Phone: (614) 764-3220
Email: Michael.Berner@wendys.com

January 12, 2024

VIA ONLINE SHAREHOLDER PROPOSAL PORTAL

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 Wendy's Company — Shareholder Proposal Submitted by the Comptroller of the City of New York

Dear Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), The Wendy's Company, a Delaware corporation (the "**Company**"), hereby requests confirmation that the staff of the Division of Corporation Finance (the "**Staff**") of the U.S. Securities and Exchange Commission (the "**Commission**") will not recommend any enforcement action if the Company omits from its proxy statement and form of proxy for its 2024 Annual Meeting of Stockholders (collectively, the "**2024 Proxy Materials**") the shareholder proposal (the "**Duplicate Proposal**") and statement in support thereof (the "**Duplicate Proposal Supporting Statement**") submitted by the Comptroller of the City of New York, Brad Lander, on behalf of the New York City Employees' Retirement System, the New York City Fire Pension Fund, The New York City Teachers' Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (collectively, the "**Proponent**"), which are further described below.

In accordance with Rule 14a-8(j) of the Exchange Act, this letter is being submitted to the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission. Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008) ("**SLB No. 14D**") and related Staff guidance, we are submitting this letter and its attachments to the Commission electronically through the Staff's online Shareholder Proposal Portal. Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (October 18, 2011), we request that the Staff provide its response to this request for no-action relief via email to the undersigned at the email address noted in the last paragraph of this letter.

Pursuant to Rule 14a-8(j) of the Exchange Act, we are simultaneously sending a copy of this letter and the attachments hereto to the Proponent and its designated agent. Rule 14a-8(k) of the Exchange Act and SLB No. 14D provide that a shareholder proponent is required to send the

company a copy of any correspondence that such proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that, if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent should concurrently furnish a copy of such correspondence to the undersigned on behalf of the Company.

I. THE DUPLICATE PROPOSAL

The Duplicate Proposal, titled "Independent Board Chair", contains the following resolution:

> RESOLVED: Shareholders of The Wendy's Company ("Wendy's") ask the Board of Directors ("Board") to adopt a policy, and amend the bylaws as necessary, to require the chair of the board to be independent of Wendy's and any Wendy's shareholder holding more than 15% of outstanding shares. The policy should provide that if the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the policy within 60 days of that determination. This policy shall apply prospectively so as not to violate any contractual obligation.

A copy of the Duplicate Proposal, the Duplicate Proposal Supporting Statement and related correspondence with the Proponent is attached to this letter as **Exhibit A**, pursuant to Staff Legal Bulletin No. 14C (June 28, 2005) ("**SLB No. 14C**").

II. BASIS FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, we hereby respectfully request that the Staff concur in our view that the Duplicate Proposal may be properly excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(11) because the Duplicate Proposal substantially duplicates another proposal previously submitted to the Company that the Company intends to include in the 2024 Proxy Materials.

III. ANALYSIS

A. Background

On November 27, 2023, the Company received via FedEx a shareholder proposal postmarked on November 22, 2023 titled "Independent Board Chairman" from John Chevedden on behalf of Kenneth Steiner, and on December 19, 2023, Mr. Chevedden submitted a minor revision to Mr. Steiner's supporting statement contained in his proposal to correct an error ("Mr. Steiner's proposal as revised, the "**Prior Proposal**", and, together with the Duplicate Proposal, the

"**Proposals**"). A copy of the Prior Proposal, including a statement in support thereof, and related correspondence is attached to this letter as **Exhibit B**, pursuant to SLB No. 14C.

The Prior Proposal includes the following proposal:

> Shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO.
>
> Whenever possible, the Chairman of the Board shall be an Independent Director.
>
> The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board on an accelerated basis.
>
> It is a best practice to adopt this policy soon. However this policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

The Company received the Duplicate Proposal via email on November 28, 2023, which is after the date on which the Company initially received the Prior Proposal. See Exhibit A and Exhibit B. The Company intends to include the Prior Proposal in its 2024 Proxy Materials.

B. Rule 14a-8(i)(11) Analysis

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it "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." The Commission has stated that "the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independent of each other." Exchange Act Release No. 12999 (Nov. 22, 1976). When two substantially duplicative proposals are received by a company, the Staff has indicated that the company may exclude the later of the proposals it received from its proxy materials, unless the initial proposal otherwise may be excluded. *See, e.g., Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994). Two stockholder proposals need not be identical in order to provide a basis for exclusion under Rule 14a-8(i)(11). *See, e.g., Ford Motor Co. (Leeds)* (avail. Mar. 3, 2008) (concurring that a proposal to establish an independent committee to prevent founding family shareholder conflicts of interest with non-family shareholders substantially duplicated a proposal requesting that the board take steps to adopt a recapitalization plan for all of the company's outstanding stock to have one vote per share). The standard that the Staff traditionally has applied for determining whether stockholder proposals are substantially duplicative is whether the proposals present the same "principal thrust" or "principal focus." *Pacific Gas & Electric Co.* (avail. Feb. 1, 1993).

The Staff has consistently concluded that proposals may be excluded because they are "substantially duplicative" when such proposals have the same "principal thrust," "principal

focus" or "same core issue." The Staff has reached this determination even when such proposals differ as to certain terms and scope and even if the later received proposal is broader than the proposal received first in time. For example, in *Exxon Mobil Corp.* (avail. Mar. 9, 2017), the proponent requested a report on the policies and procedures relating to the company's political contributions and expenditures while a prior proposal requested a report relating to, among other related things, the company's policies and procedures "governing lobbying . . . and grassroots lobbying communications." The company argued that the later proposal substantially duplicated the prior proposal because "its real target [was] disclosure of contributions to third parties that are used for political purposes." The proponent conceded that there may have been some overlap between the proposals but argued that its proposal was "far broader than the [prior] [p]roposal and request[ed] vastly more information" and even admitted that had the proposals been submitted in the opposite order, then the proposal relating to lobbying disclosures might have been excludable. Nevertheless, the distinction on the timing and order of when the broader proposal was received did not change the analysis: the Staff concurred that the broader proposal was substantially duplicative of the earlier, narrower proposal and agreed with exclusion under Rule 14a-8(i)(11). *See also, Amazon.com, Inc.* (avail. Apr. 6, 2022) (concurring that a proposal requesting the board commission an independent third-party audit on workplace health and safety, evaluating productivity quotas, surveillance practices, and the effects of these practices on injury rates and turnover was substantially duplicative of a proposal requesting the board commission an independent audit and report of the working conditions and treatment that warehouse workers face); *Exxon Mobil Corp.* (avail. Mar. 13, 2020) (concurring with the exclusion of a proposal as substantially duplicative where the Staff explained that "the two proposals share a concern for seeking additional transparency from the [c]ompany about its lobbying activities and how these activities align with the [c]ompany's expressed policy positions" despite the proposals requesting different actions); *Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring that a proposal seeking a report regarding residential mortgage loss mitigation policies and outcomes, including "home preservation rates" was substantially duplicative of a proposal seeking a review and report on the company's internal controls related to loan modifications, foreclosures and securitizations); *Chevron Corp.* (avail. Mar. 23, 2009, *recon. denied* Apr. 6, 2009) (concurring that a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company's expanding oil sands operations in the Canadian boreal forest was substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company's products and operations); and *General Electric Co.* (avail. Jan. 17, 2013, *recon. denied* Feb. 27, 2013) (concurring with the exclusion of a proposal requesting the adoption of a policy to limit executive compensation to "a competitive base salary, an annual bonus of not more than fifty per cent of base salary, and competitive retirement benefits" as substantially duplicative of an earlier proposal requesting the "cessation of all Executive Stock Option Programs[] and Bonus Programs," despite the proponent's assertion that the later proposal was "more broad and inclusive").

As demonstrated below, the Proposals share the same principal thrust or focus. In this regard, both proposals seek adoption of a policy that the chair (the "**Chair**") of the Company's Board of

Directors (the "**Board**") be an independent director. The substantial similarities between the two Proposals include the following provisions:

- the titles of both Proposals refer to the Board having an independent Chair (*i.e.*, "Independent Board Chair" versus "Independent Board Chairman");

- both Proposals request that the Board adopt a policy requiring the Chair to be independent (as the Prior Proposal notes, whenever possible);

- both Proposals request amendments to the Company's governing documents (as the Duplicate Proposal notes, the Company's bylaws), as necessary, to implement the policy;

- both Proposals note that the policy may be phased in for the next Chief Executive Officer transition (as the Duplicate Proposal notes, applied on a prospective basis so as to not violate any existing contractual obligation); and

- both Proposals request that a new independent Chair shall be selected on an accelerated basis (as the Duplicate Proposal notes, within 60 days of the determination that a Chair who was independent when selected is no longer independent).

Although the Duplicate Proposal and the Prior Proposal use some different words to phrase their shared request that the Company adopt a policy requiring that the Chair be independent (including different independence standards) and deploy distinct arguments in their supporting statements, none are substantive differences that detract from the overall shared principal thrust and focus of the Proposals. The Duplicate Proposal's broader articulation of what constitutes independence of the Chair and the other minor differences between the Proposals do not change the fact that the Proposals have the same principal thrust and focus: both request that the Company adopt a policy and amend its governing documents to require an independent Board Chair.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(11) of substantially duplicative proposals relating to an independent board chair even where the proposals had differences in their terms or scope. For example, in *JPMorgan Chase & Co.* (avail. Mar. 7, 2011), the company sought the exclusion of a proposal requesting that the board amend the bylaws to require that the chairman be an independent director under Rule 14a-8(i)(11) because it substantially duplicated a previously submitted proposal requesting that the board adopt a bylaw to require that the company have an independent "Lead Director", which the proponent of the later proposal argued was a "substantially different" position to that of a board chairman. Despite the fact that the first proposal would have required an independent Lead Director and the later proposal would have required an independent chairman, the company noted that the "core issue and principal focus" of both proposals was to require that an independent director "lead the [c]ompany's [b]oard of [d]irectors" and the Staff concurred with the exclusion under Rule 14a-8(i)(11). *See also, Pfizer Inc.* (avail. Jan. 11, 2018) (concurring with the exclusion of a proposal requesting that the board adopt a policy that, whenever possible, the board chair should be a director who has not previously served as an executive officer of the company and who is "independent" of management, which the proposal defined with a broad test that went beyond the

rules for independence of either the New York Stock Exchange or the Nasdaq Stock Exchange[1], because it substantially duplicated a previously submitted proposal requesting that the board adopt a policy and amend the bylaws to require the board chair, whenever possible, be an independent director); *Merck & Co., Inc.* (avail. Dec. 29, 2004) (concurring with the exclusion of a proposal requesting the adoption of a policy to prohibit "corporate officers", which the proposal defined to include "the CEO, COO, CFO, President and vice presidents", from either sitting on or chairing the board because it substantially duplicated a previously submitted proposal requesting the adoption of a policy to separate the roles of board chair and chief executive officer to require that the chair be an independent director who has not served as an executive officer of the company, despite the proponent's argument that the later proposal (i) "bans all current officers of the company from serving on or chairing the [c]ompany's [b]oard of [d]irectors, not just the CEO"; and (ii) "does NOT ban past corporate officers from serving on or chairing the [c]ompany's [b]oard of [d]irectors"); *Nabors Industries Ltd.* (avail. Feb. 28, 2013) (concurring with the exclusion of a proposal requesting adoption of a policy to require the chair to be an independent director who has not previously served as an executive officer of the company, because it substantially duplicated a previously submitted proposal requesting adoption of a policy to require the board chair to be an independent director); *PepsiCo, Inc*. (avail. Feb. 8, 2022) (concurring with the exclusion of a proposal requesting the adoption of a policy to require the chair be independent because it substantially duplicated a previously submitted proposal requesting adoption of a policy that requires the separation of the offices of the chair and the chief executive officer and that, wherever possible, the chair shall be independent); *Wells Fargo & Co.* (avail. Jan. 17, 2008) (concurring with the exclusion of a proposal requesting adoption of a policy separating the roles of chairman and chief executive officer because it substantially duplicates a previously submitted proposal requesting the board amend the bylaws to require the chairman to be an independent director); and *Time Warner Inc.* (avail. Mar. 2, 2006) (concurring with the exclusion of a proposal requesting the board amend the company's governing documents to require the chairman "serve in that capacity only and have no management duties, titles or responsibilities" because it substantially duplicates a previously submitted proposal requesting the adoption of a policy requiring the chairman to be an independent director who had not previously served as an executive officer). As described above, notwithstanding the differences between the Proposals in their exact terms and the specific actions requested, they have the same principal thrust and focus – both request that the Company adopt a policy and amend its governing documents to require an independent Board Chair. Accordingly, consistent with the precedents cited above, the Duplicate Proposal substantially duplicates the Prior Proposal and is excludable pursuant to Rule 14a- 8(i)(11).

Furthermore, the Staff has consistently concurred with the exclusion of proposals under Rule 14a-8(i)(11) when the earlier and later-received proposals presented the same principal thrust or focus

[1] The proposal indicated that "a director shall not be considered 'independent' if, during the last three years, he or she – • was affiliated with a company that was an advisor or consultant to the [c]ompany, or a significant customer or supplier of the [c]ompany; • was employed by or had a personal service contract(s) with the [c]ompany or its senior management; • was affiliated with a company or non-profit entity that received the greater of $2 million or 2% of its gross annual revenues from the [c]ompany; • had a business relationship with the [c]ompany that the [c]ompany had to disclose under the Securities and Exchange Commission regulations; • has been employed by a public company at which an executive officer of the [c]ompany serves as a director; • had a relationship of the sort described above with any affiliate of the [c]ompany; and, • was a spouse, parent, child, sibling or in-law of any person described above."

despite containing completely different supporting statements. For example, in *The Southern Co.* (avail. Mar. 6, 2020), the Staff concurred with the exclusion under Rule 14a-8(i)(11) of an independent board chair proposal where the supporting statement outlined certain management-related benefits of an independent chair and expressed concern with the company's corporate governance practices, including the company's failure "to adopt a simple majority vote standard for company elections." In contrast, the earlier-received proposal's supporting statement raised concerns related to the company's "strategic transformation necessary for [the company] to capitalize on the opportunities available in the transition to a low carbon economy." Similarly, in *Comcast Corp.* (avail. Mar. 14, 2019), the Staff concurred that an independent board chair proposal, with a supporting statement outlining certain management-related benefits of an independent chair and expressing concern with the company's current employment practices, was duplicative of an earlier-received proposal, with a supporting statement raising concerns with a certain "beneficial owner of [company] class B common stock (with 100-to-one voting power)." Despite the different concerns expressed in the supporting statements of the proposals at issue, the Staff concurred that the proposals in *The Southern Co.* and *Comcast Corp.* shared the same principal thrust such that relief under Rule 14a-8(i)(11) was appropriate. *See also, The Kroger Co.* (avail. Apr. 4, 2018) (concurring in the exclusion of an independent chair proposal where the supporting statement noted "[h]aving a board chairman who is independent of management is a practice that will promote greater management accountability to shareholders and lead to a more objective evaluation of management" and raised concern with long tenures of certain directors of the company, as substantially duplicative of an earlier-received proposal with a supporting statement noting that an independent chair "would be particularly useful at [the company] in providing more robust oversight regarding sustainability issues" and improve the company's policies and practices to mitigate certain identified business risks, including a disagreement over the company's decision to not join the Fair Food Program).

As noted above, while the terms of the Proposals contain minor differences, they both request that the Company adopt a policy and amend the Company's governing documents to require an independent Board Chair. Aspects of the supporting statements in the Proposals are also similar. For example, both Proposals associate an independent chair with potential for improved corporate governance and refer to voting results of shareholder proposals regarding independent board chairs at the Company's previous Annual Meetings. While the Duplicate Proposal goes on to offer additional arguments in support of the shared request to require an independent Board Chair by alleging conflicts of interest and describing a difference of opinion on the Company's position to not join the Fair Food Program, consistent with the aforementioned precedent, this does not change the conclusion that the Duplicate Proposal shares the same principal thrust and focus as the Prior Proposal.

Furthermore, as noted above, the purpose of Rule 14a-8(i)(11) "is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976). As the Duplicate Proposal substantially duplicates the Prior Proposal, if the Company were required to include both Proposals in its 2024 Proxy Materials, there is a risk that the Company's shareholders would be confused when asked to vote on both Proposals. In addition, if the voting outcome on the Proposals differed, the shareholder vote may not provide meaningful

guidance on what actions shareholders want the Company to pursue, given that the same actions would generally be necessary to implement either the Duplicate Proposal or the Prior Proposal.

Finally, we recognize that the Commission has proposed amendments to Rule 14a-8(i)(11) that would apply this basis to exclusion where the proposals involved "address[] the same subject matter and seek[] the same objective by the same means." See Exchange Act Release No. 95267 (July 13, 2022). Even if the revised standard for Rule 14a-8(i)(11) in the proposed amendments were to apply, we believe that the Duplicate Proposal would satisfy this standard as well for the reasons noted above, specifically that the Proposals each seek to require that the Company adopt a policy and amend its governing documents to require an independent Board Chair.

For the reasons discussed above, the principal thrust and focus of the Proposals is the same. Moreover, the Company intends to include the Prior Proposal in the 2024 Proxy Materials. Accordingly, the Company believes that the Duplicate Proposal may be excluded under Rule 14a-8(i)(11).

IV. CONCLUSION

Based on the foregoing analysis, we respectfully request that the Staff concur with the Company's view and confirm that the Staff will not recommend enforcement action to the Commission if the Company omits the Duplicate Proposal from its 2024 Proxy Materials.

If you have any questions, or if the Staff is unable to concur with our view without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. Please do not hesitate to contact me by telephone at (614) 764-3220 or by email at *Michael.Berner@wendys.com*.

Regards,

Michael G. Berner
Vice President – Corporate & Securities Counsel and Chief Compliance Officer, and Assistant Secretary

Attachments

cc: The Comptroller of the City of New York, Brad Lander
Jennifer Conovitz (on behalf of the Comptroller of the City of New York)
Craig Marcus, Ropes & Gray LLP

EXHIBIT A

From:	Conovitz, Jennifer
To:	Wunsch, EJ; Berner, Michael
Cc:	Garland, Michael; Law, Emily; Sologub, Jenny
Subject:	[EXT] NYCRS - Shareholder Proposal
Date:	Tuesday, November 28, 2023 4:20:14 PM
Attachments:	image001.png NYCRS-The Wendy"s Company-Independent Board Chair Shareholder Proposal-11.28.23 (1).pdf

Dear Wunsch,

Please see the attached shareholder proposal on behalf of the New York City Retirement Systems. Please confirm receipt.

We are also sending a hard copy to you via Express Mail and proof of ownership will be forthcoming from NYCRS' custodian bank, State Street.

We look forward to the opportunity to discuss it with you.

Regards,
Jennifer

Jennifer S. Conovitz
Office of the New York City Comptroller Brad Lander
[redacted]

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

Jennifer Conovitz
Special Counsel for Governance and
Responsible Investment
Senior Advisor for ESG

[redacted]

November 28, 2023

E. J. Wunsch
Chief Legal Officer and Corporate Secretary
The Wendy's Company
One Dave Thomas Boulevard
Dublin, Ohio 43017

Dear Mr. Wunsch:

I write to you on behalf of the Comptroller of the City of New York, Brad Lander. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System, the New York City Fire Pension Fund, The New York City Teachers' Retirement System, and the New York City Police Pension Fund, and the New York City Board of Education Retirement System (individually a "System," collectively the "New York Retirement Systems" or "NYCRS"). The Systems' boards of trustees have authorized the Comptroller to submit and otherwise act on the Systems' behalf with respect to the enclosed shareholder proposal, and to inform you of the Systems' intention to present the shareholder proposal for the consideration and vote of shareholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in full compliance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Each System is the beneficial owner of at least $25,000 in market value of the Company's securities entitled to vote on the shareholder proposal and have held such stock continuously for at least one year. Furthermore, each System intends to continue to hold at least $25,000 worth of these securities through the date of the Company's next annual meeting. Proof of continuous ownership for the requisite time period will be sent by the Systems' custodian bank, State Street Bank and Trust Company, under separate cover.

We welcome the opportunity to discuss the shareholder proposal with you, and are available to meet with the Company via teleconference at 10 am ET on December 15, 2023 or December 21, 2023.

I can be contacted at the phone number or email address set forth above to schedule a meeting with the Company or to address any questions the Company may have about the enclosed proposal.

Sincerely,

Jennifer Conovitz

Enclosure

Independent Board Chair

RESOLVED: Shareholders of The Wendy's Company ("Wendy's") ask the Board of Directors ("Board") to adopt a policy, and amend the bylaws as necessary, to require the chair of the board to be independent of Wendy's and any Wendy's shareholder holding more than 15% of outstanding shares. The policy should provide that if the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the policy within 60 days of that determination. This policy shall apply prospectively so as not to violate any contractual obligation.

SUPPORTING STATEMENT

We believe Wendy's Board needs an independent Chair to strengthen its independence from one of Wendy's largest shareholders, Trian Fund Management, L.P. ("Trian"), and responsiveness to investor concerns. Nelson Peltz, Trian's Chief Executive Officer, is Chair of Wendy's Board. In 2023, this proposal received an estimated almost 41% of unaffiliated votes cast, indicating substantial outside shareholder support.

As long-term shareholders, we are troubled by Peltz's potential conflicts of interest and disproportionate influence over Wendy's Board, whose members include his son, Matthew Peltz, and his longtime business partner, Peter May. Notably, the Board classified Peter May as an independent director in its 2023 proxy statement.

The potential for a serious conflict of interest arose in 2022 for Nelson Peltz (as well as Matthew Peltz and Peter May) when Trian filed a Schedule 13D/A disclosing Trian's intent to evaluate a potential transaction with Wendy's. Although Trian decided not to pursue a potential transaction with Wendy's, the potential for a related party transaction remains, which would create conflicts of interest for the Peltzes and May, all of whom are Trian partners.

Exacerbating these concerns are Chair Peltz's unresponsiveness to shareholder concerns and a resolution regarding Wendy's supply chain labor protections.[1] Under Peltz's leadership, Wendy's Board has inexplicably refused to permit Wendy's to join the Fair Food Program ("Program"), the gold standard for preventing human rights abuses in the produce supply chain. Most of Wendy's competitors, including McDonald's and Burger King, joined years ago. The Program, credited with transforming Florida tomato farms once called "ground zero for modern

[1] https://ciw-online.org/wp-content/uploads/20220308-Shareable-Digital-FFP-Advisory-and-Appendix-1.pdf

day slavery,"[2] received the Presidential Medal for Extraordinary Efforts in Combating Modern-Day Slavery.[3]

Companies with independent chairs are corporate governance and sustainability leaders. A 2021 report found that more than half of the companies listed on the MSCI ESG index at the time had independent chairs.[4] In a Fortune ranking of the most innovative boards in the S&P 500, "companies that scored higher on board effectiveness have an independent board chair."[5]

There is a pressing need for an independent chair at Wendy's to improve and protect long-term shareholder value.

For these reasons, we urge you to vote FOR this proposal.

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[2] https://www.cnn.com/2017/05/30/world/ciw-fair-food-program-freedom-project/index.html; https://www.nytimes.com/2014/04/25/business/in-florida-tomato-fields-a-penny-buys-progress.html

[3] https://fairfoodprogram.org/recognition/

[4] https://www.heidrick.com/en/insights/board-of-directors/a-look-at-leading-board-chairs-today

[5] https://fortune.com/2022/04/22/what-makes-the-best-boards-different-fortune-modern-board-25/

Kimberly A MacDonald
Officer, Client Services
State Street Bank and Trust Company
One Heritage Drive, 3rd floor
Quincy, MA 02171
Telephone: 617 985 3709
KAMacDonald2@statestreet.com

E. J. Wunsch,
Chief Legal Officer and Secretary

The Wendy's Company
One Dave Thomas Boulevard
Dublin, Ohio 43017

November 28, 2023

Re: New York City Retirement Systems

To whom it may concern,

Enclosed please find Ownership Letters attesting to the minimum share positions held by each of the NYC Retirement Systems for at least the past twelve months.

These letters are to support the Shareholder Proposal resolution sent to you directly by the NYC Office of the Comptroller.

Sincerely,

Kimberly MacDonald

Kimberly MacDonald
Officer

Kimberly A. MacDonald
Officer, Client Services

State Street Bank and Trust Company
1776 Heritage Drive
JAB 3rd Floor
Quincy, MA 02171
Telephone 617 985-3709
Kamacdonald2@StateStreet.com

November 28, 2023

Re: New York City Teachers' Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Teachers' Retirement System, the below position from October 31, 2022 through today as noted below:

Security:	WENDY S CO/THE
Cusip:	95058W100
Shares:	29,917

Please don't hesitate to contact me if you have any questions.

Sincerely,

Kimberly MacDonald

Kimberly A. MacDonald
Officer

Kimberly A. MacDonald
Officer, Client Services

State Street Bank and Trust Company
1776 Heritage Drive
JAB 3rd Floor
Quincy, MA 02171
Telephone 617 985-3709
Kamacdonald2@StateStreet.com

November 28, 2023

Re: New York City Police Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Police Pension Fund, the below position from October 31, 2022 through today as noted below:

Security:	WENDY S CO/THE
Cusip:	95058W100
Shares:	44,862

Please don't hesitate to contact me if you have any questions.

Sincerely,

Kimberly MacDonald

Kimberly A. MacDonald
Officer

Kimberly A. MacDonald
Officer, Client Services

State Street Bank and Trust Company
1776 Heritage Drive
JAB 3rd Floor
Quincy, MA 02171
Telephone 617 985-3709
Kamacdonald2@StateStreet.com

November 28, 2023

Re: New York City Fire Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Fire Pension Fund, the below position from October 31, 2022 through today as noted below:

Security:	WENDY S CO/THE
Cusip:	95058W100
Shares:	10,690

Please don't hesitate to contact me if you have any questions.

Sincerely,

Kimberly MacDonald

Kimberly A. MacDonald
Officer

STATE STREET

Kimberly A. MacDonald
Officer, Client Services

State Street Bank and Trust Company
1776 Heritage Drive
JAB 3rd Floor
Quincy, MA 02171
Telephone 617 985-3709
Kamacdonald2@StateStreet.com

November 28, 2023

Re: New York City Employee's Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Employee's Retirement System, the below position from October 31, 2022 through today as noted below:

Security:	WENDY S CO/THE
Cusip:	95058W100
Shares:	80,159

Please don't hesitate to contact me if you have any questions.

Sincerely,

Kimberly MacDonald

Kimberly A. MacDonald
Officer

Kimberly A. MacDonald
Officer, Client Services

State Street Bank and Trust Company
1776 Heritage Drive
JAB 3rd Floor
Quincy, MA 02171
Telephone 617 985-3709
Kamacdonald2@StateStreet.com

November 28, 2023

Re: New York City Board of Education Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Board of Education Retirement System, the below position from October 31, 2022 through today as noted below:

Security:	WENDY S CO/THE
Cusip:	95058W100
Shares:	7,857

Please don't hesitate to contact me if you have any questions.

Sincerely,

Kimberly MacDonald

Kimberly A. MacDonald
Officer

From:	Berner, Michael
To:	Conovitz, Jennifer
Cc:	Johnson, Mark
Subject:	RE: NYCRS - Shareholder Proposal
Date:	Tuesday, January 9, 2024 3:18:45 PM
Attachments:	image001.png image002.png

Dear Ms. Conovitz,

I am writing to inform you that The Wendy's Company plans to seek no-action relief from the SEC regarding your Rule 14a-8 proposal regarding an independent board chair because it substantially duplicates another proposal that Wendy's received before we received your proposal, and we intend to include the first proposal in our proxy materials for our 2024 Annual Meeting.

Under SEC Rule 14a-8(i)(11), a shareholder proposal may be excluded if it 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. When two substantially duplicative proposals are received by a company, the SEC staff has indicated that the company may exclude the later of the proposal it received from its proxy materials.

On November 27, 2023, Wendy's received a Rule 14a-8 shareholder proposal titled "Independent Board Chairman". We believe this first proposal, which was received before Wendy's received the NYC Comptroller's proposal (on November 28, 2023), has the same principal focus as the NYC Comptroller's proposal.

We believe the SEC staff will agree that Wendy's is permitted under SEC rules to exclude your proposal from our proxy materials for our 2024 Annual Meeting. Accordingly, I wanted to give you the opportunity to withdraw your proposal before we submit our request to the SEC on Friday, January 12.

If you would like to discuss, I am currently available for a call on Wednesday, January 10, from 9:30 – 11:00 a.m. or 4:00 – 5:00 p.m., or Thursday, January 11, from 10:00 – 11:30 a.m. or 2:00 - 3:30 p.m. (Eastern Time).

Regards,

Mike

Michael G. Berner
Vice President – Corporate & Securities Counsel and
Chief Compliance Officer, and Assistant Secretary
The Wendy's Company
One Dave Thomas Blvd. • Dublin, OH • 43017
O : 614-764-3220 • E : michael.berner@wendys.com

EXHIBIT B

Align top of FedEx Express® shipping label here

ORIGIN ID:HHKA [redacted]
JOHN CHEVEDDEN
[redacted]
[redacted]
UNITED STATES US

SHIP DATE: 22NOV23
ACTWGT: 0.15 LB
CAD: 6754050/SSFO2460

BILL CREDIT CARD

TO MR. ERIC J WUNSCH
THE WENDYS COMPANY
ONE DAVE THOMAS BLVD

DUBLIN OH 43017
(614) 764-3100

INV:
PO:
REF:
DEPT:

Part # 158287-435 RRD82 EXP 10/23

FedEx Express

[redacted] – 28 NOV 5:00P
EXPRESS SAVER

TRK# [redacted]
0201

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43017
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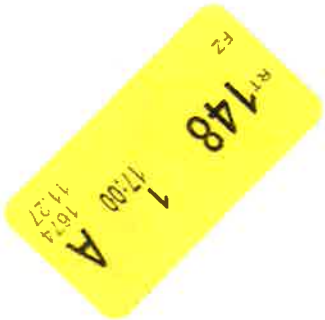

Kenneth Steiner
[redacted]

Mr. Eric J. Wunsch
The Wendy's Company (WEN)
One Dave Thomas Blvd.
Dublin OH 43017
PH: 614 764 3100
FX: 678-514-5344

Dear Mr. Wunsch,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

The attached rule 14a-8 proposal is for the next annual shareholder meeting. I intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

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

This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to
John Chevedden
[redacted]
to facilitate prompt and verifiable communications.
Please identify this proposal as my proposal exclusively.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

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

Please confirm that this proposal was sent to the correct email address for rule 14a-8 proposals. Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

Sincerely,

Kenneth Steiner — Date 10/24/23

cc: Mr. Dana Klein <Dana.Klein@wendys.com>

[WEN – Rule 14a-8 Proposal, November 3, 2023]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Independent Board Chairman

Shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board on an accelerated basis.

It is a best practice to adopt this policy soon. However this policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

John Dionne, a lecturer at Harvard Business School, said, "The CEO is running the company, and the chairman is running the board. The board is the governing body, and you really don't want the person running the governing body also running the company. It's really that simple."

This proposal topic has received as high as 45% support at an earlier Wendy's annual meeting.

This proposal is important to Wendy's because the Board of Directors could give the 2 most important jobs at Wendy's to one person on short notice for an extended period. And if this happens there is no provision in the Wendy's Corporate Governance Guidelines for even a Lead Director.

It is of added importance to have an enduring Wendy's Board structure with Independent Board Chairman because Wendy's stock has stalled and was at its current price in 2006.

Please vote yes:

Independent Board Chairman – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

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

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

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. **I intend to continue holding the same required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [redacted].

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).
Please alert the proxy editor.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.
If there is objection to the title please negotiate or seek no action relief as a last resort.
Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.

DELIVERED

Monday

11/27/23 at 8:42 AM

Signed for by: A.STEWART

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11/22/23 12:19 PM

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11/22/23 10:30 AM

ON THE WAY

COLUMBUS, OH

11/27/23 8:20 AM

OUT FOR DELIVERY

COLUMBUS, OH

11/27/23 7:38 AM

Receipt Detail

Current Status

Received For Delivery

Recipient: Wunsch E.J.
Recipient Location: Wendys RSC & Midwest Office
EMail:
Received By: ckitsos
Received On: 11/27/2023 08:48:55am
Carrier: FEDEX
Service: EXPRESS SAVER
Tracking No: ***
Description:
Sender:
Email Notes:
Internal ID: 967768
Device Name: New HH

Received For Delivery on: 11/27/2023 08:48:56am by **ckitsos**

From: Johnson, Mark
To: John Chevedden
Cc: Berner, Michael
Subject: RE: [EXT] The Wendy"s Company -- 14a-8 Proposal (WEN)
Date: Friday, December 1, 2023 4:15:00 PM
Attachments: WEN Letter to Chevedden (Deficiency Notice) (12.1.23).pdf

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Mr. Chevedden,

Please see the attached letter from The Wendy's Company requesting that Mr. Steiner provide verification that he has met the securities ownership requirements of Rule 14a-8(b).

Please confirm receipt of this email.

Thank you,
Mark

From: John Chevedden [redacted]
Sent: Wednesday, November 29, 2023 8:04 PM
To: Johnson, Mark <Mark.Johnson@wendys.com>
Cc: Berner, Michael <Michael.Berner@wendys.com>
Subject: [EXT] The Wendy's Company -- 14a-8 Proposal (WEN)

Available
Dec 18 at 11:00 am PT
Dec 19 at 11:00 am PT
Will forward the broker letter soon.

The Wendy's Company
One Dave Thomas Blvd.
Dublin, OH 43017

Direct Dial (614) 764-3220
michael.berner@wendys.com

December 1, 2023

VIA ELECTRONIC DELIVERY

John Chevedden
[redacted]

RE: Rule 14a-8 Proposal (The Wendy's Company)

Dear Mr. Chevedden:

I am writing in response to the letter from Mr. Kenneth Steiner ("Mr. Steiner") to Mr. E. J. Wunsch, Chief Legal Officer and Secretary of The Wendy's Company (the "Company"), dated on October 24, 2023, postmarked on November 22, 2023 and received via FedEx at the Company's principal executive offices on November 27, 2023 (the "Letter"), with a stockholder proposal titled "Proposal 4 – Independent Board Chairman" (the "Proposal") for inclusion in the Company's proxy materials for its 2024 Annual Meeting of Stockholders (the "Proxy Materials"). The Letter requests that the Company direct all future correspondence and communications regarding the Proposal to your attention.

The Letter states that "I intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof" and that "I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me." The Company acknowledged receipt of the Proposal by email message on November 29, 2023, however, as of the date hereof, the Company has not yet received any such verification of stock ownership providing proof that Mr. Steiner complied with the securities ownership requirements set forth in Rule 14a-8 of the Securities Exchange Act of 1934 ("Rule 14a-8"). If Mr. Steiner is a beneficial owner of the Company's common stock, then the Proposal should have been accompanied by documentation confirming that Mr. Steiner meets the applicable securities ownership requirements, such as a written statement from the "record" holder of such common stock (*e.g.*, a broker or bank) verifying that Mr. Steiner met such requirements at the time the Proposal was submitted.

In accordance with Staff Legal Bulletin Nos. 14F and 14G published by the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "SEC"), if Mr. Steiner's broker or bank is not a DTC participant or an affiliate of a DTC participant, then the Company must be provided with proof of securities ownership from the DTC participant or affiliate of the DTC participant through which Mr. Steiner's common stock is held. In the event that Mr. Steiner holds his common stock through a securities intermediary that is not a broker or bank, then the Company must be provided with proof of securities ownership from both (i) the securities intermediary and (ii) a DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary. For your reference, we have enclosed herewith copies of Rule 14a-8 and SEC Staff Legal Bulletin Nos. 14F and 14G.

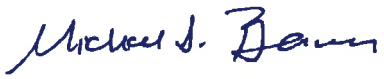
The eligibility requirements of Rule 14a-8(b) establish that a proponent must have continuously held at least (i) $2,000 in market value of the company's securities entitled to be voted on the proposal at the meeting for at least three years by the date of the proposal's submission, (ii) $15,000 in market value of the company's securities entitled to be voted on the proposal at the meeting for at least two years by the date of the proposal's submission or (iii) $25,000 in market value of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date of the proposal's submission (and, in each case, the proponent must also continue to hold those securities through the date of the meeting). As indicated above, the Company has not yet received proof that Mr. Steiner has met any of these requirements. Therefore, please provide documentation from the "record" holder demonstrating that Mr. Steiner owns and has continuously held at least $25,000 of the Company's common stock for at least the one-year period preceding and including November 22, 2023 (the date on which the Proposal was postmarked) or other applicable threshold and holding period.

If Mr. Steiner has not met these Rule 14a-8(b) securities ownership requirements, or if he does not respond within 14 calendar days as described below in this paragraph, then, in accordance with Rule 14a-8(f), the Company will be entitled to exclude the Proposal from the Proxy Materials. If Mr. Steiner wishes to proceed with the Proposal, then he must respond and submit adequate evidence (such as a written statement from the "record" holder of his common stock) verifying that Mr. Steiner has in fact met the Rule 14a-8(b) securities ownership requirements. Such response must be postmarked or transmitted electronically no later than 14 calendar days from the date on which you received this notification letter.

In the event that it is demonstrated that Mr. Steiner has met the eligibility requirements of Rule 14a-8(b), the Company reserves the right to exclude the Proposal if, and to submit to the SEC the reasons for which, in the Company's judgment, the exclusion of the Proposal from the Proxy Materials would be in accordance with SEC proxy rules.

Please direct all further correspondence with respect to this matter to my attention at the mailing address provided on the first page of this notification letter or by email to *michael.berner@wendys.com*.

Sincerely yours,



Michael G. Berner
Vice President – Corporate & Securities Counsel and
Chief Compliance Officer, and Assistant Secretary

Enclosures

cc: Mr. E. J. Wunsch, Chief Legal Officer and Secretary

Title 17 —Commodity and Securities Exchanges
Chapter II —Securities and Exchange Commission
Part 240 —General Rules and Regulations, Securities Exchange Act of 1934
Subpart A —Rules and Regulations Under the Securities Exchange Act of 1934
Regulation 14A: Solicitation of Proxies

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, 78*l*, 78m, 78n, 78n–1, 78o, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll*, 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]

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

Division of Corporation Finance
Securities and Exchange Commission

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

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

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a

company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

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

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

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

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

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

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

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

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

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

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

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

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof

of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

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

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

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

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

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

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

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

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

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

from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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

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

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

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

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

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

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

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

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

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

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

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

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)

(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

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

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

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

Modified: Oct. 18, 2011

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

Division of Corporation Finance
Securities and Exchange Commission

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)...."

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

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

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

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

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

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

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

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

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

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

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

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.[4]

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

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

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and

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

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

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

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

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

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

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

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

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

Modified: Oct. 16, 2012

From:	John Chevedden
To:	Johnson, Mark; Berner, Michael
Subject:	[EXT] Rule 14a-8 Proposal (WEN)
Date:	Sunday, December 3, 2023 11:35:37 PM
Attachments:	Letter 2.pdf ATT00001.htm

TD Ameritrade

12/01/2023

Kenneth Steiner
[redacted]

Re: Your TD Ameritrade Account Ending in [redacted]

Dear Kenneth Steiner,

Thank you for allowing me to assist you today. As you requested, this letter is to confirm that as of the start of business on December 1, 2023, there were at least 500 shares each held in your TD Ameritrade account ending in [redacted] continuously since at least November 1, 2020, of:

- AMC Networks Inc (AMCX)
- Verizon Communications (VZ)
- The Wendy's Company (WEN)

TD Ameritrade Clearing's DTC broker number is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to Client Services > Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Colton Holmes
Resource Specialist
TD Ameritrade

TD Ameritrade understands the importance of protecting your privacy. From time to time we need to send you notifications like this one to give you important information about your account. If you've opted out of receiving promotional marketing communications from us, containing news about new and valuable TD Ameritrade services, we will continue to honor your request.

Market volatility, volume, and system availability may delay account access and trade execution.

Distributed by TD Ameritrade, Inc., 200 South 108th Avenue, Omaha, NE 68154-2631.

TDA 1002212 02/21

From: John Chevedden
To: Johnson, Mark
Subject: [EXT] (WEN)
Date: Tuesday, December 19, 2023 10:39:07 PM
Attachments: Scan2023-12-19_193729.pdf
ATT00001.htm
ATT00002.htm

Mr. Johnson,
This revision applies only if it settles all issues Wendy's has with the proposal.
John Chevedden

[WEN – Rule 14a-8 Proposal, November 3, 2023 | revised December 19, 2023]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Independent Board Chairman

Shareholders request that the Board of Directors adopt an enduring policy, and amend the governing documents as necessary in order that 2 separate people hold the office of the Chairman and the office of the CEO.

Whenever possible, the Chairman of the Board shall be an Independent Director.

The Board has the discretion to select a Temporary Chairman of the Board who is not an Independent Director to serve while the Board is seeking an Independent Chairman of the Board on an accelerated basis.

It is a best practice to adopt this policy soon. However this policy could be phased in when there is a contract renewal for our current CEO or for the next CEO transition.

John Dionne, a lecturer at Harvard Business School, said, "The CEO is running the company, and the chairman is running the board. The board is the governing body, and you really don't want the person running the governing body also running the company. It's really that simple."

This proposal topic has received as high as 45% support at an earlier Wendy's annual meeting.

This proposal is important to Wendy's because the Board of Directors could give the 2 most important jobs at Wendy's to one person on short notice for an extended period. It is of added importance to have an enduring Wendy's Board structure with Independent Board Chairman because Wendy's stock has stalled and was at its current price in 2006.

Please vote yes:

Independent Board Chairman – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]