

VIA SEC ONLINE PORTAL

December 18, 2023

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

RE: The Hershey Company – 2024 Annual Meeting
Exclusion of Stockholder Proposal of Raymond Butterfield

Ladies and Gentlemen:

We are writing on behalf of our client The Hershey Company, a Delaware corporation (“*Hershey*” or the “*Company*”), pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), to notify the Staff of the Division of Corporation Finance (the “*Staff*”) of the Securities and Exchange Commission (the “*Commission*”) of Hershey’s intention to exclude the stockholder proposal and supporting statement (the “*Proposal*”) submitted by Raymond Butterfield (the “*Proponent*”) from the proxy materials to be distributed by Hershey in connection with its 2024 annual meeting of stockholders (the “*2024 proxy materials*”).

In accordance with Section C of Staff Legal Bulletin No. 14D, dated November 7, 2008 (“*SLB 14D*”), we are e-mailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of Hershey’s intent to exclude the Proposal from the 2024 proxy materials. Hershey expects to file its definitive proxy statement with the Commission on or about March 26, 2024, and this letter is being filed with the Commission no later than 80 calendar days before that date in accordance with Rule 14a-8(j).

Rule 14a-8(k) promulgated under the Exchange Act and Section E of SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the stockholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if he submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned.

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The Proposal

The text of the resolution contained in the Proposal is set forth below:

Resolved: The company (Hershey) shall not promote political or social causes in any of its activities, advertising or candy wrappers. If any of these activities are promoted the company shall immediately recall these products and advertising.

Basis for Exclusion

As discussed in more detail below, the Company respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2024 proxy materials pursuant to:

- Rule 14a-8(f) promulgated under the Exchange Act, because the Proponent failed to provide timely requisite proof of his continuous ownership of the Company's common stock;
- Rule 14a-8(b) promulgated under the Exchange Act, because the Proponent failed to provide a written statement that he was available to meet with the Company; and
- Rule 14a-8(c) promulgated under the Exchange Act, because the Proposal constitutes multiple proposals.

Background

The Proponent submitted the Proposal to the Company in a letter dated March 9, 2023, attached hereto as Exhibit A, which was received by the Company via regular mail on March 14, 2023. The Proposal did not include (i) verification of the Proponent's ownership of the requisite number of Company shares from the record owner of those shares, (ii) a written statement that the Proponent intends to continue to hold the requisite number of Company shares through the date of the Company's 2024 annual meeting of stockholders, or (iii) a written statement that the Proponent was available to meet with the Company. In addition, the Proposal contained multiple proposals. The Company reviewed its stock records, which did not indicate that the Proponent was the record owner of any shares of the Company's common stock.

Accordingly, on March 23, 2023, within 14 days of the date that the Company received the Proposal, the Company sent the Proponent a letter providing notice of the procedural deficiencies as required by Rule 14a-8(f) (the "**Deficiency Letter**"). In the Deficiency Letter,

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attached hereto as Exhibit B, the Company informed the Proponent of the requirements of Rule 14a-8 and how the Proponent could cure the procedural deficiencies. Among other things, the Deficiency Letter stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient shares of the Company's common stock;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including the requirement for the statement to verify that the Proponent "continuously held the required number of Company shares for the three-, two- or one-year period, as applicable, preceding and including March 9, 2023";
- that the Proponent must submit verification of the Proponent's ownership of the requisite number of Company shares from the record owner of those shares;
- that the Proponent is required under Rule 14a-8(b) to provide a statement of his intent to continue ownership of the required number of shares of the Company's common stock through the date of the Company's 2024 annual meeting of stockholders;
- that the Proponent must submit a written statement providing his availability to meet with the Company as required under Rule 14a-8(b);
- that the Proponent may submit no more than one proposal to a company for a particular shareholder meeting under Rule 14a-8(c); and
- that any response to the Deficiency Letter had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Deficiency Letter was received.

The Deficiency Letter also included a copy of Rule 14a-8, Staff Legal Bulletin No. 14F, dated October 18, 2011 ("**SLB 14F**"), and Staff Legal Bulletin No. 14L, dated November 3, 2021. The Company sent the Deficiency Letter to the Proponent via United Postal Service on March 23, 2023 and received confirmation that it was received by the Proponent on March 24, 2023. See Exhibit C attached hereto.

On April 2, 2023, the Proponent sent an e-mail to an individual at Charles Schwab (the "**Broker**"), copying the undersigned, and asking the Broker to e-mail the undersigned

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verification of the Proponent's continuous ownership of 400 shares of the Company's common stock for the past 5 years. Shortly thereafter, on April 2, 2023, the Proponent sent the undersigned a second e-mail, including an attachment reflecting that the Proponent paid \$37.00 and \$42.00 for his shares of the Company's common stock and stating that, in the past 5 years, the lowest stock price at which the Company's common stock traded was \$88.00. The e-mails from the Proponent (together, the "***Proponent E-mails***") are attached hereto as Exhibit D.

On April 13, 2023, the Company received a letter from the Proponent, dated April 7, 2023, stating that the Proponent intends to hold his Hershey stock "for the next 20 years" and could be contacted "during normal business hours" by calling the phone number provided (the "***Proponent Letter***"). The Proponent Letter is attached hereto as Exhibit E.

The Company has received no further correspondence from the Proponent or the Broker.

Legal Analysis

- I. ***The Proposal may be excluded pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) because the Proponent failed to establish the requisite eligibility to submit the Proposal in a timely manner after receiving notice of such deficiency.***

Rule 14a-8(f)(1) clearly permits the Company to exclude the Proposal from its 2024 proxy materials because the Proponent failed to substantiate the Proponent's eligibility to submit the Proposal under Rule 14a-8(b)(1) within 14 calendar days of receiving the Deficiency Letter. Rule 14a-8(b)(1)(i) and (ii) provide, in relevant part, that in order to be eligible to submit a proposal, a stockholder must have met each of the following requirements:

- Proof of Continuous Ownership (Rule 14a-8(b)(1)(i)). The stockholder must have continuously held at least \$2,000, \$15,000 or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years or one year, respectively. Staff Legal Bulletin No. 14, dated July 13, 2001 ("***SLB 14***"), specifies that when the stockholder is not the registered holder, the stockholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the stockholder may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c of SLB 14. Further, the Staff has clarified that these proof of ownership letters must come from the "record" holder of the proponent's shares, and that only Depository

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Trust Company (“*DTC*”) participants are viewed as record holders of securities that are deposited at DTC. *See* SLB 14F.

- Written Statement of Intent to Hold (Rule 14a-8(b)(1)(ii)). The stockholder’s proof of continuous ownership must be accompanied by a written statement that the stockholder intends to hold the requisite amount of securities through the date of the shareholders’ meeting for which the proposal is submitted. *See also* SLB 14 (“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.”).

In accordance with Rule 14a-8(f)(1), the Deficiency Letter alerted the Proponent to these eligibility requirements, informed the Proponent that he failed to satisfy them and stated how the Proponent could cure the deficiency.

However, despite the information and instructions provided by the Company in the Deficiency Letter, the Proponent failed to remedy the defects, because he did not (i) provide the Company with sufficient proof of continuous ownership of the Company’s common stock from the “record” holder of those shares or (ii) provide the Company with a written statement of his intent to hold the requisite amount of Company shares through the date of the 2024 annual meeting of stockholders. Instead, the Proponent provided only (A) the Proponent E-mails, which included a “screen shot” of the Proponent’s Contributory IRA statement for the month of March 2023 and (B) the Proponent Letter, which included a written statement of his intent to hold his shares of the Company’s common stock “for the next 20 years.” The Proponent E-mails are insufficient for purposes of Rule 14a-8(b)(1)(i) in that they are not a written statement of continuous ownership from the “record” holder of the Proponent’s securities, in accordance with Rule 14a-8(b)(2)(ii)(A). Similarly, the Proponent Letter is insufficient for purposes of Rule 14a-8(b)(1)(ii) in that it does not identify the shareholders’ meeting for which the Company’s shares will be held, in accordance with Rule 14a-8(b)(2)(ii)(A).

The Staff has consistently concurred in the exclusion of proposals where proponents have failed to include sufficient proof of beneficial ownership of the requisite amount of company shares for the required period and have failed, following a timely and proper request by the company, to provide evidence of eligibility under Rule 14a-8(b) and Rule 14a-8(f)(1) within 14 calendar days of receiving notice of the deficiency. *See AMC Networks Inc.* (Apr. 4, 2023); *Astronics Corporation* (Mar. 28, 2023); *CDW Corporation* (Mar. 28, 2023); *CVS Health Corporation* (Mar. 28, 2023); *ANSYS, Inc.* (Mar. 15, 2023); *The Coca-Cola Company* (Feb. 21, 2023); *FedEx Corporation* (July 5, 2016); *General Mills, Inc.* (June 17, 2016); *General Electric*

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Company (Jan. 29, 2016); *Medidata Solutions, Inc.* (Dec. 12, 2014); *PepsiCo, Inc.* (Jan. 11, 2013); *Cisco Systems, Inc.* (Jul. 11, 2011); *Amazon.com, Inc.* (Mar. 29, 2011); *Qwest Communications International, Inc.* (Feb. 28, 2008); *CSK Auto Corp.* (Jan. 29, 2007); *Johnson & Johnson* (Jan. 3, 2005); and *Agilent Technologies* (Nov. 19, 2004).

The Staff has also consistently permitted the exclusion of shareholder proposals where the proponent failed to provide the requisite written statement of intent to continue holding the requisite amount of shares through the date of the shareholder meeting at which the proposal will be voted on by shareholders. For example, in *Visa, Inc.* (Oct. 30, 2019), a purported proposal representative submitted a proposal to the company, and the company did not receive information regarding the identity or ownership of the underlying proponents. In response to a deficiency notice, the representative submitted four broker letters regarding three purported proponents but failed to provide a statement of intent from any such proponent. The Staff concurred with the proposal's exclusion, stating that "[R]ule 14a-8(b) requires a proponent to provide a written statement that the proponent intends to hold his or her company stock through the date of the shareholder meeting" and that "[i]t appears that the Proponents failed to provide this statement." In *McDonald's Corp.* (Feb. 9, 2017), the Staff also concurred with the exclusion of a shareholder proposal where the proponent's submission did not include a statement of intent to hold sufficient company stock through the date of the applicable annual meeting and the proponent failed to cure the deficiency, noting that "the proponent failed to provide this statement within 14 calendar days from the date the proponent received [the company's] request under rule 14a-8(f)." See also *The Dow Chemical Co.* (Feb. 13, 2015); *General Mills, Inc.* (June 25, 2013); *Johnson & Johnson* (Jan. 9, 2012); *CNB Corp.* (Feb. 16, 2011); *AT&T Corp.* (Jan. 3, 2013); *International Business Machines Corp.* (Dec. 28, 2010); *Fortune Brands, Inc.* (Apr. 7, 2009); *Rite Aid Corp.* (Mar. 26, 2009); *Exelon Corp.* (Feb. 23, 2009); *Fortune Brands, Inc.* (Feb. 12, 2009); *Sempra Energy* (Jan. 21, 2009); *SBC Communications Inc.* (Jan. 2, 2004); *IVAX Corp.* (Mar. 20, 2003); *Avaya, Inc.* (July 19, 2002); *Exxon Mobil Corp.* (Jan. 16, 2001); *McDonnell Douglas Corp.* (Feb. 4, 1997) (in each case, the Staff concurred with the exclusion of a shareholder proposal where the proponent did not provide a written statement of intent to hold the requisite number of company shares through the date of the meeting at which the proposal would be voted on by shareholders).

Consistent with the precedent cited above, the Proposal is excludable because, despite receiving timely and proper notice pursuant to Rule 14a-8(f)(1), the Proponent has not provided proof of continuous ownership of the Company's common stock from the record holder of those shares, nor has the Proponent provided the Company with a written statement of his intent to hold his shares of the Company's common stock through the date of the Company's 2024 annual meeting of stockholders, as required by Rule 14a-8(b).

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II. The Proposal may be excluded pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) because the Proponent failed to provide the Company with a written statement regarding his ability to meet with the Company after receiving notice of such deficiency.

Rule 14a-8(b)(1)(iii) requires each proponent to provide a written statement that he or she 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 that the proponent is available to discuss the proposal with the company. The proponent must identify times that are within the regular business hours of the company's principal executive office. The Commission has indicated that proponents must identify specific dates and times rather than providing a general statement of the proponent's availability, as the former approach increases the likelihood of engagement because the company knows the proponent's availability in advance. *See* SEC Release No. 34-89964, 85 Fed. Reg 70240, 70253-4. (Sept. 23, 2020). Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to provide evidence that it meets any of the eligibility requirements of Rule 14a-8(b) following a timely and proper request by the Company.

Despite the information and instructions provided by the Company in the Deficiency Letter, the Proponent failed to remedy this defect because he did not provide the Company with a written statement that included the business days and specific times of availability to discuss the Proposal. Rather, the Proponent stated that he could be contacted "during normal business hours." As such, the written statement submitted by the Proponent is insufficient for purposes of Rule 14a-8(b)(1)(iii) in that it does not identify the Proponent's availability to discuss the Proposal with the Company on a specific day or time within the Company's regular business hours, contrary to the Commission's mandate in SEC Release No. 34-89964.

In accordance with these requirements, the Staff has consistently permitted the exclusion of shareholder proposals where a proponent fails to provide a written statement of the proponent's availability to discuss the proposal after receiving a timely deficiency notice from the company under Rule 14a-8(b)(1)(iii) and Rule 14a-8(f)(1). *See Chevron Corporation* (Apr. 4, 2023); *CDW Corporation* (Mar. 28, 2023); *The Allstate Corporation* (Jan. 23, 2023); *Textron, Inc.* (Jan. 23, 2023); *Molina Healthcare, Inc.* (Jan. 17, 2023); *AmerisourceBergen*

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Corporation (Jan. 12, 2023); *Deere & Company* (Dec. 5, 2022); *PPL Corp.* (Mar. 9, 2022); *The Allstate Corp.* (Feb. 8, 2022); and *American Tower Corp.* (Feb. 8, 2022).

Accordingly, consistent with the precedent cited above, the Proposal is excludable because, despite receiving timely and proper notice pursuant to Rule 14a-8(f)(1), the Proponent has not provided a written statement regarding his ability to meet with the Company, as required by Rule 14a-8(b)(1)(iii).

III. The Proposal may be excluded pursuant to Rule 14a-8(c) and Rule 14a-8(f)(1) because the Proposal constitutes multiple proposals.

Rule 14a-8(c) provides that a “person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting.” The one-proposal limitation applies not only to proponents who submit multiple proposals in multiple submissions, but also to proponents who submit multiple proposals as elements or components of an ostensibly single proposal. The Company believes that the Proposal could be read to seek to provide shareholders with the opportunity to mandate that the Company’s board of directors take the following separate and distinct actions:

- “not promote political or social causes”;
- “recall . . . products and advertising”;
- analyze “customer trust” in the Company;
- assess the Company’s “market value”;
- analyze the impact that the Company’s advertisements may have on the payment of dividends;
- assess potential layoffs of management and employees; and
- assess the benefits afforded to the Company by the State of Pennsylvania.

The Staff has consistently recognized that Rule 14a-8(c) permits the exclusion 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 *American Electric Power* (Jan. 2, 2001), the Staff concurred in the exclusion of a proposal which sought to: (i) limit the term of director service,

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(ii) require at least one board meeting per month, (iii) increase the retainer paid to the company's directors and (iv) hold additional special board meetings when requested by the Chairman or any other director. The Staff found that the proposal constituted multiple proposals despite the proponent's argument that all of the actions were about "governance of AEP." See also *PG&E Corp.* (Mar. 11, 2010) (concurring in the exclusion of a proposal requesting the company to (i) mitigate all potential risks encompassed by studies of a particular power plant site, (ii) defer any request for or expenditure of funds for license renewal at the site and (iii) limit the production of high-level radioactive wastes at the site); *Parker-Hannifin Corp.* (Sept. 4, 2009) (concurring in the exclusion of a proposal requesting the company to institute a Triennial Executive Pay Vote program that provides shareholders the opportunity to (i) approve the compensation, incentive plans and post-employment benefits of the company's named executive officers and (ii) comment on and ask questions about the company's executive compensation policies in a forum); *Duke Energy Corp.* (Feb. 27, 2009) (concurring in the exclusion of a proposal requesting the company to (i) require candidate directors to have personally owned at least \$2,000 worth of the company common stock for at least one year prior to their nomination, (ii) have candidates declare any potential conflicts of interest upon nomination and (iii) limit director compensation to company common stock only).

Staff no-action letter precedent indicates that the test for whether a single submission with multiple elements and components (such as the Proposal) actually constitutes more than one proposal is whether the elements or components of the proposal are closely related and essential to a single well-defined unifying concept. See *Pacific Enterprises* (Feb. 19, 1998) (concurring in the exclusion of a single submission related to six matters when the company argued that the elements failed to constitute "closely related elements and essential components of a single well-defined unitary concept necessary to comprise a single shareholder proposal"). See also, e.g., *Textron, Inc.* (Mar. 7, 2012) (concurring with the company's view that a proposal was excludable under Rule 14a-8(c) because a "change of control" provision in a proxy access proposal diverged from the proposal's overarching goal of providing shareholders with proxy access and instead sought to address a possible consequence of shareholders utilizing the proposed proxy access mechanism); *General Motors Corporation* (Apr. 9, 2007) (concurring in the exclusion of a single submission under Rule 14a-8(c) when the company argued that the proposal included several distinct steps to restructure the company and were not so closely related to comprise a single proposal).

Even where multiple elements or components of a proposal relate to a general or central topic, a proposal that contemplates a variety of loosely related actions may be excludable as multiple proposals under Rule 14a-8(c). See, e.g., *Eaton Corporation* (Feb. 20, 2012) (concurring in the exclusion of a proposal in reliance on Rule 14a-8(c) where the proposal

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contained multiple components related to employee compensation relating, and accounting for, sales to independent distributors, the method of reporting of corporate ethics, accounting practices relating to goodwill and other intangible assets and concerns relating to operations in India, with the Staff specifically noting that the proposal relating to the method of reporting corporate ethics involved a separate and distinct matter from the proposals relating to employee compensation relating to, and accounting for, sales to independent distributors, the method of reporting of corporate ethics, accounting practices relating to goodwill and other intangible assets, and concerns relating to operations in India); *General Motors Corporation* (Apr. 9, 2007); *HealthSouth Corporation* (Mar. 28, 2006) (concurring in the exclusion of a proposal regarding amendments to the company's bylaws related to board membership that included proposals on the number of directors serving on the board and to vacancies on the board); *Compuware Corporation* (July 3, 2003) (concurring in the exclusion of a proposal to improve overall efficiency and operations of a company that included features requiring the reimbursement of life insurance premiums, the use of a competitive bidding system for printing contracts, the termination of a specific contract, the chief executive officer to devote all of his time to increasing sales and profitability, the filing of a Form 8-K for certain events and the release of an announcement when officers and directors plan to sell or transfer shares); *Fotoball USA, Inc.* (May 6, 1997) (concurring in the exclusion of a proposal regarding requests for directors which included minimum share ownership for directors, that directors be paid in shares or options and that non-employee directors perform no other services for the company for compensation).

The scope of the Proposal is incredibly broad and represents a myriad of separate and distinct actions submitted under the guise of a single Proposal. The Company alerted the Proponent to these deficiencies in a timely and proper Deficiency Letter, yet the Proponent took no steps to remedy these defects. As a result, the Proposal may properly be excluded under Rule 14a-8(c) and Rule 14a-8(f)(1).

Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if Hershey excludes the Proposal from its 2024 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Hershey's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Correspondence regarding this letter and the Proposal should be sent to

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CourtneyButler@HuntonAK.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (713) 220-4396 or Scott Kimpel at (202) 955-1524.

Very truly yours,



Courtney Cochran Butler

Enclosures

cc: Mr. Raymond Butterfield

Exhibit A

03/09/2023

Secretary

The Hershey Company

Hershey PA

RE:

Please find enclosed shareholder proposal

Thank you '


Raymond Butterfield



Raymond Butterfield, [REDACTED] who owns Hershey shares worth at least \$ 50,000, has submitted the following proposal.

Resolved: The company (Hershey) shall not promote political or social causes in any of its activities, advertising or candy wrappers.

If any of these activities are promoted the company shall immediately recall these products and advertising.

Supporting Statement:

Hershey relies on customer trust. The approval rating for our politicians who take sides on sexual issues ranges from 11 to 45 percent. Thus, by taking a stand on any issues Hershey automatically alienates half the population.

Further, by linking the company to the left or right the company alienates both consumers and stockholders.

Choosing one political side over another is a fools errand.

As Michael Bloomberg has written. "We have gone from leaders who would not tell a lie to politicians who cannot tell the truth"

Whose lies does Hershey want to believe?

The Hershey company was recently roasted on FOX news. Their report showed bizarre candy wrappers advocating sex change operations. FOX also promoted a new competitor whose company also sells candy with wrappers mocking Hershey.

If Hershey's goals are to enrich their competition congratulations. Your a success!

One hundredth of one percent of Disney's employees protested a Florida law on sex education in Florida's schools. Their CEO, Robert Chopek, decided to support the .0001 percent on this issue. Since then, Disney has lost 30 percent of its market value and has not paid a dividend. And, in an unbelievable sequence of events, the Board fired many of their top management and rehired the former CEO. But the damage has been done. Disney stock is still stuck at half its former price and is cutting thousands of employees to save money with no dividend in sight. Is this what Management wants for Hershey?

This type of mismanagement jeopardizes the Trust that relies on consistent intelligent stewardship of Hershey.

In the past Pennsylvania wanted the Trust to sell all its shares in the company to prevent any possibility of the Trust being endangered by a collapse of Hershey's profits. If Hershey were to duplicate Disney's performance that would put the Trust and the shareholders in a downward spiral of value. Forcing the Trust to liquidate its shares would further exacerbate these losses.

Hershey has an unique structure. Disney had an unique structure in that it was able to govern itself. The state of Florida has canceled those benefits which will ad more costs and burdens on Disney. Hershey has been given many benefits by Pennsylvania. Lets not jeopardize our company by following one or two individuals down any political or social rabbit holes.

Raymond Butterfield



A handwritten signature in cursive script that reads "Raymond Butterfield".

Exhibit B

March 23, 2023

VIA OVERNIGHT DELIVERY

Mr. Raymond Butterfield

Phone Number: [REDACTED]

Dear Mr. Butterfield:

I am writing on behalf of our client, The Hershey Company (the "Company"), which received your stockholder submission (the "Submission") on March 9, 2023. The Submission contains certain procedural deficiencies that the Securities and Exchange Commission ("SEC") regulations require the Company to bring to your attention.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") provides that stockholder proponents must submit sufficient proof of their continuous ownership of 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, as of the date the stockholder proposal was submitted. The Company's stock records do not indicate that you are the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received adequate proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Submission was submitted to the Company.

To remedy these defects, you must obtain proof of ownership verifying your continuous ownership of the required number of Company shares for the three-, two- or one-year period, as applicable, preceding and including March 9, 2023, the date the Submission was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that you continuously held the required number of Company shares for the three-, two- or one-year period, as applicable, preceding and including March 9, 2023; or
- (2) if you have filed with the SEC a Schedule I3D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the required number of Company shares as of or before the date on

Mr. Raymond Butterfield

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which the three-, two- or one-year eligibility period, as applicable, begins, a copy of the schedule and/or form and any subsequent amendments reporting a change in your ownership level, and statement that you continuously held the required number of Company shares for the applicable eligibility period.

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

- (1) If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number of Company shares for the three-, two- or one-year period, as applicable, preceding and including March 9, 2023.
- (2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number of Company shares for the three-, two- or one-year period, as applicable, preceding and including March 9, 2023. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the three-, two- or one-year period, as applicable, preceding and including March 9, 2023, the required number of Company shares were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank’s ownership.

Moreover, as discussed above, under Rule 14a-8(b) of the Exchange Act, a stockholder must have continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the Company’s securities entitled to vote on the proposal for at least three years, two years, or one year, respectively, as of the date the stockholder proposal was submitted to the Company *and* must provide to the Company a written statement of the stockholder’s intent to continue ownership of the required number of

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shares through the date of the Company's 2024 Annual Meeting of Stockholders. We remind you that any revised proof of ownership must include a written statement that you intend to continue holding the required number of Company shares through the date of the Company's 2024 Annual Meeting of Stockholders.

We also direct your attention to Rule 14a-8(b)(iii), which provides in relevant part:

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.

Your proposal does not include such a written statement, which constitutes a deficiency under Rule 14a-8. To remedy this defect, you must provide a written statement providing your availability to meet with the Company in compliance with Rule 14a-8(b)(iii).

According to Rule 14a-8(c) under the Exchange Act, a stockholder may submit no more than one proposal to a company for a particular stockholders' meeting. We believe that the Submission includes more than one stockholder proposal. Specifically, while parts of the Submission appear to relate to "customer trust" in the Company, other items raise disparate topics such as "market value", payment of dividends, layoffs of management and employees, and benefits afforded to the Company by the State of Pennsylvania, among other things. We believe that each of these topics addresses a separate and distinct matter. You can correct this procedural deficiency by indicating which proposal you would like to submit and which proposals you would like to withdraw.

Please note that the SEC's rules require your response to this letter be postmarked or transmitted electronically to me no later than 14 calendar days from the date you receive this letter. For your reference, I have enclosed copies of Rule 14a-8, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Very truly yours,



Courtney Cochran Butler

cc: Scott H. Kimpel

Enclosures

Appendix A

Rule 14a-8

This content is from the eCFR and is authoritative but unofficial.

Title 17 - Commodity and Securities Exchanges

Chapter II - Securities and Exchange Commission

Part 240 - General Rules and Regulations, Securities Exchange Act of 1934

Source: Sections 240.21F-1 through 240.21F-17 appear at 76 FR 34363, June 13, 2011.

Source: 72 FR 33620, June 18, 2007, unless otherwise noted.

Source: Sections 240.16c-1 through 240.16c-4 appear at 56 FR 7273, Feb. 21, 1991, unless otherwise noted.

Source: Sections 240.16b-1 through 240.16b-8 appear at 56 FR 7270, Feb. 21, 1991, unless otherwise noted.

Source: Sections 240.15Fb1-1 through 240.15Fb6-2 appear at 80 FR 49013, Aug. 14, 2015, unless otherwise noted.

Source: Sections 240.15Ca1-1 through 240.15Cc1-1 appear at 52 FR 16839, May 6, 1987, unless otherwise noted.

Source: Sections 240.13d-1 through 240.13f-1 appear at 43 FR 18495, Apr. 28, 1978, unless otherwise noted.

Source: Sections 240.12d1-1 through 240.12d-6 appear at 19 FR 670, Feb. 5, 1954, unless otherwise noted.

Source: Sections 240.12b-1 through 240.12b-36 appear at 13 FR 9321, Dec. 31, 1948, unless otherwise noted.

Source: 77 FR 30751, May 23, 2012, unless otherwise noted.

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78j-4, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted. Section 240.3a4-1 also issued under secs. 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121 as amended; Section 240.3a12-8 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), and 23(a), 15 U.S.C. 78w(a); See Part 240 for more

Editorial Note: Nomenclature changes to part 240 appear at 57 FR 36501, Aug. 13, 1992, and 57 FR 47409, Oct. 16, 1992.

§ 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.

(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]

Appendix B

Staff Legal Bulletin No. 14F

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 statement in this bulletin represents the view 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 <http://www.sec.gov/form/corpfin/interpretive>

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

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

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

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with

Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,⁸ under which broker and bank that are DTC participant 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 participant, 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/File/Download/client_center/DTC/alpha.htm

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

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

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

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

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

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

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

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

the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹ See Rule 14a-8(b).

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

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

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

⁵ See Exchange Act Rule 17Ad-8.

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

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

⁸ *Techne Corp.* (Sept. 20, 1988).

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

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

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

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

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

company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

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

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

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

Modified: Oct. 18, 2011

Appendix C

Staff Legal Bulletin No. 14L

Announcement

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

Division of Corporation Finance Securities and Exchange Commission

Action: Publication of CF Staff Legal Bulletin

Date: November 3, 2021

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

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content. This bulletin, like all staff guidance, has no legal force or effect; it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

Contacts: For further information, please contact the Division's Office of Chief Counsel by submitting a web-based request form at <http://www.sec.gov/form/corp-fin-interpretive>

A. The Purpose of This Bulletin

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

This bulletin outlines the Division's views on Rule 14a-8(i)(7), the ordinary business exception, and Rule 14a-8(i)(5), the economic relevance exception. We are also republishing, with primarily technical, conforming changes, the guidance contained in SLB Nos. 14I and 14K relating to the use of graphics and images, and proof of ownership letters. In addition, we are providing new guidance on the use of e-mail for submission of proposals, delivery of notice of defect, and response to the notice.

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

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

1. Background

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

2. Significant Social Policy Exception

Based on a review of the rescinded SLB and staff experience applying the guidance in them, we recognize that an undue emphasis was placed on evaluating the significance of a policy issue to a particular company at the expense of whether the proposal focuses on a significant social policy,^[2] complicating the application of Commission policy to proposals. In particular, we have found that focusing on the significance of a policy issue to a particular company has drawn the staff into factual considerations that do not advance the policy objectives behind the ordinary business exception. We have also concluded that such analysis did not yield consistent, predictable results.

Going forward, the staff will realign its approach for determining whether a proposal relates to “ordinary business” with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues,^[3] and which the Commission subsequently reaffirmed in the 1998 Release. This exception is essential for preserving shareholders’ right to bring important issues before other shareholders by means of the company’s proxy statement, while also recognizing the board’s authority over most day to day business matters. For the reasons, staff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.^[4]

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

Because the staff is no longer taking a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7), it will no longer expect a board analysis as described in the rescinded SLBs as part of demonstrating that the proposal is excludable under the ordinary business exclusion. Based on our experience, we believe that board analysis may distract the company and the staff from the proper application of the exclusion. Additionally, the “delta” component of board analysis – demonstrating that the difference between the company’s existing actions addressing the policy issue and the proposal’s request is insignificant – sometimes confounded the application of Rule 14a-8(i)(10)’s substantial implementation standard.

3. Micromanagement

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

The Commission has stated that the policy underlying the ordinary business exception rests on two central considerations. The first relates to the proposal’s subject matter; the second relates to the degree to which the

proposal “micromanage” the company “by probing too deeply into matter of a complex nature upon which shareholder, as a group, would not be in a position to make an informed judgment.”^[6] The Commission clarified in the 1998 Release that specific methods, timelines, or detail do not necessarily amount to micromanagement and are not dispositive of excludability.

Consistent with Commission guidance, the staff will take a measured approach to evaluating companies’ micromanagement arguments recognizing that proposals seeking detail or seeking to promote timeframe or methods do not per se constitute micromanagement. Instead, we will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Our recent letter to ConocoPhillips Company^[7] provides an example of our current approach to micromanagement. In that letter the staff denied no-action relief for a proposal requesting that the company set targets covering the greenhouse gas emissions of the company’s operations and products. The proposal requested that the company set emission reduction targets and it did not impose a specific method for doing so. The staff concluded this proposal did not micromanage to such a degree to justify exclusion under Rule 14a-8(i)(7).

Additionally, in order to assess whether a proposal probes matters “too complex” for shareholders, as a group, to make an informed judgment,^[8] we may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic. The staff may also consider reference to well established national or international framework when a pending proposal related to disclosure, target setting, and timeframe is indicative of topics that shareholders are well equipped to evaluate.

This approach is consistent with the Commission’s views on the ordinary business exclusion, which is designed to preserve management’s discretion on ordinary business matters but not prevent shareholders from providing high-level direction on large strategic corporate matters. As the Commission stated in its 1998 Release

[In] the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micro-manage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or to impose a specific method for implementing complex policies. Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time frame or method, necessarily amount to ‘ordinary business.’ We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.

While the analysis in this bulletin may apply to any subject matter, many of the proposals addressed in the rescinded SLBs requested companies adopt timeframes or targets to address climate change that the staff concurred were excludable on micromanagement grounds.^[9] Going forward we would not concur in the exclusion of similar proposals that suggest targets or timelines so long as the proposals afford discretion to management as to how to achieve such goals.^[10] We believe our current approach to micromanagement will help to avoid the dilemma many proponents faced when seeking to craft proposals with sufficient specificity and direction to avoid being excluded under Rule 14a-8(i)(10), substantial implementation, while being general enough to avoid exclusion for “micromanagement.”^[11]

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

Rule 14a-8(i)(5), the “economic relevance” exception, permits a company to exclude a proposal that “relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal

year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business.”

Based on a review of the rescinded SLBs and staff experience applying the guidance in them, we are returning to our longstanding approach, prior to SLB No. 14I, of analyzing Rule 14a-8(i)(5) in a manner we believe is consistent with *Lovenheim v. Iroquois Brands, Ltd.*^[12] As a result, and consistent with our pre-SLB No. 14I approach and *Lovenheim*, proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5). In light of this approach, the staff will no longer expect a board analysis for its consideration of a no-action request under Rule 14a-8(i)(5).

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

1. Background

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

2. The Use of Images in Shareholder Proposals

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

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

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

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

E. Proof of Ownership Letters^[18]

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

In Section C of SLB No. 14F, we identified two common errors shareholders make when submitting proof of ownership for purposes of satisfying Rule 14a-8(b)(2).^[20] In an effort to reduce such errors, we provided a suggested format for shareholders and their brokers or banks to follow when supplying the required verification of ownership.^[21] Below, we have updated the suggested format to reflect recent changes to the ownership

thresholds due to the Commission's 2020 rulemaking.^[22] We note that brokers and banks are not required to follow this format.

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

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

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

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

F. Use of E-mail

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

1. Submission of Proposals

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

address for submitting proposal before doing so and we encourage companies to provide such email address upon request.

2. Delivery of Notices of Defects

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

3. Submitting Responses to Notices of Defects

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

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

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

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

[4] 1998 Release ("[P]roposals . . . focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable, because the proposal would transcend the day to day business matter and raise policy issues so significant that it would be appropriate for a shareholder vote")

[5] See, e.g., *Dollar General Corporation* (Mar. 6, 2020) (granting no-action relief for exclusion of a proposal requesting the board to issue a report on the use of contractual provisions requiring employees to arbitrate employment related claim because the proposal did not focus on specific policy implication of the use of arbitration at the company) We note that in the 1998 Release the Commission stated "[P]roposal relating to [workforce management] but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." Matters related to employment discrimination are but one example of the workforce management proposals that may rise to the level of transcending the company's ordinary business operations.

[6] 1998 Release.

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

[8] See 1998 Release and 1976 Release.

[9] See, e.g., *PayPal Holdings, Inc.* (Mar. 6, 2018) (granting no-action relief for exclusion of a proposal asking the company to prepare a report on the feasibility of achieving net-zero emissions by 2030 because the staff concluded it micromanaged the company); *Devon Energy Corporation* (Mar. 4, 2019) (granting no-action relief for

exclusion of a proposal requesting that the board in annual reporting include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the Paris Climate Agreement because the staff viewed the proposal as requiring the adoption of time-bound targets).

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

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

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

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

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

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

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

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

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

[19] Rule 14a-8(b) requires proponents to have continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively.

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

[21] The Division suggested the following formulation: "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."

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

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

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

[25] See 2020 Release.

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

Modified: Nov. 3, 2021

Exhibit C

Harold, Velma

From: UPS <pkginfo@ups.com>
Sent: Friday, March 24, 2023 10:49 AM
To: Harold, Velma
Subject: UPS Delivery Notification, Tracking Number 1Z6Y32000110152634

Caution: This email originated from outside of the firm.



Hello, your package has been delivered.

Delivery Date: Friday, 03/24/2023

Delivery Time: 11:46 AM

Left At: FRONT DOOR

Experience UPS My Choice® Premium Today

Be in total control of how, when and where your packages are delivered.

[Upgrade to Premium Now](#)



[Set Delivery Instructions](#)

[Manage Preferences](#)

[View My Packages](#)

HUNTON ANDREWS KURTH LLP

Tracking Number: [1Z6Y32000110152634](#)
Ship To: MR. RAYMOND BUTTERFIELD
[REDACTED]
US
Number of Packages: 1
UPS Service: UPS Next Day Air®
Package Weight: 0.0 LBS
Reference Number: 085287.0000031.16646



[Download the UPS mobile app](#)

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Please do not reply directly to this email.

[Manage Your UPS My Choice Delivery Alerts](#)

[Review the UPS Privacy Notice](#)

[Review the UPS My Choice Service Terms](#)

Exhibit D

From: [Butler, Courtney](#)
To: [Lisa Wang](#)
Cc: [Kimpel, Scott H.](#); [Williams, Alexa](#)
Subject: Fwd: Hi Jake
Date: Sunday, April 2, 2023 6:50:34 PM

With this as well.

Courtney Cochran Butler

Partner

HUNTON ANDREWS KURTH LLP

[+1.713.220.4396](#) Phone | [+1 713.220.4285](#) Fax

CourtneyButler@HuntonAK.com | [vCard](#) | [Bio](#)

Begin forwarded message:

From: raymond butterfield [REDACTED]
Date: April 2, 2023 at 4:42:25 PM CDT
To: Jake Tinney [REDACTED]
Cc: "Butler, Courtney" <CourtneyButler@andrewskurth.com>
Subject: Hi Jake

Caution: This email originated from outside of the firm.

An attorney from Hunton Andrews Kurth, Courtney Cochrane Butler, may be contacting you to verify my ownership of Hershey stock.

Please provide her with any information she requires concerning my ownership of Hershey (HSY) stock.

In the meantime could you please email her to verify my continuous ownership of the 400 shares of Hershey stock for the past 5 years including March 9 2023. (courtneybutler@HuntonAK.com)

This stock is in account ending in 1552. fyi (200 of those shares were transferred from another of my Schwab accounts several years ago).

Thank you

Raymond Butterfield

From: [Butler, Courtney](#)
To: [Lisa Wang](#)
Cc: [Kimpel, Scott H.](#); [Williams, Alexa](#)
Subject: Butterfield SH Proposal - Evidence of Owership
Date: Sunday, April 2, 2023 6:49:23 PM
Attachments: [6B71D09E-8A2F-454A-8578-A03971146841.jpeg](#)

Please see below and attached from Mr. Butterfield.

Courtney Cochran Butler

Partner

HUNTON ANDREWS KURTH LLP

[+1.713.220.4396](#) Phone | [+1 713.220.4285](#) Fax

CourtneyButler@HuntonAK.com | [vCard](#) | [Bio](#)

Begin forwarded message:

From: raymond butterfield [REDACTED]
Date: April 2, 2023 at 5:51:22 PM CDT
To: "Butler, Courtney" <CourtneyButler@andrewskurth.com>
Subject: **Hershey ownership information**

Caution: This email originated from outside of the firm.

Hello

Please see attached statement showing I paid \$37 and \$42 for my Hershey shares.
In the past 5 years the lowest the stock traded was \$88

Thank you. Ray B



Exhibit E

04/07/2023

Secretary

The Hershey Company
c/o Secretary
19 East Chocolate Avenue
Hershey PA 17033 1314

RE:

Shareholder proposal for the 2024 annual meeting.

It is my intention to continue to hold my Hershey stock for the next 20 years.

Further, you can contact me during normal business hours at anytime by calling me at [REDACTED] Or, you can provide me with your phone number and I will call you at a scheduled time.

Thank you


Raymond Butterfield

[REDACTED]
owner 400 shares of Hershey