



DIVISION OF  
CORPORATION FINANCE

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

May 6, 2022

Carlton Fleming  
Sidley Austin LLP

Re: Quotient Technology Inc. (the "Company")  
Incoming letter dated February 4, 2022

Dear Carlton Fleming:

This letter is in response to your correspondence concerning the shareholder proposal (the "Original Proposal") and revised shareholder proposal (the "Revised Proposal") submitted to the Company by Cathy Pomeroy, as Trustee of the Pomeroy Living Trust, for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Original Proposal requests that the board disqualify all shares owned and/or controlled by both current and former named executive officers from voting to approve the proposed Tax Benefits Preservation Plan.

There appears to be some basis for your view that the Company may exclude the Original Proposal under Rule 14a-8(i)(2). We note that in the opinion of Delaware counsel, implementation of the Original Proposal would cause the Company to violate state law. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Original Proposal from its proxy materials in reliance on Rule 14a-8(i)(2). In reaching this position, we have not found it necessary to address the alternative basis for omission of the Original Proposal upon which the Company relies.

There appears to be some basis for your view that the Company may exclude the Revised Proposal under Rule 14a-8(e)(2) because the Company received it after the deadline for submitting proposals. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Revised Proposal from its proxy materials in reliance on Rule 14a-8(e)(2). In reaching this position, we have not found it necessary to address the alternative basis for omission of the Revised Proposal upon which the Company relies.

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

Sincerely,

Rule 14a-8 Review Team

cc: Cathy Pomeroy



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February 4, 2022

**VIA EMAIL**

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

Re: *Quotient Technology Inc.*  
*Stockholder Proposal Submitted by Cathy Pomeroy, as Trustee of the Pomeroy*  
*Living Trust*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is submitted on behalf of Quotient Technology Inc., a Delaware corporation (the “Company”), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, to notify the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude from its proxy materials for its 2022 Annual Meeting of Stockholders (the “2022 Annual Meeting”) a stockholder proposal (the “Proposal”) and statement in support thereof received from Cathy Pomeroy, as Trustee of the Pomeroy Living Trust (the “Proponent”). This letter is being submitted to the Commission within the time period required under Rule 14a-8(j).

The Company hereby respectfully requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2022 Annual Meeting proxy materials for the reasons set forth below.

Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), this letter and its exhibits are being submitted via email to shareholderproposals@sec.gov. A copy of this letter and its exhibits will also be sent to the Proponent.

Rule 14a-8(k) and SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the stockholder proponents elect to

submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be sent to the undersigned on behalf of the Company.

### **THE PROPOSAL**

The Proposal states:

Resolved: With regard to all shares outstanding, shareholders respectfully request that the Board hereby disqualify all shares owned and/or controlled by both current and former Named Executive Officers (“NEOs”) from voting to approve the proposed Tax Benefits Preservation Plan (the “Plan”).

A copy of the Proposal and the supporting statement are attached to this letter as Exhibit A.

### **BASES FOR EXCLUSION**

The Company believes that it may omit the Proposal from its proxy materials for the 2022 Annual Meeting in reliance on:

- Rule 14a-8(i)(2) because implementing the Proposal would cause the Company to violate state law; and
- Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

#### **I. The Proposal May Be Excluded Under Rule 14a-8(i)(2) Because Its Implementation Would Cause the Company to Violate State Law**

Rule 14a-8(i)(2) permits a company to omit from its proxy materials a shareholder proposal if “the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject.” As further discussed in the opinion of the Company’s Delaware counsel, Morris, Nichols, Arsht & Tunnell, LLP, which is attached hereto as Exhibit B (the “Delaware Counsel Opinion”), the Company believes that the Proposal is excludable under Rule 14a-8(i)(2) because implementation of the Proposal would violate Delaware law.

As background, on November 10, 2021, the board of directors of the Company (the “Board”) approved the Company’s entry into a tax benefits preservation plan, dated as of November 11, 2021 (the “Tax Benefits Preservation Plan”), and declared a dividend of one right (a “Right”) for each outstanding share of Company common stock, par value \$0.00001 per share (“Common Stock”), to stockholders of record at the close of business

on November 24, 2021. Under its terms, the Tax Benefits Preservation Plan and the Rights will expire on November 11, 2022 if “the stockholders of the Company” have not approved the plan by such date.

The Proposal requests that the Board “hereby disqualify all shares owned and/or controlled by both current and former Named Executive Officers (“NEOs”) from voting to approve the proposed Tax Benefits Preservation Plan (the “Plan”).” The proposed action would be contrary to Section 212(a) of the Delaware General Corporation Law (the “DGCL”), which grants each stockholder of a Delaware corporation a fundamental franchise right to cast one vote per share of stock on all matters submitted for stockholder action.<sup>1</sup> As discussed in the Delaware Counsel Opinion, a board of directors of a Delaware corporation cannot unilaterally divest stockholders of their “one share, one vote” voting power under Section 212(a). The Company’s certificate of incorporation (the “Certificate”), moreover, contains a provision regarding voting rights of holders of Common Stock that mirrors the applicable provision in Section 212(a) of the DGCL: Article IV.C.3 of the Certificate provides that “Except as required by law, each holder of Common Stock shall be entitled, with respect to each share of Common Stock held by such holder on the applicable record date, to one vote in person or by proxy on all matters submitted to a vote of the holders of Common Stock.” Therefore, if the Board attempted to do what the Proposal requests, to unilaterally divest current and former NEOs who hold or will hold Common Stock of their franchise right to one vote per share of stock they own, that Board action would be invalid under Delaware law.

As reflected in the Delaware Counsel Opinion, a Delaware corporation cannot depart from the one share, one vote rule by unilateral action by its board of directors. Such departure can only be done by amending its certificate of incorporation. In addition, such an amendment is a two-step process, requiring action by the board of directors and the stockholders. Pursuant to Section 242 of the DGCL, in order for a corporation to amend its charter, the board of directors must first adopt a resolution setting forth the amendment proposed, declare the advisability of the amendment and call a meeting at which the stockholders may vote on the amendment. Second, the stockholders must approve the amendment.<sup>2</sup> The Delaware Supreme Court has required strict compliance with this two-step procedure:

[I]t is significant that two discrete corporate events must occur, in precise sequence, to amend the certificate of incorporation under 8 Del. C. §242: First, the board of directors must adopt a resolution declaring the

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<sup>1</sup> Section 212(a) of the DGCL provides “Unless otherwise provided in the certificate of incorporation and subject to § 213 of this title, each stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder.”

<sup>2</sup> See 8 Del. Co. § 242(b)(1).

advisability of the amendment and calling for a stockholder vote. Second, a majority of the outstanding stock entitled to vote must vote in favor.<sup>3</sup>

The Proposal does not contemplate any such amendment to the Certificate or such two-step process, and instead seeks unilateral Board action. Moreover, it would be impossible for the Board and the stockholders to amend the Certificate prior to the vote on the Tax Benefits Preservation Plan if such actions were proposed at the same meeting of stockholders.

The Staff has consistently permitted the exclusion of a shareholder proposal where the proposal, if implemented, would, according to a legal opinion signed by counsel, cause the company to violate the state law to which it is subject.<sup>4</sup> For example, in *eBay Inc.* (Apr. 1, 2020), the Staff allowed the exclusion under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) of a proposal requesting that the company reform the structure of its board of directors by allowing employees to elect a specified percentage of the board members, which would require the company to violate state law.

The Staff has also permitted the exclusion of proposals that involve the unilateral action of either stockholders or the board of directors to amend company charters when such action would be contrary to applicable state law that prescribes the approval of both the board of directors and stockholders in order to effectuate such amendments. For example, in *The Stanley Works* (Feb. 2, 2009), the Staff permitted the exclusion of a proposal that called for “the articles of incorporation to be amended to provide that

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<sup>3</sup> *Williams v. Geier*, 671 A.2d 1368, 1381 (Del. 1996). See also *Gantler v. Stephens*, 2008 Del. Ch. LEXIS 20, at \*45 n. 81 (Del. Ch. Feb. 14, 2008) (“A board must submit a proposed amendment of the certificate of incorporation to the shareholders for a vote, and it will not be effective unless ‘a majority of the outstanding stock entitled to vote thereon’ votes in favor of the amendment.”); *Lions Gate Entm’t Corp. v. Image Entm’t Inc.*, 2006 Del. Ch. LEXIS 108, at \*23–24 (Del. Ch. June 5, 2006) (“Because the Charter Amendment Provision purports to give the . . . board the power to amend the charter unilaterally without a shareholder vote, it contravenes Delaware law and is invalid.”); *Klang v. Smith’s Food & Drug Ctrs., Inc.*, 1997 Del. Ch. LEXIS 73, at \*53–54 (Del. Ch. May 13, 1997) (“Pursuant to 8 Del. C. § 242, an amendment of a corporate certificate requires a board of directors to adopt a resolution which declares the advisability of the amendment and calls for a shareholder vote. Thereafter, in order for the amendment to take effect a majority of outstanding stock must vote in its favor.”).

<sup>4</sup> See also *The Goldman Sachs Group, Inc.* (Feb. 1, 2016) (concurring with the exclusion of a proposal asking that the compensation committee of the company’s board of directors be reformed to include individuals who are not members of the company’s board of directors as violating applicable state law); *Dominion Resources, Inc.* (Jan. 14, 2015) (concurring with the exclusion of a proposal that requested a director be appointed by the Board without a stockholder vote as a violation of applicable state law); *Abbott Laboratories* (Feb. 1, 2013) (concurring with the exclusion of a proposal requesting the company’s board of directors to replace all voting requirements in the company’s charter and bylaws with the voting standard of a majority of the votes cast for and against the proposal or the voting standard closest thereto as violating applicable state law); *Johnson & Johnson* (Feb. 16, 2012) (concurring with the exclusion of a proposal requesting that the board disqualify members who fail to receive certain levels of stockholder votes from serving on the compensation committee as a violation of state law impermissibly limiting the decision-making authority of the board to select committee members in the exercise of their fiduciary duties).

directors shall be elected by the shares represented in person or by proxy at any meeting for the election of directors at which a quorum is present,” in reliance on Rules 14a-8(i)(2) and 14a-8(i)(6). Stanley Works argued that under the laws of Connecticut, its state of incorporation, Stanley Works’ charter may not be amended by action only of the stockholders and without the necessary prior approval of the board. In a similar way, the Staff has permitted the exclusion of proposals that request the board to unilaterally amend the company’s charter, contrary to state law that requires stockholder action. For example, in *eBay Inc.* (Apr. 1, 2020), the Staff permitted the exclusion of a proposal to “reform the structure of the board of directors letting the employees elect at least 20% of the board members.” Based on the opinion of eBay’s Delaware counsel, eBay could not implement such proposal without violating certain provisions of the DGCL. In *PayPal Holdings, Inc.* (Mar. 9, 2018), the Staff permitted the exclusion of a proposal that asked the board of directors to amend the Company’s proxy access bylaws and associated documents, noting PayPal’s Delaware counsel opinion that the implementation of the proposal would cause PayPal to violate state law. In *Fortune Brands, Inc.* (Jan. 6, 2010), the Staff permitted the exclusion of a proposal that required the board of directors to unilaterally amend the charter to remove a prohibition on stockholder action by written consent, noting the opinion of the company’s Delaware counsel that implementing the proposal would cause the company to violate Delaware law.<sup>5</sup>

As confirmed by the Delaware Counsel Opinion, the Proposal, if adopted and acted upon, would result in the Board unilaterally acting to disenfranchise stockholders of the

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<sup>5</sup> See also *Bristol-Myers Squibb Company* (Mar. 14, 2008) (permitting the exclusion of a proposal that recommended that the board adopt cumulative voting under Rule 14a-8(i)(2) noting the company’s counsel’s opinion that implementing such proposal would cause the company to violate state law); *Exxon Mobil Corporation* (Mar. 24, 2008) (permitting the exclusion of a proposal that the company adopt cumulative voting under Rule 14a-8(i)(2) noting the company’s counsel’s opinion that implementing the proposal would cause the company to violate state law); *Time Warner Inc.* (Feb. 26, 2008) (permitting the exclusion of a proposal that urged the company to adopt cumulative voting under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) noting the company’s counsel’s opinion that implementing the proposal would cause the company to violate state law); *The Boeing Company* (Feb. 20, 2008) (permitting the exclusion of a proposal that urged the board to adopt cumulative voting under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) noting the opinion of the company’s counsel that implementing the proposal would cause the company to violate Delaware law); *AT&T, Inc.* (Feb. 19, 2008) (permitting the exclusion of a proposal for the company to amend its bylaws and any other appropriate governing documents to “lift restrictions on shareholder ability to act by written consent” under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) noting the company’s Delaware counsel’s opinion that the board of the company cannot amend its certificate of incorporation without violating state law); *Xerox Corporation* (Feb. 23, 2004) (permitting the exclusion of a proposal requesting that “the company’s board of directors amend the company’s certificate of incorporation to reinstate the rights of the shareholders to take action by written consent and to call special meetings under Rule 14a-8(i)(2) because the board of directors cannot unilaterally amend the company’s certificate of incorporation under New York law); *Burlington Resources Inc.* (Feb. 7, 2003) (concurring that a company incorporated in Delaware may exclude a proposal that requested that “the board of directors amend the certificate of incorporation to reinstate the rights of shareholders to take action by written consent and to call special meetings”).

Company in violation of the DGCL and its Certificate. Accordingly, the Company believes that the Proposal is excludable under Rule 14a-8(i)(2).

## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because the Company Lacks the Power or Authority to Implement the Proposal**

Rule 14a-8(i)(6) provides that a company may properly omit a shareholder proposal from its proxy materials if the company lacks the power or authority to implement the proposal. As reflected in the Delaware Counsel Opinion, the Company cannot implement the Proposal without violating Section 212(a) of the DGCL as well as its Certificate, and therefore lacks the authority to implement the Proposal. Moreover, as noted above, it would be impossible for the Board and the stockholders to amend the Certificate prior to the vote on the Tax Benefits Preservation Plan if such actions were proposed at the same meeting of stockholders.

The Staff has consistently allowed shareholder proposals to be excluded under both Rules 14a-8(i)(2) and 14a-8(i)(6) when the implementation of the proposal would violate state corporate law and, accordingly, the company lacks the authority to implement the proposal. For example, in *Trans World Entertainment Corporation* (May 2, 2019), the Staff permitted the exclusion under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) of a proposal requesting that the company's bylaws be amended to provide for an elevated quorum requirement, citing the opinion of the company's counsel that such action would violate the New York Business Corporation Law, which prescribes that such elevated quorum requirement may only be provided in the charter, the amendment of which requires board action and shareholder approval. In *eBay Inc.* (Apr. 1, 2020), the Staff allowed the exclusion under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) of a proposal requesting that the company reform the structure of its board of directors by allowing employees to elect a specified percentage of the board members, which would not be within the power or authority of the company to implement. In *IDACORP, Inc.* (Mar. 13, 2012), the Staff permitted the exclusion under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) of a proposal requesting the board to amend the company's bylaws to require a majority voting standard for uncontested director elections and plurality voting standard for contested elections, citing the opinion of the company's counsel that the board cannot do so without violating the Idaho Business Corporation Act, which prescribes a plurality voting as the default standard, absent a contrary provision in a company's charter.

Therefore, because the implementation of the Proposal would cause the Company to violate applicable state law, and because the Company lacks the power or authority under Delaware law to implement the Proposal, the Proposal should be excludable under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6).

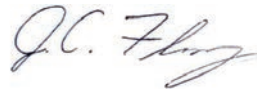


## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff confirm that it will take no action if the Company excludes the Proposal from its proxy materials for the 2022 Annual Meeting.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If you have any questions regarding this request or desire additional information, please contact the undersigned at (415) 772-1207 or by email at [cfleming@sidley.com](mailto:cfleming@sidley.com).

Sincerely,



Carlton Fleming

### Attachments

cc: Connie Chen  
General Counsel, Compliance Officer and Secretary  
Quotient Technology Inc.


Cathy Pomeroy, as Trustee of the Pomeroy Living Trust

Stephen Pomeroy

**Exhibit A**  
(see attached)

To Whom It May Concern:

Pursuant to the requirements of Rule 14a-8 under the Securities Exchange Act of 1934, please find the requested information below:

<ul style="list-style-type: none"><li>Identify the company to the which proposal (Exhibit A) is directed:</li></ul>	Quotient Technology Inc.
<ul style="list-style-type: none"><li>Identify the annual or special meeting for which the proposal (Exhibit A) is submitted:</li></ul>	Quotient's 2022 Annual Meeting of Shareholders
<ul style="list-style-type: none"><li>Identify the shareholder submitting the proposal (Exhibit A):</li></ul>	Cathy Pomeroy, as Trustee of the Pomeroy Living Trust
<ul style="list-style-type: none"><li>Identify the shareholder's designated representative (as designated in Exhibit B):</li></ul>	Stephen Pomeroy
<ul style="list-style-type: none"><li>Include the shareholder's statement authorizing the designated representative to submit the proposal (Exhibit A), and otherwise act on the shareholder's behalf:</li></ul>	Please see Exhibit B
<ul style="list-style-type: none"><li>Identify the specific topic of the proposal (Exhibit A) to be submitted:</li></ul>	Shareholders respectfully request that the Board hereby disqualify all shares owned and/or controlled by both current and former Named Executive Officers ("NEOs") from voting to approve the proposed Tax Benefits Preservation Plan (the "Plan").
<ul style="list-style-type: none"><li>Include the shareholder's statement supporting the proposal (Exhibit A):</li></ul>	Please see Exhibit C
<ul style="list-style-type: none"><li>Include proof of ownership:</li></ul>	Please see Exhibit D
<ul style="list-style-type: none"><li>Include statement of ownership intentions:</li></ul>	Please see Exhibit E
<ul style="list-style-type: none"><li>Include contact information and availability of both the shareholder and shareholder's designated representative:</li></ul>	Please see Exhibit F
<ul style="list-style-type: none"><li>Date:</li></ul>	12/21/2021
<ul style="list-style-type: none"><li>Shareholder signature:</li></ul>	 Cathy Pomeroy

## Exhibit A

### Resolved:

With regard to all shares outstanding, shareholders respectfully request that the Board hereby disqualify all shares owned and/or controlled by both current and former Named Executive Officers (“NEOs”) from voting to approve the proposed Tax Benefits Preservation Plan (the “Plan”).

### Supporting Statement:

The primary purpose of any business should be to maximize profits for its owners. To that end, officers and directors are obligated to utilize all assets towards achieving such maximum profitability. Unfortunately, the Company’s track record falls short of these basic principles.

To wit, the Company’s Federal net operating losses (“NOLs”) actually *increased* by ~\$130 million between 2012 and 2020. During that same time frame, NEOs nonetheless received ~\$115 million in compensation. Given the Company’s consistent underperformance vis-à-vis both its peers, and the broader market indexes, shareholders have not fared nearly as well.

In our view, the Company’s current problems are two-fold. Whereas the Company’s growing NOLs represent management’s ongoing inability to profitably utilize Company assets, the compensation paid to the Company’s NEOs reflects a systemic - and egregious - inclination to reward management, irrespective of results (or lack thereof).

The Plan is particularly emblematic of this regrettable reality. Approved in November of 2021, the Plan is designed to deter any person or group “from acquiring beneficial ownership of 4.9% or more of the Company’s securities.” While safeguarding Company NOLs is the purported justification, the Plan’s details suggest otherwise:

- The Board has discretionary power to grant an “exemption *notwithstanding the effect on the Company’s NOLs and other tax attributes*, if the Board determines that such approval is in the best interests of the Company.”
- Which shareholders are considered to be “in the best interests of the Company?” Specifically:
  - a. Any Company “officer, director, or employee,” and
  - b. Anyone whose ownership is the “result of share purchases or issuances directly from the Company or through an underwritten offering approved by the Board.”

As written, the Plan prioritizes the Board’s *anointed* shareholders, at the expense of *all* shareholders. In so doing, the Plan’s primary beneficiaries appear to be the Company’s NOEs generally, and Steven Boal specifically.

Irrespective of the desirability of protecting NOLs, we believe this tradeoff is both unacceptable and at odds with the fiduciary duties of the Company’s directors and officers. In fact, the Company’s own Code of Business Conduct & Ethics (the “Code”) seems to agree. Per the Code, every officer, director, and

employee “*must* avoid any situation in which [their] personal interests conflict or even appear to conflict with the Company’s interests.”

As such, permitting NOEs (*including* Mr. Boal) to vote on a Plan of which they are the primary beneficiaries, constitutes a blatant rejection of both the Code *and* their fiduciary duties. This rejection is neither appropriate *nor* justified.

Accordingly, we request that all Company NEOs (*including* Mr. Boal) recuse themselves from voting on the Plan. If voluntary recusal is refused, the Board should disclose such refusal to all shareholders, demand adherence to fiduciary duties, and promptly thereafter disqualify said votes.

## Exhibit B

I, Cathy Pomeroy, in my role as Trustee of the Pomeroy Living Trust, do hereby authorize Stephen Pomeroy to:

- Act as my designated representative to submit the shareholder proposal (as included in Exhibit A herein), and
- Otherwise act on my behalf with regard to any, and all, future matters related to the shareholder proposal (as included in Exhibit A herein) and its submission to Quotient's 2022 Annual Meeting of shareholders.

  
Cathy Pomeroy

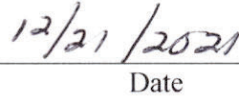
12 / 21 / 2021  
Date

## Exhibit C

As a long-term shareholder, I have watched with dismay as the credibility - and market value - of the Company has been destroyed by a torrent of sloppiness, missed guidance, and general mismanagement. With the recent (and unanimous?!) approval of the so-called Tax Benefits Preservation Plan, the Board has transitioned from an apparent tolerance of such underperformance, to a tacit approval - protection even - of the very incompetence that produced the Company's NOLs in the first place!

Accordingly, I, Cathy Pomeroy, in my role as Trustee of the Pomeroy Living Trust, enthusiastically support the proposal (as included in Exhibit A herein).

  
Cathy Pomeroy

  
Date

# Exhibit D

12/21/21, 4:49 PM

QUOT Lot Details for XXXX-████

 [Print](#)

Accounts > Positions

## Lot Details: QUOT - QUOTIENT TECHNOLOGY INCO

▼ Open Date	Quantity	Price	Cost/Share	Market Value	Cost Basis	Gain/Loss		Holding Period
						\$	%	
12/19/2019	████	████	████	████	████	████	████	Long Term
<b>Total</b>	████			████	████	████		

Today's Date: 06:48 PM ET, 12/21/2021

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## Exhibit E

I, Cathy Pomeroy, in my role as Trustee of the Pomeroy Living Trust, do intend to continue holding the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of §240.14a-8, through the date of the shareholders' meeting for which this proposal (as included in Exhibit A herein) is submitted.

Moreover, because I intend to rely on the minimum investment requirement of \$2,000 (as permitted in paragraph (b)(3)), I hereby provide the Company with written notice that I also intend to continue to hold at least \$2,000 of Quotient common stock through the date of the 2022 annual shareholders' meeting.

  
Cathy Pomeroy

  
Date

## Exhibit F

In compliance with the required written statement ... I, Cathy Pomeroy, in my role as Trustee of the Pomeroy Living Trust, am able - *if necessary* - to speak/meet with the Company via teleconference. To that end, my contact information and availability is as follows:

Shareholder:	<ul style="list-style-type: none"><li>• Cathy Pomeroy</li></ul>
Phone Number:	<ul style="list-style-type: none"><li>• [REDACTED]</li></ul>
Mailing Address:	<ul style="list-style-type: none"><li>• [REDACTED]</li></ul>
Availability:	<ul style="list-style-type: none"><li>• Wednesdays (11AM - 1 PM MST)</li><li>• Thursdays (11AM - 1 PM MST)</li></ul>

However, because I have requested that Stephen Pomeroy shall serve as my representative for the submission of my shareholder proposal (as included in Exhibit A herein), I expect that Stephen shall be the first - and primary - point of contact for the Company. To that end, Stephen's contact information and availability is as follows:

Shareholder's Representative:	<ul style="list-style-type: none"><li>• Stephen Pomeroy</li></ul>
Phone Number:	<ul style="list-style-type: none"><li>• [REDACTED]</li></ul>
Mailing Address:	<ul style="list-style-type: none"><li>• [REDACTED]</li></ul>
Availability:	<ul style="list-style-type: none"><li>• Wednesdays (11AM - 1 PM MST)</li><li>• Thursdays (11AM - 1 PM MST)</li></ul>

  
Cathy Pomeroy

12/21/2021  
Date

# FedEx®

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POMEROY LIVING TRUST [PII] ROY

SHIP DATE: 22DEC21  
ACTWGT:  
CAD: 308300009/INET4402

BILL CREDIT CARD

TO **QUOTIENT TECHNOLOGY, INC**  
**ATTENTION: INVESTOR RELATIONS**  
**1260 EAST STRINGHAM AVENUE**  
**SUITE 600**  
**SALT LAKE CITY UT 84106**

980305647E4

(646) 277-1250 REF:  
INV. PO. DEPT.



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Express



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**THU - 23 DEC 4:30P**  
**STANDARD OVERNIGHT**

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0201

**WL NPHA**

**84106**

UT-US **SLC**



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E 4713 12:23  
ST 3

◀ Insert shipping document here.

**Exhibit B**  
(see attached)

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

1201 NORTH MARKET STREET  
P.O. BOX 1347  
WILMINGTON, DELAWARE 19899-1347

—  
(302) 658-9200  
(302) 658-3989 FAX

February 4, 2022

Quotient Technology Inc.  
1260 East Stringham Avenue, Suite 600  
Salt Lake City, UT 84106

**Re: Stockholder Proposal Submitted by Cathy Pomeroy, as Trustee for the Pomeroy Living Trust**

Ladies and Gentlemen:

This letter confirms our opinion regarding a stockholder proposal (the “Proposal”) submitted to Quotient Technology Inc., a Delaware corporation (the “Company”), by Cathy Pomeroy, as Trustee for the Pomeroy Living Trust (the “Proponent”) for inclusion in the Company’s proxy materials for its 2022 annual meeting of stockholders. For the reasons explained below, the Proposal, if implemented, would cause the Company to violate Delaware law.

The Proposal addresses the voting of shares owned by the Company’s current and former named executive officers (“NEOs”). The Proposal requests that the board of directors of the Company (the “Board”) unilaterally take action to “hereby disqualify all shares owned and/or controlled by both current and former Named Executive Officers (“NEOs”) from voting to approve the proposed Tax Benefits Preservation Plan.”<sup>1</sup>

We understand from the Company’s public filings with the Securities and Exchange Commission that the Company adopted the Tax Benefits Preservation Plan in November of 2021 to protect against a possible limitation on the Company’s ability to use its net operating losses and

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<sup>1</sup> The Proposal provides:

Resolved: With regard to all shares outstanding, shareholders respectfully request that the Board hereby disqualify all shares owned and/or controlled by both current and former Named Executive Officers (“NEOs”) from voting to approve the proposed Tax Benefits Preservation Plan.

In the supporting statement for the Proposal, the Proponent states that it is additionally requesting that the present and former NEOs voluntarily recuse themselves from voting on the Proposal, but, if that request is refused, “the Board should disclose such refusal to all shareholders, demand adherence to fiduciary duties, and promptly thereafter disqualify said votes.” Notwithstanding this comment in the supporting statement, the Proposal nonetheless requests unilateral action by the Board to disqualify shares owned by a present or former NEO from voting if such person does not agree to recuse him or herself.

certain other tax attributes to reduce potential future U.S. federal income tax obligations. Pursuant to the Tax Benefits Preservation Plan, the Board declared a dividend of one preferred share purchase right for each outstanding share of Company common stock, which rights, under certain circumstances, permit the holder thereof to purchase from the Company one one-thousandth of a share of the Company's Series A Junior Participating Preferred Stock at an exercise price of \$28.00 per right, subject to adjustment. Under its terms, the Tax Benefits Preservation Plan will expire if "the stockholders of the Company" have not approved it by November 11, 2022.

The Delaware General Corporation Law (the "DGCL") grants each stockholder of a Delaware corporation a fundamental franchise right to cast one vote per share of stock on all matters submitted for stockholder action. All stockholders are entitled to one vote per share. Any current or former NEO who holds common stock has a right to vote on the adoption of the Tax Benefits Preservation Plan. Section 212(a) of the DGCL states:

Unless otherwise provided in the certificate of incorporation and subject to § 213 of this title, each stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder.<sup>2</sup>

The statute could not be clearer. "Each stockholder," which includes current and former NEOs who hold common stock, is entitled to vote on the stockholder approval of the Tax Benefits Preservation Plan. Section 212(a) neither contemplates, nor permits, unilateral board action to deprive a stockholder who owns shares on the record date for a meeting<sup>3</sup> of its franchise right to one vote per share of stock such holder owns. The case law interpreting Section 212(a) supports this conclusion: in no case upholding the validity of a corporation's deviation from the one share-one vote rule has such deviation been implemented by unilateral board action.<sup>4</sup>

Accordingly, any attempt by the Board to unilaterally take the action requested the Proposal would violate Delaware law.

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<sup>2</sup> 8 *Del. C.* § 212(a).

<sup>3</sup> Section 212(a) is "subject to" Section 213 of the DGCL. Section 213 allows a corporation to fix a record date in advance of a stockholder meeting, to determine which stockholders are entitled to exercise their "one vote per share" voting right at an upcoming stockholder meeting. Accordingly, any current or former NEO who holds stock on the record date will be entitled to vote on the Tax Benefits Preservation Plan.

<sup>4</sup> A Delaware corporation cannot depart from the one share, one vote rule by unilateral action by the board of directors. Such departure can only be done by undertaking the drastic step of amending its certificate of incorporation, with a resolution setting forth an amendment that is adopted and approved by the board and the stockholders. *See* 8 *Del. C.* §§ 212(a) & 242(b). The Proposal does not contemplate any such attempt at amending the Company's certificate of incorporation; the Proposal instead seeks unilateral Board action to disqualify certain shares entitled to vote in connection with stockholder approval of the Tax Benefits Preservation Plan. Further, it would be impossible for the Board and the stockholders to amend the certificate of incorporation prior to the vote on the Tax Benefits Preservation Plan if such actions were proposed at the same stockholder meeting.

*See Providence & Worcester Co. v. Baker*, 378 A.2d 121 (Del. 1977); *Williams v. Geier*, 1987 WL 11285 (Del. Ch. May 20, 1987); *Sagusa, Inc. v. Magellan Petroleum Corp.*, 1993 WL 512487 (Del. Ch. Dec. 1, 1993), *aff'd*, 650 A.2d 1306 (Del. 1994) (Table).

Quotient Technology Inc.

February 4, 2022

Page 3

For all of the foregoing reasons, it is our opinion that the Proposal, if implemented, would cause the Company to violate Delaware law.

Very truly yours,

*Morris, Nichols, Archt & Tunnell LLP*

February 11, 2022

**VIA EMAIL**

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

Re: Quotient Technology Inc.  
Stockholder Proposal Submitted by Cathy Pomeroy,  
as Trustee of the Pomeroy Living Trust  
Securities Exchange Act of 1934 - Rule 14a-8

Ladies and Gentlemen:

This is in regard to the February 4, 2022 no-action request submitted by Quotient Technology Inc. (the “Company”).

As stated in the supporting statement of our initial shareholder proposal:<sup>1</sup>

- We believe that the primary purpose of any business should be to maximize profits for its owners,
- We believe that management’s ongoing inability to fulfill that primary purpose is evidenced by the Company’s growing cache of net operating losses (“NOLs”),
- Irrespective of any purported justifications, we believe that the practical application of the “Tax Benefits Preservation Plan” (the “Plan”) is the prioritization of *some* shareholders at the expense of *all* shareholders,
- We believe that this prioritization is particularly true for the Company’s Named Executive Officers (“NEOs”) who, despite their ongoing managerial incompetence, have nonetheless received significant stock-based compensation,
- We believe that allowing Company NEOs - who were employed to avoid NOLs, and paid amply *by shareholders* to do so - to vote on a Plan that weaponizes the fruits of their mismanagement to both safeguard and entrench their leadership positions, is at odds with both the fiduciary duties of company officers generally, and the Company’s own “Code of Business Conduct and Ethics”<sup>2</sup> specifically,
- To the extent that voting restrictions (as we initially proposed) would be at odds with Delaware law, we believe the Board should then - at the very least - provide all shareholders with prompt disclosure of which NEOs voted to put their interests ahead of ours.

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<sup>1</sup> As submitted to the Company on December 22, 2021

<sup>2</sup> [Quotient: Code of Business Conduct & Ethics Policy](#)



Moreover, and despite the ample opportunity to do so afforded by this process, we note that the Company has not cited any “obvious deficiencies in terms of accuracy, clarity, or relevance” with regard to anything within our initial proposal.

With that in mind, and in accordance with the Division of Corporation Finance’s “long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal,”<sup>3</sup> we respectfully request that a revised proposal be permitted. We have attached a revised proposal, and believe the proposed revisions not only preserve the spirit of our initial submission, but also address concerns as cited by the Company and its counsel.

Thank you for your consideration,

Stephen Pomeroy

cc: Connie Chen  
Carlton Fleming  
Cathy Pomeroy, as Trustee of the Pomeroy Living Trust

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<sup>3</sup> As quoted from [\(E\)\(1\) of the Division of Corporation Finance: Staff Legal Bulletin No. 14](#)

## **Shareholder Proposal (As Revised)**

### **Resolved:**

We believe a vote in favor of the proposed Tax Benefits Preservation Plan (the “Plan”) is at odds with both the fiduciary duties of Named Executive Officers (“NEOs”), *and* the Company’s own Code of Business Conduct & Ethics. Accordingly, shareholders respectfully request that the Board promptly, and as permitted by Delaware law, provide all shareholders with detailed disclosure of any NEO(s) who opt **not** to recuse themselves from voting on the Plan.

### **Supporting Statement:**

The primary purpose of any business should be to maximize profits for its owners. To that end, officers and directors are obligated to utilize all assets towards achieving such maximum profitability. Unfortunately, the Company’s track record falls short of these basic principles.

To wit, the Company’s Federal net operating losses (“NOLs”) actually *increased* by ~\$130 million between 2012 and 2020. During that same time frame, NEOs nonetheless received ~\$115 million in compensation. Given the Company’s consistent underperformance vis-à-vis both its peers, and the broader market indexes, shareholders have not fared nearly as well.

In our view, the Company’s current problems are two-fold. Whereas the Company’s growing NOLs represent management’s ongoing inability to profitably utilize Company assets, the compensation paid to the Company’s NEOs reflects a systemic - and egregious - inclination to reward management, irrespective of results (or lack thereof).

The Plan is particularly emblematic of this regrettable reality. Approved in November of 2021, the Plan is designed to deter any person or group “from acquiring beneficial ownership of 4.9% or more of the Company’s securities.” While safeguarding Company NOLs is the purported justification, the Plan’s details suggest otherwise:

- The Board has discretionary power to grant an “exemption *notwithstanding the effect on the Company’s NOLs and other tax attributes*, if the Board determines that such approval is in the best interests of the Company.”
- Which shareholders are considered to be “in the best interests of the Company?” Specifically:
  - a. Any Company “officer, director, or employee,” and
  - b. Anyone whose ownership is the “result of share purchases or issuances directly from the Company or through an underwritten offering approved by the Board.”

As written, the Plan prioritizes the Board’s *anointed* shareholders, at the expense of *all* shareholders. In so doing, the Plan’s primary beneficiaries appear to be the Company’s NOEs generally, and Steven Boal specifically.

Irrespective of the desirability of protecting NOLs, we believe this tradeoff is both unacceptable and at odds with the fiduciary duties of the Company’s directors and officers. In fact, the Company’s own Code

of Business Conduct & Ethics (the “Code”) seems to agree. Per the Company’s Code, every officer, director, and employee “*must* avoid any situation in which [their] personal interests conflict or even appear to conflict with the Company’s interests.”

As such, NOEs (*including* Mr. Boal) who opt to vote on a Plan of which they are the primary beneficiaries, represent a blatant rejection of both the Code *and* their fiduciary duties, and should thus be promptly disclosed by the Board.



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CFLEMING@SIDLEY.COM  
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February 17, 2022

**VIA EMAIL**

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

Re: *Quotient Technology Inc.*  
*Stockholder Proposal Submitted by Cathy Pomeroy, as Trustee of the Pomeroy*  
*Living Trust*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

In a letter dated February 4, 2022 (the “No-Action Request”), we requested confirmation that the staff of the Division of Corporation Finance (the “Staff”) concur that our client Quotient Technology Inc. (the “Company”) may exclude from its proxy statement and form of proxy (the “2022 Proxy Materials”) for its 2022 Annual Meeting of Shareholders a shareholder proposal received by the Company (the “Original Proposal”) from Cathy Pomeroy, as Trustee of the Pomeroy Living Trust (together with her representative in this matter, Stephen Pomeroy, the “Proponent”).

In response to the No-Action Request, on February 11, 2022, the Proponent emailed to the Staff a letter addressed to the Staff (the “Revision Request Letter”), copying the Company’s Corporate Secretary, to “request that a revised proposal be permitted” and attaching a revised proposal (the “Revised Proposal”). The Revision Request Letter and the Revised Proposal are attached hereto as Exhibit A. The Company first became aware of the Revised Proposal’s contents on February 11, 2022 when its Corporate Secretary was copied on the Proponent’s email.

The Revised Proposal was thus submitted 50 days after December 23, 2021, the deadline for shareholder proposals submitted to the Company pursuant to Rule 14a-8 for inclusion in the 2022 Proxy Materials (the “Company Rule 14a-8 Deadline”).

The Revised Proposal is also substantially different from the Original Proposal, if not an entirely new proposal.

The Original Proposal states:

Resolved: With regard to all shares outstanding, shareholders respectfully request that the Board hereby disqualify all shares owned and/or controlled by both current and former Named Executive Officers (“NEOs”) from voting to approve the proposed Tax Benefits Preservation Plan (the “Plan”).

The Revised Proposal, by contrast, states:

Resolved: We believe a vote in favor of the proposed Tax Benefits Preservation Plan (the “Plan”) is at odds with both the fiduciary duties of Named Executive Officers (“NEOs”), *and* the Company’s own Code of Business Conduct & Ethics. Accordingly, shareholders respectfully request that the Board promptly, and as permitted by Delaware law, provide all shareholders with detailed disclosure of any NEO(s) who opt **not** to recuse themselves from voting on the Plan.

The Revision Request Letter presents the Revised Proposal as a mere revision of the Original Proposal and in so doing references Item E.1 of Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”), noting the “the Division of Corporation Finance’s ‘long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal. . . .’” But, as noted above, the Revised Proposal may be fairly construed as an entirely new proposal. Whereas the Original Proposal requests that the Board disqualify certain shareholders from voting on a matter, the Revised Proposal requests that the Board instead allow such shareholders to vote on such matter, and take a new action of disclosing such shareholders’ participation in or recusal from such vote. In light of these differences, the Revised Proposal cannot be construed as a “minor” revision of the Original Proposal.

In light of the above, the Company hereby informs the Staff and the Proponent that, pursuant to Rule 14a-8(e) and Rules 14a-8(c) and (f), the Company does not accept the Revised Proposal and does not intend to include the Revised Proposal in the 2022 Proxy Materials. On one hand, Rule 14a-8(e) requires that shareholder proposals submitted pursuant to Rule 14a-8 be received by the Company not less than 120 calendar days before the date of the company proxy statement for the prior year’s annual meeting; this rule is the basis for the calculation of the Company Rule 14a-8 Deadline. On the other hand, Rule 14a-8(c) provides that each shareholder “may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting.”

Insofar as the Revision Request Letter and the Revised Proposal constitute an attempt to revise the Original Proposal after the Company submitted its No-Action Request and after the Company Rule 14a-8 Deadline, we refer the Staff to Item E.3 of SLB 14, which states as follows:

3. If the shareholder decides to make revisions to his or her proposal after the company has submitted its no-action request, must the company address those revisions?

No, but it *may* address the shareholder's revisions. We base our no-action response on the proposal included in the company's no-action request. Therefore, if the company indicates in a letter to us and the shareholder that it acknowledges and accepts the shareholder's changes, we will base our response on the revised proposal. Otherwise, we will base our response on the proposal contained in the company's original no-action request. Again, it is important for shareholders to note that, depending on the nature and timing of the changes, a revised proposal could be subject to exclusion under rule 14a-8(c), rule 14a-8(e), or both.

We also refer to Item D.2 of Staff Legal Bulletin No. 14F (Oct. 18, 2011), which states:

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. . . .

On the basis of the rules and Staff guidance cited above, the Company is not accepting the Revised Proposal and does not intend to include the Revised Proposal in the 2022 Proxy Materials.

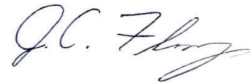
The Company therefore respectfully reconfirms its prior request for the Staff's confirmation that it will not recommend to the Securities and Exchange Commission (the "Commission") that enforcement action be taken if the Company excludes the Original Proposal from its 2022 Proxy Materials. Additionally, the Company respectfully requests the Staff's confirmation that it will not recommend to the Commission that enforcement

be taken if the Company excludes the Revised Proposal from its 2022 Proxy Materials for the reasons set forth above. The Staff has agreed with such requests in similar circumstances. *See Huron Consulting Group* (Jan. 4, 2017), *General Electric Company* (Mar. 3, 2016), *Community Health Systems, Inc.* (Mar. 7, 2014), *The Coca-Cola Company* (Jan. 16, 2014), *Noble Romans* (Mar. 12, 2010) and *Raytheon Co.* (Feb. 12, 2009).

We also wish to respond to a miscellaneous point made in the Revision Request Letter, that the “the Company has not cited any ‘obvious deficiencies in terms of accuracy, clarity, or relevance’ with regard to anything within our initial proposal.” We do not dispute this assertion, which we believe is referencing Item E.1 of SLB 14. But, we note that this assertion has no bearing on the arguments made in our No-Action Request or on whether the Company should accept the Revised Proposal.

We thank the Staff for its attention to this matter. If you have any questions regarding this letter or desire additional information, please contact the undersigned at (415) 772-1207 or by email at [cflaming@sidley.com](mailto:cflaming@sidley.com).

Sincerely,



Carlton Fleming

Attachments

cc: Connie Chen  
General Counsel, Compliance Officer and Secretary  
Quotient Technology Inc.

Cathy Pomeroy, as Trustee of the Pomeroy Living Trust

Stephen Pomeroy

**Exhibit A**  
(see attached)



**From:** Stephen Pomeroy

**Sent:** Friday, February 11, 2022

**To:** shareholderproposals@sec.gov

**Cc:** Connie Chen; cfleming; Kathy Pomeroy

**Subject:** Re: Shareholder Response to Quotient Technology's No-Action Request Letter

Ladies and Gentlemen:

Attached, please find our:

- Response to the no-action request submitted by Quotient Technology (the "Company") on February 4, 2022, and
- Shareholder proposal (with proposed revisions to address concerns cited by the Company and its counsel)

Sincerely,

Stephen Pomeroy

cc: Connie Chen

Carlton Fleming

Cathy Pomeroy, as Trustee of the Pomeroy Living Trust

February 11, 2022

**VIA EMAIL**

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

Re: Quotient Technology Inc.  
Stockholder Proposal Submitted by Cathy Pomeroy,  
as Trustee of the Pomeroy Living Trust  
Securities Exchange Act of 1934 - Rule 14a-8

Ladies and Gentlemen:

This is in regard to the February 4, 2022 no-action request submitted by Quotient Technology Inc. (the “Company”).

As stated in the supporting statement of our initial shareholder proposal:<sup>1</sup>

- We believe that the primary purpose of any business should be to maximize profits for its owners,
- We believe that management’s ongoing inability to fulfill that primary purpose is evidenced by the Company’s growing cache of net operating losses (“NOLs”),
- Irrespective of any purported justifications, we believe that the practical application of the “Tax Benefits Preservation Plan” (the “Plan”) is the prioritization of *some* shareholders at the expense of *all* shareholders,
- We believe that this prioritization is particularly true for the Company’s Named Executive Officers (“NEOs”) who, despite their ongoing managerial incompetence, have nonetheless received significant stock-based compensation,
- We believe that allowing Company NEOs - who were employed to avoid NOLs, and paid amply *by shareholders* to do so - to vote on a Plan that weaponizes the fruits of their mismanagement to both safeguard and entrench their leadership positions, is at odds with both the fiduciary duties of company officers generally, and the Company’s own “Code of Business Conduct and Ethics”<sup>2</sup> specifically,
- To the extent that voting restrictions (as we initially proposed) would be at odds with Delaware law, we believe the Board should then - at the very least - provide all shareholders with prompt disclosure of which NEOs voted to put their interests ahead of ours.

---

<sup>1</sup> As submitted to the Company on December 22, 2021

<sup>2</sup> [Quotient: Code of Business Conduct & Ethics Policy](#)

Moreover, and despite the ample opportunity to do so afforded by this process, we note that the Company has not cited any “obvious deficiencies in terms of accuracy, clarity, or relevance” with regard to anything within our initial proposal.

With that in mind, and in accordance with the Division of Corporation Finance’s “long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal,”<sup>3</sup> we respectfully request that a revised proposal be permitted. We have attached a revised proposal, and believe the proposed revisions not only preserve the spirit of our initial submission, but also address concerns as cited by the Company and its counsel.

Thank you for your consideration,

Stephen Pomeroy

cc: Connie Chen  
Carlton Fleming  
Cathy Pomeroy, as Trustee of the Pomeroy Living Trust

---

<sup>3</sup> As quoted from [\(E\)\(1\) of the Division of Corporation Finance: Staff Legal Bulletin No. 14](#)

## **Shareholder Proposal (As Revised)**

### **Resolved:**

We believe a vote in favor of the proposed Tax Benefits Preservation Plan (the “Plan”) is at odds with both the fiduciary duties of Named Executive Officers (“NEOs”), *and* the Company’s own Code of Business Conduct & Ethics. Accordingly, shareholders respectfully request that the Board promptly, and as permitted by Delaware law, provide all shareholders with detailed disclosure of any NEO(s) who opt **not** to recuse themselves from voting on the Plan.

### **Supporting Statement:**

The primary purpose of any business should be to maximize profits for its owners. To that end, officers and directors are obligated to utilize all assets towards achieving such maximum profitability. Unfortunately, the Company’s track record falls short of these basic principles.

To wit, the Company’s Federal net operating losses (“NOLs”) actually *increased* by ~\$130 million between 2012 and 2020. During that same time frame, NEOs nonetheless received ~\$115 million in compensation. Given the Company’s consistent underperformance vis-à-vis both its peers, and the broader market indexes, shareholders have not fared nearly as well.

In our view, the Company’s current problems are two-fold. Whereas the Company’s growing NOLs represent management’s ongoing inability to profitably utilize Company assets, the compensation paid to the Company’s NEOs reflects a systemic - and egregious - inclination to reward management, irrespective of results (or lack thereof).

The Plan is particularly emblematic of this regrettable reality. Approved in November of 2021, the Plan is designed to deter any person or group “from acquiring beneficial ownership of 4.9% or more of the Company’s securities.” While safeguarding Company NOLs is the purported justification, the Plan’s details suggest otherwise:

- The Board has discretionary power to grant an “exemption *notwithstanding the effect on the Company’s NOLs and other tax attributes*, if the Board determines that such approval is in the best interests of the Company.”
- Which shareholders are considered to be “in the best interests of the Company?” Specifically:
  - a. Any Company “officer, director, or employee,” and
  - b. Anyone whose ownership is the “result of share purchases or issuances directly from the Company or through an underwritten offering approved by the Board.”

As written, the Plan prioritizes the Board’s *anointed* shareholders, at the expense of *all* shareholders. In so doing, the Plan’s primary beneficiaries appear to be the Company’s NOEs generally, and Steven Boal specifically.

Irrespective of the desirability of protecting NOLs, we believe this tradeoff is both unacceptable and at odds with the fiduciary duties of the Company’s directors and officers. In fact, the Company’s own Code

of Business Conduct & Ethics (the “Code”) seems to agree. Per the Company’s Code, every officer, director, and employee “*must* avoid any situation in which [their] personal interests conflict or even appear to conflict with the Company’s interests.”

As such, NOEs (*including* Mr. Boal) who opt to vote on a Plan of which they are the primary beneficiaries, represent a blatant rejection of both the Code *and* their fiduciary duties, and should thus be promptly disclosed by the Board.

**From:** Stephen Pomeroy  
**Sent:** Wednesday, February 9, 2022  
**To:** [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)  
**Cc:** Connie Chen; cfleming  
**Subject:** Re: Quotient Technology Inc. No-Action Request Letter

**VIA EMAIL**

U.S. Securities and Exchange Commission  
Division of Corporate Finance  
Office of Chief Counsel  
100 F Street, NE  
Washington, DC 20549  
[shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Re: Quotient Technology Inc.  
Stockholder Proposal Submitted by Cathy Pomeroy,  
as Trustee of the Pomeroy Living Trust  
Securities Exchange Act of 1934 - Rule 14a-8

Ladies and Gentlemen:

This is in regard to the February 4, 2022 no-action request submitted by Quotient.

Please be advised that the Proponent does intend to submit a response for the Commission's consideration.

Sincerely,

Stephen Pomeroy

cc: Connie Chen  
Carlton Fleming

February 23, 2022

**VIA EMAIL**

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

Re: Quotient Technology Inc.  
Stockholder Proposal Submitted by Cathy Pomeroy,  
as Trustee of the Pomeroy Living Trust  
Securities Exchange Act of 1934 - Rule 14a-8

Ladies and Gentlemen:

In a letter dated February 4, 2022 (the “No-Action Request”), Quotient Technology Inc. (the “Company”) requested confirmation that the staff of the Division of Corporation Finance (the “Staff”) would concur with the Company’s contention that our shareholder proposal could be excluded from the Company’s proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders.

In a February 11, 2022 reponse, we emailed the Staff to respectfully request that a revised proposal be permitted. To that end, we attached a revised proposal, and stated that we believed, “the proposed revisions not only preserve the spirit of our initial submission, but also address concerns as cited by the Company and its counsel.”

With our revised proposal no longer at odds with Delaware law, the Company’s counsel, in a letter sent to the Staff dated February 17, 2022, appears to now advise the Staff that the Company’s newfound justification for excluding our proposal is . . . um . . . the Company has determined that the proposed revisions aren’t sufficiently minor, and thus doesn’t think they need to include it. As Mr. Fleming declaratively asserts, the revised proposal:

- “. . . [is] substantially different from the Original Proposal, if not an entirely new proposal.”
- “. . . may be fairly construed as an entirely new proposal.”
- “. . . cannot be construed as a ‘minor’ revision of the Original Proposal.”

Simply put, we find such assertions to be somewhere between half-baked hyperbole and utter nonsense. The sort of disingenuous legalese that one employs to obscure an otherwise obvious reality: the Company does not want to include our proposal, never has, and has acted accordingly from the onset.

In fact, among a grand total of 494 words contained in our proposal, a meager 9 words (by our count) are new/exclusive to the revised proposal. If that doesn't constitute a revision that is "minor in nature," we don't know what does?

And what about the substance of the initial proposal? Other than the removal of the parts of our initial proposal that the Company contended would run afoul of Delaware law, we believe the Staff shall find that - contrary to Mr. Fleming's assertions - the substance of the revised proposal does indeed remain substantively unchanged.

And how about any "obvious deficiencies in terms of accuracy, clarity, or relevance?" To date, the Company has not cited a single deficiency - a reality the Company's counsel did not dispute, but nonetheless dismissed as a "miscellaneous point."

By contrast, consider what Commissioner Aguilar once said about the proxy process (emphasis mine):<sup>1</sup>

"Whether it's voting on directors, executive compensation matters, or other significant matters, **the annual meeting is the principal opportunity for shareholders - the true owners of public companies - to have their voices heard by the corporate managers of their investments.**"

Since this Company's corporate managers are trying to weaponize the fruits of their ongoing managerial incompetence (i.e., net operating losses) to implement a poison pill (in everything but name) . . . it is unsurprising - but still alarming - that the Company is eagerly using this process to omit the sort of disclosure we have proposed, and in so doing, suppress the "voices" of disappointed shareholders.

With that in mind, and in accordance with the Staff's "long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal,"<sup>2</sup> we respectfully request, once again, that our revised proposal (as submitted to the Staff on February 11, 2022) be permitted.

Thank you for your consideration,

Stephen Pomeroy

cc: Connie Chen  
Carlton Fleming  
Cathy Pomeroy, as Trustee of the Pomeroy Living Trust

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<sup>1</sup> <https://www.sec.gov/news/statement/021915-psclaa.html>

<sup>2</sup> [Item E.1 of Staff Legal Bulletin No. 14](#)