



DIVISION OF
CORPORATION FINANCE

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

February 14, 2022

Lori Zyskowski
Gibson, Dunn & Crutcher LLP

Re: The Kraft Heinz Company (the "Company")
Incoming letter dated February 14, 2022

Dear Ms. Zyskowski:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Anna Lyles (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its December 23, 2021 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

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

Sincerely,

Rule 14a-8 Review Team

cc: Conrad MacKerron
As You Sow

December 23, 2021

VIA E-MAIL

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

Re: *The Kraft Heinz Company*
Stockholder Proposal of Anna Lyles
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Kraft Heinz Company (the “Company”), intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Stockholders (collectively, the “2022 Proxy Materials”) a stockholder proposal relating to a report on plastic packaging (the “Proposal”) and statements in support thereof received from Anna Lyles (the “Proponent”) and represented by As You Sow (the “Representative”).

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 2022 Proxy Materials with the Commission; and
- concurrently sent copies 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.

Office of Chief Counsel
Division of Corporation Finance
December 23, 2021
Page 2

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2022 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 response to the Company's proper request for that information.

BACKGROUND

The Proposal, along with all other relevant correspondence, attached hereto as Exhibit A, was submitted to the Company by the Proponent via FedEx on November 24, 2021 and received by the Company on November 26, 2021. The Proponent did not include with such submission any documentary evidence of ownership of Company shares. In addition, the Company reviewed its stock records, which did not indicate that the Proponent was a record owner of Company shares.

Accordingly, the Company properly sought verification of stock ownership from the Proponent. Specifically, the Company sent the Representative and the Proponent a letter dated December 6, 2021, expressly identifying each deficiency, including failure to provide any proof of ownership, notifying the Proponent of the requirements of Rule 14a-8 and explaining how the Proponent could cure the procedural deficiencies (the "Deficiency Notice"). The Deficiency Notice, attached hereto as Exhibit B, provided detailed information regarding the "record" holder requirements, as clarified by Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") and Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), and attached a copy of Rule 14a-8, SLB 14F and SLB 14L. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b) (the "Ownership Requirements");
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient Company shares;
- 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 the Proponent's shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date [November 24, 2021]), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above"; and

Office of Chief Counsel
Division of Corporation Finance
December 23, 2021
Page 3

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

The Company sent the Deficiency Notice to both the Representative and Proponent via email and to the Representative via UPS overnight delivery on December 6, 2021, which was within 14 calendar days of the Company's receipt of the Proposal. *See Exhibit B and Exhibit C.* Overnight delivery service records confirm delivery of a physical copy of the Deficiency Notice to the Representative on December 7, 2021. *See Exhibit C.* In addition, it is evident based on the Representative's Response (defined below) that the Representative received the emailed Deficiency Notice on December 6, 2021. However, no response to the Deficiency Notice was received until December 21, 2021, one day following the clearly articulated 14-day deadline for a timely response to the Deficiency Notice.

Subsequently, on December 21, 2021, the day after the 14-day deadline to cure the deficiency had passed, the Company received an email from the Representative (the "Representative's Response"), copying the Proponent, including a letter from Charles Schwab, dated December 21, 2021, purporting to show the Proponent's ownership in Company shares (the "Broker Letter") and a cover note attempting to explain, among other things, the reason for the late response. *See Exhibit D.* In pertinent part, the Representative's Response attempts to excuse the delay by noting: "The Proponent, Anna Marie Lyles, has repeatedly requested the [p]roof of [o]wnership letter from her custodian, Charles Schwab. After weeks of frustration, she sought our assistance and we were unable to obtain it until today." However, based on the explicit requirements of Rule 14a-8(b) and Rule 14a-8(f), and as clearly established by precedent (as discussed below), because the Broker Letter was not timely received, the Proposal may be excluded under Rule 14a-8.

ANALYSIS

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

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to substantiate her eligibility to submit the Proposal under Rule 14a-8(b). 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, 2022, a stockholder proponent must have continuously held:

Office of Chief Counsel
Division of Corporation Finance
December 23, 2021
Page 4

- (A) at least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years;
- (B) at least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years;
- (C) at least \$25,000 in market value of the company's shares entitled to vote on the proposal for at least one year; or
- (D) the amounts specified in Rule 14a-8(b)(3) under the conditions and for the duration specified therein.¹

Each of these Ownership Requirements were described by the Company in the Deficiency Notice.

Staff Legal Bulletin No. 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). *See* Section C.1.c, Staff Legal Bulletin No. 14 (Jul. 13, 2001). 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 beneficial 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 Representative and Proponent in a timely manner the Deficiency Notice, which specifically set forth the information and instructions listed above and attached a copy

¹ Under Rule 14a-8(b)(3), a stockholder may satisfy the ownership requirements by demonstrating that such stockholder 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 the stockholder has 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.

Office of Chief Counsel
Division of Corporation Finance
December 23, 2021
Page 5

of Rule 14a-8, SLB 14F, and SLB 14L. *See Exhibit B.* However, despite the clear explanation in the Deficiency Notice to provide the requisite documentary support, the Proponent 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.

The Staff has consistently concurred in 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). Additionally, in *AT&T Inc.* (avail. Jan. 29, 2019), the proponent submitted a proposal without proper verification of the proponent's ownership of the requisite number of company shares for the requisite period. In response, the company timely sent the proponent a notice explaining the deficiency via email only; however, the proof of ownership ultimately provided by the proponent was not submitted until three days after the deadline (17 days after receiving the company's timely deficiency notice). The Staff concurred that the proposal was excludable pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1). *See also Time Warner Inc.* (avail. Mar. 13, 2018) (concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 18 days after receiving the company's timely deficiency notice); *ITC Holdings Corp.* (avail. Feb. 9, 2016) (concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 35 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). Here, regardless of the content of the Broker Letter, no proof of ownership was transmitted by the Proponent until 15 days after the Proponent's receipt of the Deficiency Notice, and, consistent with the above-cited precedent, is therefore untimely. Therefore, consistent with *FedEx*, *AT&T* and the other cited precedent, the Company may exclude the Proposal pursuant to Rule 14a-8(f)(1) and Rule 14a-8(b).

Here, the Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponent in a timely manner the Deficiency Notice, which specifically set forth the information and instructions listed above and attached a copy of Rule 14a-8, SLB 14F and SLB 14L. *See Exhibit B.* Moreover, the Proponent failed to provide any timely proof of ownership despite

Office of Chief Counsel
Division of Corporation Finance
December 23, 2021
Page 6

working with the Representative, who routinely submits and advises proponents on stockholder proposals and the submission process and is versed in the eligibility requirements of Rule 14a-8, and despite being given an additional 14 days to produce such evidence (courtesy of the Deficiency Notice and Rule 14a-8(f)(1)). Notably, this is not the first time the Proponent has submitted a proposal pursuant to Rule 14a-8, so the need to obtain documentary support evidencing her ownership of sufficient Company shares should not have come as a surprise to the Proponent nor is the Company required to provide the Proponent with any additional time beyond what is prescribed by the Rule to procure and produce evidence of ownership of sufficient Company shares that she knew, or should have known, was required at the time of submission.² As such, consistent with the above-cited precedent, the Proponent did not satisfy Rule 14a-8(b) and the Proposal may be properly excluded.

While SLB 14L suggests that there may be situations where the Staff considers it appropriate for a company to provide a second deficiency notice, the language of SLB 14L indicates that this situation is limited to if and when a company “sen[ds] a deficiency notice prior to receiving the proponent’s proof of ownership if such deficiency notice did not identify the specific defect(s).” SLB 14L. In the present case, the specific defect that remains (*i.e.*, untimeliness) cannot be cured. Specifically, regardless of the contents of the Broker Letter, this documentation was not timely transmitted and, as demonstrated above, the Staff has consistently and strictly applied the timing requirements of Rule 14a-8. The Proponent and its Representative were informed of the timing requirements in the Deficiency Notice, and, in fact, this is not the first time the Proponent has submitted a proposal to the Company, using the Representative, and failed to provide requisite proof of ownership under Rule 14a-8 in a timely manner. *See Kraft 2021*. Therefore the Company has complied with both the letter and spirit of the Staff’s guidance in SLB 14L.

As in the precedent cited above, the Proponent failed to timely provide documentary evidence of ownership of Company shares and has therefore not demonstrated eligibility under Rule 14a-8 to submit the Proposal. 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).

² *See, e.g., The Kraft Heinz Co.* (avail. Feb 12, 2021) (“*Kraft 2021*”) (although this proposal was ultimately withdrawn, the Company submitted a no-action request to exclude a proposal from the same Proponent based on her failure to provide any proof of ownership, despite the Company’s timely and properly noticed request for the same); *Exxon Mobil Corp.* (avail. Mar. 20, 2020) (here, Anna Lyles was a co-filer and submitted a broker letter from Charles Schwab in response to the company’s request for such information).

Office of Chief Counsel
Division of Corporation Finance
December 23, 2021
Page 7

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 2022 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 (212) 351-2309 or Heidi Miller, the Company's Assistant Corporate Secretary and Deputy General Counsel, Corporate Governance and Securities, at (773) 454-4735.

Sincerely,



Lori Zyskowski

Enclosures

cc: Rashida La Lande, The Kraft Heinz Company
Heidi Miller, The Kraft Heinz Company
Conrad MacKerron, As You Sow
Anna Lyles

EXHIBIT A

FedEx®
Express

Extremely Urgent

FROM: J. L. JENKINS
JENKINS PUBLISHING

200 WASHINGTON AVENUE

PORT WASHINGTON, CA 94062

TEL: 415-731-1111

FAX: 415-731-1111

TO: RASHIDA LA LANDE

THE KRAFT HEINZ COMPANY

200 EAST RANDOLPH STREET

SUITE 7600

CHICAGO IL 60601

953-899-5555

SHIP DATE: MONDAY
ACTING
CALL NUMBER: 800-468-5243

BILL CREDIT CARD



B
1 11:30 AM
536
B96



7753 1039 8302

FRI 11:30A
PRIORITY OVERNIGHT

XN CHIA

60601

IL-US ORD



Insert shipping document here

VIA FEDEX & EMAIL

November 24, 2021

Rashida La Lande
Senior Vice President and Corporate Secretary
The Kraft Heinz Company
200 East Randolph St.
Suite 7600
Chicago, Illinois 60601
[REDACTED]

cc: Investor Relations, [REDACTED]
Conrad MacKerron, [REDACTED]

Dear Ms. La Lande,

I am submitting the attached shareholder proposal, which I support, for a vote at The Kraft Heinz Company's 2022 annual shareholder meeting requesting The Kraft Heinz Company's Board **to issue a report describing how the company will reduce plastic packaging**. I will meet Rule 14a-8 requirements including the continuous ownership of over \$2,000 worth of Company stock, with voting rights, which I have held continuously since before January 4, 2020 and will continue to hold the required amount of stock through the date of the Company's annual meeting in 2022.

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

I am available to meet with The Kraft Heinz Company's representative at the following times:

- 12/14/2021 at 4:00pm Central Time
- 12/14/2021 at 4:30pm Central Time

This letter confirms that I am delegating Conrad MacKerron to act as my agent regarding this Rule 14a-8 proposal, including negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to Conrad MacKerron at [REDACTED] or PH: [REDACTED] to facilitate prompt communication. Please send all correspondence **with a copy to** [REDACTED]

Your consideration and that of the Board of Directors is appreciated in support of the long-term performance of our company. You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [REDACTED]. That will prompt me to request the required letter from my broker and to submit it to you.

Sincerely,



Anna Marie Lyles
PhD

WHEREAS: The growing plastic pollution crisis poses increasing risks to our company. Corporations could face an annual financial risk of approximately \$100 billion should governments require them to cover the waste management costs of the packaging they produce, a policy that is increasingly being enacted around the globe.¹

Recently, Pew Charitable Trusts released a groundbreaking study, *Breaking the Plastic Wave*, concluding that if all current industry and government commitments were met, ocean plastic deposition would be reduced by only seven percent. Without immediate and sustained new commitments throughout the plastics value chain, annual flows of plastics into oceans could nearly triple by 2040.

The Pew report also finds that improved recycling is insufficient to stem the plastic tide, and must be coupled with reductions in use, materials redesign, and substitution. It also finds that at least one-third of plastic demand can and should be reduced. The report states that reducing plastic production is the most attractive solution from environmental, economic, and social perspectives. The European Union has banned 10 single-use plastic products commonly found in ocean cleanups and enacted a \$1/kg tax on non-recycled plastic packaging waste.

Kraft Heinz lags peers in reducing risk from plastic packaging use. Competitor Unilever has taken the most significant action to date, agreeing to cut virgin plastic packaging use by 50% by 2025, including absolute elimination of 100,000 tons of plastic packaging. Seventeen other consumer goods companies have virgin plastic reduction goals, including Procter & Gamble, Colgate-Palmolive, Nestlé, and Target. Kraft Heinz has no virgin plastic reduction goal.

Competitor Nestlé uses 4.2% recycled content in its plastic packaging, while fifteen other companies report using two to ten percent recycled content plastic. Twenty-three competitors have time bound goals to improve use of recycled content plastic in packaging. Kraft Heinz does not report use of any recycled content plastic and has no recycled plastic content goal.

Up to 30% of Kraft Heinz's packaging is flexible plastic film, which cannot be recycled. Flexible packaging represents 59% of all plastic production but an outsized 80% of plastic leaking into oceans.

Our company received a score of "D" in a 2021 study ranking corporate leadership on plastic pollution,² demonstrating that Kraft Heinz is behind competitors in addressing its contribution to plastic pollution, thereby creating reputational, regulatory, and cost risks.

BE IT RESOLVED: Shareholders request the Kraft Heinz Board issue a report describing how the company will reduce plastic packaging, including any planned reduction strategies or goals, materials redesign, substitution, or reductions in use of virgin plastic.

SUPPORTING STATEMENT: Proponents note that the report should be prepared at reasonable cost, omitting confidential information, and include an assessment of the reputational, financial, and operational risks associated with continuing to use substantial amounts of plastic packaging while plastic pollution grows unabated. In the board's discretion, the report could also evaluate benefits and costs of dramatically reducing the amount of plastics used in our packaging.

¹ https://www.pewtrusts.org/-/media/assets/2020/07/breakingtheplasticwave_report.pdf

² <https://www.asyousow.org/report-page/plastic-pollution-scorecard-2021/>

EXHIBIT B

From: Miller, Heidi [REDACTED]
Sent: Monday, December 6, 2021 9:51 AM
To: Conrad MacKerron [REDACTED]
Cc: Fritz, Nicole [REDACTED] Shareholder Engagement
[REDACTED] Annarie Lyles [REDACTED]
Subject: KHC Stockholder Proposal - AYS/Lyles

Dear Mr. MacKerron,

We are in receipt of the stockholder proposal regarding pesticides sent to us by As You Sow on November 22, 2021 and the stockholder proposal regarding plastic packaging which was sent to us on November 24, 2021 identifying As You Sow as the representative for Anna Lyles. Please find attached a deficiency notice relating to the stockholder proposals.

Please confirm receipt of this email and the deficiency notice. If you have any questions with respect to the foregoing, please contact me at [REDACTED]

Best,
Heidi

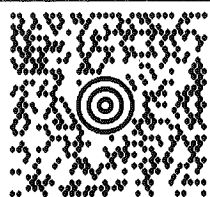
Heidi Miller
Assistant Corporate Secretary and Deputy General Counsel,
Corporate Governance and Securities

The Kraft Heinz Company
200 E. Randolph Street
Suite 7600
Chicago, IL 60601
Office: [REDACTED]
Mobile: [REDACTED]
[REDACTED]

HEIDI MILLER
KRAFT HEINZ CO
200 E RANDOLPH ST
CHICAGO IL 60601-6436

LTR 1 OF 1

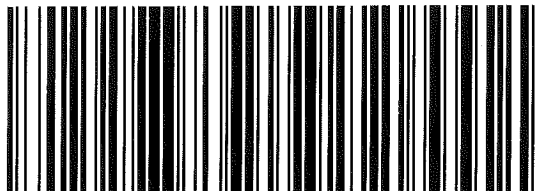
SHIP TO:
CONRAD MACKERRON
AS YOU SOW
SUITE 500
2020 MILVIA ST
BERKELEY CA 94704



CA 948 9-02



UPS NEXT DAY AIR SAVER 1P
TRACKING #: 1Z 597 72E 13 4459 9494



BILLING: P/P

REF 1:C7023124/LEGAL/NC
REF 2:U025

WS 24.0.24 Zebra ZP 460 49.0A 11/2021



SEE NOTICE ON REVERS, regarding UPS terms and notice of limitation of liability. Where allowed by law, shipper authorizes UPS and its forwarding agent to export contents for customs purposes. If exported from the U.S., shipper certifies that the commodities, technology or software were exported from the U.S. in accordance with the Export Administration Regulation. Diversion contrary to law is prohibited. BRD 1 02



December 6, 2021

VIA OVERNIGHT MAIL AND EMAIL

Conrad MacKerron
As You Sow
2020 Milvia St., Suite 500
Berkeley, CA 94704

Dear Mr. MacKerron:

This letter is being sent to you in accordance with Rule 14a-8 under the Securities and Exchange Act of 1934 (the “**Exchange Act**”), in connection with the following stockholder proposals submitted to the Kraft Heinz Company (the “**Company**”) for inclusion in the proxy statement for the Company’s 2022 Annual Meeting of Stockholders:

- (1) the stockholder proposal regarding pesticides (the “**First Proposal**”), sent to the Company by As You Sow, on behalf of Handlery Hotels Inc., on November 22, 2021 and received by the Company on November 23, 2021; and
- (2) the stockholder proposal regarding plastic packaging (the “**Second Proposal**” and together with the First Proposal, the “**Proposals**”), which was sent to the Company on November 24, 2021 (the “**Submission Date**”), received by the Company on November 26, 2021, identifying As You Sow as the representative for Anna Lyles (the “**Proponent**”).

Rule 14a-8(f) provides that we must notify you of any procedural or eligibility deficiencies with respect to the Proposals, as well as the time frame for your response to this letter. We are hereby notifying you of the following procedural deficiencies with respect to the Proposals.

Pursuant to Rule 14a-8(c) under the Exchange Act, a person may submit no more than one proposal, directly or indirectly, to a company for a particular stockholders’ meeting. In addition, under the rule, 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 single stockholders’ meeting. The SEC stated this means that a stockholder-proponent is not permitted to submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another stockholder’s behalf for consideration at the same meeting.

As noted above, shortly after As You Sow submitted the First Proposal to the Company, the Company received the Second Proposal. The Second Proposal was accompanied by a letter from the Proponent in which the Proponent granted As You Sow authority to “act as [her] agent

regarding this Rule 14a-8 proposal, including negotiations and/or modification, and presentation at the forthcoming shareholder meeting” and directing all future communications regarding the Second Proposal to As You Sow. We believe these facts demonstrate that As You Sow has submitted more than one proposal for consideration at the Company’s upcoming 2022 Annual Meeting of Stockholders in violation of Rule 14a-8(c). This deficiency can be corrected by notifying the Company which of the Proposals As You Sow wishes to withdraw. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you receive this letter. Please note that if you do not timely advise the Company which of the Proposals As You Sow wishes to withdraw, the Company intends to request the SEC Staff to concur that it may omit both Proposals from the proxy statement for the Company’s 2022 Annual Meeting of Stockholders in accordance with SEC rules.

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

- (1) \$2,000 in market value of the Company’s shares entitled to vote on the Second 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 Second 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 Second Proposal for at least one year preceding and including the Submission Date; or
- (4) \$2,000 of the Company’s shares entitled to vote on the Second Proposal for at least one year as of January 4, 2021, and that the Proponent has 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 the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date we have not received proof that the Proponent has satisfied any of the Ownership Requirements.

To remedy this defect, the Proponent must submit sufficient proof that such Proponent has 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 the Proponent’s shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Second Proposal (the Submission Date), the Proponent continuously held the requisite

amount of Company shares to satisfy at least one of the Ownership Requirements above; or

- (2) if the Proponent was required to and has 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 the Proponent 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 the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

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

Conrad MacKerron
December 6, 2021
Page 4

from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

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 200 East Randolph Street, Suite 7600, Chicago, Illinois 60601. Alternatively, you may transmit any response by email to me at [REDACTED]

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 as amended for meetings that occur on or after January 1, 2022 but before January 1, 2023, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,



Heidi Miller
Assistant Corporate Secretary and Deputy General
Counsel, Corporate Governance and Securities

cc: Anna Lyles

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.



U.S. Securities and Exchange Commission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹ See Rule 14a-8(b).

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

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

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

⁵ See Exchange Act Rule 17Ad-8.

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

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

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

⁸ *Techne Corp.* (Sept. 20, 1988).

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

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

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

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

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

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

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

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

<http://www.sec.gov/interp/leg/cfs1b14f.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 Commission (the “Commission”). Further, the Commission has neither approved nor disapproved its content. This 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 Nos. 14I and 14K relating to the use of graphics and images, and proof of ownership 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 proposals. Companies often request assurance that the staff 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’s ordinary business operations.” The purpose of the exception is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”^[1]

2. 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 emphasis was placed on evaluating the significance of a policy issue 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 business exception. We have also concluded that such analysis did not yield consistent, predictable results.

Going forward, the staff will realign its approach for determining whether a proposal relates to “ordinary business” 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 shareholders by means of the company’s proxy statement, while also recognizing the board’s authority over most 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 societal impact, such that they transcend the ordinary business of the company.^[4]

Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable 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 demonstrating that the proposal is excludable under the ordinary business exclusion. Based on our experience, 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)’s substantial implementation standard.

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 discretion constitutes micromanagement.

The Commission has stated that the policy underlying the ordinary business exception rests on two central considerations. The first relates to the proposal’s subject matter; the second relates to the degree to which the proposal “micromanages” the company “by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”^[6] The Commission clarified in the 1998 Release that specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability.

Consistent with Commission guidance, the staff will take a measured approach to evaluating companies' 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 expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors 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 requested that the company set emission reduction targets and it did not impose a specific method for doing so. 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 references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.

This approach is consistent with the Commission's views on the ordinary business exclusion, which is designed 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 impose specific methods for implementing complex policies. Some commenters thought that the examples 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 reasonable level of detail without running afoul of these considerations.

While the analysis in this bulletin may apply to any subject matter, many of the proposals addressed in the rescinded SLBs requested companies adopt timeframes or targets to address climate change that the staff 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 proponents faced when seeking to craft proposals with sufficient specificity 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 otherwise significantly related to the company's business."

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we are returning to our longstanding approach, prior to SLB No. 14I, of analyzing Rule 14a-8(i)(5) in a manner we believe is consistent 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 shareholder uses email to respond to a company's deficiency notice, the burden is on the shareholder 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 directors on one hand, and the company's shareholders on the other." Release No. 34-39093 (Sept. 18, 1997).

[2] For example, SLB No. 14K explained that the staff "takes a company-specific 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 issues so significant that it would be appropriate for a shareholder vote").

[5] See, e.g., *Dollar General Corporation* (Mar. 6, 2020) (granting no-action relief for exclusion of a proposal requesting the board to issue a report on the use of contractual provisions requiring employees 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 matters) generally would not be considered to be excludable, because the proposals would transcend 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 Release and 1976 Release.

[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 feasibility of achieving net-zero emissions by 2030 because the staff 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 as requiring the adoption of time-bound targets).

[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] This section previously appeared in SLB No. 14I (Nov. 1, 2017) and is republished here with only minor, conforming changes.

[14] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. See 1976 Release.

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

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

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

[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 shareholder satisfies the relevant ownership threshold, the shareholder should 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 highest selling price during the 60 calendar days before the shareholder submitted 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).

EXHIBIT C

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z59772E1344599494

Service

UPS Next Day Air Saver®

Shipped / Billed On

12/06/2021

Delivered On

12/07/2021 10:13 A.M.

Delivered To

BERKELEY, CA, US

Received By

CONRAD

Left At

Reception

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 12/22/2021 12:37 P.M. EST

EXHIBIT D

From: Shareholder Engagement [REDACTED]
Date: December 21, 2021 at 9:06:31 PM CST
To: "Miller, Heidi" [REDACTED]
Cc: "Fritz, Nicole" [REDACTED] Annarie Lyles [REDACTED] Conrad MacKerron
[REDACTED] Danielle Fugere [REDACTED]
Subject: Re: KHC Stockholder Proposal - AYS/Lyles

Dear Ms. Miller,

We are in receipt of your deficiency notice asserting that The Kraft Heinz proposal violates the one proposal limit of Rule 14a-8(c). This is not the case. The proponent filed the proposal on her own behalf. It was not filed by As You Sow.

The language of the Rule, and the Commission's guidance in the 2020 amendments to Rule 14a-8, are very clear. Once a proposal is filed, a Proponent is entitled to representation in all exchanges with the Company other than in having their proposal filed on their behalf. The Commission's [final rulemaking release](#) clearly states on page 59 that "if a shareholder's representative of choice is unable to submit a proposal for the shareholder, because it has already made a submission on behalf of another client, the representative could still assist the shareholder with drafting the proposal, advising on steps in the submission process, and engaging with the company.

The one proposal rule only prohibits a representative from filing more than one proposal on behalf of proponents (or themselves) for the same meeting. That has not occurred.

The Proponent, Anna Marie Lyles, has repeatedly requested the Proof of Ownership letter from her custodian, Charles Schwab. After weeks of frustration, she sought our assistance and we were unable to obtain it until today. Please recognize the Proponent's attempts to get this to you on time, and thank you for your consideration.

Attached please find the proof of ownership for the proposal regarding plastic packaging for your reference:

Lead Filer Anna Marie Lyles 100 shares

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

Thank you,
Rachel Lowy



December 21, 2021

Account [REDACTED]
Questions: +1 800-378-0685 x70681

Anna Lyles
[REDACTED]

Important information about your recent request.

Dear Anna Lyles,

I'm writing to confirm that 100 shares of The Kraft Heinz Co. (CUSIP 500754106) are held in the above referenced account.

As of the date of this letter, shares have been continuously held in this account since January 04, 2020.

Please note: This letter is for informational purposes only and is not an official record of the account. Please refer to your statements and trade confirmations as they are the official record of your transactions.

Thank you for investing with Schwab. We appreciate your business and look forward to serving you in the future. If you have any questions or if we can help in any other way, please call me or any Client Service Specialist at +1 800-378-0685 x70681, Monday through Friday, from 9:00 a.m. to 7:00 p.m. ET.

Sincerely,

Ed McCoy
Sr Specialist, Partner Support

[REDACTED]
8332 Woodfield Crossing Blvd
Indianapolis, IN 46240

February 14, 2022

VIA E-MAIL

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

Re: *The Kraft Heinz Company*
Stockholder Proposal of Anna Lyles
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

In a letter dated December 23, 2021 (the “No-Action Request”), we requested that the staff of the Division of Corporation Finance (the “Staff”) concur that our client, The Kraft Heinz Company (the “Company”), could exclude from its proxy statement and form of proxy for its 2022 Annual Meeting of Stockholders a stockholder proposal relating to a report on plastic packaging (the “Proposal”) and statements in support thereof received from As You Sow (the “Representative”) on behalf of Anna Lyles (the “Proponent”).

In a letter dated February 10, 2022 and attached hereto as Exhibit A, the Representative informed the Company of its decision to withdraw the Proposal. Based on the withdrawal of the Proposal, the Company hereby informs the Staff that the Company is withdrawing its No-Action Request.

If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 351-2309 or Heidi Miller, the Company’s Assistant Corporate Secretary and Deputy General Counsel, Corporate Governance and Securities, at (773) 454-4735.

Sincerely,



Lori Zyskowski

Enclosures

cc: Rashida La Lande, The Kraft Heinz Company

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
February 14, 2022
Page 2

Heidi Miller, The Kraft Heinz Company
Anna Lyles
Conrad MacKerron, As You Sow

EXHIBIT A



AS YOU SOW

Main Post Office, P.O. Box 751
Berkeley, CA 94701
www.asyousow.org

February 10, 2022

Jonah Smith
Global Lead ESG and President Foundation
The Kraft Heinz Company

Re: Withdrawal of 2022 Resolution on Plastic Packaging Reporting

Dear Mr. Smith:

We appreciate the constructive dialogue with the company in recent months in regard to a proposal filed Nov. 24, 2021 by shareholder Anna Marie Lyles asking for a public report on strategies and goals in regard to reduction of the use of virgin plastic for packaging.

We are in receipt of your Feb. 10 correspondence:

“Kraft Heinz continues to explore ways to reduce detrimental environmental packaging impacts. The company intends to set a substantial virgin plastic packaging reduction goal later this year (or the first quarter of 2023). The company will also continue to drive towards its packaging goals and support of a circular economy through a variety of initiatives and investments, including reduction of virgin plastic material, packaging redesign, increased use of recycled content, and continued exploration and scaling of reuse models. “

This pledge fulfills a key goal of committing to reduction in use of virgin plastic packaging we sought when we filed the proposal. In recognition of this positive action taken by the company, *As You Sow* agrees to withdraw its proposal for inclusion in the company's 2022 proxy statement. *As You Sow* may speak publicly about the commitments cited above.

This agreement will become effective on the date the last party below executes this agreement.

AS YOU SOW:

Conrad MacKerron
Senior Vice President

2-10-2022

Date



AS YOU SOW

KRAFT HEINZ CO.

A handwritten signature in black ink, appearing to read "Jonah Smith".

Jonah Smith
Global Lead ESG and President Foundation

2/11/2022

Date