



DIVISION OF  
CORPORATION FINANCE

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

January 6, 2022

Lillian Brown  
Wilmer Cutler Pickering Hale and Dorr LLP

Re: The Walt Disney Company (the "Company")  
Incoming letter dated October 26, 2021

Dear Ms. Brown:

This letter is in response to your correspondence concerning the shareholder proposals (the "Proposals") submitted to the Company by Max Riekse for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

There appears to be some basis for your view that the Company may exclude the Proposals under Rule 14a-8(e)(2) because the Company received them after the deadline for submitting proposals. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposals 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 bases for omission 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: Paul M. Ladas  
Ladas & Hoopes Law Offices, PLC

October 26, 2021

**Via E-mail to shareholderproposals@sec.gov**

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

**Re: The Walt Disney Company  
Exclusion of Shareholder Proposals by Max Riekse**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2022 annual meeting of shareholders (the “Proxy Materials”) the three sets of shareholder proposals and supporting statements (collectively, the “Proposals”) that were included in correspondence from Paul M. Ladas of Ladas & Hoopes Law Offices, PLC (the “Ladas Letter”) on behalf of his client Lt. Colonel Max Riekse (the “Proponent”). While the Ladas Letter addresses various matters related to the Proponent’s purported submission of proposals to the Company over the past approximately 18 months, the Proposals included in the Ladas Letter seem to request that the Company put the Proposals, each of which relates to the Company’s ordinary business operations, to a shareholder vote.

The Company respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposals from its Proxy Materials for the reasons discussed below. Note that it is not clear that the Ladas Letter is in itself intended as a Rule 14a-8 Proposal. Rather, the Ladas Letter refers to various proposal-related matters, including a 2020 shareholder proposal submitted by the Proponent, but the Company is treating the Ladas Letter as such for purposes of this request for no-action relief from the Staff in an abundance of caution.

Pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter, and the Proposals and related correspondence (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent, no later than 80 calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

## Background

On September 23, 2021,<sup>1</sup> WilmerHale, counsel to the Company, received the Ladas Letter. The Ladas Letter included the Proposals, which are presented in three separate letters from the Proponent dated January 20, 2021, March 1, 2021 and March 1, 2021. The Ladas Letter claims that the Proposals had been sent to the Company on the dates specified in the letters. While the Ladas Letter asserts that the Proponent has proof that the Company previously received the Proposals, no proof of receipt has been provided to date and the Company has no record of receiving such Proposals. The first time the Company saw the Proposals was in the Ladas Letter.<sup>2</sup>

The first letter,<sup>3</sup> dated January 20, 2021, states in relevant part as follows:

SUBJECT: The future of the Hall of Presidents, its content and its configuration at Magic Kingdom at Disney World, Orlando, Florida.

# Whereas there has been some discussion concerning the future, status, content and the closing of the Hall of Presidents at Magic Kingdom, Orlando, Florida.

# Whereas the great American, Walt Disney, founder of Disneyland and Disney World greatly appreciated our Constitutional Republic, founding fathers and all those American presidents who lead our nation over the past 230 some years; and which is so represented in the Hall of Presidents at Magic Kingdom, Orlando, Florida promoting our great Constitutional Republic; and what the United States of America stands for.

# Resolve that the Walt Disney company and the Board of Directors of the Disney company, **be compelled to retain the Hall of Presidents in its present form and content.**

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<sup>1</sup> For purposes of this letter, we are stating the date of receipt of the Ladas Letter as September 23, 2021 based on the tracking information provided by USPS for the tracking number associated with the envelope containing the Ladas Letter. Notwithstanding the foregoing, the envelope containing the Ladas Letter was actually received by WilmerHale on September 24, 2021, and nothing in this response shall be deemed an admission or confirmation of receipt on any date prior to September 24, 2021.

<sup>2</sup> A duplicate copy of the Ladas Letter was subsequently received by WilmerHale on September 27, 2021. And another copy was subsequently determined to have been received at a Company address on September 22, 2021; however, such copy was misaddressed to Roger A. Iger and, in light of the fact that the Ladas Letter does not on its face appear to be a Rule 14a-8 shareholder proposal, was only recently identified as related to this matter. Accordingly, the Company believes at this point that it received three different copies of the Ladas Letter on various dates over a week-long period at two different addresses, neither of which is the address specified for submission of Rule 14a-8 proposals in the Company's proxy materials as specified in Rule 14a-8.

<sup>3</sup> We have reproduced the language of the Proposals as provided by the Proponent and have not attempted to address any typographical or other errors in the language, either here or when cited throughout the body of this correspondence. Further, we note that the Proposals appear to be drafted in mandatory versus precatory form and, therefore, may raise practical and legal considerations for the Company if required to be implemented as drafted. In light of the number of procedural and other substantive bases on which the Company may exclude the Proposals, however, the Company is not in this letter addressing the mandatory form of the Proposals.

# That it be further resolved that current emotion, personal political preferences and or animosity against any past president be set aside and which has NO place in or at Magic Kingdom, be resolved in the spirit of national unity, which Walt Disney would appreciate

# Be it further resolved that considering that over 74 million Americans voted for President Donald Trump, knee jerk reaction to his term of office as President of the United States of America, be put aside by Disney and its Board of Directors.

# That former President Donald Trump be fully represented in the Hall of Presidents and that the Hall of Presidents be kept in the same location at Magic Kingdom for 75 years. And that a President Donald Trump mannequin be placed next to either former Presidents Teddy Roosevelt, Ronald Reagan or Andrew Jackson in the Hall of Presidents.

# Be it further resolved that the current representation of President Donald Trump in the Hall of Presidents, 2017-2020, be donated at no cost and in full working order, to the future President Donald Trump Presidential Library and Museum.

The second letter, dated March 1, 2021, states in relevant part as follows:

SUBJECT: Shareholder Proposal for the placement of a Bronze Bust of Walt Disney for the Shades of Green at Disney World, Florida in early of 2022 as per 'our' agreement.

# Bronze Bust of Walt Disney to be the same as now in the Hall of Presidents at Magic Kingdom at Disney World in Orlando, Florida — along with the same pedestal it sits on.

# That brass plaques be placed on the front and & sides of the pedestal holding the life size bronze bust of Walt Disney; the front being a duplicate of the one at the Hall of Presidents; the sides memorizing Disney's gift of land that the Shades of Green sits on.

# Furthermore be it resolved that Disney offer the Bust to the Director(s) — management of the Shades of Green and the U.S. Military of the above Disney bronze bust at no cost whatsoever to them; in commendation of Disney generous gift to the U.S. Military; & be placed in either the lobby of Shades of Green or at the front entrance leading to the lobby. \*\*And again, that the completion of the above Bronze Bust be done in very early 2022.

# Whereas that great American, Walt Disney generously donated the land for the Shades of Green, a U.S. military resort, on the grounds of Disney World, Orlando, Florida.

# Whereas, most men and women, military personnel and their families, who stay at Shades of Green, do not know of or appreciate Walt Disney's generosity or his great appreciation of the U.S. military and of his very generous donation of the land which Shades of Green, a five Star U.S. Military resort, sits on.

# The estimated cost of the above Bronze Bust of Walt Disney is approximately \$3,000 or less — given the fact that Disney owns the copyright and the mold to the one currently displayed at the Hall of Presidents; & that cost of an in-house made pedestal would be

minimal. This ‘project’ would cost little compared to Disney’s multibillion dollar budget.

# Lastly, that a public and suitable dedication of the above Bronze Bust of Disney be conducted soon after its installation. And that the cost to Shades of Green be zero.

The third letter, also dated March 1, 2021, states in relevant part as follows:

SUBJECT: Shareholder Proposal for the placement of a Bronze Statue of Walt Disney for the Shades of Green at Disney World, Florida – along with a suitable pedestal for it.

# The Bronze Statue of Walt Disney to be the same as now in front of Cinderella’s Castle at Magic Kingdom at Disney World in Orlando, Florida — with a suitable pedestal.

# That a suitable bronze plaque be placed on the base of the above Bronze Statue that memorializes Walt Disney’s very generous gift of land that the Shades of Green at Disney World set’s on; and that the bronze statue be ‘weatherized’ for outdoor display.

# Furthermore be it resolved that Disney offer the above statue to the Director (s) — management of the Shades of Green and the U.S. Military the above Bronze Statue of Disney at no cost whatsoever to them; in commendation of Disney very generous gift to the U.S. Military; and be placed along the sidewalk leading up to the Shades of Green.

# And furthermore, that the above Walt Disney Bronze Statue (with or with out the mouse that he is holding hands with in front of the castle at Magic Kingdom) be placed no later then the year of our Lord God December 2022 – as per previous ‘agreement’.

# Whereas that great American, Walt Disney generously donated the land for the Shades of Green, a U.S. military resort, on the grounds of Disney World, Orlando, Florida, his pro-military gift should be known by all those who stay & enjoy the Shades of Green.

# The estimated cost of the above Bronze Statue of Walt Disney would not be great given that Disney owns both the copy write and mold of the one in front of the castle at Magic Kingdom at Disney World; and that the pedestal can be made ‘in house’ by current Disney employees. And that the over all cost would be tiny compared to the multi billions that Disney makes every year; and the ten’s of millions of dollars that are paid to Disney’s Board of Directors; its chairman (Director) of the board; and its shareholders.

# Lastly, that a public and suitable dedication of the above Bronze Bust of Disney be conducted soon after its installation; and that all living presidents of the United States of America be invited; And that there be no cost to Shades of Green. Zero for anything.

As noted above, the Ladas Letter addresses various matters related to the Proponent’s purported submission of proposals to the Company over the past approximately 18 months, including a timeline relating to the purported submission and a discussion of a previously withdrawn shareholder proposal submitted by the Proponent. Although it is not clear that the Ladas Letter

is intended to be treated as submitting a Rule 14a-8 proposal, the Company is treating it as having done so and, accordingly, reviewed the Proposals for compliance with the procedural and substantive requirements of Rule 14a-8 upon WilmerHale's receipt of the first copy of the letter. The Proposals are procedurally deficient in a number of respects, including because they were received after the Company's September 21, 2021 deadline for receipt of Rule 14a-8 shareholder proposals. As discussed below, this deficiency is, of course, not able to be remedied so a deficiency notice would not normally be required under Rule 14a-8; however, in light of the many irregularities in the Proponent's Proposals, and in an abundance of caution, the Company provided the Proponent with a deficiency notice explaining the Proposal's deficiencies, including with regard to receipt of the Ladas Letter after its deadline for receipt of shareholder proposals. The notice of deficiency, which is attached as Exhibit A to this letter (the "Notice of Deficiency"), was sent to the Proponent's counsel, Mr. Ladas, on October 7, 2021, and requested the Proponent respond within 14 days of receipt. The Notice of Deficiency was sent by fax on October 7, 2021 (and was followed by a courtesy hard copy via FedEx that was received by the Proponent's counsel, Mr. Ladas, on October 8).

### **Bases for Exclusion**

As discussed more fully below, the Company believes the Proposals may be properly excluded from the Proxy Materials pursuant to:

- Rule 14a-8(e)(2) on the basis that the Ladas Letter including the Proposals was received after the deadline for submitting shareholder proposals for inclusion in the Company's 2022 Proxy Materials (and was never received at the appropriate address for submission of such proposals in any event);
- Rule 14a-8(b) and Rule 14a-8(f) because the Proponent has failed to:
  - establish he had continuously held the requisite amount of Company securities entitled to be voted on the Proposals at the Company's 2022 annual meeting of shareholders (the "2022 Annual Meeting") for the required minimum period of time by the date on which he submitted the Proposals;
  - provide the Company with a written statement of his intent to continue to hold the required amount of securities through the date of the Company's 2022 Annual Meeting;
  - provide the Company with a written statement with regard to his ability to meet with the Company regarding the Proposals; and
  - provide the Company with the written documentation required for a proponent that is using a representative to submit a shareholder proposal on its behalf;

- Rule 14a-8(c) and Rule 14a-8(f) of the Exchange Act on the basis that the multiple Proposals violate the regulatory limit in Rule 14a-8(c) of no more than one proposal per shareholder for a particular meeting of shareholders;
- Rule 14a-8(d) on the basis that the Proposals exceed 500 words in violation of the regulatory limit in Rule 14a-8(d) that that any shareholder proposal, including any accompanying supporting statement, not exceed 500 words; and
- Rule 14a-8(i)(7) of the Exchange Act on the basis that the Proposals relate to the Company's ordinary business operations.

***The Proposals may be excluded under Rule 14a-8(e)(2) because the Proposals were received after the deadline for submitting shareholder proposals for inclusion in the Company's 2022 Proxy Materials.***

As required by Rule 14a-5(e), the Company included in its 2021 proxy statement the deadline for receiving shareholder proposals submitted for inclusion in the Company's 2022 Proxy Materials, calculated in the manner prescribed in Rule 14a-8(e) and Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14"). Specifically, the following disclosure appeared on page 16 of the Company's 2021 proxy statement:

"To be eligible for inclusion in the proxy statement for our 2022 Annual Meeting, shareholder proposals must be received by the Company's Secretary no later than the close of business on September 21, 2021. Proposals should be sent to the Secretary, The Walt Disney Company, 500 South Buena Vista Street, Burbank, California 91521-1030 and follow the procedures required by SEC Rule 14a-8." [emphasis added.]

Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to follow one of the eligibility or procedural requirements contained in Rule 14a-8. Ordinarily, a company may exclude a proposal on this basis only after it has timely notified the proponent of an eligibility or procedural problem and the proponent has timely failed to adequately correct the problem. However, as per Rule 14a-8(f)(1), a company "need not provide [the proponent] such notice of a deficiency if the deficiency cannot be remedied, such as if [the proponent] fail[s] to submit a proposal by the company's properly determined deadline". The Staff strictly construes the deadline for shareholder proposals under Rule 14a-8, permitting companies to exclude from proxy materials those proposals received at companies' principal executive offices after the deadline. See, e.g., *DTE Energy Co.* (Dec. 18, 2018) (proposal received two days after company's deadline). Here, the Proposals were received (by WilmerHale, which is not an appropriate address for such submissions) on September 23, 2021, two days after the Company's properly calculated and noticed deadline of September 21, 2021 for shareholder proposals submitted for inclusion in the Company's 2022 Proxy Materials.<sup>4</sup> Accordingly, the Proposals are

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<sup>4</sup> We note that the additional duplicate copy that was subsequently determined to have been received at a Company address on September 22, 2021 and misaddressed to Roger A. Iger was received one day after the Company's

properly excludable from the Company's 2022 Proxy Materials because they were not received at the Company's principal executive offices within the time frame required under Rule 14a-8(e)(2).

***The Proposals may be excluded under Rule 14a-8(b) and Rule 14a-8(f) because the Proponent has failed to establish that he continuously held the requisite amount of the Company's securities entitled to be voted on the Proposals at the Company's 2022 Annual Meeting and failed to provide a statement of intent to continue to hold his securities through the date of the 2022 Annual Meeting.***

Under Rule 14a-8(f), a company may exclude from its proxy materials a proposal submitted by a proponent who fails to satisfy the eligibility requirements set forth in Rule 14a-8(b). Rule 14a-8(b)(1)(i) of the Exchange Act provides that, to be eligible to submit a proposal for a company's annual meeting that is scheduled to be held on or after January 1, 2022, a proponent must have continuously held:

- At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years;
- At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
- At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year.

Alternatively, under Rule 14a-8(b)(3), if a shareholder proponent 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 shareholder proponent 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, the shareholder proponent may provide proof of meeting such ownership requirement.

Under Rule 14a-8(b)(2) (or 14a-8(b)(3), if applicable), if a proponent is not a registered shareholder of a company and has not made a filing with the Commission detailing the proponent's beneficial ownership of shares in the company (as described in Rule 14a-8(b)(2)(ii)(B)), such proponent has the burden to prove he meets the beneficial ownership requirements of Rule 14a-8(b)(1) by submitting to the company a written statement from the "record" holder of the securities verifying that, at the time the proponent submitted the proposal, the proponent continuously held the requisite amount of such securities for the requisite time period. The proponent also must provide the proponent's own written statement of intent to continue to hold such securities through the date of the meeting. If the proponent fails to provide such proof of ownership and intent with regard to continued ownership, the company may exclude the proposal, but only if the company notifies the proponent in writing of such

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properly calculated and noticed deadline of September 21, 2021 for shareholder proposals submitted for inclusion in the Company's 2022 Proxy Materials.



deficiency within 14 calendar days of receiving the proposal and the proponent fails to adequately correct it. A proponent's response to such notice of deficiency must be postmarked or transmitted electronically to the company no later than 14 days from the date the proponent receives the notice of deficiency.

The Proposals were received at the offices of WilmerHale on September 23, 2021. The Proponent did not include with the Proposals written proof of his holdings from the record holder. The Company's stock records indicate that the Proponent is the record owner of six shares of the Company's common stock and that the Proponent has held these shares since November 2012. Therefore, the Company's stock records do not indicate the Proponent is the record owner of sufficient shares to satisfy Rule 14a-8's ownership requirement via any of the available tests. Accordingly, because the Company was unable to verify the Proponent's eligibility to submit the Proposals, the Company sent the Notice of Deficiency, requesting the Proponent provide the necessary proof required by Rule 14a-8(b)(2) (or Rule 14a-8(b)(3), if applicable) in compliance with the timing set forth in Rule 14a-8. The Notice of Deficiency clearly set out what documentation would be sufficient to prove the requisite ownership. The Proponent failed to provide a written statement from the "record" holder of the Proponent's shares verifying that, as of the date the Proposals were submitted to the Company, the Proponent continuously held the requisite number of Company shares for the relevant holding period either in the Ladas Letter or in response to the Company's Notice of Deficiency (which put him on notice regarding this requirement). The Proponent therefore failed to establish that he held the requisite securities entitled to be voted on the Proposals at the 2022 Annual Meeting; therefore, in accordance with long-standing Staff precedent, the Proposals may be excluded in its entirety from the Company's Proxy Materials. *See e.g., FedEx* (June 5, 2019) (concurring in exclusion of a proposal where proof of ownership was not provided until 15 days following receipt of the company's timely deficiency notice); *Time Warner Inc.* (Mar. 13, 2018) (concurring in exclusion of a shareholder proposal where the proponent supplied proof of ownership 18 days after receiving the company's timely deficiency notice); *ITC Holdings Corp.* (Feb. 9, 2016) (concurring in exclusion of a shareholder proposal under 14a-8(b)(2)(i) where the proponent failed to supply proof of ownership until 35 days after receipt of the company's timely deficiency notice); and *D.R. Horton* (Sep. 30, 2010) (concurring in exclusion of a shareholder proposal when the proponent failed to provide documentary support evidencing that he satisfied the minimum ownership requirement.)

In addition, the Proponent failed to provide a written statement of intent to hold his securities through the date of the 2022 Annual Meeting with the Ladas Letter or in response to the Company's Notice of Deficiency (which put him on notice regarding this requirement). Therefore, in accordance with longstanding Staff precedent, the Proposals may be excluded in their entirety from the Company's Proxy Materials. *See, e.g., Visa Inc.* (October 30, 2019) (concurring in exclusion of a proposal pursuant to Rule 14a-8(f), on the basis that the proponent failed to provide a written statement of its intention to hold the company's stock through the date of the shareholder meeting, as required by Rule 14a-8(b)); and *The Dow Chemical Company* (February 13, 2015) (concurring in exclusion of a proposal pursuant to Rule 14a-8(f), on the

basis that the proponent failed to provide a written statement of its intention to hold the company's stock through the date of the shareholder meeting, as required by Rule 14a-8(b)).

The Proponent failed to adequately correct the failure to supply documentary support that he held the requisite securities entitled to be voted on the Proposals and failed to provide the required statement of intent to continue to hold the securities through the date of the 2022 Annual Meeting within 14 days of receiving the Company's Notice of Deficiency. Accordingly, the Company may exclude the Proposals pursuant to Rule 14a-8(b) and Rule 14a-8(f).

***The Proposals may be excluded under Rule 14a-8(b) and Rule 14a-8(f) because the Proponent has failed to provide the Company with a written statement regarding his ability to meet with the Company.***

As noted, under Rule 14a-8(f), a company may exclude from its proxy materials a proposal submitted by a proponent who fails to satisfy the procedural requirements set forth in Rule 14a-8(b). Under Rule 14a-8(b)(1)(iii), as applicable to annual meetings to be held on or after January 1, 2022, a proponent must provide the company with a written statement that the proponent is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. This written statement must include the proponent's contact information as well as business days and specific times the proponent is available to discuss the proposal with the company.

The Proponent failed to provide a written statement regarding his ability to meet with the Company in either the Ladas Letter or in response to the Company's Notice of Deficiency (which put him on notice regarding this requirement).

Accordingly, the Company may exclude the Proposals pursuant to Rule 14a-8(b) and Rule 14a-8(f).

***The Proposals may be excluded under Rule 14a-8(b) because the Proponent has failed to provide the Company with the written documentation required for a proponent that is using a representative to submit a shareholder proposal on its behalf.***

As noted, under Rule 14a-8(f), a company may exclude from its proxy materials a proposal submitted by a proponent who fails to satisfy the procedural requirements set forth in Rule 14a-8(b). Under Rule 14a-8(b)(iv), a proponent who uses a representative to submit a shareholder proposal on behalf of the proponent, must provide the company with written documentation that:

- Identifies the company to which the proposal is directed;
- Identifies the annual or special meeting for which the proposal is submitted;
- Identifies the shareholder proponent as the proponent and identifies the person acting on the shareholder proponent's behalf as its representative;

- Includes a statement authorizing the designated representative to submit the proposal and otherwise act on the shareholder proponent's behalf;
- Identifies the specific topic of the proposal to be submitted;
- Includes the shareholder proponent's statement supporting the proposal; and
- Is signed and dated by the shareholder proponent.

The Ladas Letter failed to include any of the written documentation required from the Proponent to authorize Paul M. Ladas of Ladas & Hoopes Law Office, PLC to submit the Proposals and otherwise act on the Proponent's behalf. Moreover, the Proponent failed to respond to the Company's Notice of Deficiency (which put him on notice regarding this requirement) with any such documentation. Accordingly, the Company may exclude the Proposals pursuant to Rule 14a-8(b) and Rule 14a-8(f).

***The Proposals may be excluded under Rule 14a-8(c) and Rule 14a-8(f) because they constitute multiple proposals.***

Under Rule 14a-8(f), a company may exclude from its proxy materials a proposal submitted by a proponent who fails to satisfy the procedural requirements set forth in Rule 14a-8(c). Rule 14a-8(c) provides that a shareholder may submit only one proposal to a company per shareholder meeting. Contrary to this longstanding limitation, however, the Proposals are unambiguously three separate sets of shareholder proposals, dated January 20, 2021, March 1, 2021, and March 1, 2021. Specifically, (i) the letter dated January 20, 2021 consists of a clearly separate proposal relating to the Hall of Presidents, which proposal includes multiple proposals nested within it, regarding topics including the location of the Hall of Presidents and the placement of a mannequin of Donald Trump within the Hall of Presidents; (ii) the letter dated March 1, 2021 consists of a clearly separate proposal relating to the placement of a bronze bust of Walt Disney, which proposal includes multiple nested proposals regarding topics including the location of the bust, the content of brass plaques to be manufactured and affixed to a pedestal under the bust and a dedication ceremony to be conducted following installation of the bust; and (iii) the letter dated March 1, 2021 consists of a clearly separate proposal relating to the placement of a bronze statue of Walt Disney, which proposal includes multiple nested proposals regarding topics including the location of the statue, the content of a bronze plaque to be manufactured and affixed to a pedestal under the statue, and a dedication ceremony to which all living U.S. presidents would be invited following installation of the statue.

The Company requested the Proponent reduce his Proposals to no more than one proposal for consideration by the Company's shareholders in its Notice of Deficiency; however, the Proponent failed to respond to this aspect of the Notice of Deficiency in any manner. Accordingly, the Proposals may be excluded in their entirety from the Company's Proxy Materials on the basis that they constitute multiple proposals and thereby contravene the one proposal limitation set forth in Rule 14a-8(c).

As noted, there are three separate letters with shareholder proposals, and each “proposal” includes multiple proposals. Looking at the letters together, they are clearly multiple proposals combining several separate and distinct requests. The Staff has consistently concurred in exclusion under Rule 14a-8(c) of proposals combining separate and distinct elements that lack a single well-defined unifying concept, even if the elements are presented as part of a single program and relate to the same general subject matter. For example, in *Navidea Biopharmaceuticals, Inc.* (May 11, 2018), the Staff concurred in exclusion pursuant to Rule 14a-8(c) of a proposal seeking to amend the company’s bylaws to (i) elect all directors by majority voting, (ii) elect all directors on an annual basis and (iii) permit the holder or holders of 15% of the outstanding shares of common stock to call a special meeting of shareholders. Similarly, in *The Goldman Sachs Group, Inc.* (March 7, 2012) and *Textron Inc.* (March 7, 2012, *recon. denied*, March 30, 2012), the Staff concurred in exclusion of a proposal seeking to amend each company’s bylaws and governing documents to “allow shareowners to make board nominations” (i) in accordance with procedures set forth in the proposal for including shareholder nominations for director in the company’s proxy materials and (ii) by defining events that would not be considered a change in control. In granting the companies’ requests for no-action relief, the Staff noted that the paragraph regarding events that would not be considered a change in control “contains a proposal that constitutes a separate and distinct matter from the proposal relating to the inclusion of shareholder nominations for director in [such company’s] proxy materials.” See also *PG&E Corporation* (March 11, 2010) (concurring in the exclusion under Rule 14a-8(c) of a proposal requesting that, pending completion of certain studies of a specific power plant site, the company: (i) (A) mitigate potential risks encompassed by those studies and (B) not increase production of certain waste at the site beyond the levels then authorized, and (ii) defer any request for or expenditure of public or corporate funds for license renewal at the site).

As in the above-cited no-action letters, the Proponent has submitted multiple separate and distinct proposals requesting separate and distinct courses of action – one relating to the Hall of Presidents, one relating to a bronze bust of Walt Disney, and one related to a bronze statue of Walt Disney. These proposals relate to separate and distinct business matters and, as a practical matter, shareholders may be put in an untenable position if all three proposals are put before shareholders. Shareholders who favor one but not all of the proposals might be forced to vote for a proposal they do not favor in order to cast a favorable vote for a proposal they do favor. Accordingly, the Company may exclude the Proposals pursuant to Rule 14a-8(c) and Rule 14a-8(f).

***The Proposals may be excluded under Rule 14a-8(d) because they exceed 500 words.***

Rule 14a-8(d) provides that a proposal, including any supporting statement, may not exceed 500 words. The Staff has explained that “[a]ny statements that are, in effect, arguments in support of the proposal constitute part of the supporting statement.” See Staff Legal Bulletin No. 14 (July 13, 2001). Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal that exceeds 500 words if the proponent fails to submit a revised proposal that does not exceed 500 words, provided the company notifies the proponent of the deficiency within 14 calendar days of

receiving the proposal and the proponent fails to correct the deficiency within 14 days of receiving such notice.

The Staff has previously concurred that a company may exclude a proposal under Rule 14a-8(d) and Rule 14a-8(f)(1) because the proposal exceeds 500 words. *See, e.g., General Electric Co.* (December 30, 2014); *Danaher Corp.* (January 19, 2010); *Procter & Gamble Co.* (July 29, 2008); and *Amgen, Inc.* (January 12, 2004) (in each instance concurring in exclusion of a proposal that contained more than 500 words). Assuming that the Proposals are intended to be one proposal, the Company determined that the Proposals contain more than 500 words. More specifically, the three proposals contain approximately 994 words total. As a result, the Company sent the Notice of Deficiency notifying the Proponent that the Proposals exceed 500 words. The Proponent, however, did not submit a revised Proposal. Accordingly, the Proposals may be excluded from the 2022 proxy materials pursuant to Rule 14a-8(d) and Rule 14a-8(f)(1).

***The Proposals may be excluded pursuant to Rule 14a-8(i)(7) because the subject matters of the Proposals directly concern the Company's ordinary business operations.***

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal “deals with a matter relating to the company’s ordinary business operations.” The underlying policy of the ordinary business exclusion 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.” SEC Release No. 34-40018 (May 21, 1998) (the “1998 Release”). An exception to this principle may be made where a proposal focuses on significant policy issues (e.g., significant discrimination matters) that transcend the day-to-day business matters of the company. *See* 1998 Release.

As set out in the 1998 Release, there are two “central considerations” underlying the ordinary business exclusion. One consideration is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The other consideration is that a proposal should not “seek[] to ‘micro-manage’ 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.” The Proposals implicate both of these considerations and do not raise a significant policy issue that would transcend the ordinary business of the Company.

*A. The Proposals related to the ordinary business day-to-day operations of the Company and do not raise a significant policy issue*

The Proposals may be excluded in reliance on Rule 14a-8(i)(7) because the subject matter of the Proposals concern the Company’s ordinary business matter of deciding if, when and where to place statues, plaques, elements of guest attractions and other ornaments or decor, including as a means of commemorating or lauding a particular individual. The Proposals contain requests relating to the Hall of Presidents and the placement of a Donald Trump mannequin, the placement of a bronze bust of Walt Disney, and the placement of a bronze statue of Walt Disney. Such decisions are part of the fundamental responsibilities of management, as contemplated in

the 1998 Release. In making these decisions, the Company's management must consider a myriad of factors, including, for example, traffic flow, aesthetics, entertainment value, enhancement of the guest experience, whether an animatronic can be repurposed, parks priorities, costs, publicity concerns, effects on the Company's reputation and many other ordinary business considerations.

The Staff consistently has concurred that matters relating to the Company's ordinary business operations may be excluded under Rule 14a-8(i)(7), including with regard to decisions about how companies present their branding or imagery and decisions about allocation of sponsorship and similar resource decisions. *See, e.g., Ford Motor Company* (February 2, 2017) (concurring in exclusion of a proposal requesting that the company assess the political activity resulting from its advertising and any resulting exposure to risk because the proposal related to Ford's ordinary business operations); *FedEx Corp.* (July 11, 2014) (concurring in exclusion of a proposal relating to the company's sponsorship of the Washington, D.C. NFL franchise team because the proposal "relate[d] to the manner in which FedEx advertise[d] its products and services"); *Tootsie Roll Industries Inc.* (Jan. 31, 2002) (concurring in exclusion of a proposal asking the company to identify and disassociate from certain imagery in product marketing and advertising because the proposal related to "the manner in which a company advertises its products"); *The Quaker Oats Company* (March 16, 1999) (concurring in exclusion of a proposal requesting the formation of an employee committee to review advertising because the proposal related to "the manner in which a company advertises its products"); *PepsiCo, Inc.* (February 23, 1998) (concurring in exclusion of a proposal requesting that the Board of Directors prepare a report regarding the use of nonracist portrayals by the company because the proposal related to "the manner in which a company advertises its products"); and *General Mills, Inc.* (July 14, 1992) (concurring in exclusion of a proposal to establish a policy of not advertising on Geraldo Rivera's show and other "trash TV" programs because the proposal related to "the manner in which a company advertises its products").

The Staff also has consistently concurred in the exclusion of proposals concerning the sale or distribution of particular products and services, including the manner in which a company provides its products and services. *See, e.g., McDonald's Corporation* (March 12, 2019) (concurring in exclusion of a proposal "request[ing] that the board create a special board committee on food integrity to restore public confidence in the [c]ompany's reputation for food quality and integrity" as relating to the products offered for sale by the company); *Amazon.com, Inc.* (March 11, 2016) (concurring in exclusion of a proposal requesting that the company "issue a report addressing animal cruelty in the supply chain" as relating to the "products and services offered for sale by the company"); *Pepco Holdings, Inc.* (February 18, 2011) (concurring in exclusion of a proposal urging the company to pursue the market for solar technology and noting that the "proposal relates to the products and services offered for sale by the company"); and *Wal-Mart Stores, Inc.* (March 30, 2010) (concurring in exclusion of a proposal requiring that all company stores stock certain amounts of locally produced and packaged food as concerning "the sale of particular products"). Moreover, the Staff's decisions make clear that proposals focused on considerations that do not qualify as sufficiently significant social policies will not warrant shareholder action. *See, e.g., Nike, Inc.* (June 19, 2020) (concurring in exclusion under Rule

14a-8(i)(7) of a proposal focused on marketing to customers over the age of 40 as relating to the Company's ordinary business operations of "development, sale and marketing of the products offered by the [c]ompany").

Similar to the types of ordinary business decisions addressed in the above precedent, the Company's decisions regarding if, when and where to place statues, plaques and other ornaments, decor or elements of guest attractions, including as a means of commemorating or lauding a particular individual, are a part of the daily operations of the Company that do not raise significant policy issues. Accordingly, the Proposals are excludable as related to the ordinary business day-to-day operations of the Company.

*B. The Proposals seek to micromanage the Company*

In addition to interfering with management's day-to-day operations, the Proposals also seek to micromanage the Company with regard to the details of how the Company manages the organization, attractions, exhibits, ornaments and other decor of its parks. The Company is a leading theme park, entertainment and media company, and therefore, the Company's decisions regarding the, the organization, attractions, exhibits, ornaments and decor are central to the Company's ability to run its business on a day-to-day basis.

As the Staff explained in Staff Legal Bulletin 14K (October 16, 2019) ("SLB 14K"), in considering arguments under the micromanagement exclusion, the Staff looks at "whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board . . . . When a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted." In SLB 14K, the Staff stated that micromanagement depends on the level of prescriptiveness of a proposal. When a proposal describes specific actions that a company's management or the board must undertake without affording them sufficient flexibility or discretion, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted. Moreover, "the precatory nature of a proposal does not bear on the degree to which a proposal micromanages." *Id.*

The Proposals epitomize micromanagement by providing detailed and precise instructions about exactly how, where and when the Company would be required to place certain statues, mannequins and plaques in the Company's Hall of Presidents and Shades of Green. The letter dated January 20, 2021 requests that that the Company "retain the Hall of Presidents in its present form and content", that a "Donald Trump mannequin be placed next to either former Presidents Teddy Roosevelt, Ronald Reagan or Andrew Jackson in the Hall of Presidents" and that "the current representation of President Donald Trump in the Hall of Presidents, 2017-2020, be donated at no cost and in full working order, to the future President Donald Trump Presidential Library and Museum." The letter dated March 1, 2021 requests that the Company donate a bronze bust of Walt Disney to the Shades of Green and the U.S. military and that "brass plaques be placed on the front and sides of the pedestal holding the life size bronze bust of Walt

Disney.” The Proposals’ resolutions further include specific directions on when and where the statue and plaque should be placed on the grounds of Shades of Green, the contents of the brass plaques as well as a dedication ceremony to be conducted following installation of the bust. The second letter dated March 1, 2021 requests that the Company donate a Bronze Statute of Walt Disney to the Shades of Green and the U.S. military. The Proposal’s resolutions further include specific directions relating to the location of the statue, the content of a bronze plaque to be manufactured and affixed to a pedestal under the statue, and a dedication ceremony to which all living U.S. presidents would be invited following installation of the statue.

The Staff has consistently concurred in exclusion of proposals that seek to micromanage the company “by seeking to impose specific methods for implementing complex policies.” Proposals that are far less prescriptive than the Proposals at issue have been deemed excludable. For example, in *SeaWorld Entertainment, Inc.* (April 23, 2018), the company argued that the proposal micromanaged the company because “breeding, which is a particularly complex and sensitive husbandry issue – is an animal care decision that micromanages the [c]ompany with respect to complex day-to-day business operations . . . [t]he degree to which the [p]roposal seeks to micro-manage the [c]ompany is made even more extreme by the [p]roponent’s confirmation in its response that the ban is intended to apply to all types of breeding (natural and by artificial insemination) of all . . . animals in Sea World’s care.” *See also SeaWorld Entertainment, Inc.* (March 30, 2017) (concurring in exclusion of a proposal requesting the replacement of the company’s live orca exhibits with virtual reality experiences as “seek[ing] to micromanage 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.”). The Staff’s positions in *SeaWorld Entertainment, Inc.* (April 23, 2018) and *SeaWorld Entertainment, Inc.* (March 30, 2017) are consistent with the Staff’s longstanding practice of concurring in exclusion pursuant to Rule 14a8(i)(7) of proposals that micromanage companies in other contexts. *See, e.g., Amazon.com, Inc.* (January 18, 2018, *recon. denied* April 5, 2018) (concurring in exclusion of a proposal requesting that the company list WaterSense showerheads before others and that the company provide a brief description of such showerheads, on the basis that the proposal “seeks to micromanage the [c]ompany 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”).

As in the above-cited letters, the Proposals seek to micromanage the company by dictating the Company’s direct management of its parks and such management decisions fall squarely within ordinary business matters best left to the Company’s management. Accordingly, the Proposals involve precisely the type of micromanagement of the Company’s business that the ordinary business exclusion was meant to address, and thus the Proposals may be excluded on such basis.

## **Conclusion**

For the foregoing reasons, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposals from its Proxy Materials.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposals from its Proxy Materials, please do not



October 26, 2021

Page 16

WILMERHALE

hesitate to contact me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,

A handwritten signature in black ink, appearing to read "Lillian Brown". The signature is written in a cursive, flowing style.

Lillian Brown

Enclosures

cc: Jolene Negre, Associate General Counsel and Assistant Secretary  
The Walt Disney Company

Paul M. Ladas

**EXHIBIT A**

**LADAS & HOOPES Law Offices, PLC**

ATTORNEYS AT LAW  
435 WHITEHALL ROAD  
NORTH MUSKEGON, MI 49445

PAUL M. LADAS  
KENNETH S. HOOPES

TELEPHONE  
(231) 744-6218

FAX (231) 744-5532  
[www.ladasandhoopes.com](http://www.ladasandhoopes.com)

September 20, 2021

Roger A. Iger,  
Executive Chairman and Chairman of the Board of Directors  
Walt Disney Company Headquarters  
500 Buena Vista St.  
Burbank, CA 91521

Dear Mr. Iger,

On behalf of my longtime client, Lt. Colonel Max Riekse, (retired U.S. Army), P.O. Box 82, Fruitport, MI 49515, [REDACTED] PII who is a Walt Disney Company Stockholder of record, I am writing you concerning his request for three proposed shareholders resolutions previously submitted and to be presented and voted upon at the 2022 Disney annual shareholders meeting.

Lt. Colonel Max Riekse originally sent you a proposed resolution for consideration on February 23, 2020, that you received for which he had proof of delivery as receipt was acknowledged by your attorneys Jolene Negre and Lillian Brown.

The result that Lt. Colonel Riekse withdrew his resolutions to give Disney time to assess and act upon his request which the attorneys have not replied and assured, per the enclosed (Exhibit A).

Lt. Colonel then sent you another proposed resolution dated January 20, 2021, (Exhibit B), and also two other proposed resolutions dated March 1, 2021, and herein labeled (Exhibits C & D) all of which we have a record of these being received at Disney headquarters in 2021.

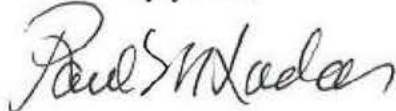
With no acknowledgment or action by Walt Disney Company regarding the resolutions per Exhibit B, C & D on receipt, Lt. Colonel Riekse is concerned that Disney will not act in good faith and fairness in having these resolutions both acted upon and voted on at the 2022 shareholder meeting.

Colonel Riekse would like to resolve this issue in a timely and amicable manner without a great deal of litigation. If we don't hear from you in a timely manner, we will consider filing an action in the Federal District Court in Grand Rapids, Michigan with copies of our court filing sent to the Federal Securities and Exchange Commission, the Federal Communications Commission and Federal Trade Commission.

We note that there may be also cause for a class action suit given that Walt Disney Company has also in the past stonewalled, sidelined, ignored, and not responded to other proposed stockholders' resolutions in the past.

You may contact Lt. Colonel Riekse directly if you so desire if that would help expedite the placement of the Bust at Shades of Greens and the statue at Shades of Green entrance. In order to avoid Lt. Colonel Riekse going forth with his stockholder's resolutions. We would like to see the placement of the Disney Bust in place at Shades of Greens no later than December 15, 2021, and the Disney statue at the entrance no later than February 2022.

Sincerely yours,



PAUL M. LADAS, P16333  
On behalf of Lt. Colonel Max Riekse  
In practice over 60 years  
Graduate of the University of Michigan Law School  
PML:llg  
Enclosures

Cc: Max Riekse  
P.O. Box 82  
Fruitport, MI 49515  
Ph: [REDACTED] PII



The WALT DISNEY Company

Jolene E. Negre

October 29, 2020

Lieutenant Colonel Max Riekse  
P.O. Box 82  
Fruitport, Michigan 49415


Re: Withdrawal of Shareholder Proposal Submitted to The Walt Disney Company

Dear Lieutenant Colonel Riekse:

Thank you for your letter dated October 28, 2020 (the "Withdrawal Letter"), withdrawing your shareholder proposal to The Walt Disney Company (the "Company") concerning placement of a statue or other commemoration of Walt Disney at Shades of Green (the "Proposal"). Per your request by voicemail to our counsel, Lillian Brown, we are writing to confirm receipt of the Withdrawal Letter as of today's date and confirming that we will view the Proposal as having been properly withdrawn. Accordingly, the Proposal will not appear in the Company's proxy statement for its 2021 annual meeting of stockholders. As discussed, we understand that you may decide to submit a new proposal in six months for the 2022 annual meeting of stockholders (or otherwise in the future).

We very much appreciate your willingness to engage with us on this matter and your agreement to withdraw the Proposal.

Sincerely,



Jolene Negre  
Associate General Counsel and Assistant Secretary

cc: Lillian Brown, WilmerHale (via email)

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FROM: LTC (Ret) Max Riekse  
P.O. Box 82  
Fruitport, Michigan 49415

20 January 2021

B

PII

TO: Director & CEO  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521

SUBJECT: The future of the Hall of Presidents, its content and its configuration at Magic Kingdom at Disney World, Orlando, Florida.

# Whereas there has been some discussion concerning the future, status, content and the closing of the Hall of Presidents at Magic Kingdom, Orlando, Florida.

# Whereas the great American, Walt Disney, founder of Disneyland and Disney World greatly appreciated our Constitutional Republic, founding fathers and all those American presidents who lead our nation over the past 230 some years; and which is so represented in the Hall of Presidents at Magic Kingdom, Orlando, Florida promoting our great Constitutional Republic; and what the United States of America stands for.

# Resolve that the Walt Disney company and the Board of Directors of the Disney company, be compelled to retain the Hall of Presidents in its present form and content.

# That it be further resolved that current emotion, personal political preferences and or animosity against any past president be set aside and which has NO place in or at Magic Kingdom, be resolved in the spirit of national unity, which Walt Disney would appreciate

# Be it further resolved that considering that over 74 million Americans voted for President Donald Trump, knee jerk reaction to his term of office as President of the United States of America, be put aside by Disney and its Board of Directors.

# That former President Donald Trump be fully represented in the Hall of Presidents and that the Hall of Presidents be kept in the same location at Magic Kingdom for 75 years. And that a President Donald Trump mannequin be placed next to either former Presidents Teddy Roosevelt, Ronald Reagan or Andrew Jackson in the Hall of Presidents.

# Be it further resolved that the current representation of President Donald Trump in the Hall of Presidents, 2017-2020, be donated at no cost and in full working order, to the future President Donald Trump Presidential Library and Museum.

Sincerely,

LtColonel Max Riekse; Disney Shareholder; Retired U.S. Army; 32 years; and Vietnam War Veteran (one Year) and Iraq War Veteran (one Year). God Bless America.....

FROM: LtColonel (Ret) Max Riekse  
P.O. Box 82 Fruitport, Michigan 49415  
Disney Shareholder of record.

March 1<sup>st</sup>, 2021

TO: Director & CEO of Record - Mr. Iger  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521

SUBJECT: Shareholder Proposal for the placement of a Bronze Bust of Walt Disney for the Shades of Green at Disney World, Florida in early of 2022 as per 'our' agreement.

# Bronze Bust of Walt Disney to be the same as now in the Hall of Presidents at Magic Kingdom at Disney World in Orlando, Florida – along with the same pedestal it sits on.

# That brass plaques be placed on the front and & sides of the pedestal holding the life size bronze bust of Walt Disney; the front being a duplicate of the one at the Hall of Presidents; the sides memorizing Disney's gift of land that the Shades of Green sits on.

# Furthermore be it resolved that Disney offer the Bust to the Director(s) – management of the Shades of Green and the U.S. Military of the above Disney bronze bust at no cost whatsoever to them; in commendation of Disney generous gift to the U.S. Military; & be placed in either the lobby of Shades of Green or at the front entrance leading to the lobby.

\*\*And again, that the completion of the above Bronze Bust be done in very early 2022.

# Whereas that great American, Walt Disney generously donated the land for the Shades of Green, a U.S. military resort, on the grounds of Disney World, Orlando, Florida.

# Whereas, most men and women, military personnel and their families, who stay at Shades of Green, do not know of or appreciate Walt Disney's generosity or his great appreciation of the U.S. military and of his very generous donation of the land which Shades of Green, a five Star U.S. Military resort, sits on.

# The estimated cost of the above Bronze Bust of Walt Disney is approximately \$3,000 or less – given the fact that Disney owns the copyright and the mold to the one currently displayed at the Hall of Presidents; & that cost of an in-house made pedestal would be minimal. This 'project' would cost little compared to Disney's multibillion dollar budget.

# Lastly, that a public and suitable dedication of the above Bronze Bust of Disney be conducted soon after its installation. And that the cost to Shades of Green be zero.

Sincerely,

Max Riekse; LtColonel (Ret) U.S. Army; 32 years; Vietnam War & Iraq War Veteran.



D

FROM: LtColonel (Ret) Max Riekse  
P.O. Box 82; Fruitport, Michigan 49415  
Disney Shareholder of Record

March 1<sup>st</sup>, 2021

PII

TO: Director & CEO of Record – Mr. Iger  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521

SUBJECT: Shareholder Proposal for the placement of a Bronze Statue of Walt Disney for the Shades of Green at Disney World, Florida – along with a suitable pedestal for it.

# The Bronze Statue of Walt Disney to be the same as now in front of Cinderella's Castle at Magic Kingdom at Disney World in Orlando, Florida – with a suitable pedestal.

# That a suitable bronze plaque be placed on the base of the above Bronze Statue that memorializes Walt Disney's very generous gift of land that the Shades of Green at Disney World set's on; and that the bronze statue be 'weatherized' for outdoor display.

# Furthermore be it resolved that Disney offer the above statue to the Director (s) – management of the Shades of Green and the U.S. Military the above Bronze Statue of Disney at no cost whatsoever to them; in commendation of Disney very generous gift to the U.S. Military; and be placed along the sidewalk leading up to the Shades of Green.

# And furthermore, that the above Walt Disney Bronze Statue (with or with out the mouse that he is holding hands with in front of the castle at Magic Kingdom) be placed no later then the year of our Lord God December 2022 – as per previous 'agreement'.

# Whereas that great American, Walt Disney generously donated the land for the Shades of Green, a U.S. military resort, on the grounds of Disney World, Orlando, Florida, his pro-military gift should be known by all those who stay & enjoy the Shades of Green.

# The estimated cost of the above Bronze Statue of Walt Disney would not be great given that Disney owns both the copy write and mold of the one in front of the castle at Magic Kingdom at Disney World; and that the pedestal can be made 'in house' by current Disney employees. And that the over all cost would be tiny compared to the multi billions that Disney makes every year; and the ten's of millions of dollars that are paid to Disney's Board of Directors; its chairman (Director) of the board; and its shareholders.


# Lastly, that a public and suitable dedication of the above Bronze Bust of Disney be conducted soon after its installation; and that all living presidents of the United States of America be invited; And that there be no cost to Shades of Green. Zero for anything.

Sincerely;

Max Riekse: LtColonel (Ret) U.S. Army; 32 years; Vietnam War & Iraq War Veteran.

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TELEPHONE  
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[www.ladasandhoopes.com](http://www.ladasandhoopes.com)

September 20, 2021

Roger A. Iger,  
Executive Chairman and Chairman of the Board of Directors  
Walt Disney Company Headquarters  
500 Buena Vista St.  
Burbank, CA 91521

Dear Mr. Iger,

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The result that Lt. Colonel Riekse withdrew his resolutions to give Disney time to assess and act upon his request which the attorneys have not replied and assured, per the enclosed (Exhibit A).

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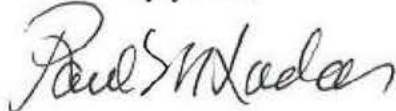
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Colonel Riekse would like to resolve this issue in a timely and amicable manner without a great deal of litigation. If we don't hear from you in a timely manner, we will consider filing an action in the Federal District Court in Grand Rapids, Michigan with copies of our court filing sent to the Federal Securities and Exchange Commission, the Federal Communications Commission and Federal Trade Commission.

We note that there may be also cause for a class action suit given that Walt Disney Company has also in the past stonewalled, sidelined, ignored, and not responded to other proposed stockholders' resolutions in the past.

You may contact Lt. Colonel Riekse directly if you so desire if that would help expedite the placement of the Bust at Shades of Greens and the statue at Shades of Green entrance. In order to avoid Lt. Colonel Riekse going forth with his stockholder's resolutions. We would like to see the placement of the Disney Bust in place at Shades of Greens no later than December 15, 2021, and the Disney statue at the entrance no later than February 2022.

Sincerely yours,



PAUL M. LADAS, P16333  
On behalf of Lt. Colonel Max Riekse  
In practice over 60 years  
Graduate of the University of Michigan Law School  
PML:llg  
Enclosures

Cc: Max Riekse  
P.O. Box 82  
Fruitport, MI 49515  
Ph: [REDACTED] PII



The WALT DISNEY Company

Jolene E. Negre

October 29, 2020

Lieutenant Colonel Max Riekse  
P.O. Box 82  
Fruitport, Michigan 49415


Re: Withdrawal of Shareholder Proposal Submitted to The Walt Disney Company

Dear Lieutenant Colonel Riekse:

Thank you for your letter dated October 28, 2020 (the "Withdrawal Letter"), withdrawing your shareholder proposal to The Walt Disney Company (the "Company") concerning placement of a statue or other commemoration of Walt Disney at Shades of Green (the "Proposal"). Per your request by voicemail to our counsel, Lillian Brown, we are writing to confirm receipt of the Withdrawal Letter as of today's date and confirming that we will view the Proposal as having been properly withdrawn. Accordingly, the Proposal will not appear in the Company's proxy statement for its 2021 annual meeting of stockholders. As discussed, we understand that you may decide to submit a new proposal in six months for the 2022 annual meeting of stockholders (or otherwise in the future).

We very much appreciate your willingness to engage with us on this matter and your agreement to withdraw the Proposal.

Sincerely,



Jolene Negre  
Associate General Counsel and Assistant Secretary

cc: Lillian Brown, WilmerHale (via email)

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P.O. Box 82  
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FROM: LTC (Ret) Max Riekse  
P.O. Box 82  
Fruitport, Michigan 49415

20 January 2021

B

PII

TO: Director & CEO  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521

SUBJECT: The future of the Hall of Presidents, its content and its configuration at Magic Kingdom at Disney World, Orlando, Florida.

# Whereas there has been some discussion concerning the future, status, content and the closing of the Hall of Presidents at Magic Kingdom, Orlando, Florida.

# Whereas the great American, Walt Disney, founder of Disneyland and Disney World greatly appreciated our Constitutional Republic, founding fathers and all those American presidents who lead our nation over the past 230 some years; and which is so represented in the Hall of Presidents at Magic Kingdom, Orlando, Florida promoting our great Constitutional Republic; and what the United States of America stands for.

# Resolve that the Walt Disney company and the Board of Directors of the Disney company, be compelled to retain the Hall of Presidents in its present form and content.

# That it be further resolved that current emotion, personal political preferences and or animosity against any past president be set aside and which has NO place in or at Magic Kingdom, be resolved in the spirit of national unity, which Walt Disney would appreciate

# Be it further resolved that considering that over 74 million Americans voted for President Donald Trump, knee jerk reaction to his term of office as President of the United States of America, be put aside by Disney and its Board of Directors.

# That former President Donald Trump be fully represented in the Hall of Presidents and that the Hall of Presidents be kept in the same location at Magic Kingdom for 75 years. And that a President Donald Trump mannequin be placed next to either former Presidents Teddy Roosevelt, Ronald Reagan or Andrew Jackson in the Hall of Presidents.

# Be it further resolved that the current representation of President Donald Trump in the Hall of Presidents, 2017-2020, be donated at no cost and in full working order, to the future President Donald Trump Presidential Library and Museum.

Sincerely,

LtColonel Max Riekse; Disney Shareholder; Retired U.S. Army; 32 years; and Vietnam War Veteran (one Year) and Iraq War Veteran (one Year). God Bless America.....

FROM: LtColonel (Ret) Max Riekse  
P.O. Box 82 Fruitport, Michigan 49415  
Disney Shareholder of record.

March 1<sup>st</sup>, 2021

TO: Director & CEO of Record - Mr. Iger  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521

SUBJECT: Shareholder Proposal for the placement of a Bronze Bust of Walt Disney for the Shades of Green at Disney World, Florida in early of 2022 as per 'our' agreement.

# Bronze Bust of Walt Disney to be the same as now in the Hall of Presidents at Magic Kingdom at Disney World in Orlando, Florida – along with the same pedestal it sits on.

# That brass plaques be placed on the front and & sides of the pedestal holding the life size bronze bust of Walt Disney; the front being a duplicate of the one at the Hall of Presidents; the sides memorizing Disney's gift of land that the Shades of Green sits on.

# Furthermore be it resolved that Disney offer the Bust to the Director(s) – management of the Shades of Green and the U.S. Military of the above Disney bronze bust at no cost whatsoever to them; in commendation of Disney generous gift to the U.S. Military; & be placed in either the lobby of Shades of Green or at the front entrance leading to the lobby.

\*\*And again, that the completion of the above Bronze Bust be done in very early 2022.

# Whereas that great American, Walt Disney generously donated the land for the Shades of Green, a U.S. military resort, on the grounds of Disney World, Orlando, Florida.

# Whereas, most men and women, military personnel and their families, who stay at Shades of Green, do not know of or appreciate Walt Disney's generosity or his great appreciation of the U.S. military and of his very generous donation of the land which Shades of Green, a five Star U.S. Military resort, sits on.

# The estimated cost of the above Bronze Bust of Walt Disney is approximately \$3,000 or less – given the fact that Disney owns the copyright and the mold to the one currently displayed at the Hall of Presidents; & that cost of an in-house made pedestal would be minimal. This 'project' would cost little compared to Disney's multibillion dollar budget.

# Lastly, that a public and suitable dedication of the above Bronze Bust of Disney be conducted soon after its installation. And that the cost to Shades of Green be zero.

Sincerely,

Max Riekse; LtColonel (Ret) U.S. Army; 32 years; Vietnam War & Iraq War Veteran.



D

FROM: LtColonel (Ret) Max Riekse  
P.O. Box 82; Fruitport, Michigan 49415  
Disney Shareholder of Record

March 1<sup>st</sup>, 2021

PII

TO: Director & CEO of Record – Mr. Iger  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521

SUBJECT: Shareholder Proposal for the placement of a Bronze Statue of Walt Disney for the Shades of Green at Disney World, Florida – along with a suitable pedestal for it.

# The Bronze Statue of Walt Disney to be the same as now in front of Cinderella's Castle at Magic Kingdom at Disney World in Orlando, Florida – with a suitable pedestal.

# That a suitable bronze plaque be placed on the base of the above Bronze Statue that memorializes Walt Disney's very generous gift of land that the Shades of Green at Disney World set's on; and that the bronze statue be 'weatherized' for outdoor display.

# Furthermore be it resolved that Disney offer the above statue to the Director (s) – management of the Shades of Green and the U.S. Military the above Bronze Statue of Disney at no cost whatsoever to them; in commendation of Disney very generous gift to the U.S. Military; and be placed along the sidewalk leading up to the Shades of Green.

# And furthermore, that the above Walt Disney Bronze Statue (with or with out the mouse that he is holding hands with in front of the castle at Magic Kingdom) be placed no later then the year of our Lord God December 2022 – as per previous 'agreement'.

# Whereas that great American, Walt Disney generously donated the land for the Shades of Green, a U.S. military resort, on the grounds of Disney World, Orlando, Florida, his pro-military gift should be known by all those who stay & enjoy the Shades of Green.

# The estimated cost of the above Bronze Statue of Walt Disney would not be great given that Disney owns both the copy write and mold of the one in front of the castle at Magic Kingdom at Disney World; and that the pedestal can be made 'in house' by current Disney employees. And that the over all cost would be tiny compared to the multi billions that Disney makes every year; and the ten's of millions of dollars that are paid to Disney's Board of Directors; its chairman (Director) of the board; and its shareholders.

# Lastly, that a public and suitable dedication of the above Bronze Bust of Disney be conducted soon after its installation; and that all living presidents of the United States of America be invited; And that there be no cost to Shades of Green. Zero for anything.

Sincerely;

Max Riekse: LtColonel (Ret) U.S. Army; 32 years; Vietnam War & Iraq War Veteran.

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ATTORNEYS AT LAW

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Roger A. Iger  
Executive Chairman and Chairman of the  
Board of Directors  
Walt Disney Company Headquarters  
500 Buena Vista St.  
Burbank, CA 91521

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TELEPHONE  
(231) 744-6218

FAX (231) 744-5532  
[www.ladasandhoopes.com](http://www.ladasandhoopes.com)

September 20, 2021

Roger A. Iger,  
Executive Chairman and Chairman of the Board of Directors  
Walt Disney Company Headquarters  
500 Buena Vista St.  
Burbank, CA 91521

Dear Mr. Iger,

On behalf of my longtime client, Lt. Colonel Max Riekse, (retired U.S. Army), P.O. Box 82, Fruitport, MI 49515, [REDACTED] PII who is a Walt Disney Company Stockholder of record, I am writing you concerning his request for three proposed shareholders resolutions previously submitted and to be presented and voted upon at the 2022 Disney annual shareholders meeting.

Lt. Colonel Max Riekse originally sent you a proposed resolution for consideration on February 23, 2020, that you received for which he had proof of delivery as receipt was acknowledged by your attorneys Jolene Negre and Lillian Brown.

The result that Lt. Colonel Riekse withdrew his resolutions to give Disney time to assess and act upon his request which the attorneys have not replied and assured, per the enclosed (Exhibit A).

Lt. Colonel then sent you another proposed resolution dated January 20, 2021, (Exhibit B), and also two other proposed resolutions dated March 1, 2021, and herein labeled (Exhibits C & D) all of which we have a record of these being received at Disney headquarters in 2021.

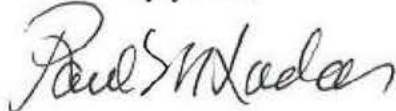
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You may contact Lt. Colonel Riekse directly if you so desire if that would help expedite the placement of the Bust at Shades of Greens and the statue at Shades of Green entrance. In order to avoid Lt. Colonel Riekse going forth with his stockholder's resolutions. We would like to see the placement of the Disney Bust in place at Shades of Greens no later than December 15, 2021, and the Disney statue at the entrance no later than February 2022.

Sincerely yours,



PAUL M. LADAS, P16333  
On behalf of Lt. Colonel Max Riekse  
In practice over 60 years  
Graduate of the University of Michigan Law School  
PML:llg  
Enclosures

Cc: Max Riekse  
P.O. Box 82  
Fruitport, MI 49515  
Ph: [REDACTED] PII



The WALT DISNEY Company

Jolene E. Negre

October 29, 2020

Lieutenant Colonel Max Riekse  
P.O. Box 82  
Fruitport, Michigan 49415


Re: Withdrawal of Shareholder Proposal Submitted to The Walt Disney Company

Dear Lieutenant Colonel Riekse:

Thank you for your letter dated October 28, 2020 (the "Withdrawal Letter"), withdrawing your shareholder proposal to The Walt Disney Company (the "Company") concerning placement of a statue or other commemoration of Walt Disney at Shades of Green (the "Proposal"). Per your request by voicemail to our counsel, Lillian Brown, we are writing to confirm receipt of the Withdrawal Letter as of today's date and confirming that we will view the Proposal as having been properly withdrawn. Accordingly, the Proposal will not appear in the Company's proxy statement for its 2021 annual meeting of stockholders. As discussed, we understand that you may decide to submit a new proposal in six months for the 2022 annual meeting of stockholders (or otherwise in the future).

We very much appreciate your willingness to engage with us on this matter and your agreement to withdraw the Proposal.

Sincerely,



Jolene Negre  
Associate General Counsel and Assistant Secretary

cc: Lillian Brown, WilmerHale (via email)

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**P.O. Box 82**  
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FROM: LTC (Ret) Max Riekse  
P.O. Box 82  
Fruitport, Michigan 49415

20 January 2021

B

PII

TO: Director & CEO  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521

SUBJECT: The future of the Hall of Presidents, its content and its configuration at Magic Kingdom at Disney World, Orlando, Florida.

# Whereas there has been some discussion concerning the future, status, content and the closing of the Hall of Presidents at Magic Kingdom, Orlando, Florida.

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Sincerely,

LtColonel Max Riekse; Disney Shareholder; Retired U.S. Army; 32 years; and Vietnam War Veteran (one Year) and Iraq War Veteran (one Year). God Bless America.....

FROM: LtColonel (Ret) Max Riekse  
P.O. Box 82 Fruitport, Michigan 49415  
Disney Shareholder of record.

March 1<sup>st</sup>, 2021

TO: Director & CEO of Record - Mr. Iger  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521

SUBJECT: Shareholder Proposal for the placement of a Bronze Bust of Walt Disney for the Shades of Green at Disney World, Florida in early of 2022 as per 'our' agreement.

# Bronze Bust of Walt Disney to be the same as now in the Hall of Presidents at Magic Kingdom at Disney World in Orlando, Florida – along with the same pedestal it sits on.

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# Furthermore be it resolved that Disney offer the Bust to the Director(s) – management of the Shades of Green and the U.S. Military of the above Disney bronze bust at no cost whatsoever to them; in commendation of Disney generous gift to the U.S. Military; & be placed in either the lobby of Shades of Green or at the front entrance leading to the lobby.

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Sincerely,

Max Riekse; LtColonel (Ret) U.S. Army; 32 years; Vietnam War & Iraq War Veteran.



D

FROM: LtColonel (Ret) Max Riekse  
P.O. Box 82; Fruitport, Michigan 49415  
Disney Shareholder of Record

March 1<sup>st</sup>, 2021  
PII

TO: Director & CEO of Record – Mr. Iger  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521

SUBJECT: Shareholder Proposal for the placement of a Bronze Statue of Walt Disney for the Shades of Green at Disney World, Florida – along with a suitable pedestal for it.

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Sincerely;

Max Riekse: LtColonel (Ret) U.S. Army; 32 years; Vietnam War & Iraq War Veteran.

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Jolene Negre  
1875 Pennsylvania Ave., NW  
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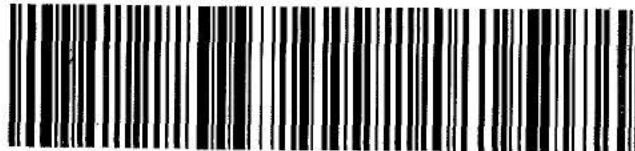
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Lillian Brown  
1875 Pennsylvania Ave., NW  
Washington, DC 20006



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Lillian Brown

+1 202 663 6743 (t)  
+1 202 663 6363 (f)  
lillian.brown@wilmerhale.com

October 7, 2021

**VIA FEDERAL EXPRESS AND FACSIMILE**

Paul M. Ladas  
Ladas & Hoopes Law Offices, PLC  
435 Whitehall Road  
North Muskegon, MI 49445

Re: Notice of Deficiencies Relating to Shareholder Proposals

Dear Mr. Ladas:

I am writing on behalf of The Walt Disney Company (the “Company”). On September 23, 2021,<sup>1</sup> WilmerHale, counsel to the Company, received a submission enclosing three sets of proposals from your client (the “Proponent”) for consideration at the Company’s 2022 Annual Meeting (the “Submission”). Based on the date of postmark of the Submission, the Company has determined that the date of submission for purposes of assessing the Proponent’s ownership of the requisite amount of Company securities to have a proposal included in the Company’s proxy materials, as further described below, was September 20, 2021 (the “Submission Date”).

Rule 14a-8(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provides that a shareholder proponent can in most cases find the deadline for submitting a proposal for a company’s annual meeting in the company’s last year’s proxy statement. As set forth in the Company’s proxy statement filed with the Securities Exchange Commission on January 19, 2021 (the “2021 Proxy Statement”), to be eligible for inclusion in the Company’s proxy statement for consideration at the Company’s 2022 Annual Meeting, shareholder proposals must be received by the Company’s Secretary no later than the close of business on September 21, 2021. Although the Submission included three sets of proposals on three separate letters dated January 20, 2021, March 1, 2021 and March 1, 2021, the Company did not receive these letters. Accordingly, the Company only became aware of these proposals upon receipt of

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<sup>1</sup> For purposes of this response, we are stating the date of receipt as September 23, 2021 based on the tracking information provided by USPS for the tracking number associated with the envelope containing the Submission. Notwithstanding the foregoing, the envelope containing the Submission was actually received by WilmerHale on September 24, 2021, and nothing in this response shall be deemed an admission or confirmation of receipt on any date prior to September 24, 2021.

Paul M. Ladas  
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the Submission to WilmerHale on September 23, 2021.<sup>2</sup> WilmerHale received the Submission on September 23, 2021, two days after the submission deadline for a shareholder proposal to be eligible for consideration at the Company's 2022 Annual Meeting. Accordingly, the Proponent failed to submit a proposal by the Company's properly determined deadline, which defect cannot be remedied.

Even if the Submission were timely (which it was not), it otherwise fails to meet the requirements of Rule 14a-8 in a number of respects, which we detail below.<sup>3</sup>

**Ownership of Company Shares** – Exchange Act Rule 14a-8(b) provides that, as of the Submission Date, a shareholder proponent must have continuously held:

- At least \$2,000 in market value of the Company's securities entitled to vote on the proposal for at least three years; or
- At least \$15,000 in market value of the Company's securities entitled to vote on the proposal for at least two years; or
- At least \$25,000 in market value of the Company's securities entitled to vote on the proposal for at least one year.

Alternatively, a shareholder proponent must have 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 the shareholder proponent must have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the Submission Date.

The Company's stock records indicate that the Proponent is the record owner of 6 shares of the Company's common stock and that the Proponent has held these shares since November 2012. Accordingly, the Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement via any of these tests. Therefore, under Rule 14a-8(b), the Proponent was required to prove his eligibility by submitting either:

- A written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that, as of the Submission Date, the Proponent (i) continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the Company's securities entitled

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<sup>2</sup> We note that the Submission was not addressed to the Company's principal executive offices as required by Exchange Act Rule 14a-8(e)(2). The address of the Company's principal executive offices is set forth in the Company's 2021 Proxy Statement, which states that shareholder "[p]roposals should be sent to the Secretary, The Walt Disney Company, 500 South Buena Vista Street, Burbank, California 91521-1030."

<sup>3</sup> While this response describes various procedural defects with the proposal, we note that there are also substantive bases for exclusion of the proposal under Rule 14a-8 that are not required to be addressed in this response under Rule 14a-8, which substantive bases we reserve the right to assert.

Paul M. Ladas

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to vote on the proposal for at least three years, two years, or one year, respectively or (ii) 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 the Proponent continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the Submission Date. As addressed by the SEC staff in Staff Legal Bulletin 14G, please note that if the Proponent's shares are held by a bank, broker or other securities intermediary that is a Depository Trust Company ("DTC") participant or an affiliate thereof, proof of ownership from either that DTC participant or its affiliate will satisfy this requirement. Alternatively, if the Proponent's shares are held by a bank, broker or other securities intermediary that is not a DTC participant or an affiliate of a DTC participant, proof of ownership must be provided by both (1) the bank, broker or other securities intermediary and (2) the DTC participant (or an affiliate thereof) that can verify the holdings of the bank, broker or other securities intermediary. The Proponent can confirm whether a particular bank, broker or other securities intermediary is a DTC participant by checking DTC's participant list, which is available on the Internet at <http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf>. The Proponent should be able to determine who the DTC participant is by asking the Proponent's bank, broker or other securities intermediary; or

- If the Proponent 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 it (i) 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, or (ii) 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 the Proponent continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the Submission Date, 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 number of Company shares for the requisite period.

The Company did not receive proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the Submission Date. To remedy this defect,<sup>4</sup> the Proponent would have to submit sufficient proof of his ownership of the requisite number of Company shares during the applicable time period preceding and including the Submission Date. For example, if the Proponent owns at least \$15,000 in market value of the Company's securities entitled to vote on the Proposal, the Proponent would have to submit sufficient proof of his continuous ownership of the requisite number of Company shares during the two years preceding and including the

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<sup>4</sup> While this response describes the proper manner to remedy various defects, please note that addressing any curable defects would not result in inclusion of the proposal due to the untimeliness discussed above, which is not curable.

Paul M. Ladas

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Submission Date. If, on the other hand, the Proponent 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 has continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the Submission Date, the Proponent would have to submit sufficient proof of his continuous ownership of the requisite number of Company shares for at least one year as of January 4, 2021, and from that date through and including the Submission Date.

**Intent to Continue to Hold Shares** – Rule 14a-8(b) also provides that a shareholder proponent must submit a written statement that it intends to continue to hold the requisite securities through the date of the meeting of shareholders. The Company has not received such a statement. To remedy this defect, the Proponent would have to submit a written statement that the Proponent intends to continue to hold the requisite securities, determined in accordance with the foregoing ownership requirement, through the date of the Company's 2022 Annual Meeting.

**Use of a Representative** – Rule 14a-8(b) also requires a shareholder proponent that is using a representative to submit a shareholder proposal on its behalf to provide the company with written documentation that:

- Identifies the company to which the proposal is directed;
- Identifies the annual or special meeting for which the proposal is submitted;
- Identifies the shareholder proponent as the proponent and identifies the person acting on the shareholder proponent's behalf as its representative;
- Includes a statement authorizing the designated representative to submit the proposal and otherwise act on the shareholder proponent's behalf;
- Identifies the specific topic of the proposal to be submitted;
- Includes the shareholder proponent's statement supporting the proposal; and
- Is signed and dated by the shareholder proponent.

The Submission failed to include a statement from the Proponent authorizing Paul M. Ladas of Ladas & Hoopes Law Office, PLC to submit the proposal and otherwise act on the Proponent's behalf. Moreover, the Submission was not signed or dated by the Proponent. To remedy these defects, the Proponent would have to provide the Company with written documentation containing all of the information set forth above, including a signed and dated statement from the

Paul M. Ladas

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Proponent authorizing the designated representative to submit the proposal and otherwise act on the Proponent's behalf.

**Ability to Meet** – Exchange Act Rule 14a-8(b) also requires a shareholder proponent to provide the Company with a written statement that such proponent is able to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. The Proponent has not provided such a statement. To remedy this defect, the Proponent would have to provide the Company with this statement, which must include the Proponent's contact information as well as business days and specific times that the Proponent is available to discuss the proposal with the Company. The Proponent must identify times that are between 9:00 a.m. and 5:30 p.m. in the time zone of the Company's principal executive offices.

**Multiple Proposals** – Exchange Act Rule 14a-8(c) of the Exchange Act provides that no more than one proposal per shareholder may be submitted for a particular meeting of shareholders. The Submission contains three separate sets of shareholder proposals, dated January 20, 2021, March 1, 2021 and March 1, 2021. Specifically, (i) the letter dated January 20, 2021 consists of a clearly separate proposal relating to the Hall of Presidents, which proposal includes multiple nested proposals regarding topics including the location of the Hall of Presidents and the placement of a mannequin of Donald Trump within the Hall of Presidents; (ii) the letter dated March 1, 2021 consists of a clearly separate proposal relating to the placement of a bronze bust of Walt Disney, which proposal includes multiple nested proposals regarding topics including the location of the bust, the content of brass plaques to be manufactured and affixed to a pedestal under the bust and a dedication ceremony to be conducted following installation of the bust; and (iii) the letter dated March 1, 2021 consists of a clearly separate proposal relating to the placement of a bronze statue of Walt Disney, which proposal includes multiple nested proposals regarding topics including the location of the statue, the content of a bronze plaque to be manufactured and affixed to a pedestal under the statue, and a dedication ceremony to which all living U.S. presidents would be invited following installation of the statue. To remedy this deficiency, the Proponent would have to reduce his submission to no more than one proposal for consideration by the Company's shareholders.

**500-Word Limit** – Exchange Act Rule 14a-8(d) of the Exchange Act requires that any shareholder proposal, including any accompanying supporting statement, not exceed 500 words. The proposals (including the supporting statement) contained in the Submission exceed 500 words. To remedy this defect, the Proponent would have to revise the Submission so that the proposal (including the supporting statement) does not exceed 500 words.

As noted above, the Company has no record of having received the proposals by the Company's deadline for submission of such proposals and failure to submit a proposal by the deadline cannot be remedied under Rule 14a-8. If the Proponent has tracking information from the USPS,

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UPS, FedEx or another carrier demonstrating that the letters were received by the Company as required by the instructions contained in the 2021 Proxy Statement before the close of business on September 21, 2021, please provide such information and respond to the above deficiencies. Pursuant to the SEC's rules, any such response to this letter must be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com). The failure to correct the deficiencies (other than the Proponent's failure to submit a proposal by the Company's properly determined deadline, which defect cannot be remedied) within this timeframe will provide the Company with additional bases<sup>5</sup> to exclude the proposals contained in the Submission from the Company's proxy materials for its 2022 Annual Meeting.

If you have any questions with respect to the foregoing, please contact me at the above noted email address or at 202-663-6743. For your reference, I enclose a copy of Rule 14a-8 as well as Staff Legal Bulletins 14, 14F, 14G and 14I.

Sincerely,



Lillian Brown

cc: Jolene Negre, Associate General Counsel and Assistant Secretary  
The Walt Disney Company

Enclosures – Exchange Act Rule 14a-8  
Staff Legal Bulletins 14, 14F, 14G and 14I

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<sup>5</sup> As noted above, such bases are in addition to the substantive bases for exclusion of the proposal under Rule 14a-8 that are not required to be addressed in this response under Rule 14a-8, which substantive bases we reserve the right to assert.





Displaying title 17, up to date as of 10/05/2021. Title 17 was last amended 9/29/2021.



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# Title 17

## § 240.14a-8 Shareholder proposals.

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

- (a) **Question 1:** What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).
- (b) **Question 2:** Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?
  - (1) To be eligible to submit a proposal, you must satisfy the following requirements
    - (i) You must have continuously held:
      - (A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or
      - (B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
      - (C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or
      - (D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and
    - (ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and
    - (iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:
      - (A) Agree to the same dates and times of availability, or

- (B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and
  - (iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that
    - (A) Identifies the company to which the proposal is directed;
    - (B) Identifies the annual or special meeting for which the proposal is submitted;
    - (C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;
    - (D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;
    - (E) Identifies the specific topic of the proposal to be submitted;
    - (F) Includes your statement supporting the proposal; and
    - (G) Is signed and dated by you
  - (v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.
  - (vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.
- (2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:
- (i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.
  - (ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
    - (A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or
    - (B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:
      - (1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;
      - (2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and
      - (3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting

- (3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:
- (i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and
  - (ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.
  - (iii) This paragraph (b)(3) will expire on January 1, 2023.
- (c) **Question 3:** How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.
- (d) **Question 4** How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.
- (e) **Question 5:** What is the deadline for submitting a proposal?
- (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.
  - (2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.
  - (3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.
- (f) **Question 6:** What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?
- (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).
  - (2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.
- (g) **Question 7:** Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.
- (h) **Question 8:** Must I appear personally at the shareholders' meeting to present the proposal?

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

Note to paragraph (i)(1):

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

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

Note to paragraph (i)(2):

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

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

Note to paragraph (i)(9):

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

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

Note to paragraph (i)(10):

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

(11) **Duplication:** If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) **Resubmissions.** If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- (i) Less than 5 percent of the votes cast if previously voted on once;
- (ii) Less than 15 percent of the votes cast if previously voted on twice; or
- (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) **Specific amount of dividends:** If the proposal relates to specific amounts of cash or stock dividends.

(j) **Question 10:** What procedures must the company follow if it intends to exclude my proposal?

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

- (i) The proposal;
- (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
- (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) **Question 11:** May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) **Question 12:** If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

- (1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
- (2) The company is not responsible for the contents of your proposal or supporting statement.

(m) **Question 13:** What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

- (1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.
- (2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
- (3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
  - (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
  - (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

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

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**EFFECTIVE DATE NOTE**

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

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## U.S. Securities and Exchange Commission

### Division of Corporation Finance: Staff Legal Bulletin No. 14

#### Shareholder Proposals

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

**Date:** July 13, 2001

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

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

**Contact Person:** For further information, please contact Jonathan Ingram, Michael Coco, Lillian Cummin or Keir Gumb at (202) 942-2900.

**Note:** This bulletin is also available in MS Word and PDF ([Adobe Acrobat](#)) formats for ease in printing.

- ▶ [Download Staff Legal Bulletin 14 \(Word\) now](#)  
(file size: approx. 239 KB).
- ▶ [Download Staff Legal Bulletin 14 \(PDF\) now](#)  
(file size: approx. 425 KB).

#### A. What is the purpose of this bulletin?

The Division of Corporation Finance processes hundreds of rule 14a-8 no-action requests each year. We believe that companies and shareholders may benefit from information that we can provide based on our experience in processing these requests. Therefore, we prepared this bulletin in order to

- explain the rule 14a-8 no-action process, as well as our role in this process;
- provide guidance to companies and shareholders by expressing our views on some issues and questions that commonly arise under rule 14a-8; and
- suggest ways in which both companies and shareholders can facilitate our review of no-action requests.

Because the substance of each proposal and no-action request differs, this bulletin primarily addresses procedural matters that are common to companies and shareholders. However, we also discuss some substantive matters that are of interest to companies and shareholders alike.

We structured this bulletin in a question and answer format so that it is easier to understand and we can more easily respond to inquiries regarding its contents. The references to "we," "our" and "us" are to the Division of Corporation Finance. You can find a copy of rule 14a-8 in Release No. 34-40018, dated May 21, 1998, which is located on the Commission's website at [www.sec.gov/rules/final/34-40018.htm](http://www.sec.gov/rules/final/34-40018.htm).

## B. Rule 14a 8 and the no action process

### 1. What is rule 14a-8?

Rule 14a-8 provides an opportunity for a shareholder owning a relatively small amount of a company's securities to have his or her proposal placed alongside management's proposals in that company's proxy materials for presentation to a vote at an annual or special meeting of shareholders. It has become increasingly popular because it provides an avenue for communication between shareholders and companies, as well as among shareholders themselves. The rule generally requires the company to include the proposal unless the shareholder has not complied with the rule's procedural requirements or the proposal falls within one of the 13 substantive bases for exclusion described in the table below.

Substantive Basis	Description
Rule 14a 8(i)(1)	The proposal is not a proper subject for action by shareholder under the law of the jurisdiction of the company's organization.
Rule 14a-8(i)(2)	The proposal would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject.
Rule 14a 8(i)(3)	The proposal or supporting statement is contrary to any of the Commission's proxy rule, including rule 14a 9, which prohibit materially false or misleading statement in proxy soliciting material.
Rule 14a-8(i)(4)	The proposal relates to the redress of a personal claim or grievance against the company or any other person, or is designed to result in a benefit to the shareholder, or to further a personal interest, which is not shared by the other shareholders at large.
Rule 14a 8(i)(5)	The proposal relate to operation that account for less than 5% of the company's total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business.
Rule 14a-8(i)(6)	The company would lack the power or authority to implement the proposal.
Rule 14a 8(i)(7)	The proposal deal with a matter relating to the company's ordinary business operation.
Rule 14a-8(i)(8)	The proposal relates to an election for membership on the company's board of directors or analogous governing body.
Rule 14a 8(i)(9)	The proposal directly conflict with one of the company's own proposal to be submitted to shareholder at the same meeting.



Rule 14a-8(i)(10)	The company has already substantially implemented the proposal.
Rule 14a-8(i)(11)	The proposal substantially duplicates another proposal previously submitted to the company by another shareholder that will be included in the company's proxy materials for the same meeting.
Rule 14a-8(i)(12)	The proposal deals with substantially the same subject matter as another proposal or proposals that previously has or have been included in the company's proxy materials within a specified time frame and did not receive a specified percentage of the vote. Please refer to questions and answers F.2, F.3 and F.4 for more complete descriptions of this basis.
Rule 14a-8(i)(13)	The proposal relates to specific amounts of cash or stock dividends.

## 2. How does rule 14a-8 operate?

The rule operates as follows:

- the shareholder must provide a copy of his or her proposal to the company by the deadline imposed by the rule;
- if the company intends to exclude the proposal from its proxy materials, it must submit its reason(s) for doing so to the Commission and simultaneously provide the shareholder with a copy of that submission. This submission to the Commission of reasons for excluding the proposal is commonly referred to as a no-action request;
- the shareholder may, but is not required to, submit a reply to us with a copy to the company; and
- we issue a no-action response that either concurs or does not concur in the company's view regarding exclusion of the proposal.

## 3. What are the deadlines contained in rule 14a-8?

Rule 14a-8 establishes specific deadlines for the shareholder proposal process. The following table briefly describes those deadlines.

120 days before the release date disclosed in the previous year's proxy statement	Proposals for a regularly scheduled annual meeting must be received at the company's principal executive offices not less than 120 calendar days before the release date of the previous year's annual meeting proxy statement. Both the release date and the deadline for receiving rule 14a-8 proposals for the next annual meeting should be identified in that proxy statement.
14-day notice of defect(s)/response to notice of defect(s)	If a company seeks to exclude a proposal because the shareholder has not complied with an eligibility or procedural requirement of rule 14a-8, generally, it must notify the shareholder of the alleged defect(s) within 14 calendar days of receiving the proposal. The shareholder then has 14 calendar days after receiving the notification to respond. Failure to cure the defect(s) or respond in a timely manner may result in exclusion of the proposal.
80 days before the	If a company intends to exclude a proposal from its

company files its definitive proxy statement and form of proxy	proxy materials, it must submit its no-action request to the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission unless it demonstrates "good cause" for missing the deadline. In addition, a company must simultaneously provide the shareholder with a copy of its no-action request.
30 days before the company files its definitive proxy statement and form of proxy	If a proposal appears in a company's proxy materials, the company may elect to include its reasons as to why shareholders should vote against the proposal. This statement of reasons for voting against the proposal is commonly referred to as a statement in opposition. Except as explained in the box immediately below, the company is required to provide the shareholder with a copy of its statement in opposition no later than 30 calendar days before it files its definitive proxy statement and form of proxy.
Five days after the company has received a revised proposal	If our no-action response provides for shareholder revision to the proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, the company must provide the shareholder with a copy of its statement in opposition no later than five calendar days after it receives a copy of the revised proposal.

In addition to the specific deadlines in rule 14a-8, our informal procedures often rely on timely action. For example, if our no-action response requires that the shareholder revise the proposal or supporting statement, our response will afford the shareholder seven calendar days from the date of receiving our response to provide the company with the revisions. In this regard, please refer to questions and answers B.12.a and B.12.b.

#### 4. What is our role in the no-action process?

Our role begins when we receive a no-action request from a company. In these no-action requests, companies often assert that a proposal is excludable under one or more parts of rule 14a-8. We analyze each of the bases for exclusion that a company asserts, as well as any arguments that the shareholder chooses to set forth, and determine whether we concur in the company's view.

The Division of Investment Management processes rule 14a-8 no-action requests submitted by registered investment companies and business development companies.

**Rule 14a-8 no-action requests submitted by registered investment companies and business development companies, as well as shareholder responses to those requests, should be sent to**

U.S. Securities and Exchange Commission  
 Division of Investment Management  
 Office of Chief Counsel  
 450 Fifth Street, N.W.  
 Washington, D.C. 20549

**All other rule 14a-8 no-action requests and shareholder responses to those requests should be sent to**

U.S. Securities and Exchange Commission  
 Division of Corporation Finance

Office of Chief Counsel  
450 Fifth Street, N.W.  
Washington, D.C. 20549

### **5. What factors do we consider in determining whether to concur in a company's view regarding exclusion of a proposal from the proxy statement?**

The company has the burden of demonstrating that it is entitled to exclude a proposal, and we will not consider any basis for exclusion that is not advanced by the company. We analyze the prior no-action letters that a company and a shareholder cite in support of their arguments and, where appropriate, any applicable case law. We also may conduct our own research to determine whether we have issued additional letters that support or do not support the company's and shareholder's positions. Unless a company has demonstrated that it is entitled to exclude a proposal, we will not concur in its view that it may exclude that proposal from its proxy materials.

### **6. Do we base our determinations solely on the subject matter of the proposal?**

No. We consider the specific arguments asserted by the company and the shareholder, the way in which the proposal is drafted and how the arguments and our prior no-action responses apply to the specific proposal and company at issue. Based on these considerations, we may determine that company X may exclude a proposal but company Y cannot exclude a proposal that addresses the same or similar subject matter. The following chart illustrates this point by showing that variations in the language of a proposal, or different bases cited by a company, may result in different responses.

As shown below, the first and second examples deal with virtually identical proposals, but the different company arguments resulted in different responses. In the second and third examples, the companies made similar arguments, but differing language in the proposals resulted in different responses.

<b>Company</b>	<b>Proposal</b>	<b>Bases for exclusion that the company cited</b>	<b>Date of our response</b>	<b>Our response</b>
PG&E Corp.	Adopt a policy that independent directors are appointed to the audit, compensation and nomination committees.	Rule 14a-8(b) only	Feb. 21, 2000	We did not concur in PG&E's view that it could exclude the proposal. PG&E did not demonstrate that the shareholder failed to satisfy the rule's minimum ownership requirements. PG&E included the proposal in its

				proxy materials.
PG&E Corp.	Adopt a bylaw that independent directors are appointed for all future openings on the audit, compensation and nomination committees.	Rule 14a-8(i)(6) only	Jan. 22, 2001	We concurred in PG&E's view that it could exclude the proposal. PG&E demonstrated that it lacked the power or authority to implement the proposal. PG&E did not include the proposal in its proxy materials.
General Motors Corp.	Adopt a bylaw requiring a <i>transition to</i> independent directors for each seat on the audit, compensation and nominating committees as openings occur (emphasis added).	Rules 14a-8(i)(6) and 14a-8(i)(10)	Mar. 22, 2001	We did not concur in GM's view that it could exclude the proposal. GM did not demonstrate that it lacked the power or authority to implement the proposal or that it had substantially implemented the proposal. GM included the proposal in its proxy materials.

### 7. Do we judge the merits of proposals?

No. We have no interest in the merits of a particular proposal. Our concern is that shareholders receive full and accurate information about all proposals that are, or should be, submitted to them under rule 14a-8.

### 8. Are we required to respond to no-action requests?

No. Although we are not required to respond, we have, as a convenience to both companies and shareholders, engaged in the informal practice of expressing our enforcement position on these submissions through the issuance of no-action responses. We do this to assist both companies and shareholders in complying with the proxy rules.

### 9. Will we comment on the subject matter of pending litigation?

No. Where the arguments raised in the company's no-action request are before a court of law, our policy is not to comment on those arguments.

Accordingly, our no-action response will express no view with respect to the company's intention to exclude the proposal from its proxy materials.

#### **10. How do we respond to no-action requests?**

We indicate either that there appears to be some basis for the company's view that it may exclude the proposal or that we are unable to concur in the company's view that it may exclude the proposal. Because the company submits the no-action request, our response is addressed to the company. However, at the time we respond to a no-action request, we provide all related correspondence to both the company and the shareholder. These materials are available in the Commission's Public Reference Room and on commercially available, external databases.

#### **11. What is the effect of our no-action response?**

Our no-action responses only reflect our informal views regarding the application of rule 14a-8. We do not claim to issue "rulings" or "decisions" on proposals that companies indicate they intend to exclude, and our determinations do not and cannot adjudicate the merits of a company's position with respect to a proposal. For example, our decision not to recommend enforcement action does not prohibit a shareholder from pursuing rights that he or she may have against the company in court should management exclude a proposal from the company's proxy materials.

#### **12. What is our role after we issue our no-action response?**

Under rule 14a-8, we have a limited role after we issue our no-action response. In addition, due to the large number of no-action requests that we receive between the months of December and February, the no-action process must be efficient. As described in answer B.2, above, rule 14a-8 envisions a structured process under which the company submits the request, the shareholder may reply and we issue our response. When shareholders and companies deviate from this structure or are unable to resolve differences, our time and resources are diverted and the process breaks down. Based on our experience, this most often occurs as a result of friction between companies and shareholders and their inability to compromise. While we are always available to facilitate the fair and efficient application of the rule, the operation of the rule, as well as the no-action process, suffers when our role changes from an issuer of responses to an arbiter of disputes. The following questions and answers are examples of how we view our limited role after issuance of our no-action response.

##### **a. If our no-action response affords the shareholder additional time to provide documentation of ownership or revise the proposal, but the company does not believe that the documentation or revisions comply with our no-action response, should the company submit a new no-action request?**

No. For example, our no-action response may afford the shareholder seven days to provide documentation demonstrating that he or she satisfies the minimum ownership requirements contained in rule 14a-8(b). If the shareholder provides the required documentation eight days after receiving our no-action response, the company should not submit a new no-action request in order to exclude the proposal. Similarly, if we indicate in our response that the shareholder must provide factual support for a sentence in the supporting statement, the company and the shareholder should work together to determine whether the revised sentence contains appropriate factual support.

##### **b. If our no-action response affords the shareholder an additional seven days to provide documentation of ownership or revise the**

**proposal, who should keep track of when the seven-day period begins to run?**

When our no-action response gives a shareholder time, it is measured from the date the shareholder receives our response. As previously noted in answer B.10, we send our response to both the company and the shareholder. However, the company is responsible for determining when the seven-day period begins to run. In order to avoid controversy, the company should forward a copy of our response to the shareholder by a means that permits the company to prove the date of receipt.

**13. Does rule 14a-8 contemplate any other involvement by us after we issue a no-action response?**

Yes. If a shareholder believes that a company's statement in opposition is materially false or misleading, the shareholder may promptly send a letter to us and the company explaining the reasons for his or her view, as well as a copy of the proposal and statement in opposition. Just as a company has the burden of demonstrating that it is entitled to exclude a proposal, a shareholder should, to the extent possible, provide us with specific factual information that demonstrates the inaccuracy of the company's statement in opposition. We encourage shareholders and companies to work out these differences before contacting us.

**14. What must a company do if, before we have issued a no-action response, the shareholder withdraws the proposal or the company decides to include the proposal in its proxy materials?**

If the company no longer wishes to pursue its no-action request, the company should provide us with a letter as soon as possible withdrawing its no-action request. This allows us to allocate our resources to other pending requests. The company should also provide the shareholder with a copy of the withdrawal letter.

**15. If a company wishes to withdraw a no-action request, what information should its withdrawal letter contain?**

In order for us to process withdrawals efficiently, the company's letter should contain

- a statement that either the shareholder has withdrawn the proposal or the company has decided to include the proposal in its proxy materials;
- if the shareholder has withdrawn the proposal, a copy of the shareholder's signed letter of withdrawal, or some other indication that the shareholder has withdrawn the proposal;
- if there is more than one eligible shareholder, the company must provide documentation that all of the eligible shareholders have agreed to withdraw the proposal;
- if the company has agreed to include a revised version of the proposal in its proxy materials, a statement from the shareholder that he or she accepts the revisions; and
- an affirmative statement that the company is withdrawing its no-action request.

**C. Questions regarding the eligibility and procedural requirements of the rule**

Rule 14a-8 contains eligibility and procedural requirements for shareholders who wish to include a proposal in a company's proxy materials. Below, we

address some of the common questions that arise regarding these requirements.

**1. To be eligible to submit a proposal, rule 14a-8(b) requires the shareholder to 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 meeting for at least one year by the date of submitting the proposal. Also, the shareholder must continue to hold those securities through the date of the meeting. The following questions and answers address issues regarding shareholder eligibility.**

**a. How do you calculate the market value of the shareholder's securities?**

Due to market fluctuations, the value of a shareholder's investment in the company may vary throughout the year before he or she submits the proposal. In order to determine whether the shareholder satisfies the \$2,000 threshold, we 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 \$2,000 or greater, based on the average of the bid and ask prices. Depending on where the company is listed, bid and ask prices may not always be available. For example, bid and ask prices are not provided for companies listed on the New York Stock Exchange. Under these circumstances, companies and shareholders should determine the market value by multiplying the number of securities the shareholder held for the one-year 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.

**b. What type of security must a shareholder own to be eligible to submit a proposal?**

A shareholder must own company securities entitled to be voted on the proposal at the meeting.

**Example**

**A company receives a proposal relating to executive compensation from a shareholder who owns only shares of the company's class B common stock. The company's class B common stock is entitled to vote only on the election of directors. Does the shareholder's ownership of only class B stock provide a basis for the company to exclude the proposal?**

Yes. This would provide a basis for the company to exclude the proposal because the shareholder does not own securities entitled to be voted on the proposal at the meeting.

**c. How should a shareholder's ownership be substantiated?**

Under rule 14a-8(b), there are several ways to determine whether a shareholder has owned the minimum amount of company securities entitled to be voted on the proposal at the meeting for the required time period. If the shareholder appears in the company's records as a registered holder, the company can verify the shareholder's eligibility independently. However, many shareholders hold their securities indirectly through a broker or bank. In the event that the shareholder is not the registered holder, the

shareholder is responsible for proving his or her eligibility to submit a proposal to the company. To do so, the shareholder must do one of two things. He or she can submit a written statement from the record holder of the securities verifying that the shareholder has owned the securities continuously for one year as of the time the shareholder submits the proposal. Alternatively, a shareholder who has filed a Schedule 13D, Schedule 13G, Form 4 or Form 5 reflecting ownership of the securities as of or before the date on which the one-year eligibility period begins may submit copies of these forms and any subsequent amendments reporting a change in ownership level, along with a written statement that he or she has owned the required number of securities continuously for one year as of the time the shareholder submits the proposal.

**(1) Does a written statement from the shareholder's investment adviser verifying that the shareholder held the securities continuously for at least one year before submitting the proposal demonstrate sufficiently continuous ownership of the securities?**

The written statement must be from the record holder of the shareholder's securities, which is usually a broker or bank. Therefore, unless the investment adviser is also the record holder, the statement would be insufficient under the rule.

**(2) Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?**

No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities *continuously* for a period of one year as of the time of submitting the proposal.

**(3) If a shareholder submits his or her proposal to the company on June 1, does a statement from the record holder verifying that the shareholder owned the securities continuously for one year as of May 30 of the same year demonstrate sufficiently continuous ownership of the securities as of the time he or she submitted the proposal?**

No. A shareholder must submit proof from the record holder that the shareholder continuously owned the securities for a period of one year as of the time the shareholder submits the proposal.

**d. Should a shareholder provide the company with a written statement that he or she intends to continue holding the securities through the date of the shareholder meeting?**

Yes. The shareholder must provide this written statement regardless of the method the shareholder uses to prove that he or she continuously owned the securities for a period of one year as of the time the shareholder submits the proposal.

**2. In order for a proposal to be eligible for inclusion in a company's proxy materials, rule 14a-8(d) requires that the proposal, including any accompanying supporting statement, not exceed 500 words. The following questions and answers address issues regarding the 500-word limitation.**

**a. May a company count the words in a proposal's "title" or "heading" in determining whether the proposal exceeds the 500-word limitation?**

Any statements that are, in effect, arguments in support of the proposal constitute part of the supporting statement. Therefore, any "title" or



"heading" that meets this test may be counted toward the 500-word limitation.

**b. Does referencing a website address in the proposal or supporting statement violate the 500-word limitation of rule 14a-8(d)?**

No. Because we count a website address as one word for purposes of the 500-word limitation, we do not believe that a website address raises the concern that rule 14a-8(d) is intended to address. However, a website address could be subject to exclusion if it refers readers to information that may be materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules. In this regard, please refer to question and answer F.1.

**3. Rule 14a-8(e)(2) requires that proposals for a regularly scheduled annual meeting be received at the company's principal executive offices by a date 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. The following questions and answers address a number of issues that come up in applying this provision.**

**a. How do we interpret the phrase "before the date of the company's proxy statement released to shareholders?"**

We interpret this phrase as meaning the approximate date on which the proxy statement and form of proxy were first sent or given to shareholders. For example, if a company having a regularly scheduled annual meeting files its definitive proxy statement and form of proxy with the Commission dated April 1, 2001, but first sends or gives the proxy statement to shareholders on April 15, 2001, as disclosed in its proxy statement, we will refer to the April 15, 2001 date as the release date. The company and shareholders should use April 15, 2001 for purposes of calculating the 120-day deadline in rule 14a-8(e)(2).

**b. How should a company that is planning to have a regularly scheduled annual meeting calculate the deadline for submitting proposals?**

The company should calculate the deadline for submitting proposals as follows:

- start with the release date disclosed in the previous year's proxy statement;
- increase the year by one; and
- count back 120 calendar days.

**Examples**

**If a company is planning to have a regularly scheduled annual meeting in May of 2003 and the company disclosed that the release date for its 2002 proxy statement was April 14, 2002, how should the company calculate the deadline for submitting rule 14a-8 proposals for the company's 2003 annual meeting?**

- The release date disclosed in the company's 2002 proxy statement was April 14, 2002.
- Increasing the year by one, the day to begin the calculation is April 14, 2003.

- "Day one" for purposes of the calculation is April 13, 2003.
- "Day 120" is December 15, 2002.
- The 120-day deadline for the 2003 annual meeting is December 15, 2002.
- A rule 14a-8 proposal received after December 15, 2002 would be untimely.

**If the 120<sup>th</sup> calendar day before the release date disclosed in the previous year's proxy statement is a Saturday, Sunday or federal holiday, does this change the deadline for receiving rule 14a-8 proposals?**

No. The deadline for receiving rule 14a-8 proposals is always the 120<sup>th</sup> calendar day before the release date disclosed in the previous year's proxy statement. Therefore, if the deadline falls on a Saturday, Sunday or federal holiday, the company must disclose this date in its proxy statement, and rule 14a-8 proposals received after business hours would be untimely.

**c. How does a shareholder know where to send his or her proposal?**

The proposal must be received at the company's principal executive offices. Shareholders can find this address in the company's proxy statement. If a shareholder sends a proposal to any other location, even if it is to an agent of the company or to another company location, this would not satisfy the requirement.

**d. How does a shareholder know if his or her proposal has been received by the deadline?**

A shareholder should submit a proposal by a means that allow him or her to determine when the proposal was received at the company's principal executive office.

**4. Rule 14a-8(h)(1) requires that the shareholder or his or her qualified representative attend the shareholders' meeting to present the proposal. Rule 14a-8(h)(3) provides that a company may exclude a shareholder's proposals for two calendar years if the company included one of the shareholder's proposals in its proxy materials for a shareholder meeting, neither the shareholder nor the shareholder's qualified representative appeared and presented the proposal and the shareholder did not demonstrate "good cause" for failing to attend the meeting or present the proposal. The following questions and answers address issues regarding these provisions.**

**a. Does rule 14a-8 require a shareholder to represent in writing before the meeting that he or she, or a qualified representative, will attend the shareholders' meeting to present the proposal?**

No. The Commission stated in Release No. 34-20091 that shareholders are no longer required to provide the company with a written statement of intent to appear and present a shareholder proposal. The Commission eliminated this requirement because it "serve[d] little purpose" and only encumbered shareholders. We, therefore, view it as inappropriate for companies to solicit this type of written statement from shareholders for purposes of rule 14a-8. In particular, we note that shareholders who are unfamiliar with the proxy rule may be misled, even unintentionally, into believing that a written statement of intent is required.

**b. What if a shareholder provides an unsolicited, written statement that neither the shareholder nor his or her qualified representative will attend the meeting to present the proposal? May the company exclude the proposal under this circumstance?**

Yes. Rule 14a-8(i)(3) allows companies to exclude proposals that are contrary to the proxy rules, including rule 14a-8(h)(1). If a shareholder voluntarily provides a written statement evidencing his or her intent to act contrary to rule 14a-8(h)(1), rule 14a-8(i)(3) may serve as a basis for the company to exclude the proposal.

**c. If a company demonstrates that it is entitled to exclude a proposal under rule 14a-8(h)(3), can the company request that we issue a no-action response that covers both calendar years?**

Yes. For example, assume that, without "good cause," neither the shareholder nor the shareholder's representative attended the company's 2001 annual meeting to present the shareholder's proposal, and the shareholder then submits a proposal for inclusion in the company's 2002 proxy materials. If the company seeks to exclude the 2002 proposal under rule 14a-8(h)(3), it may concurrently request forward-looking relief for any proposal(s) that the shareholder may submit for inclusion in the company's 2003 proxy materials. If we grant the company's request and the company receives a proposal from the shareholder in connection with the 2003 annual meeting, the company still has an obligation under rule 14a-8(j) to notify us and the shareholder of its intention to exclude the shareholder's proposal from its proxy materials for that meeting. Although we will retain that notice in our records, we will not issue a no-action response.

**5. In addition to rule 14a-8(h)(3), are there any other circumstances in which we will grant forward-looking relief to a company under rule 14a-8?**

Yes. Rule 14a-8(i)(4) allows companies to exclude a proposal if it relates to the redress of a personal claim or grievance against the company or any other person or is designed to result in a benefit to the shareholder, or to further a personal interest, that is not shared by the other shareholders at large. In rare circumstances, we may grant forward-looking relief if a company satisfies its burden of demonstrating that the shareholder is abusing rule 14a-8 by continually submitting similar proposals that relate to a particular personal claim or grievance. As in answer C.4.c, above, if we grant this relief, the company still has an obligation under rule 14a-8(j) to notify us and the shareholder of its intention to exclude the shareholder's proposal(s) from its proxy materials. Although will retain that notice in our records, we will not issue a no-action response.

**6. What must a company do in order to exclude a proposal that fails to comply with the eligibility or procedural requirements of the rule?**

If a shareholder fails to follow the eligibility or procedural requirements of rule 14a-8, the rule provides procedures for the company to follow if it wishes to exclude the proposal. For example, rule 14a-8(f) provides that a company may exclude a proposal from its proxy materials due to eligibility or procedural defects if

- within 14 calendar days of receiving the proposal, it provides the shareholder with written notice of the defect(s), including the time frame for responding; and
- the shareholder fails to respond to this notice within 14 calendar days of receiving the notice of the defect(s) or the shareholder timely responds but does not cure the eligibility or procedural defect(s).

Section G.3 - Eligibility and Procedural Issues, below, contains information that companies may want to consider in drafting these notices. If the shareholder does not timely respond or remedy the defect(s) and the company intends to exclude the proposal, the company still must submit, to us and to the shareholder, a copy of the proposal and its reasons for excluding the proposal.

**a. Should a company's notices of defect(s) give different levels of information to different shareholders depending on the company's perception of the shareholder's sophistication in rule 14a-8?**

No. Companies should not assume that any shareholder is familiar with the proxy rules or give different levels of information to different shareholders based on the fact that the shareholder may or may not be a frequent or "experienced" shareholder proponent.

**b. Should companies instruct shareholders to respond to the notice of defect(s) by a specified date rather than indicating that shareholders have 14 calendar days after receiving the notice to respond?**

No. Rule 14a-8(f) provides that shareholders must respond within 14 calendar days of receiving notice of the alleged eligibility or procedural defect(s). If the company provides a specific date by which the shareholder must submit his or her response, it is possible that the deadline set by the company will be shorter than the 14-day period required by rule 14a-8(f). For example, events could delay the shareholder's receipt of the notice. As such, if a company sets a specific date for the shareholder to respond and that date does not result in the shareholder having 14 calendar days after receiving the notice to respond, we do not believe that the company may rely on rule 14a-8(f) to exclude the proposal.

**c. Are there any circumstances under which a company does not have to provide the shareholder with a notice of defect(s)? For example, what should the company do if the shareholder indicates that he or she does not own at least \$2,000 in market value, or 1%, of the company's securities?**

The company does not need to provide the shareholder with a notice of defect(s) if the defect(s) cannot be remedied. In the example provided in the question, because the shareholder cannot remedy this defect after the fact, no notice of the defect would be required. The same would apply, for example, if

- the shareholder indicated that he or she had owned securities entitled to be voted on the proposal for a period of less than one year before submitting the proposal;
- the shareholder indicated that he or she did not own securities entitled to be voted on the proposal at the meeting;
- the shareholder failed to submit a proposal by the company's properly determined deadline; or
- the shareholder, or his or her qualified representative, failed to attend the meeting or present one of the shareholder's proposals that was included in the company's proxy materials during the past two calendar years.

In all of these circumstances, the company must still submit its reasons regarding exclusion of the proposal to us and the shareholder. The shareholder may, but is not required to, submit a reply to us with a copy to the company.

## **D. Questions regarding the inclusion of shareholder names in proxy statements**

### **1. If the shareholder's proposal will appear in the company's proxy statement, is the company required to disclose the shareholder's name?**

No. A company is not required to disclose the identity of a shareholder proponent in its proxy statement. Rather, a company can indicate that it will provide the information to shareholders promptly upon receiving an oral or written request.

### **2. May a shareholder request that the company not disclose his or her name in the proxy statement?**

Yes. However, the company has the discretion not to honor the request. In this regard, if the company chooses to include the shareholder proponent's name in the proxy statement, rule 14a-8(l)(1) requires that the company also include that shareholder proponent's address and the number of the company's voting securities that the shareholder proponent holds.

### **3. If a shareholder includes his or her e-mail address in the proposal or supporting statement, may the company exclude the e-mail address?**

Yes. We view an e-mail address as equivalent to the shareholder proponent's name and address and, under rule 14a-8(l)(1), a company may exclude the shareholder's name and address from the proxy statement.

## **E. Questions regarding revisions to proposals and supporting statements**

In this section, we first discuss the purpose for allowing shareholders to revise portions of a proposal and supporting statement. Second, we express our views with regard to revisions that a shareholder makes to his or her proposal before we receive a company's no-action request, as well as during the course of our review of a no-action request. Finally, we address the circumstances under which our responses may allow shareholders to make revisions to their proposals and supporting statements.

### **1. Why do our no-action responses sometimes permit shareholders to make revisions to their proposals and supporting statements?**

There is no provision in rule 14a-8 that allows a shareholder to revise his or her proposal and supporting statement. However, we have a 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. We adopted this practice to deal with proposals that generally comply with the substantive requirements of the rule, but contain some relatively minor defects that are easily corrected. In these circumstances, we believe that the concepts underlying Exchange Act section 14(a) are best served by affording an opportunity to correct these kinds of defects.

Despite the intentions underlying our revisions practice, we spend an increasingly large portion of our time and resources each proxy season responding to no-action requests regarding proposals or supporting statements that have obvious deficiencies in terms of accuracy, clarity or relevance. This is not beneficial to all participants in the process and diverts resources away from analyzing core issues arising under rule 14a-8 that are matters of interest to companies and shareholders alike. Therefore, when a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, we may find it

appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading.

**2. If a company has received a timely proposal and the shareholder makes revisions to the proposal before the company submits its no action request, must the company accept those revisions?**

No, but it *may* accept the shareholder's revisions. If the changes are such that the revised proposal is actually a different proposal from the original, the revised proposal could be subject to exclusion under

- rule 14a-8(c), which provides that a shareholder may submit no more than one proposal to a company for a particular shareholders' meeting; and
- rule 14a-8(e), which imposes a deadline for submitting shareholder proposals.

**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.

**4. If the shareholder decides to make revisions to his or her proposal after the company has submitted its no action request, should the shareholder provide a copy of the revisions to us?**

Yes. All shareholder correspondence relating to the no-action request should be sent to us and the company. However, under rule 14a-8, no-action requests and shareholder responses to those requests are submitted to us. The proposals themselves are not submitted to us. Because proposals are submitted to companies for inclusion in their proxy materials, we will not address revised proposals unless the company chooses to acknowledge the changes.

**5. When do our responses afford shareholders an opportunity to revise their proposals and supporting statements?**

We may, under limited circumstance, permit shareholder to revise their proposal and supporting statement. The following table provides examples of the rule 14a-8(b) under which we typically allow revision, as well as the type of permissible change:

<b>Basis</b>	<b>Type of revision that we may permit</b>
Rule 14a-8(i)(1)	When a proposal would be binding on the company if approved by shareholders, we may permit the shareholder to revise the proposal to a recommendation or request that the board of directors take the action specified in the proposal.
Rule 14a-8(i)(2)	If implementing the proposal would require the company to breach existing contractual obligation, we may permit

	the shareholder to revise the proposal so that it applies only to the company's future contractual obligations.
Rule 14a-8(i)(3)	If the proposal contains specific statements that may be materially false or misleading or irrelevant to the subject matter of the proposal, we may permit the shareholder to revise or delete these statements. Also, if the proposal or supporting statement contains vague terms, we may, in rare circumstances, permit the shareholder to clarify these terms.
Rule 14a-8(i)(6)	Same as rule 14a-8(i)(2), above.
Rule 14a-8(i)(7)	If it is unclear whether the proposal focuses on senior executive compensation or director compensation, as opposed to general employee compensation, we may permit the shareholder to make this clarification.
Rule 14a-8(i)(8)	If implementing the proposal would disqualify directors previously elected from completing their terms on the board or disqualify nominees for directors at the upcoming shareholder meeting, we may permit the shareholder to revise the proposal so that it will not affect the unexpired terms of directors elected to the board at or prior to the upcoming shareholder meeting.
Rule 14a-8(i)(9)	Same as rule 14a-8(i)(8), above.

## F. Other questions that arise under rule 14a 8

### 1. May a reference to a website address in the proposal or supporting statement be subject to exclusion under the rule?

Yes. In some circumstances, we may concur in a company's view that it may exclude a website address under rule 14a-8(i)(3) because information contained on the website may be materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules. Companies seeking to exclude a website address under rule 14a-8(i)(3) should specifically indicate why they believe information contained on the particular website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules.

### 2. Rule 14a 8(i)(12) provides a basis for a company to exclude a proposal dealing with substantially the same subject matter as another proposal or proposals that previously has or have been included in the company's proxy materials. How does rule 14a 8(i)(12) operate?

Rule 14a-8(i)(12) operates as follows:

- a. First, the company should look back three calendar years to see if it previously included a proposal or proposals dealing with substantially the same subject matter. If it has not, rule 14a-8(i)(12) is not available as a basis to exclude a proposal from this year's proxy materials.
- b. If it has, the company should then count the number of times that a proposal or proposal dealing with substantially the same subject matter was or were included over the preceding five calendar years.
- c. Finally, the company should look at the percentage of the shareholder vote that a proposal dealing with substantially the same subject matter received the last time it was included.

- If the company included a proposal dealing with substantially the same subject matter only once in the preceding five calendar years, the company may exclude a proposal from this year's proxy materials under rule 14a-8(i)(12)(i) if it received less than 3% of the vote the last time that it was voted on.
- If the company included a proposal or proposals dealing with substantially the same subject matter twice in the preceding five calendar year, the company may exclude a proposal from this year's proxy material under rule 14a-8(i)(12)(ii) if it received less than 6% of the vote the last time that it was voted on.
- If the company included a proposal or proposals dealing with substantially the same subject matter three or more times in the preceding five calendar years, the company may exclude a proposal from this year's proxy materials under rule 14a-8(i)(12)(iii) if it received less than 10% of the vote the last time that it was voted on.

**3. Rule 14a-8(i)(12) refers to calendar years. How do we interpret calendar years for this purpose?**

Because a calendar year runs from January 1 through December 31, we do not look at the specific date of company meeting. Instead, we look at the calendar year in which a meeting was held. For example, a company scheduled a meeting for April 25, 2002. In looking back three calendar years to determine if it previously had included a proposal or proposals dealing with substantially the same subject matter, any meeting held in calendar year 1999, 2000 or 2001 which would include any meeting held between January 1, 1999 and December 31, 2001 would be relevant under rule 14a-8(i)(12).

**Examples**

**A company receives a proposal for inclusion in its 2002 proxy materials dealing with substantially the same subject matter as proposals that were voted on at the following shareholder meetings:**

Calendar Year	1997	1998	1999	2000	2001	2002	2003
Voted on?	Yes	No	No	Yes	No		
Percentage	%	N/A	N/A	%	N/A		

**May the company exclude the proposal from its 2002 proxy materials in reliance on rule 14a-8(i)(12)?**

Yes. The company would be entitled to exclude the proposal under rule 14a-8(i)(12)(ii). First, calendar year 2000, the last time the company included a proposal dealing with substantially the same subject matter, is within the prescribed three calendar years. Second, the company included proposals dealing with substantially the same subject matter twice within the preceding five calendar years, specifically, in 1997 and 2000. Finally, the proposal received less than 6% of the vote on its last submission to shareholders in 2000. Therefore, rule 14a-8(i)(12)(ii), which permits exclusion when a company has included a proposal or proposals dealing with substantially the same subject matter twice in the preceding five calendar years and that proposal received less than 6% of the shareholder vote the last time it was voted on, would serve as a basis for excluding the proposal.



**If the company excluded the proposal from its 2002 proxy materials and then received an identical proposal for inclusion in its 2003 proxy materials, may the company exclude the proposal from its 2003 proxy materials in reliance on rule 14a-8(i)(12)?**

No. Calendar year 2000, the last time the company included a proposal dealing with substantially the same subject matter, is still within the prescribed three calendar years. However, 2000 was the only time within the preceding five calendar years that the company included a proposal dealing with substantially the same subject matter, and it received more than 3% of the vote at the 2000 meeting. Therefore, the company would not be entitled to exclude the proposal under rule 14a-8(i)(12)(i).

**4. How do we count votes under rule 14a-8(i)(12)?**

Only votes for and against a proposal are included in the calculation of the shareholder vote of that proposal. Abstentions and broker non-votes are not included in this calculation.

**Example**

**A proposal received the following votes at the company's last annual meeting:**

- **5,000 votes for the proposal;**
- **3,000 votes against the proposal;**
- **1,000 broker non votes; and**
- **1,000 abstentions.**

**How is the shareholder vote of this proposal calculated for purposes of rule 14a-8(i)(12)?**

This percentage is calculated as follows:

$$\frac{\text{Votes for the Proposal}}{\text{(Votes Against the Proposal + Votes for the Proposal)}} = \text{Voting Percentage}$$

Applying this formula to the facts above, the proposal received 62.5% of the vote.

$$\frac{5,000}{3,000 + 5,000} = .625$$

**G. How can companies and shareholders facilitate our processing of no-action requests or take steps to avoid the submission of no-action requests?**

**Eligibility and procedural issues**

1. Before submitting a proposal to a company, a shareholder should look in the company's most recent proxy statement to find the deadline for submitting rule 14a-8 proposals. To avoid exclusion on the basis of untimeliness, a shareholder should submit his or her proposal well in advance of the deadline and by a means that allow the shareholder to demonstrate the date the proposal was received at the company's principal executive office.

2. A shareholder who intends to submit a written statement from the record holder of the shareholder's securities to verify continuous ownership of the securities should contact the record holder before submitting a proposal to ensure that the record holder will provide the written statement and knows how to provide a written statement that will satisfy the requirements of rule 14a-8(b).

3. Companies should consider the following guidelines when drafting a letter to notify a shareholder of perceived eligibility or procedural defects:

- provide adequate detail about what the shareholder must do to remedy all eligibility or procedural defects;
- although not required, consider including a copy of rule 14a-8 with the notice of defect(s);
- explicitly state that the shareholder must respond to the company's notice within 14 calendar days of receiving the notice of defect(s); and
- send the notification by a means that allows the company to determine when the shareholder received the letter.

4. Rule 14a-8(f) provides that a shareholder's response to a company's notice of defect(s) must be postmarked, or transmitted electronically, no later than 14 days from the date the shareholder received the notice of defect(s). Therefore, a shareholder should respond to the company's notice of defect(s) by a means that allows the shareholder to demonstrate when he or she responded to the notice.

5. Rather than waiting until the deadline for submitting a no-action request, a company should submit a no-action request as soon as possible after it receives a proposal and determines that it will seek a no-action response.

6. Companies that will be submitting multiple no-action requests should submit their requests individually or in small groups rather than waiting and sending them all at once. We receive the heaviest volume of no-action requests between December and February of each year. Therefore, we are not able to process no-action requests as quickly during this period. Our experience shows that we often receive 70 to 80 no-action requests a week during our peak period and, at most, we can respond to 30 to 40 requests in any given week. Therefore, companies that wait until December through February to submit all of their requests will have to wait longer for a response.

7. Companies should provide us with all relevant correspondence when submitting the no-action request, including the shareholder proposal, any cover letter that the shareholder provided with the proposal, the shareholder's address and any other correspondence the company has exchanged with the shareholder relating to the proposal. If the company provided the shareholder with notice of a perceived eligibility or procedural defect, the company should include a copy of the notice, documentation demonstrating when the company notified the shareholder, documentation demonstrating when the shareholder received the notice and any shareholder response to the notice.

8. If a shareholder intends to reply to the company's no-action request, he or she should try to send the reply as soon as possible after the company submits its no-action request.

9. Both companies and shareholders should promptly forward to each other copies of all correspondence that is provided to us in connection with no-action requests.

10. Due to the significant volume of no-action requests and phone calls we receive during the proxy season, companies should limit their calls to us regarding the status of their no-action request.

11. Shareholders who write to us to object to a company's statement in opposition to the shareholder's proposal also should provide us with copies of the proposal as it will be printed in the company's proxy statement and the company's proposed statement in opposition.

### **Substantive issues**

1. When drafting a proposal, shareholders should consider whether the proposal, if approved by shareholders, would be binding on the company. In our experience, we have found that proposals that are binding on the company face a much greater likelihood of being improper under state law and, therefore, excludable under rule 14a-8(i)(1).

2. When drafting a proposal, shareholders should consider what actions are within a company's power or authority. Proposals often request or require action by the company that would violate law or would not be within the power or authority of the company to implement.

3. When drafting a proposal, shareholders should consider whether the proposal would require the company to breach existing contracts. In our experience, we have found that proposals that would result in the company breaching existing contractual obligations face a much greater likelihood of being excludable under rule 14a-8(i)(2), rule 14a-8(i)(6), or both. This is because implementing the proposals may require the company to violate law or may not be within the power or authority of the company to implement.

4. In drafting a proposal and supporting statement, shareholders should avoid making unsupported assertions of fact. To this end, shareholders should provide factual support for statements in the proposal and supporting statement or phrase statements as their opinion where appropriate.

5. Companies should provide a supporting opinion of counsel when the reasons for exclusion are based on matters of state or foreign law. In determining how much weight to afford these opinions, one factor we consider is whether counsel is licensed to practice law in the jurisdiction where the law is at issue. Shareholders who wish to contest a company's reliance on a legal opinion as to matters of state or foreign law should, but are not required to, submit an opinion of counsel supporting their position.

### **H. Conclusion**

Whether or not you are familiar with rule 14a-8, we hope that this bulletin helps you gain a better understanding of the rule, the no-action request process and our views on some issues and questions that commonly arise during our review of no-action requests. While not exhaustive, we believe that the bulletin contains information that will assist both companies and shareholders in ensuring that the rule operates more effectively. Please contact us with any questions that you may have regarding information contained in the bulletin.

<http://www.sec.gov/interps/legal/cfslb14.htm>

# 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.

**Contact** For further information, please contact the Division’s Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at [https://www.sec.gov/forms/corp\\_fin\\_interpretive](https://www.sec.gov/forms/corp_fin_interpretive).

### A. The purpose of this bulletin

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

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

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

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

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

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

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

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

## 2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.<sup>4</sup> The names of the 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 participant having a position in the company's securities and the number of securities held by each DTC participant on that date.<sup>5</sup>

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.<sup>6</sup> Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the position against its own or its transfer agent's record or against DTC's securities position listing.

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

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,<sup>8</sup> under which brokers and banks

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

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

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

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

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

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

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

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

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

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

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

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

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

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

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

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

## D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>2</sup> For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] (“Proxy Mechanics Concept Release”), at Section II.A. The term “beneficial owner” does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to “beneficial owner” and “beneficial ownership” in Sections 13 and 16 of the



Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 (“The term ‘beneficial owner’ when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.”).

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

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

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

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

<sup>7</sup> See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company’s non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

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

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

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

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

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

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

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

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

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

*Modified: Oct. 18, 2011*

# Shareholder Proposals

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

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

**Date** October 16, 2012

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

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

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

### A. The purpose of this bulletin

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

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

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

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

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

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

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

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

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letter from entities that were not themselves DTC participants, but were affiliates of DTC participants.<sup>1</sup> By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers’ ownership of securities. Accordingly, we are of the view that, for purpose of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

## 2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not broker or bank maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8’s documentation requirement by submitting a proof of ownership letter from that securities intermediary.<sup>2</sup> If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

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

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

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

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

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

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

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

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

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

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposal and supporting statements.<sup>4</sup>

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

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

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

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

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

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

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

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

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

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

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

*Modified: Oct. 16, 2012*

# Shareholder Proposals

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

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

**Date** November 1, 2017

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

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

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

## A. The purpose of this bulletin

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

- the scope and application of Rule 14a-8(i)(7);
- the scope and application of Rule 14a-8(i)(5);
- proposals submitted on behalf of shareholder; and
- the use of graph and image content with Rule 14a-8(d)

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

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

### 1. Background

Rule 14a-8(i)(7), the “ordinary business” exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operation.” 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.”<sup>[1]</sup>

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

The Commission has stated that the policy underlying the “ordinary business” exception rests on two central considerations <sup>[2]</sup> The first relates to the proposal’s subject matter; the second, the degree to which the proposal “micromanages” the company. Under the first consideration, proposals that raise matters that are “so fundamental

to management' ability to run a company on a day to day basis that they could not, as a practical matter, be subject to direct shareholder oversight" may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote. [3] Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operation. [4]

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

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

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

### 1. Background

Rule 14a-8(i)(5), the "economic relevance" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "relate[s] to operation[s] which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business."

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

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concern, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal." [5] The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today. [6] In adopting the rule, the Commission characterized it as relating "to proposal[s] concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting." [7]

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



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

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

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

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

Where a proposal’s significance to a company’s business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is “otherwise significantly related to the company’s business.”<sup>[8]</sup> For example, the proponent can provide information demonstrating that the proposal “may have a significant impact on other segments of the issuer’s business or subject the issuer to significant contingent liabilities.”<sup>[9]</sup> The proponent could continue to raise social or ethical issues in its argument, but it would need to tie those to a significant effect on the company’s business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the “total mix” of information about the issuer.

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

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

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

## D. Proposals submitted on behalf of shareholders

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

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

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

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

## E. Rule 14a-8(d)

### 1. Background

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

### 2. The use of images in shareholder proposals

Questions have recently arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.<sup>[13]</sup> In two recent no-action decisions,<sup>[14]</sup> the Division expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.<sup>[15]</sup> 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.<sup>[16]</sup>

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.<sup>[17]</sup>

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.

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

[2] *Id.*

[3] *Id.*

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

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

[6] *Id.*

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

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

[9] Release No. 34-19135.

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

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

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

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

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

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

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

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

