@visa.com>
**Subject:** (V)

Available for an off the record telephone meeting with one company employee:
Aug 23 10:00 am PT
Aug 23 10:30 am PT

Confirmation requested by:
Aug 19
Please provide the name of the company employee.
I have no need for a meeting.

John Chevedden

I intend to continue to hold through the date of the Company 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy at least one of the rule 14a-8 proposal Ownership Requirements.

**EXHIBIT D**

**From:** John Chevedden < >
**Sent:** Saturday, August 20, 2022 8:23:18 AM (UTC-08:00) Pacific Time (US & Canada)
**To:** Douglas Stewart < >; Corporate Secretary <corporatesecretary@visa.com>
**Subject:** Rule 14a-8 Proposal (V) blb

Mr. Stewart,

Please see the attached broker letter.

Please confirm receipt.

John Chevedden

Personal Investing

August 18, 2022

JOHN R CHEVEDDEN

To Whom It May Concern:

Thank you for contacting Fidelity Investments. This letter is in response to a recent request from our client, John R. Chevedden, to provide account verification for their Fidelity accounts. I appreciate the opportunity to assist you.

Please accept this letter as confirmation that as of the market close on August 17, 2022, Mr. Chevedden has continuously owned no fewer than the share quantities of the securities shown on the below table since December 20, 2019:

| Security | Symbol | Share Quantity |
|---|---|---|
| | | |
| Visa Inc | V | 30.000 |
| | | |

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

I hope you find this information helpful. If you have any questions regarding this issue or general inquiries regarding the account, please contact Mr. Chevedden directly. They may follow up with us directly if necessary. If you have any questions regarding Fidelity Investment's products and services please call us at 800-544-6666 for assistance.

Sincerely,

Jacqueline Kramer
Operations Specialist

Our File:

**EXHIBIT E**

**From:** Corporate Secretary <corporatesecretary@visa.com>
**Sent:** Thursday, August 25, 2022 10:01 PM
**To:** John Chevedden <[redacted]>
**Subject:** RE: Rule 14a-8 Proposal (V) blb

Good evening, Mr. Chevedden.

Please see attached letter.

Kind regards,
Simona

August 25, 2022

*VIA OVERNIGHT MAIL AND EMAIL*
John Chevedden

Dear Mr. Chevedden:

I am writing on behalf of Visa Inc. (the **"Company"**), which received on August 4, 2022, your stockholder proposal entitled "Shareholder Ratification of Termination Pay" that you submitted on August 4, 2022 (the **"Submission Date"**) pursuant to Securities and Exchange Commission (**"SEC"**) Rule 14a-8 for inclusion in the proxy statement for the Company's 2023 Annual Meeting of Stockholders (the **"Proposal"**). In our letter to you dated August 16, 2022 (the **"Prior Deficiency Notice"**), we informed you of certain deficiencies regarding your submission and provided information on how to remedy the deficiencies. This letter supplements the Prior Deficiency Notice in light of your subsequent correspondence.

We thank you for your email correspondence on August 18, 2022 (the **"August 18 Email"**) providing your availability to meet with the Company on August 23, 2022. Unfortunately, due to scheduling conflicts, the Company is not available to meet with you at the two times you provided. However, we propose the following alternative dates and times for a meeting to discuss the Proposal:

- 3pm PT on Wednesday, 31 August 2022; or
- 1pm PT on Thursday, 1 September 2022.

The Company also notes your request to meet with only one Company employee. However, we would like to include one of the Company's subject matter experts relating to the issues raised by the Proposal to promote a more meaningful conversation and productive engagement. Therefore, Joel Eisenberg, Senior Managing Counsel, Compensation & Benefits at the Company, will be joining me during the meeting to discuss the Proposal.

In addition, we are in receipt of the August 18, 2022 letter from Fidelity Investments (the **"Fidelity Letter"**) addressing your ownership of the Company's shares. The Fidelity Letter does not satisfy any of the ownership requirements of Rule 14a-8. As we explained in the Prior Deficiency Notice, Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a stockholder proponent must submit sufficient proof of its continuous ownership of company shares. Thus, with respect to the Proposal, Rule 14a-8 requires that, for proposals submitted to a company for an annual or special meeting after January 1, 2023, you demonstrate that you have continuously owned at least:

(1) $2,000 in market value of the Company's shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;

(2) $15,000 in market value of the Company's shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or

(3) $25,000 in market value of the Company's shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date (each an **"Ownership Requirement,"** and collectively, the **"Ownership Requirements"**).

The Fidelity Letter is insufficient because while it verifies ownership of 30 Company shares (the **"Shares"**) from December 19, 2019 to August 17, 2022, the Fidelity Letter does not verify ownership of the Shares for the three-year period preceding and including the Submission Date, nor does it verify ownership of the requisite amount of Company shares to satisfy either of the Ownership Requirements set forth in clauses (2) or (3) in the paragraph above.

To remedy this defect, and as we have explained in the Prior Deficiency Notice, you must obtain a proof of ownership letter verifying that you have satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

(1) a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that, at the time you submitted the Proposal (the Submission Date), you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or

(2) if you were required to and have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that you met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

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

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

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

Any response to the matters raised in this letter must be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at P. O. Box 193243, San Francisco, CA 94100. Alternatively, you may transmit any response by email to me at corporatesecretary@visa.com.

If you have any questions with respect to the foregoing, please contact me at [redacted]. For your reference, I enclose another copy of Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L.

Sincerely,

Simona Katcher
Senior Managing Counsel and Assistant Secretary

Enclosures

cc: Joel Eisenberg, Visa, Inc.

**Rule 14a-8 – Shareholder proposals.**

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

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

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) 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.

U.S. Securities

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

# Shareholder Proposals

## Staff Legal Bulletin No. 14F (CF)

**Action:** Publication of CF Staff Legal Bulletin

**Date:** October 18, 2011

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

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

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

### A. The purpose of this bulletin

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

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

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

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

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

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

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

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

**2. The role of the Depository Trust Company**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**D. The submission of revised proposals**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*http://www.sec.gov/interps/legal/cfslb14f.htm*

Announcement

# Shareholder Proposals: Staff Legal Bulletin No. 14L (CF)

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

**Action** Publication of CF Staff Legal Bulletin

**Date:** November 3, 2021

**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 Commi ion (the "Commi ion") Further, the Commi ion ha neither approved nor di approved it content Thi bulletin, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

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

## A. The Purpose of This Bulletin

The Division is rescinding Staff Legal Bulletin Nos. 14I, 14J and 14K (the "rescinded SLBs") after a review of staff experience applying the guidance in them. In addition, to the extent the views expressed in any other prior Division staff legal bulletin could be viewed as contrary to those expressed herein, this staff legal bulletin controls.

This bulletin outlines the Division's views on Rule 14a-8(i)(7), the ordinary business exception, and Rule 14a-8(i)(5), the economic relevance exception. We are also republishing, with primarily technical, conforming changes, the guidance contained in SLB No 14I and 14K relating to the u e of graphic and image , and proof of owner hip letters. In addition, we are providing new guidance on the use of e-mail for submission of proposals, delivery of notice of defects, and responses to those notices.

In Rule 14a-8, the Commission has provided a means by which shareholders can present proposals for the shareholders' consideration in the company's proxy statement. This process has become a cornerstone of shareholder engagement on important matters. Rule 14a-8 sets forth several bases for exclusion of such propo al Companie often reque t a urance that the taff will not recommend enforcement action if they omit a proposal based on one of these exclusions ("no-action relief"). The Division is issuing this bulletin to streamline and simplify our process for reviewing no-action requests, and to clarify the standards staff will apply when evaluating these requests.

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

## 1. Background

Rule 14a-8(i)(7), the ordinary business exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “deals with a matter relating to the company’ ordinary bu ine operation ” The purpo e of the e ception i “to confine the re olution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”[1]

## 2. Significant Social Policy Exception

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we recognize that an undue empha i wa placed on evaluating the ignificance of a policy i ue to a particular company at the expense of whether the proposal focuses on a significant social policy,[2] complicating the application of Commission policy to proposals. In particular, we have found that focusing on the significance of a policy issue to a particular company has drawn the staff into factual considerations that do not advance the policy objectives behind the ordinary bu ine e ception We have al o concluded that uch analy i did not yield con i tent, predictable results.

Going forward, the taff will realign it approach for determining whether a propo al relate to “ordinary bu ine ” with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues,[3] and which the Commission subsequently reaffirmed in the 1998 Release. This exception is essential for preserving shareholders’ right to bring important issues before other hareholder by mean of the company’ pro y tatement, while al o recognizing the board’ authority over mo t day-to-day business matters. For these reasons, staff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad ocietal impact, uch that they tran cend the ordinary bu ine of the company [4]

Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to rai e a policy i ue of ignificance for the company may no longer be viewed a e cludable under Rule 14a-8(i)(7). For example, proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company.[5]

Because the staff is no longer taking a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7), it will no longer expect a board analysis as described in the rescinded SLBs as part of demon trating that the propo al i e cludable under the ordinary bu ine e clu ion Ba ed on our e perience, we believe that board analysis may distract the company and the staff from the proper application of the exclusion. Additionally, the “delta” component of board analysis – demonstrating that the difference between the company’s existing actions addressing the policy issue and the proposal’s request is insignificant – sometimes confounded the application of Rule 14a 8(i)(10)’ ub tantial implementation tandard

## 3. Micromanagement

Upon further consideration, the staff has determined that its recent application of the micromanagement concept, as outlined in SLB Nos. 14J and 14K, expanded the concept of micromanagement beyond the Commission’s policy directives. Specifically, we believe that the rescinded guidance may have been taken to mean that any limit on company or board di cretion con titute micromanagement

The Commission has stated that the policy underlying the ordinary business exception rests on two central con ideration The fir t relate to the propo al’ ubject matter; the econd relate to the degree to which the proposal “micromanages” the company “by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”[6] The Commission clarified in the 1998 Release that specific methods, timelines, or detail do not necessarily amount to micromanagement and are not di po itive of e cludability

Con i tent with Commi ion guidance, the taff will take a mea ured approach to evaluating companie ' micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement. Instead, we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would e pect the level of detail included in a hareholder propo al to be con i tent with that needed to enable inve tor to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Our recent letter to ConocoPhillips Company[7] provides an example of our current approach to micromanagement. In that letter the staff denied no-action relief for a proposal requesting that the company set targets covering the greenhouse gas emissions of the company's operations and products. The proposal reque ted that the company et emi ion reduction target and it did not impo e a pecific method for doing o The staff concluded this proposal did not micromanage to such a degree to justify exclusion under Rule 14a-8(i)(7).

Additionally, in order to assess whether a proposal probes matters "too complex" for shareholders, as a group, to make an informed judgment,[8] we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. The staff may also consider reference to well e tabli hed national or international framework when a e ing propo al related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.

Thi approach i con i tent with the Commi ion' view on the ordinary bu ine e clu ion, which i de igned to preserve management's discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters. As the Commission stated in its 1998 Release:

> [In] the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micro-manage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or to impo e pecific method for implementing comple policie Some commenter thought that the e ample cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to 'ordinary business.' We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a rea onable level of detail without running afoul of the e con ideration

While the analysis in this bulletin may apply to any subject matter, many of the proposals addressed in the re cinded SLB reque ted companie adopt timeframe or target to addre climate change that the taff concurred were excludable on micromanagement grounds.[9] Going forward we would not concur in the exclusion of similar proposals that suggest targets or timelines so long as the proposals afford discretion to management as to how to achieve such goals.[10] We believe our current approach to micromanagement will help to avoid the dilemma many proponent faced when eeking to craft propo al with ufficient pecificity and direction to avoid being excluded under Rule 14a-8(i)(10), substantial implementation, while being general enough to avoid exclusion for "micromanagement."[11]

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

Rule 14a-8(i)(5), the "economic relevance" exception, permits a company to exclude a proposal that "relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwi e ignificantly related to the company' bu ine "

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we are returning to our long tanding approach, prior to SLB No 14I, of analyzing Rule 14a 8(i)(5) in a manner we believe i con i tent with Lovenheim v. Iroquois Brands, Ltd.[12] As a result, and consistent with our pre-SLB No. 14I approach and Lovenheim, proposals that raise issues of broad social or ethical concern related to the company's business may

not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5). In light of this approach, the staff will no longer expect a board analysis for its consideration of a no-action request under Rule 14a-8(i)(5).

## D. Rule 14a-8(d)[13]

### 1. Background

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

### 2. The Use of Images in Shareholder Proposals

Questions have arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.[14] The staff has expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.[15] Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.[16]

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

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

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

## E. Proof of Ownership Letters[18]

In relevant part, Rule 14a-8(b) provides that a proponent must prove eligibility to submit a proposal by offering proof that it "continuously held" the required amount of securities for the required amount of time.[19]

In Section C of SLB No. 14F, we identified two common errors shareholders make when submitting proof of ownership for purposes of satisfying Rule 14a-8(b)(2).[20] In an effort to reduce such errors, we provided a suggested format for shareholders and their brokers or banks to follow when supplying the required verification of ownership.[21] Below, we have updated the suggested format to reflect recent changes to the ownership thresholds due to the Commission's 2020 rulemaking.[22] We note that brokers and banks are not required to follow this format.

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

Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive. For example, we did not concur with the excludability of a proposal based on Rule 14a-8(b) where the proof of ownership letter deviated from the format set forth in SLB No. 14F.[23] In those cases, we concluded that the proponent nonetheless had supplied documentary support sufficiently evidencing the requisite minimum ownership requirements, as required by Rule 14a-8(b). We took a plain meaning approach to interpreting the text of the proof of ownership letter, and we expect companies to apply a similar approach in their review of such letters.

While we encourage shareholders and their brokers or banks to use the sample language provided above to avoid this issue, such formulation is neither mandatory nor the exclusive means of demonstrating the ownership requirements of Rule 14a-8(b).[24] We recognize that the requirements of Rule 14a-8(b) can be quite technical. Accordingly, companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.

We also do not interpret the recent amendments to Rule 14a-8(b)[25] to contemplate a change in how brokers or banks fulfill their role. In our view, they may continue to provide confirmation as to how many shares the proponent held continuously and need not separately calculate the share valuation, which may instead be done by the proponent and presented to the receiving issuer consistent with the Commission's 2020 rulemaking.[26] Finally, we believe that companies should identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent's proof of ownership if such deficiency notice did not identify the specific defect(s).

## F. Use of E-mail

Over the past few years, and particularly during the pandemic, both proponents and companies have increasingly relied on the use of emails to submit proposals and make other communications. Some companies and proponents have expressed a preference for emails, particularly in cases where offices are closed. Unlike the use of third-party mail delivery that provides the sender with a proof of delivery, parties should keep in mind that methods for the confirmation of email delivery may differ. Email delivery confirmations and company server logs may not be sufficient to prove receipt of emails as they only serve to prove that emails were sent. In addition, spam filters or incorrect email addresses can prevent an email from being delivered to the appropriate recipient. The staff therefore suggests that to prove delivery of an email for purposes of Rule 14a-8, the sender should seek a reply e-mail from the recipient in which the recipient acknowledges receipt of the e-mail. The staff also encourages both companies and shareholder proponents to acknowledge receipt of emails when requested. Email read receipts, if received by the sender, may also help to establish that emails were received.

### 1. Submission of Proposals

Rule 14a-8(e)(1) provides that in order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery. Therefore, where a dispute arises regarding a proposal's timely delivery, shareholder proponents risk exclusion of their proposals if they do not receive a confirmation of receipt from the company in order to prove timely delivery with email submissions. Additionally, in those instances where the company does not disclose in its proxy statement an email address for submitting proposals, we encourage shareholder proponents to contact the company to obtain the correct email address for submitting proposals before doing so and we encourage companies to provide such email addresses upon request.

### 2. Delivery of Notices of Defects

Similarly, if companies use email to deliver deficiency notices to proponents, we encourage them to seek a confirmation of receipt from the proponent or the representative in order to prove timely delivery. Rule 14a-8(f)(1) provides that the company must notify the shareholder of any defects within 14 calendar days of receipt of the proposal, and accordingly, the company has the burden to prove timely delivery of the notice.

### 3. Submitting Responses to Notices of Defects

Rule 14a-8(f)(1) also provides that a shareholder's response to a deficiency notice must be postmarked, or transmitted electronically, no later than 14 days from the date of receipt of the company's notification. If a hareholder u e email to re pond to a company' deficiency notice, the burden i on the hareholder or representative to use an appropriate email address (e.g., an email address provided by the company, or the email address of the counsel who sent the deficiency notice), and we encourage them to seek confirmation of receipt.

---

[1] Release No. 34-40018 (May 21, 1998) (the "1998 Release"). Stated a bit differently, the Commission has explained that "[t]he 'ordinary business' exclusion is based in part on state corporate law establishing spheres of authority for the board of director on one hand, and the company' hareholder on the other " Relea e No 34 39093 (Sept. 18, 1997).

[2] For e ample, SLB No 14K e plained that the taff "take a company pecific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally 'significant.'" Staff Legal Bulletin No. 14K (Oct. 16, 2019).

[3] Release No. 34-12999 (Nov. 22, 1976) (the "1976 Release") (stating, in part, "proposals of that nature [relating to the economic and safety considerations of a nuclear power plant], as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations").

[4] 1998 Release ("[P]roposals . . . focusing on sufficiently significant social policy issues. . .generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy i ue o ignificant that it would be appropriate for a hareholder vote")

[5] *See, e.g., Dollar General Corporation* (Mar. 6, 2020) (granting no-action relief for exclusion of a proposal reque ting the board to i ue a report on the u e of contractual provi ion requiring employee to arbitrate employment-related claims because the proposal did not focus on specific policy implications of the use of arbitration at the company). We note that in the 1998 Release the Commission stated: "[P]roposals relating to [workforce management] but focusing on sufficiently significant social policy issues (e.g., significant discrimination matter ) generally would not be con idered to be e cludable, becau e the propo al would tran cend the day to day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." Matters related to employment discrimination are but one example of the workforce management proposals that may rise to the level of transcending the company's ordinary business operations.

[6] 1998 Release.

[7] *ConocoPhillips Company* (Mar. 19, 2021).

[8] *See* 1998 Relea e and 1976 Relea e

[9] *See, e.g.*, *PayPal Holdings, Inc.* (Mar. 6, 2018) (granting no-action relief for exclusion of a proposal asking the company to prepare a report on the fea ibility of achieving net zero emi ion by 2030 becau e the taff concluded it micromanaged the company); *Devon Energy Corporation* (Mar. 4, 2019) (granting no-action relief for exclusion of a proposal requesting that the board in annual reporting include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the Paris Climate Agreement because the staff viewed the proposal a requiring the adoption of time bound target )

[10] *See ConocoPhillips Company* (Mar. 19, 2021).

[11] To be more specific, shareholder proponents have expressed concerns that a proposal that was broadly worded might face exclusion under Rule 14a-8(i)(10). Conversely, if a proposal was too specific it risked exclusion under Rule 14a 8(i)(7) for micromanagement

[12] 618 F. Supp. 554 (D.D.C. 1985).

[13] Thi ection previou ly appeared in SLB No 14I (Nov 1, 2017) and i republi hed here with only minor, conforming changes.

[14] Rule 14a 8(d) i intended to limit the amount of pace a hareholder propo al may occupy in a company' proxy statement. *See* 1976 Release.

[15] *See General Electric Co* (Feb 3, 2017, Feb 23, 2017); *General Electric Co* (Feb 23, 2016) The e decisions were consistent with a longstanding Division position. *See Ferrofluidics Corp.* (Sept. 18, 1992).

[16]Companie hould not minimize or otherwi e dimini h the appearance of a hareholder' graphic For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

[18] This section previously appeared in SLB No. 14K (Oct.16, 2019) and is republished here with minor, conforming changes. Additional discussion is provided in the final paragraph.

[19] Rule 14a-8(b) requires proponents to have 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.

[20]Staff Legal Bulletin No. 14F (Oct. 18, 2011).

[21]The Division suggested the following formulation: "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]."

[22] Release No. 34-89964 (Sept. 23, 2020) (the "2020 Release").

[23] *See Amazon.com, Inc.* (Apr. 3, 2019); *Gilead Sciences, Inc.* (Mar. 7, 2019).

[24] *See* Staff Legal Bulletin No 14F, n 11

[25] *See* 2020 Release.

[26] 2020 Release at n.55 ("Due to market fluctuations, the value of a shareholder's investment in a company may vary throughout the applicable holding period before the shareholder submits the proposal. In order to determine whether the hareholder ati fie the relevant owner hip thre hold, the hareholder hould look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at the relevant threshold or greater. For these purposes, companies and shareholders should determine the market value by multiplying the number of securities the shareholder continuously held for the relevant period by the highe t elling price during the 60 calendar day before the hareholder ubmitted the proposal. For purposes of this calculation, it is important to note that a security's highest selling price is not necessarily the same as its highest closing price.") (citations omitted).

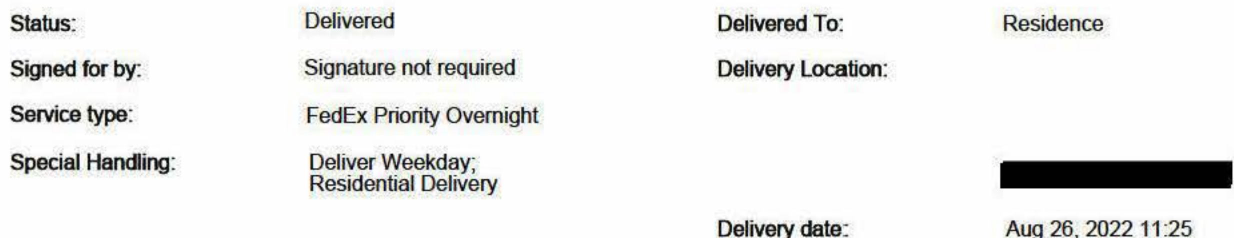
*Modified: Nov. 3, 2021*

August 30, 2022

Dear Customer,

The following is the proof-of-delivery for tracking number: 777747554192

**Delivery Information:**



| | | | |
|---|---|---|---|
| **Status:** | Delivered | **Delivered To:** | Residence |
| **Signed for by:** | Signature not required | **Delivery Location:** | |
| **Service type:** | FedEx Priority Overnight | | |
| **Special Handling:** | Deliver Weekday;<br>Residential Delivery | | [redacted], |
| | | **Delivery date:** | Aug 26, 2022 11:25 |

**Shipping Information:**

| | | | |
|---|---|---|---|
| **Tracking number:** | 777747554192 | **Ship Date:** | Aug 25, 2022 |
| | | **Weight:** | 0.5 LB/0.23 KG |

**Recipient:**

[redacted]

**Shipper:**

Foster City, CA, US,

| | |
|---|---|
| **Reference** | Chevedden-2nd AM notice |
| **Purchase Order** | S.Katcher |
| **Department Number** | 18204 |

Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

Thank you for choosing FedEx

**EXHIBIT F**

**From:** John Chevedden <[redacted]t>
**Sent:** Saturday, August 27, 2022 9:22:29 AM (UTC-08:00) Pacific Time (US & Canada)
**To:** Corporate Secretary <corporatesecretary@visa.com>
**Subject:** (V)

Available for an off the record telephone meeting with one company employee:
Aug 30  9:00 am PT
Aug 31  9:00 am PT

Confirmation requested by:
Aug 29
Please provide the name of the company employee.
I have no need for a meeting.

Please advise your email address.

John Chevedden

---

**From:** Corporate Secretary <corporatesecretary@visa.com>
**Sent:** Monday, August 29, 2022 4:19 PM
**To:** John Chevedden
**Subject:** RE: (V)

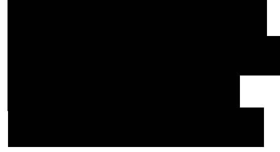
Good afternoon, Mr. Chevedden.

Thank you for providing additional dates and times that you are available. Unfortunately, we cannot meet at 9am PT, but can meet at 9.30am PT on 30 August. Kindly confirm and I will send a meeting invite with a dial-in number. I also note your request to meet with one Visa employee; however, to promote a more meaningful conversation and productive engagement, I am inviting Joel Eisenberg, Senior Managing Counsel, Compensation & Benefits, to join us during our meeting to discuss the Proposal.

Thank you, and I look forward to hearing from you.

Kind regards,
Simona

**Simona B. Katcher**
Senior Managing Counsel and Assistant Secretary
Visa, Legal – Securities and Corporate Governance



This e-mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender and delete or destroy any copy of this message.

---

**From:** John Chevedden
**Sent:** Monday, August 29, 2022 6:00 PM
**To:** Corporate Secretary <corporatesecretary@visa.com>; Katcher, Simona
**Subject:** (V)

# 9.15 am PT on 30 August

---

**From:** Katcher, Simona
**Sent:** Monday, August 29, 2022 11:03 PM
**To:** John Chevedden
**Subject:** RE: (V)

Good evening, Mr. Chevedden.

I just sent a meeting invite to you for 9.15am PT on 30 August.

Thank you, and speak with you soon.

Kind regards,
Simona

**EXHIBIT G**

**From:** John Chevedden <[redacted]>
**Sent:** Monday, September 12, 2022 4:29:15 PM (UTC-08:00) Pacific Time (US & Canada)
**To:** Katcher, Simona <[redacted]>; Joel Eisenberg <[redacted]>; Douglas Stewart <[redacted]>; Corporate Secretary <corporatesecretary@visa.com>
**Subject:** Rule 14a-8 Proposal (V) blb

Dear Ms. Katcher,
Please see the attached broker letter.
Please confirm receipt.
John Chevedden

Personal Investing

JOHN R CHEVEDDEN

September 12, 2022

To Whom It May Concern:

Thank you for contacting Fidelity Investments. This letter is in response to a recent request from our client, John R. Chevedden, to provide account verification for their Fidelity accounts. I appreciate the opportunity to assist you.

Please accept this letter as confirmation that as of the market close on September 9, 2022 Mr. Chevedden has continuously owned no fewer than the shares quantities of the securities shown on the below table since July 1, 2019:

| Security: | Symbol: | Share Quantity: |
|---|---|---|
| Visa Inc | V | 30.000 |

These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number 0226) a Fidelity Investments subsidiary. The DTC clearinghouse number for Fidelity is 0266.

Each of these stock holdings supports a rule 14a-8 shareholder proposal for the respective annual shareholder meeting proxy. These stock holdings do not need to be linked to a specific Fidelity account.

*(Continued)*

I hope you find this information helpful. If you have any questions regarding this issue or general inquiries regarding the account, please contact Mr. Chevedden directly. They may follow up with us directly if necessary. If you have any questions regarding Fidelity Investment's products and services please call us at 800-544-6666 for assistance.

Sincerely,

Elaina Lehto
Operations Specialist

Our File:

September 13, 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**
**Visa Inc. (V)**
**Shareholder Ratification of Termination Pay**
**John Chevedden**

Ladies and Gentlemen:

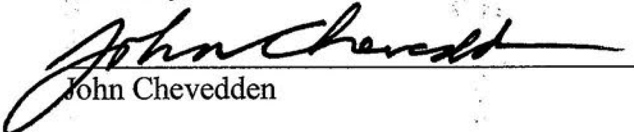
This is in regard to the September 13, 2022 no-action request.

The attached letter illustrates that 14-days is no longer an adequate time period to obtain a broker letter.

It took Fidelity 17-days with bird-dogging to provide the broker letter that shows I own the right number of shares to support a 2023 rule 14a-8 proposal. The highly profitability Fidelity enterprise gives low priority to broker letters.

Additional information will be provided.

Sincerely,



John Chevedden

cc: Simona B. Katcher <skatcher@visa.com>

# SHAREHOLDER RIGHTS GROUP

September 13, 2022

Ms. Renee Jones
Director
Division of Corporation Finance
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Rule 14a-8 Proof of Ownership by Brokers and Banks

Dear Director Jones,

We are writing to raise an issue in the administration of the shareholder proposal program, Rule 14a-8. The issue relates to the procedures of proof of ownership required by the rule.

Notably, the proof of ownership language of Rule 14a-8(b)(2) puts the responsibility on brokers and banks to provide the needed documentation of the adequacy of proponents' holdings in most instances:

> (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....

We request that the Division establish policies to ensure that proponents who own sufficient shares and who undertake timely efforts to obtain the proof of ownership required by the rule should not have their proposals excluded if brokers or banks fail to provide compliant documentation in time to meet the filing deadlines.

We appreciate the reference in Staff Legal Bulletin 14L to interpretation of the 2020 rule amendments as continuing to allow brokers or banks to demonstrate proof of ownership as they have traditionally done:

PO Box 231 Amherst, MA 01004 • 413 549-7333

**Shareholder Rights Group**

Arjuna Capital

As You Sow

Boston Common Asset Management, LLC

Boston Trust Walden

Clean Yield Asset Management

First Affirmative Financial Network, LLC

Harrington Investments, Inc.

Ides Capital

Interfaith Center on Corporate Responsibility

James McRitchie

John Chevedden

Mercy Investments

Natural Investments, LLC

Newground Social Investment, SPC

NorthStar Asset Management, Inc.

Pax World Funds

Sustainability Group of Loring, Wolcott & Coolidge, LLC

The Shareholder Commons

Trillium Asset Management, LLC

Zevin Asset Management

> We also do not interpret the recent amendments to Rule 14a-8(b) to contemplate a change in how brokers or banks fulfill their role. In our view, they may continue to provide confirmation as to how many shares the proponent held continuously and need not separately calculate the share valuation, which may instead be done by the proponent and presented to the receiving issuer consistent with the Commission's 2020 rulemaking. [Footnotes omitted]

This has helped to ease the correspondence with *some* brokers and banks to fulfil their role in providing proof of ownership. Nevertheless, there have been numerous instances in which proponents have requested appropriate documentation from brokers or banks on proof of ownership, but the brokers or banks failed to provide technically viable proof on a timely basis.

Proponents have unfortunately had the experience that some of the leading firms are not consistently prepared to provide the requested documentation. Some of the largest brokerage firms have multiple offices and personnel that field these requests and do not appear to have adequate training and protocols. Time and again, after clear instructions from the shareowner and timely requests, instructions are ignored, proof of ownership wording is rewritten incorrectly, and no amount of pre-work is effective in obtaining correct and timely documentation.

An example of this problem occurred in 2021 in which Charles Schwab representatives used a faulty proof of ownership template, substituting the word "since" for "prior to" when referring to the holding period. Although the Schwab letters state that the proponent had held the shares for at least a year, the error Schwab personnel made in wording suggests that the proponent has held the shares for a month or less.

Even though it is early in the current filing season, proponents are already experiencing the disorganization of major brokerage firms in meeting the proof of ownership requirements of the rule. We also believe that this may be an issue that the Investment Management Division may wish to examine, but in any event, we urge that the Division of Corporation Finance provide leeway to proponents, given the high stakes in many shareholder proposals and the wholesale lack of success in moving many of these firms to respond timely and correctly. The Staff should not penalize an investor by exclusion of an otherwise legally compliant proposal that has been proven subsequently to be backed by sufficient proof of ownership. The consequences of broker or bank disorganization and incompetence should not fall on the proponents.

Given the ongoing practice of the Staff in allowing issuers to go forward with late-filed no action requests, often without a compelling justification, we believe a balanced approach would also allow proponent proposals to move forward where they made timely and legally compliant requests to receive proof of ownership documentation, but the broker or bank nevertheless failed to provide a correct proof of ownership. We suggest that the Division make this clear in a future Staff Legal Bulletin.

Respectfully Submitted,

Sanford Lewis
Director
Shareholder Rights Group

Cc:
Michael Seaman
Acting Chief Counsel
Division of Corporation Finance

**JOHN CHEVEDDEN**

=September 25, 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**
**Visa Inc. (V)**
**Shareholder Ratification of Termination Pay**
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the September 13, 2022 no-action request.

Attached is the August 26, 2022 request for the broker letter.

It took Fidelity 17-days with my bird-dogging to draft the September 12, 2022 broker letter.

I talked to these people at Fidelity (800-544-5704) in a good faith effort to obtain the broker letter in a timely manner:

August 29
Tyler Garrett
Mitchell Kresser

September 6
Jackson Harris

September 9
Terri Rawding

September 12
Ryan Gunstream
Lawrence Jorgensen

It is not possible to talk to a person in the Fidelity back office that drafts the letters. The above persons are the Fidelity go-betweens and they will not name the person in the Fidelity back office that is the source of their information.

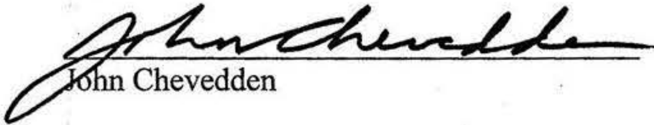
Two years ago the Staff told me that 4-days was a reasonable time period to obtain a broker letter.
Fidelity has recently sent me routine messages to expect 3 to 5 days for a broker letter.

It is beyond my control to routinely obtain broker letters from Fidelity within 13-days.

Fidelity will not give an expected completion date for a broker letter even if the request is more than 2-weeks old.

The problems with timely broker letters were brought up at the September 22, 2022 Rule 14a-8 Stakeholders' Meeting.

Sincerely,



John Chevedden

cc: Simona B. Katcher <skatcher@visa.com>

# Communic

Messages | Alerts His

Messages Se

Your messages will be st

Received | Sent

| | Subject |
|---|---|
| ☐ | Letter confirm |
| ☐ | Letter confirm |
| ☐ | W559374-04/ |
| ☐ | W559374-04/ |
| ☐ | Letter Confirm |

Delete Selected

* Virtual Assistant is Fidelity' input personal or account in improve the search results. I Responses provided by the not guarantee accuracy of re

534606.6.0

## Message 1 of 5

Print | Delete

Next

From: John Chevedden
To: Fidelity
Topic: Account services
Subject: Letter confirming stock ownership per 17 CFR § 240.14a-8
Date: 08/26/2022 8:58 AM

Revision of August 25, 2022 request
Please provide a letter with the below wording and email it to me in the message center.

Each of these stock holdings supports a rule 14a-8 shareholder proposal for the respective annual shareholder meeting proxy.
These stock holdings do not need to be linked to a specific Fidelity account.
The Office of Chief Council, Securities and Exchange Commission (202-551-3500), said that 4-days is a reasonable time period for these letters to be provided.
Thank you.
John Chevedden
Fidelity Customer
PH: PII

[Date]

Dear Mr. Chevedden,

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

Please accept this letter as confirmation that as of the market close on [the day before the date of this letter] Mr. Chevedden has continuously owned no fewer than the shares quantities of the securities shown on the below table since July 1, 2019:

Security Symbol Share Quantity

AES Corp (AES) 250 shares
AutoNation, Inc. (AN) 100 shares
Bank of America Corporation (BAC) 250 shares
International Business Machines Corporation (IBM) 25 shares
Kaman Corporation (KAMN) 100 shares
Lennar Corporation (LEN) 100 shares
Stanley Black & Decker, Inc. (SWK) 30 shares
Walgreens Boots Alliance, Inc. (WBA) 100 shares
Visa Inc. (V) 30 shares
Deere & Company (DE) 50 shares

These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number 0226) a Fidelity Investments subsidiary.
The DTC clearinghouse number for Fidelity is 0266.

Sincerely,
Operations Specialist

estions?

with us now
nediate answers with our Assistant*.

ed links

ways to contact us
ge your alerts
ge security settings
nents & records

oyer plans

ons about your 401(k), , or other employer-ored benefits? Visit ner Service on nefits®.

Feedback

engine, we ask that you not id to help provide analytics to logged in to our website. esults carefully. Fidelity does

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October 3, 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**
**Visa Inc. (V)**
**Shareholder Ratification of Termination Pay**
**John Chevedden**

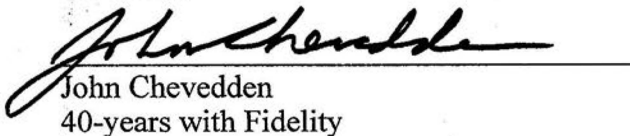
Ladies and Gentlemen:

This is in regard to the September 13, 2022 no-action request.

The below messages to Fidelity illustrate the extreme unreliability of Fidelity in producing broker letters as of July 12, 2022.
It was 3 months and 9 messages to Fidelity and Fidelity had yet to produce an acceptable broker letter for one stock – CTAS. Fortunately CTAS did not ask for no action relief.

Fidelity is on a 3-year path to be more unreliable and troublesome in producing broker letters. It appears that the goal of Fidelity is to be difficult in producing broker letters and to thus gain relief from totally frustrated customers of any requirement to produce broker letters.

Sincerely,



John Chevedden
40-years with Fidelity

cc: Simona B. Katcher <skatcher@visa.com>

Fom: John Chevedden
To: Fidelity
Topic: Account services
Subject: Shares verification
Date: 06/15/2022 1:40 PM
This message was received without the attachment.
Please forward the attachment.

From: Fidelity
To: John Chevedden
Topic:
Subject: Shares verification
Date: 06/07/2022 9:30 AM
Dear John Chevedden:

Thank you for contacting Fidelity Investments requesting a verification letter for your Fidelity account. I appreciate the opportunity to assist you.

Please view the attachment to see the requested information.

I hope this information is helpful. For any other issues or general inquiries, please contact a Fidelity representative at 800-544-4442. Thank you for choosing Fidelity Investments.

Sincerely,

Daniel Merrell
Operations Specialist

Fidelity Brokerage Services LLC, Members NYSE and SIPC.

From: John Chevedden
To: Fidelity
Topic: Account services
Subject: Letter regarding stock ownership
Date: 05/26/2022 6:20 PM
Please email a letter in the exact same format as
W392833-29DEC21
With a market close date of the day before the date the Fidelity letter is written
With the same since date of December 20, 2019.
For
CINTAS CORP (CTAS) 20 shares

The Office of Chief Counsel, Securities and Exchange Commission said that 4-days is a reasonable turnaround on this type letter.

Please check the 2 separate positions I have in this stock.

Thank you.

John Chevedden

Fom: John Chevedden
To: Fidelity
Topic: Account services
Subject: Letter regarding stock ownership
Date: 05/13/2022 9:22 AM
Please email a letter in the exact same format as
W392833-29DEC21
With a market close date of the day before the date the Fidelity letter is written
With the same since date of December 20, 2019.
For
CINTAS CORP (CTAS) 20 shares

The Office of Chief Counsel, Securities and Exchange Commission said that 4-days is a reasonable turnaround on this type letter.

Please check the 2 separate positions I have in this stock.

Thank you.

John Chevedden

From: John Chevedden
To: Fidelity
Topic: Account services
Subject: Letter regarding stock ownrership
Date: 05/11/2022 5:50 PM
Please email a letter in the exact same format as
W392833-29DEC21
With a market close date of the day before the date at the top of the letter.
With the same since date of December 20, 2019.
For
CINTAS CORP (CTAS) 20 shares

The Office of Chief Counsel, Securities and Exchange Commission said that 4-days is a reasonable turnaround on this type letter.

Please check the 2 separate positions I have in this stock.

Thank you.

John Chevedden

From: John Chevedden
To: Fidelity
Topic: Account services
Subject: Letter re stock ownership
Date: 05/04/2022 3:23 PM
Please forward today the letter regarding the CTAS shares held since December 20, 2019.
This was originally requested on April 13, 2022.
The Office of Chief Counsel, Securities and Exchange Commission said that 4-days is a reasonable turnaround on this type letter.

From:�John Chevedden
To:�Fidelity
Topic:�Account services��
Subject:�Letter re stock ownership
Date:�04/13/2022 10:48 PM
Please email a letter in the exact same format as
W392833-29DEC21
With a market close date of the day before the date at the top of the letter.
With the same since date of December 20, 2019.
FEDEX CORP (FDX) 50 shares
CINTAS CORP (CTAS) 20 shares

The Office of Chief Counsel, Securities and Exchange Commission said that 4-days is a reasonable turnaround on this type letter.

Thank you.

John Chevedden

From: John Chevedden
To: Fidelity
Topic: Account services
Subject: Letter re stock ownership
Date: 04/27/2022 11:40 PM
This further explains my message a few minutes ago
This is regarding TOD PII
Do not mention the account number in the letter

Please email a letter in the exact same format as
W392833-29DEC21
With a market close date of the day before the date at the top of the letter.
With the same since date of December 20, 2019.
CINTAS CORP (CTAS) 20 shares

The Office of Chief Counsel, Securities and Exchange Commission said that 4-days is a reasonable turnaround on this type letter.

Thank you.

John Chevedden

From: John Chevedden
To: Fidelity
Topic: Account services
Subject: Letter re stock ownership
Date: 04/27/2022 11:35 PM
Please email a letter in the exact same format as
W392833-29DEC21
With a market close date of the day before the date at the top of the letter.
With the same since date of December 20, 2019.
CINTAS CORP (CTAS) 20 shares

The Office of Chief Counsel, Securities and Exchange Commission said that 4-days is a reasonable turnaround on this type letter.

Thank you.

John Chevedden

From: John Chevedden
To: Fidelity
Topic: Account services
Subject: Letter re stock ownership
Date: 04/25/2022 12:23 AM
Letter re stock ownership

One of my 2 holdings of this stock qualifies for this requested letter.
Please email a letter in the exact same format as
W392833-29DEC21
With a market close date of the day before the date at the top of the letter.
With the since date of December 20, 2019.
CINTAS CORP (CTAS) 20 shares

The Office of Chief Counsel, Securities and Exchange Commission said that 4-days is a reasonable turnaround on this type letter.

Thank you.

John Chevedden

From: John Chevedden
To: Fidelity
Topic: Account services
Subject: Letter re stock ownership
Date: 04/13/2022 10:48 PM
Please email a letter in the exact same format as
W392833-29DEC21
With a market close date of the day before the date at the top of the letter.
With the same since date of December 20, 2019.
FEDEX CORP (FDX) 50 shares
CINTAS CORP (CTAS) 20 shares

The Office of Chief Counsel, Securities and Exchange Commission said that 4-days is a reasonable turnaround on this type letter.

Thank you.

John Chevedden

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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Elizabeth A. Ising
Direct: +1 202.955.8287
Fax: +1 202.530.9631
Eising@gibsondunn.com

October 20, 2022

***VIA E-MAIL***
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Visa Inc.*
*Supplemental Letter Regarding Stockholder Proposal of John Chevedden*
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

On September 13, 2022, we submitted a letter (the "No-Action Request") on behalf of our client, Visa Inc. (the "Company"), notifying the staff of the Division of Corporation Finance (the "Staff") that the Company intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Stockholders (collectively, the "2023 Proxy Materials") a stockholder proposal (the "Proposal"), including statements in support thereof received from John Chevedden (the "Proponent"). The No-Action Request indicated our belief that the Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the requisite proof of continuous stock ownership in a timely manner in response to the Company's proper request for that information.

Subsequently, also on September 13, 2022, the Proponent submitted a response to the No-Action Request (the "First Response"). In the First Response, the Proponent included a letter from the Shareholder Rights Group requesting that the Staff disregard the 14-day proponent response deadline under Rule 14a-8(f) and establish policies allowing stockholder proponents to proceed where "brokers or banks fail to provide compliant documentation in time to meet the filing deadlines." In addition, on September 25, 2022, the Proponent submitted a follow-up response (the "Second Response"). In the Second Response, the Proponent provided the dates on which he contacted his broker, Fidelity Investments ("Fidelity"), in response to the Company's letter dated August 25, 2022.

We continue to believe that the Proposal is excludable pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) despite the Proponent's assertion that "14-days is no longer an adequate time period to obtain a broker letter."

While we are sympathetic to the challenges faced by the Proponent in this situation, Rule 14a-8(f)(1) expressly requires a stockholder proponent's response to a company's deficiency notice to be "be postmarked, or transmitted electronically, *no later than 14 days* from the date [the proponent] receive[s] the company's notification" (emphasis added). *See*

*also* Securities and Exchange Commission (the "Commission" or the "SEC") Release No. 34-40018 (May 21, 1998) (addressing the Commission's "proposal to establish a uniform 14-day period in which shareholders would be required to respond to a company's notification that the shareholder has failed to comply with one or more procedures under [R]ule 14a-8, such as . . . establishing proponent eligibility" and confirming that it was "adopting the 14-day period as proposed"); and SEC Release No. 34-89964 n.49 (Sept. 23, 2020) ("the shareholder-proponent is required to respond to this [deficiency] notice within 14 days"). Given that the 14-day proponent response deadline was adopted pursuant to the SEC's rulemaking authority, any amendments or modifications to that deadline can only be effected via Commission rulemaking, which would include a public comment period.

As discussed in the No-Action Request, there is well-established Staff precedent requiring strict adherence to the 14-day deadline under Rule 14a-8(f)(1) and concurring with the exclusion of proposals when proponents have failed, following a timely and proper request by a company, to timely furnish evidence of eligibility to submit the stockholder proposal pursuant to Rule 14a-8(b)—even if the response misses the 14-day deadline by a single day. *See e.g.*, FedEx Corp. (avail. June 5, 2019). Abandoning decades of precedent and extending the 14-day deadline beyond what is permissible under Rule 14a-8 would cause irreparable harm to a company's preparation and internal and external deadlines, and cause additional confusion and uncertainty as the company prepares for its stockholders' meeting and the filing of its proxy statement. The certainty and finality provided by the Rule's 14-day response deadline is necessary for a company to, among other things, comply with its obligation under Rule 14a-8(j) to file any no-action requests at least 80 calendar days prior to the date the company intends to file its definitive proxy statement with the SEC, especially where the proponent submits its stockholder proponent on or just before the Rule 14a-8 deadline, as the Proponent did here. In addition, this timeline is becoming even more compressed in light of Staff Legal Bulletin No. 14L (Nov. 3, 2021) advising companies to issue a second deficiency notice (as was done here) if a prior deficiency notice sent by the company "did not identify the specific defect(s)."

We also note that stockholder proponents like the Proponent have other means to address or avoid the difficulties raised in the First Response. For example, stockholder proponents can often obtain a proof of ownership letter prior to submitting their proposal, and then submit their proposal, together with the proof of ownership letter, on the same day via email[1] or fax, thereby avoiding any of the concerns raised by the First Response. Indeed, as noted by the Staff in Part G.2 of Staff Legal Bulletin No. 14 (July 13, 2001), "[a] shareholder who intends to submit a written statement from the record holder of the shareholder's securities to verify continuous ownership of the securities *should contact the record holder* *before* *submitting a*

[1] We note that the Proponent typically submits his stockholder proposals via email.

*proposal to ensure that the record holder will provide the written statement and knows how to provide a written statement that will satisfy the requirements of [R]ule 14a-8(b)"* (emphases added). Alternatively, a proponent may also choose to hold shares of record as a registered stockholder and entirely avoid this process with a broker.

Lastly, we note that the Proponent has been able to obtain from Fidelity in the past sufficient and timely proof of ownership of Company shares and proof of ownership of other companies' shares. For example, in advance of the Company's 2021 Annual Meeting of Stockholders, the Proponent provided in a timely manner sufficient proof of ownership from Fidelity. We also note that the Proponent has done so several times recently at other companies as well.[2] Thus, the Proponent's recent difficulties with his broker regarding share ownership also must be considered in light of the Proponent's repeated ability to obtain from Fidelity and provide to the Company and other companies sufficient proof of ownership in a timely manner.

Based upon the foregoing and the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2023 Proxy Materials. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Simona Katcher, Visa Inc.
John Chevedden

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[2] *See, e.g.*, *AT&T Inc.* (avail. Mar. 10, 2022) (Fidelity proof of ownership letter dated one day after the date of the deficiency notice); *AutoNation, Inc.* (avail. Feb. 25, 2022) (Fidelity proof of ownership letter dated 13 days after the date of the deficiency notice); *The AES Corp.* (avail. Feb. 16, 2022) (Fidelity proof of ownership letter dated one day after the date of the deficiency notice); *Mastercard Inc.* (avail. Mar. 30, 2021) (Fidelity proof of ownership letter dated eight days after the date of the deficiency notice); *Northrop Grumman Corp.* (avail. Mar. 19, 2021) (Fidelity proof of ownership letter dated six days after the date of the deficiency notice); *CVS Health Corp.* (avail. Mar. 17, 2021) (Fidelity proof of ownership letter dated seven days after the date of the deficiency notice); and *Crown Holdings, Inc.* (avail. Mar. 2, 2021) (Fidelity proof of ownership letter dated the same date as the deficiency notice).

**JOHN CHEVEDDEN**

October 20, 2022

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

**# 4 Rule 14a-8 Proposal**
**Visa Inc. (V)**
**Shareholder Ratification of Termination Pay**
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the September 13, 2022 no-action request.

There will be a response soon to the October 20, 2022 management letter.

Sincerely,

John Chevedden

cc: Simona B. Katcher <skatcher@visa.com>

**JOHN CHEVEDDEN**

October 24, 2022

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

**# 5 Rule 14a-8 Proposal**
**Visa Inc. (V)**
**Shareholder Ratification of Termination Pay**
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the September 13, 2022 no-action request.

The October 20, 2022 management letter offers impractical suggestions.
For instance it suggests that proponents can obtain a broker letter ahead of time. This means that the proponent needs to get 2 broker letters because the broker insists that a letter dated today must state that the ownership is as of the close of business yesterday.

And last week the broker confused a request for a second broker letter (with only a new date) for a particular stock with an entirely new request for a broker letter on other stocks. The broker then asked that the request be resubmitted.

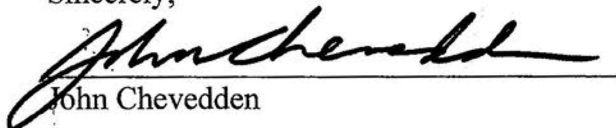
The letter suggests that a proponent be a registered shareholder. This would be a disaster at tax preparation time when owning small quantities of dozens of stocks with the need to report a large batch of dividends of 2 figures each. And how does one best track and analyze the progress of one's portfolio as a registered shareholder in dozens of stocks?

The letter suggests that the proponent be especially penalized because he was able to timely obtain broker letters previously. The decline in service by the broker is beyond the control of a small shareholder.

And to change brokers would potentially mean that the number of broker letters would need to be doubled and the proponent would be stuck with attempting to obtain broker letters from a broker where he closed accounts to establish 3-years of continuous ownership.

The prospect of changing brokers is compounded by the new for 2023 requirement to own stocks for a continuous 3-years that was not fully in effect in 2022. The 14-day rule was established long before the 3-year ownership requirement.

Sincerely,



John Chevedden

cc: Simona B. Katcher <skatcher@visa.com>