



DIVISION OF
CORPORATION FINANCE

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

April 1, 2025

Lisa Stimmell
Wilson Sonsini Goodrich & Rosati, P.C.

Re: Dropbox, Inc. (the "Company")
Incoming letter dated March 31, 2025

Dear Lisa Stimmell:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Half Moon Capital, LLC for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Company withdraws its January 10, 2025 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Brandon Carnovale
Half Moon Capital, LLC



Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
O: 650.493.9300
F: 650.493.6811

January 10, 2025

VIA ONLINE PORTAL SUBMISSION

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

**Re: Shareholder Proposal of Half Moon Capital, LLC
Submitted to Dropbox, Inc.**

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended, we are writing on behalf of our client, Dropbox, Inc., a Delaware corporation (the “Company”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, it may exclude the stockholder proposal and supporting statement (together, the “Proposal”) submitted by Half Moon Capital, LLC (the “Proponent”) from the proxy materials to be distributed by the Company in connection with its 2025 Annual Meeting of Stockholders (the “2025 Proxy Materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (CF) (Nov. 7, 2008) (“SLB 14D”), the Company is emailing this letter to the Staff. Simultaneously, pursuant to Rule 14a-8(j), the Company is sending a copy of this letter to the Proponent, as notice of the Company’s intention to exclude the Proposal from the 2025 Proxy Materials. The Company will promptly forward to the Proponent any response from the Staff to this no-action request that the Staff transmits by email or fax to the Company. Also pursuant to Rule 14a-8(j), this letter is being filed no later than 80 calendar days before the Company files its 2025 Proxy Materials.

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

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1. The Proposal

The text of the Proposal is set forth below:

Proposal: Half Moon Capital, LLC is proposing Dropbox shareholders APPROVE a 3-year vesting schedule for the Class B shares to convert into Class A. We propose the Class B shares vest 33.33% in each year the Class A stock subsequently remains below \$30, \$35, and \$40 on the 1, 2 and 3 year anniversary of adoption.

A copy of the Proposal is attached as Exhibit A.

2. Basis for Exclusion

The Company requests that the Staff concur in its view that it may exclude the Proposal from the 2025 Proxy Materials pursuant to:

Rule 14a-8(i)(2) – the Proposal would, if implemented, cause the Company to violate any state, federal or foreign law to which it is subject;

Rule 14a-8(i)(1) – the Proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization;

Rule 14a-8(i)(6) – the Company lacks the power or authority to implement the Proposal; and

Rule 14a-8(i)(3) – the Proposal is impermissibly vague and indefinite as to be inherently misleading in violation of Rule 14-9.

3. Background

While it is unclear exactly what the Proponent has in mind with the concept of “vesting” as it relates to the convertibility of the Company’s Class B common stock (the “Class B Common Stock”), we understand that the Proposal either seeks to (i) impose new and additional transfer restrictions on the Class B Common Stock or (ii) require the periodic conversion of shares of Class B Common Stock to shares of the Company’s Class A common stock (the “Class A Common Stock”) based on the prevailing trading price of the Class A Common Stock. The Company’s Restated Certificate of Incorporation (the “Charter”) provides that each share of Class B Common Stock is convertible at any time at the option of the holder into one share of Class A Common Stock. Shares of Class B Common Stock will automatically convert into shares of Class A Common Stock upon sale or transfer except for certain permitted transfers described in the Charter, which primarily consist of estate planning transfers where sole dispositive power and exclusive voting control with respect to the shares of Class B Common Stock are retained by the transferring holder and transfers between our co-founders. Class B Common Stock

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generally has the same rights, preferences and privileges as the Class A Common Stock except in principal part that each share of Class B Common Stock is entitled to 10 votes, whereas the Class A Common Stock is entitled to one vote per share. There is no liquid market for the Class B Common Stock. Therefore, shares of Class B Common Stock must be converted into Class A Common Stock, which is listed and traded on the Nasdaq Global Select Market, to be sold or freely transferred. We note that as of December 31, 2024, the Company had approximately 84 holders of Class B Common Stock.

4. Analysis

The Proposal, if approved, would violate Delaware law.

Rule 14a-8(i)(2) permits a company to omit a proposal if it would violate state, federal or foreign law. The Proposal would impose “vesting” restrictions on already issued and fully vested shares of Class B Common Stock and such vesting restrictions would appear to prohibit or restrict the conversion of such shares. We note that these shares are not restricted stock awards subject to repurchase, nor are they equity compensation awards subject to existing vesting provisions. All shares of Class B Common Stock currently outstanding are fully paid shares not subject to any right of repurchase. There is no public market for the Class B Common Stock and shares can only be sold if converted. In fact, shares automatically convert to Class A Common Stock if there is a sale or transfer of such shares and the owner does not maintain sole dispositive power and voting control. Accordingly, any prohibition on conversion of the Class B Common Stock, including by imposing a “vesting” requirement, effectively prevents sales or transfers of such shares. The Staff has historically permitted exclusion of proposals that purport to impose holding requirements on already owned shares on the basis that such restrictions violate state law. *See, e.g., Citigroup* (avail. Feb. 18, 2009); *NiSource Inc.* (avail. March 22, 2010). We discuss the Delaware law violations of this Proposal below and reference the legal opinion provide herewith and attached as Annex A.

Section 202(b) of the Delaware General Corporation Law (the “DGCL”) provides that new transfer restrictions may be validly imposed on previously issued securities only with the consent of the holders of those securities, either in the form of an agreement with respect to the transfer restriction or a vote in favor of the transfer restriction.¹ *See also Henry v. Phixios Holdings, Inc.*, 2017 WL 2928034, at *8 (Del. Ch. Jul. 10, 2017) (holding that “[a]n existing stockholder must affirmatively assent to the restriction in order to be bound either by becoming

¹ Section 202(b) of the DGCL states, in pertinent part:

A restriction on the transfer or registration of transfer of securities of a corporation . . . may be imposed by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. *No restrictions so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.* (emphasis added)

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a party to an agreement or by voting in favor of the restriction”). The proposed vesting conditions constitute a restriction on the transfer of securities under Delaware law because the Proposal calls for the adoption of provisions that would impose a new limitation on the transferability and alienability of shares of Class B Common Stock. *See Brown v. Matterport, Inc.*, 2024 WL 2745822, at *8 (Del. Ch. May 28, 2024); *Moran v. Household Int’l, Inc.*, 490 A.2d 1059, 1079 (Del. Ch. 1985), rev’d on other grounds[Ryan, why delete?]; *see also Williams v. Geier*, 1987 WL 11285, at *4 (Del. Ch. May 20, 1987) (citing favorably the characterization of transfer restrictions in *Moran*). The Proposal, if approved, would violate Delaware law on its face and could not be legally enforced as proposed.

We further note that the Company has not issued Class B Common Stock since the Company’s initial public offering (the “IPO”), except upon vesting or settlement of equity awards that were outstanding prior to the IPO, and the Company has not issued new awards of Class B Common Stock under its equity compensation plans since the IPO. All awards for the issuance of Class B Common Stock issued prior to the IPO are fully vested. The Company’s equity compensation plans do not permit new awards of Class B Common Stock, and the Charter prohibits reissuance of Class B Common Stock that may be acquired by the Company. Finally, without the consent of the holders of the Class B Common Stock, voting as a class, Class B Common Stock may not be issued except for pursuant to awards that were outstanding at the IPO. Accordingly, even if the Proposal was intended to be forward-looking and apply to future awards of Class B Common Stock, the Proposal would be inapplicable.

If the Proposal is meant to require the periodic conversion of shares of Class B Common Stock to shares of Class A Common Stock based on the prevailing trading price of the Class A Common Stock, then the Proposal similarly would violate Delaware law on its face and could not be legally enforced. The rights of conversion of the Class B Common Stock are as stated in the Charter. These bargained-for rights are rights of the holders of Class B Common Stock and cannot be unilaterally changed without an amendment to the Charter, which would require stockholder approval and a class vote of the Class B Common Stock. *See, e.g.*, 8 *Del. C.* § 151(e) (“Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation . . . as shall be stated in the certificate of incorporation . . .”); *Greenmont Capital Partners I, LP. v. Mary’s Gone Crackers, Inc.*, 2012 WL 4479999, at *6–7 (Del. Ch. Sept. 28, 2012) (noting that, when set forth in the certificate of incorporation, the convertibility of stock is a part of the “bundle of rights, privileges, and restrictions” held by the stockholder); Restated Cert. of Inc. of Dropbox, Inc., Art. V, § 12, filed with Del. Sec’y of State, Mar. 27, 2018. Similarly, the Company has no right to obligate the holders of Class B Common Stock to choose to convert their shares at any given time or for any given reason. The Charter is a contract among the Company’s stockholders, and the Company and its stockholders have the rights and obligations as set forth therein. *Airgas, Inc. v. Air Prods. & Chemicals, Inc.*, 8 A.3d 1182, 1188 (Del. 2010). Accordingly, the Proposal, if approved and to the extent it seeks to



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require a conversion of the Class B Common Stock, would violate Delaware law on its face and could not be legally enforced because the Company does not have the power under its Charter to obligate the holders of Class B Common Stock to convert their shares, as the right to convert such shares is held solely by the holders of Class B Common Stock.

The Proposal is not a proper subject for action by stockholders.

Rule 14a-8(i)(1) permits a company to omit a stockholder proposal “[i]f the proposal is not a proper subject for action by the stockholders under the laws of the jurisdiction of the company’s organization.” As noted above, a limitation or restriction such as that proposed in the Proposal would require individual consent by each holder of Class B Common Stock, either in the form of an individual agreement or an amendment to the Charter that is consented to by each holder of Class B Common Stock. It is clear that the stockholders cannot take this action unilaterally, and any action to implement the Proposal requires not only the action of the Company, but also each individual stockholder that is impacted. Similarly, if the Proposal seeks to require the periodic conversion of Class B Common Stock to Class A Common Stock, the Company cannot compel the holders of Class B Common Stock to exercise their conversion rights with respect to the Class B Common Stock, and such conversion rights belong solely to those holders. The Proposal does not, in any way, recommend or request the Company to take action.

Even if the Proposal was read to propose or even recommend or request an amendment to the Charter to implement the restriction or the conversion requirement, as contemplated by Staff Legal Bulletin No. 14C (CF) (June 18, 2005)—which is not at all indicated by the plain language of the Proposal which makes no reference to the Charter—Dropbox stockholders have no authority under Delaware law to directly implement the Proponent’s Proposal. Section 242(b) of the DGCL (“Section 242”) provides that in order for a corporation that has capital stock to amend its certificate of incorporation, “its board of directors shall adopt resolutions setting forth the amendment proposed declaring its advisability and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders.” Section 242 “prescribes a two-step process that must be followed in precise sequence to amend a Delaware corporation’s charter.” *AGR Halifax Fund Inc. v. Fiscina*, 743 A.2d 1188, 1192 (Del. Ch. 1999). First, the board of directors must adopt a resolution setting forth a proposed amendment declaring its advisability and directing that it be considered at a special meeting of the stockholders or at the next annual meeting of the stockholders. *Id.* Second, the stockholders must approve the proposed amendment at either the special or annual stockholders meeting. *Id.* “Both steps must occur in that sequence, and under no circumstances may the stockholders act before the mandated board action proposing and recommending the amendment.” *Id.* (citing *Williams v. Geier*, 671 A.2d 1368, 1381 (Del. 1996)). The Staff has consistently held that stockholder proposals that mandate an amendment of a company’s charter may be excluded. *See, e.g., CytRx Corp.* (avail. June 26, 2018); *Cambridge*

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Heart, Inc. (avail. Mar. 25, 2008); *UAL Corp.* (avail. Feb. 7, 2001); *Boeing Co.* (avail. Feb. 6, 2001); *Great Lakes Chemical Corp.* (avail. Mar. 8, 1999). And again, even reading this Proposal to ask or mandate the Company to amend the Charter is reading well beyond the words of the Proposal. The Proposal would thereby circumvent the statutory scheme for charter amendments prescribed by Delaware law and thus is not proper subject for stockholder action. *See CytRx Corp.* (avail. June 26, 2018); *Cambridge Heart, Inc.* (avail. Mar. 25, 2008); *Watt Industries Inc.* (avail. July 10, 1998); *Hechinger Co.* (avail. Mar. 31, 1997). Further, as described above, an amendment to the Charter would not be sufficient to implement the Proposal unless the holders of Class B Common Stock approved on a stockholder by stockholder basis – that is, even approval by the holders of the Company’s outstanding capital stock or approval by the holders of the Class B Common Stock as a class would not be sufficient to enforce the provision against every holder of Class B Common Stock.

Accordingly, we ask that the Staff concur that the Company may exclude the Proponent’s Proposal under Rule 14a-8(i)(1).

The Company lacks the power to implement the Proposal.

Similarly, Rule 14a-8(i)(6) permits a Company to exclude a proposal if the Company lacks the power or authority to implement the Proposal. For the reasons discussed above, unless each holder of Class B Common Stock affirmatively voted to approve, or agreed to, the vesting provisions, the Company and the board of directors would be unable to implement or enforce the vesting provisions described in the Proposal. The Company has no legal basis to require its stockholders who currently own shares to consent to such transfer restrictions or to otherwise require that such stockholders convert their shares of Class B Common Stock to Class A Common Stock. As a result, the Company lacks the power to impose such restrictions without the consent of such stockholders.

The Proposal is vague and misleading.

Notwithstanding the Company’s discussion above, the Company’s analysis of the exclusions is based on *potential* readings of the Proposal, which the Company has inferred for purposes of this letter. However, the Proposal is not at all clear as to the action to be taken if approved. For example, all shares of Class B Common Stock are owned, free and clear without restriction. All of such shares were purchased prior to the IPO or were issued upon exercise or vesting of equity awards granted prior to the IPO and therefore, any vesting conditions were met prior to issuance of the shares of Class B Common Stock. Such shares are owned by over 80 stockholders. If the Proposal is approved, it is not clear whether the Proposal is intended to immediately result in restrictions on these stockholders and their owned shares. Further, it is not clear what the Proponent intends by its use of the term “vest” in relation to conversion or what the price-based terms represent. Class B Common Stock is not an option to purchase, nor does it represent any other right to acquire, Class B Common Stock or Class A Common Stock, nor is it restricted stock subject to a right of repurchase. Accordingly, it is not clear whether the

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intent of the Proposal is that the Company must meet the stock price targets (which are entirely arbitrary as it relates to Company performance) in order for holders of Class B Common Stock to be able to convert and sell their shares, that the Class B Common Stock be subject to periodic conversion if such stock price targets are not met, or if there are other rights and privileges that the Proponent intends to restrict by implementing the arbitrary three-year vesting schedule. Finally, the Proposal implies that Class B Common Stock is held by “insiders” who should be held “accountable” for the Company’s performance. While the majority holder of the Class B Common Stock is the Company’s Chief Executive Officer, and a small number of holders are management employees of the Company, many of the remaining holders of Class B Common Stock are long-time employees of the Company or are no longer involved at the Company at all other than in their capacity as stockholders. The Company has attempted to infer what the Proponent intends with this Proposal for purposes of this letter, but the Company does not have any certainty how to implement the Proposal, and it is unrealistic to expect that the Company’s stockholders will understand in any meaningful way or with any reasonable certainty what they are voting on. The Proposal makes incorrect and misleading statements about the holders of the Class B Common Stock as well as the ability of stockholders to impose this action.

5. Conclusion

The Company requests that the Staff concur with its view that, for the reasons stated above, it may exclude the Proposal from the 2025 Proxy Materials.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

DocuSigned by:

Lisa Stimmell

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Enclosures

cc: Dropbox, Inc.
Half Moon Capital, LLC

Annex A
Legal Opinion



Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
O: 650.493.9300
F: 866.974.7329

January 10, 2025

Dropbox, Inc.
1800 Owens Street
San Francisco, CA 94158

Re: Stockholder Proposal of Half Moon Capital, LLC

Ladies and Gentlemen:

We have acted as Delaware counsel to Dropbox, Inc., a Delaware corporation (the “Company”), in connection with a proposal (the “Proposal”) submitted by Half Moon Capital, LLC (the “Proponent”) for inclusion in the Company’s proxy statement and form of proxy for the Company’s 2025 annual meeting of stockholders (the “Annual Meeting”). In this regard, you have requested our opinion as to certain matters under Delaware law, including the [General Corporation Law of the State of Delaware] (the “DGCL”).

In rendering the opinions expressed below, we have examined executed originals or copies of the following documents:

- (a) the Restated Certificate of Incorporation of the Company, as amended to date;
- (b) the Amended and Restated Bylaws of the Company; and
- (c) the Proposal and its supporting statement.

In addition, we have examined and relied upon such corporate records of the Company as we have deemed necessary or appropriate for purposes of the opinions expressed below.

With your permission and without any verification by us, we have assumed for purposes of rendering the opinions set forth herein: (a) the genuineness of all signatures; (b) the legal capacity of all natural persons to execute and deliver documents; (c) the authenticity and completeness of documents submitted to us as originals; (d) the completeness and conformity with authentic original documents of all documents submitted to us as copies; (e) that the dated documents match the executed but undated versions thereof delivered to us; and (f) that all documents, books and records made available to us by the Company are accurate and complete.

The Proposal

The text of the Proposal is set forth below:

Proposal: Half Moon Capital, LLC is proposing Dropbox shareholders APPROVE a 3-year vesting schedule for the Class B shares to convert into Class A. We propose the Class B shares vest 33.33% in each year the Class A stock subsequently remains below \$30, \$35, and \$40 on the 1, 2 and 3 year anniversary of adoption.

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Discussion

You have asked for our opinion whether implementation of the Proposal would violate Delaware law. For the reasons set forth below, in our opinion, the Proposal, if adopted and implemented, would violate Delaware law.

The specific terms and intent of the Proposal are unclear. However, we understand that the Proposal either seeks to (i) impose new and additional transfer restrictions on the Company's Class B common stock (the "Class B Common Stock") or (ii) require the periodic conversion of shares of Class B Common Stock to shares of the Company's Class A common stock (the "Class A Common Stock") based on the prevailing trading price of the Class A Common Stock. Based on either reading, the Proposal, if adopted and implemented, would violate Delaware law.

The Proposal, if adopted and implemented, would implement a vesting schedule on all shares of Class B Common Stock regardless of when such stock was issued or how it was obtained by virtue of preventing conversion into the Company's freely tradeable Class A Common Stock. The foregoing restrictions would be considered transfer restrictions governed by Section 202 of the DGCL. See Leondard Loventhal v. Hilton Hotels Corp., 2000 WL 1528909, at *7 (Del. Ch. Oct. 10, 2000) (citations omitted) ("Statutorily speaking, 8 Del. C. § 202 defines what constitutes a transfer restriction on stock under Delaware law. More generally, one set of commentators has defined transfer restrictions as 'provisions which prevent or establish preconditions for the disposition by stockholders of their stock or other securities.');" see also Moran v. Household Int'l, Inc., 490 A.2d 1059, 1079 (Del Ch. 1985); Williams v. Geier, 1987 WL 11285, at *4 (Del. Ch. May 20, 1987).

Section 202 of the DGCL governs the manner in which transfer restrictions may be validly imposed on a corporation's securities, including shares of its capital stock. With respect to the imposition of transfer restrictions on previously issued securities, Section 202(b) provides, in relevant part:

A restriction on the transfer or registration of transfer of securities of a corporation . . . may be imposed by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restrictions so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

8 Del. C. § 202(b) (emphasis added).

In Henry v. Phixios Holdings, Inc., 2017 WL 2928034, at *8 (Del. Ch. Jul. 10, 2017), the Court stated that "[a]n existing stockholder must affirmatively assent to the [transfer] restriction in order to be bound either by becoming a party to an agreement or by voting in favor of the restriction. A restriction cannot be retroactively imposed on a current stockholder without his express consent." As stated in DiLoreto v. Tiber Holding Corp., "[t]he purpose of § 202 is to protect a shareholder's investment from diminishment through post-purchase restrictions placed on the shareholder's shares by the corporation or its other shareholders. (Otherwise, others might circumscribe the stockholder's ability to transfer his or

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her shares, reducing the investment's liquidity and value.)” DiLoreto v. Tiber Holding Corp., 1999 WL 1261450, at *6 (Del. Ch. Jun. 29, 1999); see also Henry, 2017 WL 2928034, at *24. Thus, Section 202(b) provides that neither the board of directors, nor stockholders, may impose transfer restrictions on securities issued prior to the adoption of the transfer restriction without the consent of the holders of the securities, either in the form of an agreement or a vote in favor of the restriction. See Joseph E. Seagram & Sons, Inc. v. Conoco, Inc., 519 F.Supp. 506, 513 (D. Del. 1981) (stating that a board of directors may not “unilaterally . . . impose stock transfer restrictions, which might be of significant economic consequence, on existing shares without the consent of the corporation’s shareholders”); Geier, 1987 WL 11285, at *4; R. Franklin Balotti & Jesse A. Finkelstein, DELAWARE LAW OF CORPORATIONS & BUSINESS ORGANIZATIONS, § 6.6 (4th ed., 2025-1 supp.) (stating that Section 202(b) “provides that the holders of securities outstanding at the time a restriction is imposed are not bound by the restriction unless they assent to it”); Robert S. Saunders, Allison L. Land & Jennifer C. Voss, FOLK ON THE DELAWARE GENERAL CORPORATION LAW, 202.6 (6th ed. 2025-1 supp.) (“[A] restriction, however imposed, cannot retroactively bind any current stockholder without the stockholder’s express consent, either by voting in favor of the restriction—if the restriction is imposed by amendment to the certificate or bylaws—or by becoming a party to an agreement imposing the restriction.”).

As indicated above, the Proposal would require the restrictions contemplated thereby to be imposed, by unilateral action of the stockholders, on previously issued and currently outstanding shares of Class B Common Stock. The imposition of such restrictions, however, may not be validly imposed by the stockholders on previously issued and currently outstanding shares unless the holder of those shares has consented to or voted in favor of the restriction. See 8 Del. C. § 202(b); Henry, 2017 WL 2928034, at *24; Di Loreto, 1999 WL 1261450, at *6; Geier, 1987 WL 11285, at *4. Because the outstanding shares of Class B Common Stock are presently not subject to the restrictions on transfer contemplated by the Proposal, the restrictions contemplated by the Proposal cannot now be validly imposed on such shares by unilateral action of the stockholders or the board of directors. Accordingly, the Proposal, if adopted and implemented, would purport to permit the stockholders to unilaterally impose a transfer restriction on currently outstanding shares of Class B Common Stock in violation of Section 202 of the DGCL.

If the Proposal is instead meant to require the periodic conversion of shares of Class B Common Stock to shares of Class A Common Stock based on the prevailing trading price of the Class A Common Stock, then the Proposal similarly would violate Delaware law. The rights of conversion of the Class B Common Stock are as stated in the Company’s Restated Certificate of Incorporation (the “Charter”). See 8 Del. C. § 151(e) (“Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation . . . as shall be stated in the certificate of incorporation . . .”). The Charter is a contract among the Company’s stockholders, and the Company and its stockholders have the rights and obligations as set forth therein. Airgas, Inc. v. Air Prods. & Chemicals, Inc., 8 A.3d 1182, 1188 (Del. 2010); see also Greenmont Capital Partners I, LP. v. Mary’s Gone Crackers, Inc., 2012 WL 4479999, at *6–7 (Del. Ch. Sept. 28, 2012) (noting that, when set forth in the certificate of incorporation, the convertibility of stock is a part of the “bundle of rights, privileges, and restrictions” held by the stockholder). Neither the Company nor its stockholders have a right to obligate the holders of Class B Common Stock to convert their shares to Class A Common Stock, as the right of conversion is personally

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Dropbox, Inc.
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held by the holders of Class B Common Stock as specifically set forth in the Charter. Accordingly, the Proposal, if approved and to the extent it seeks to require a conversion of the Class B Common Stock, would violate Delaware law because neither the Company nor the board of directors has the power under the Charter to obligate the holders of Class B Common Stock to convert their shares, and the right to convert such shares is held solely by the holders of Class B Common Stock.

Conclusion

Based upon and subject to the foregoing, and subject to the limitations stated herein, it is our opinion that the Proposal, if adopted and implemented, would be invalid under Delaware law.

The opinions set forth above are subject to the following exceptions, qualifications and limitations:

- A. We express no opinion as to any matter relating to laws of any jurisdiction other than the DGCL, as in effect on the date hereof, and we have made no inquiry into, and we express no opinion as to, the statutes, regulations, treaties, common laws or other laws of any other nation, state or jurisdiction.
- B. This opinion speaks only at and as of its date and is based solely on the facts and circumstances known to us at and as of such date. We express no opinion as to the effect of any statute, rule, regulation or other law which is enacted or becomes effective after, or of any court decision which changes the law relevant to such rights which is rendered after, the date of this opinion or the conduct of the parties following the closing of the contemplated transaction. In addition, in rendering this opinion, we assume no obligation to revise or supplement this opinion should the present laws of the jurisdictions mentioned herein be changed by legislative action, judicial decision or otherwise.

This opinion is intended solely for your benefit in connection with the matters addressed herein and may be relied upon for such purpose. We understand that you may furnish a copy of this opinion letter to the United States Securities and Exchange Commission in connection with the matters addressed herein and that you may refer to it in your proxy statement for the Annual Meeting, and we consent to your doing so. Except as stated in this paragraph, this opinion may not be relied upon by you for any other purpose or relied upon or furnished or quoted to any other person without our prior written consent.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

DocuSigned by:

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Exhibit A
(see attached)

From: [REDACTED]
Date: Thu, Oct 31, 2024 at 10:17 AM
Subject: HMC - Proxy Shareholder Proposal

To: [REDACTED]
Cc: [REDACTED]

Hi Tim,

As we discussed during our call in June 2024, we are submitting a shareholder proposal to be included in the Company-sponsored proxy statement for the 2025 AGM. In accordance with SEC Rule 14a-8, we have included our proposal, a recent account statement and confirmation from our custodian of ownership over the past year. We believe we are in compliance with all requirements outlined in the Dropbox proxy and SEC Rule 14a-8. As a recent precedent, a similar proposal has been made by Starboard Value with News Corp (NWSA).

We have addressed our letter to Mr. Donald W. Blair as he is our Lead Independent Director. Could you please confirm receipt?

Please let us know if you would like to discuss as always

Thanks,

Brandon

Brandon Carnovale
Half Moon Capital, LLC
Phone (Direct): [REDACTED]
Phone (Office): [REDACTED]
www.halfmooncapital.com

October 31st, 2024

Dropbox, Inc.
Attention: Corporate Secretary
1800 Owens Street
San Francisco, California 94158
IR@dropbox.com

Dear Mr. Blair, Lead Independent Director,

Half Moon Capital, LLC (“Half Moon Capital”) is submitting a stockholder proposal to be included in the company-sponsored 2025 proxy statement and held for a shareholder vote at the 2025 Annual General Meeting. In accordance with SEC Rule 14a-8, we have included a written statement from Goldman Sachs & Co. LLC, our custodian, stating we have owned over \$25,000 of shares in Dropbox for more than 1 year. For added transparency we have included a recent account statement as well. We intend to own over \$25,000 of shares, in accordance with SEC Rule 14a-8, through next year’s annual general meeting. We are available to discuss our stockholder proposal during regular business hours (9am – 5pm ET), in-person or through a video conference at your earliest convenience. Please contact us through Eric DeLamarter, [REDACTED] and Brandon Carnovale, [REDACTED]. Please find our proposal to be included in the company-sponsored Proxy Statement below.

Stockholder Proposal:

Proposal: Half Moon Capital, LLC is proposing Dropbox shareholders APPROVE a 3-year vesting schedule for the Class B shares to convert into Class A. We propose the Class B shares vest 33.33% in each year the Class A stock subsequently remains below \$30, \$35, and \$40 on the 1, 2, and 3 year anniversary of adoption.

Issue: We believe the dual-class structure has created a misalignment between the majority owners (i.e. Class A holders) of Dropbox and the insiders who control the super voting Class B shares. We believe this has prevented shareholders from holding insiders accountable as significant missteps continue to erode shareholder value.

Supporting Reasons:

- Since Dropbox’s IPO, Class A shares have grossly underperformed, generating a 3.19% annualized return compared to 20.93% for the S&P 500 Index with dividends reinvested through 9/30/24.
- Peers such as BackBlaze (Nasdaq:BLZE) and Nutanix (Nasdaq:NTNX) have eliminated their dual-class share structures in the public markets as a best practice for corporate governance.
- Additional benefits potentially include improved strategic value, corporate governance, ESG ratings, broader shareholder base and possible index inclusions.

Regards,



Eric DeLamarter
Managing Partner



Brandon Carnovale
Senior Analyst

From: Stimmell, Lisa
Sent: Wednesday, November 13, 2024 5:59 PM
To: eric [REDACTED] brandon [REDACTED]
Cc: Bart Volkmer - DropBox [REDACTED] Cara Angelmar; Gillman, Andrew
Subject: Dropbox 14a-8 Submission
Attachments: DBX - Rule 14a-8 14 Day Letter to HMC. (4868-5395-5830.4).pdf

Attached please find a letter requesting certain clarifications regarding your submission of a shareholder proposal to Dropbox.

Thank you,
Lisa

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SONSINI**

Lisa Stimmell | Member | Wilson Sonsini Goodrich & Rosati
[REDACTED]





Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
O: 650.493.9300
F: 650.493.6811

LISA STIMMELL
[REDACTED]
[REDACTED]

November 13, 2024

BY EMAIL

([Eric \[REDACTED\]](#), [Brandon \[REDACTED\]](#))
Half Moon Capital, LLC
Attn: Eric DeLamarter, Brandon Carnovale

Re: Shareholder Proposal

Dear Sir or Madam:

We are writing on behalf of Dropbox, Inc. (“Dropbox”) concerning a shareholder proposal (the “Proposal”) submitted to Dropbox by Half Moon Capital, LLC (the “Proponent”). The Proposal was submitted pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended, for inclusion in Dropbox’s proxy materials for its 2025 Annual Meeting of Shareholders (the “2025 Annual Meeting”). Dropbox received the Proposal electronically on October 31, 2024 (the “Submission Date”).

As set forth below, the Proposal contains certain deficiencies that, pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”), we are required to bring to your attention.

1. Ownership of Dropbox Shares

Rule 14a-8(b) provides that, as of *and including* the Submission Date, a proponent must have continuously held:

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

Rule 14a-8(b) requires a proponent to prove its eligibility by submitting either:

- A written statement from the “record” holder of the proponent’s shares (usually a broker or a bank) verifying that, *as of the Submission Date*, the proponent continuously held at least \$2,000, \$15,000, or \$25,000 in market value of

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Half Moon Capital, LLC
November 13, 2024
Page 2

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

- If the proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that it continuously held at least \$2,000, \$15,000, or \$25,000 in market value of Dropbox's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively, a copy of the schedule or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the proponent continuously held the requisite number of Dropbox shares for the requisite period.

The written statement of eligibility submitted by the Proponent with the Proposal does not clearly verify that the Proponent beneficially held sufficient shares *as of and including the Submission Date*. The SEC's position is that a proposal's date of submission is the date that the proposal is transmitted electronically. However, the form of position report submitted by the Proponent with the Proposal is dated as of October 15, 2024 (the "Position Report"), which is sixteen (16) calendar days before the Submission Date. Further, the identified account holder in the Position Report is "Half Moon Capital Partners, LP" and not the Proponent. Accordingly, there is a gap between the date of the Position Report and the Submission Date, and the Proponent was not the identified account holder as provided in the Position Report.

We refer also to the copy of the electronic email dated October 31, 2024 (the "Email Statement") provided to verify the ownership. While we acknowledge that the Email Statement appears to verify ownership as of the submission date and refers to "Half Moon Capital, LLC", it also refers to "associated accounts" which we are unable to verify. Please also note below that multiple shareholders may not aggregate to meet the ownership thresholds. Given that a copy of a printed email cannot be verified and we lack clarity as to the nature of the associated ownership, Dropbox cannot authenticate printed email copies as sufficient proof of ownership under Rule 14a-8(b).

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Half Moon Capital, LLC
November 13, 2024
Page 3

2. No Aggregation with Other Shareholders

Rule 14a-8(b) does not permit a proponent to aggregate the proponent's 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. Dropbox has not received such a statement from the Proponent in connection with the Proposal. To remedy this defect, the Proponent must confirm and authenticate that it is not aggregating its holdings with those of another shareholder or group.

* * *

For your reference, copies of Rule 14a-8, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14G are enclosed.

For the Proposal to be eligible for inclusion in Dropbox's proxy materials for the 2025 Annual Meeting, the SEC's rules require that your response to this letter, correcting all procedural deficiencies identified in this letter, be postmarked or transmitted electronically no later than 14 calendar days from the date that you receive this letter. Please address any response to me at the address set forth on the first page of this letter. You are responsible for confirming our receipt of any correspondence that you submit in response to this letter.

Dropbox reserves the right to submit a no-action request to exclude the Proposal on other grounds even if the Proponent remedies all procedural defects in the submission of the Proposal.

If you have any questions with respect to the foregoing, please contact me.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

DocuSigned by:
Lisa Stimmell
4E631B7FFF814F1...
Lisa Stimmell

Enclosures

cc:

Dropbox, Inc.
Bart Volkmer
Cara Angelmar

Wilson Sonsini Goodrich & Rosati, Professional Corporation
Andy Gillman

§ 240.14a-8 Shareholder proposals.

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

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to

vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite

amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders'

meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous

year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified

under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9*: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

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

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules*: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which pro-

hibits 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]

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

§ 240.14a-9 False or misleading statements.

(a) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the state-

ments therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

(b) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

(c) No nominee, nominating shareholder or nominating shareholder group, or any member thereof, shall cause to be included in a registrant's proxy materials, either pursuant to the Federal proxy rules, an applicable state or foreign law provision, or a registrant's governing documents as they relate to including shareholder nominees for director in a registrant's proxy materials, include in a notice on Schedule 14N (§ 240.14n-101), or include in any other related communication, any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to a solicitation for the same meeting or subject matter which has become false or misleading.

NOTE: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

a. Predictions as to specific future market values.

b. Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.

c. Failure to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons

**Division of Corporation Finance
Securities and Exchange Commission**

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://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-8⁷ and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹ See Rule 14a-8(b).

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

compared to “beneficial owner” and “beneficial ownership” in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 (“The term ‘beneficial owner’ when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.”).

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

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

⁵ See Exchange Act Rule 17Ad-8.

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

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

⁸ *Techne Corp.* (Sept. 20, 1988).

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

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

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

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

¹³ This position will apply to all proposals submitted after an initial proposal but before the company’s deadline for receiving proposals, regardless of whether they are explicitly labeled as

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

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

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

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

<http://www.sec.gov/interps/legal/cfs1b14f.htm>

**Division of Corporation Finance
Securities and Exchange Commission**

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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.

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.

<http://www.sec.gov/interp/leg/cfs1b14g.htm>

From: Stimmell, Lisa
Sent: Thursday, November 21, 2024 8:18 AM
To: brandon [REDACTED]; eric [REDACTED]
Cc: 'Bart Volkmer - DropBox'; 'Cara Angelmar'; Gillman, Andrew
Subject: RE: Dropbox 14a-8 Submission

Receipt confirmed.

Thanks,
Lisa

From: brandon [REDACTED]
Sent: Thursday, November 21, 2024 8:16 AM
To: Stimmell, Lisa [REDACTED]; eric [REDACTED]
Cc: 'Bart Volkmer - DropBox' [REDACTED]; 'Cara Angelmar' [REDACTED]; Gillman, Andrew [REDACTED]
Subject: RE: Dropbox 14a-8 Submission

EXT - [brandon](#) [REDACTED]

Hi Lisa,

Per your request below, could you please confirm you have received our follow-up email & attachments? In case we don't hear back shortly, we'll be happy to reply via FedEx to ensure we satisfy this obligation since we are on a 14-day clock.

Wilson Sonsini Letter – 11.13.24

For the Proposal to be eligible for inclusion in Dropbox's proxy materials for the 2025 Annual Meeting, the SEC's rules require that your response to this letter, correcting all procedural deficiencies identified in this letter, be postmarked or transmitted electronically no later than 14 calendar days from the date that you receive this letter. Please address any response to me at the address set forth on the first page of this letter. **You are responsible for confirming our receipt of any correspondence that you submit in response to this letter.**

Regards,

Brandon

Brandon Carnovale
Half Moon Capital, LLC

Phone (Direct): [REDACTED]

Phone (Office): [REDACTED]

www.halfmooncapital.com

From: [brandon](#) [REDACTED]
Sent: Tuesday, November 19, 2024 4:29 PM
To: 'Stimmell, Lisa' [REDACTED]; [eric](#) [REDACTED]
Cc: 'Bart Volkmer - DropBox' [REDACTED]; 'Cara Angelmar' [REDACTED]; 'Gillman, Andrew' [REDACTED]
Subject: RE: Dropbox 14a-8 Submission

Thank you, Lisa. Please find our updated materials attached and let us know if there's anything else we can provide you with.

Could you please confirm receipt?

Regards,

Brandon

Brandon Carnovale
Half Moon Capital, LLC
Phone (Direct): [REDACTED]
Phone (Office): [REDACTED]
www.halfmooncapital.com

From: Stimmell, Lisa [REDACTED]
Sent: Wednesday, November 13, 2024 8:59 PM
To: [eric](#) [REDACTED]; [brandon](#) [REDACTED]
Cc: Bart Volkmer - DropBox [REDACTED]; Cara Angelmar [REDACTED] Gillman, Andrew [REDACTED]
Subject: Dropbox 14a-8 Submission

Attached please find a letter requesting certain clarifications regarding your submission of a shareholder proposal to Dropbox.

Thank you,
Lisa

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Lisa Stimmell | Member | Wilson Sonsini Goodrich & Rosati
[REDACTED]



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Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
O: 650.493.9300
F: 650.493.6811

March 6, 2025

VIA ONLINE PORTAL SUBMISSION

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

**Re: Shareholder Proposal of Half Moon Capital, LLC
Submitted to Dropbox, Inc.**

Ladies and Gentlemen:

We are submitting this letter as a supplement to our prior letter submitted on January 10, 2025 (the "Original Letter") on behalf of our client, Dropbox, Inc., a Nevada corporation (formerly a Delaware corporation) (the "Company"). Pursuant to the Original Letter, a copy of which is attached as Exhibit A hereto (*exhibits omitted*), we requested that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with the Company's view that it may exclude the stockholder proposal and supporting statement (together, the "Proposal") submitted by Half Moon Capital, LLC (the "Proponent") from the proxy materials to be distributed by the Company in connection with its 2025 Annual Meeting of Stockholders (the "2025 Proxy Materials"). We are submitting this supplemental letter (this "Supplemental Letter") because on March 5, 2025, following the date of the Original Letter, the Company reincorporated from Delaware to Nevada. In the Original Letter, we cited Delaware law as a basis for the Company's view that the Proposal may be excluded, and the Original Letter included a legal opinion from Delaware counsel in support of this position. In view of the reincorporation of the Company to Nevada, we are providing this Supplemental Letter, including an opinion from Nevada counsel, to provide the basis for exclusion of the Proposal under Nevada law.

In accordance with Section C of Staff Legal Bulletin No. 14D (CF) (Nov. 7, 2008) ("SLB 14D"), the Company is emailing this letter to the Staff. Simultaneously, pursuant to Rule 14a-8(j), the Company is sending a copy of this letter to the Proponent, as notice of the Company's intention to exclude the Proposal from the 2025 Proxy Materials. The Company will promptly forward to the Proponent any response from the Staff to this no-action request that the Staff transmits by email or fax to the Company. Also pursuant to Rule 14a-8(j), the Original Letter was filed no later than 80 calendar days before the Company expects to file its 2025 Proxy Materials.

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Office of Chief Counsel
March 6, 2025
Page 2

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

For ease of reference, we have repeated the text of the Proposal and basis for exclusion set forth in the Original Letter below. We believe that the provisions of Rule 14a-8 that were cited in the Original Letter as the basis for exclusion continue to apply and we have discussed the reasoning for our belief under Nevada law and, where relevant, the Company's Nevada articles of incorporation, as currently in effect (the "Nevada Charter").

1. The Proposal

The text of the Proposal is set forth below:

Proposal: Half Moon Capital, LLC is proposing Dropbox shareholders APPROVE a 3-year vesting schedule for the Class B shares to convert into Class A. We propose the Class B shares vest 33.33% in each year the Class A stock subsequently remains below \$30, \$35, and \$40 on the 1, 2 and 3 year anniversary of adoption.

A copy of the Proposal is attached as Exhibit A.

1. Basis for Exclusion

The Company requests that the Staff concur in its view that it may exclude the Proposal from the 2025 Proxy Materials pursuant to:

Rule 14a-8(i)(2) – the Proposal would, if implemented, cause the Company to violate any state, federal or foreign law to which it is subject;

Rule 14a-8(i)(1) – the Proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Rule 14a-8(i)(6) – the Company lacks the power or authority to implement the Proposal; and

Rule 14a-8(i)(3) – the Proposal is impermissibly vague and indefinite as to be inherently misleading in violation of Rule 14-9.

2. Background on the Reincorporation

The Company was incorporated in Delaware in 2007. On January 17, 2025, the board of directors of the Company approved the reincorporation of the Company from the State of Delaware to the

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Office of Chief Counsel
March 6, 2025
Page 3

State of Nevada by conversion (the “Nevada Reincorporation”) and on January 28, 2025, stockholders representing at least a majority of the Company’s outstanding voting power approved the Nevada Reincorporation by written consent. On January 29, 2025, the Company filed a preliminary information statement with the Commission and on February 10, 2025, the Company filed a definitive information statement (the “Information Statement”) with the Commission and commenced mailing the Information Statement to stockholders of the Company who did not consent to the Nevada Reincorporation. On March 5, 2025, the Company consummated the Nevada Reincorporation and the Company is now governed by the Nevada Revised Statutes (“NRS”) instead of the Delaware General Corporation Law, as well the Nevada Charter and Nevada Bylaws of the Company.

3. Analysis

Notwithstanding the Nevada Reincorporation, we believe that the Proposal should be excludable on a similar basis as set forth in the Original Letter. Our analysis under Nevada law is set forth below

The Proposal, if approved, would violate Nevada law.

Rule 14a-8(i)(2) permits a company to omit a proposal if it would violate state, federal or foreign law. The Proposal would impose “vesting” restrictions on already issued and fully vested shares of Class B Common Stock and such vesting restrictions would appear to prohibit or restrict the conversion of such shares. As noted in the Original Letter, shares of Class B Common Stock are not restricted stock awards subject to repurchase, nor are they equity compensation awards subject to existing vesting provisions. All shares of Class B Common Stock currently outstanding are fully paid shares not subject to any right of repurchase. There is no public market for the Class B Common Stock and shares can only be sold if converted to Class A Common Stock. In fact, shares automatically convert to Class A Common Stock if there is a sale or transfer of such shares and the owner does not maintain sole dispositive power and voting control. Accordingly, any prohibition on conversion of the Class B Common Stock, including by imposing a “vesting” requirement, effectively prevents sales or transfers of such shares. Under Nevada law, imposing a transfer restriction on shares already owned by a stockholder requires the vote or consent of that stockholder. Other stockholders and the Company cannot collectively or unilaterally impose such restrictions without the consent or approval of the stockholder to be bound by the restriction. *See* NRS 78.242(2). The Staff has historically permitted exclusion of proposals that purport to impose holding requirements on already owned shares on the basis that such restrictions violate state law. *See, e.g., Citigroup* (avail. Feb. 18, 2009); *NiSource Inc.* (avail. March 22, 2010). We discuss Nevada law in more detail below and reference the legal opinion from Nevada counsel provided herewith and attached as Annex A (the “Nevada Opinion”).

The NRS is clear that no restriction on transfer may be imposed on any stockholder with respect to shares already owned by the stockholder unless such stockholder is a party to the agreement imposing such restriction or if such stockholder votes in favor of the restriction. NRS 78.242(2) provides:

**WILSON
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Office of Chief Counsel
March 6, 2025
Page 4

A restriction on the transfer or registration of transfer of the stock of a corporation, or on the amount of a corporation's stock that may be owned by a person or group of persons, may be imposed by the articles of incorporation or by the bylaws or by an agreement among any number of stockholders or between or among one or more stockholders and the corporation. No restriction so imposed is binding upon any stockholder with respect to the shares of stock owned by such stockholder at the time the restriction is adopted, regardless of any later effective time of such restriction, unless such stockholder is a party to the agreement or voted in favor of the restriction." (Emphasis added.)

As set forth more fully in the Nevada Opinion, the Proposal, if approved, would violate the NRS on its face and could not be legally enforced as proposed.

We further note that the Company has not issued Class B Common Stock since the Company's initial public offering (the "IPO"), except upon vesting or settlement of equity awards that were outstanding prior to the IPO, and the Company has not issued new awards of Class B Common Stock under its equity compensation plans since the IPO. All awards for the issuance of Class B Common Stock issued prior to the IPO are fully vested. The Company's equity compensation plans do not permit new awards of Class B Common Stock, and the Nevada Charter prohibits reissuance of Class B Common Stock that may be acquired by the Company. Finally, without the consent of the holders of the Class B Common Stock, voting as a class, Class B Common Stock may not be issued except for pursuant to awards that were outstanding at the IPO. Accordingly, even if the Proposal was intended to be forward-looking and apply to future awards of Class B Common Stock, the Proposal would be inapplicable.

If the Proposal is meant to require the periodic conversion of shares of Class B Common Stock to shares of Class A Common Stock based on the prevailing trading price of the Class A Common Stock, then the Proposal similarly would violate the NRS on its face and could not be legally enforced. The rights of conversion of the Class B Common Stock are as stated in the Nevada Charter, as required by the NRS. *See* NRS 78.195(1).¹ These bargained-for rights are rights of the holders of Class B Common Stock and cannot be unilaterally changed by the Company, or collectively changed by action of the stockholders, without an amendment to the Nevada Charter, which would require approval of the board of directors, stockholder approval and a separate class vote of the Class B Common Stock. *See* NRS 78.390(1); Art. of Inc. of Dropbox, Inc., Art. V, § 12, filed with Nev. Sec'y of State, Mar. 5, 2025. Similarly, the Company has no right to obligate the holders of Class B Common Stock to choose to convert their shares at any given time or for any given reason. Accordingly, the Proposal, if approved and to the extent it seeks to require a conversion of the Class B Common Stock, would violate the NRS on its face and could not be legally enforced because the Company does not have the power under the Nevada

¹ NRS 78.195(1) states in relevant part "The voting powers, designations, preferences, limitations, restrictions, relative rights and distinguishing designation of each class or series of stock must be described in the articles of incorporation. . . ."

**WILSON
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Charter to obligate the holders of Class B Common Stock to convert their shares, as the right to convert such shares is held solely by the holders of Class B Common Stock.

The Proposal is not a proper subject for action by stockholders.

Rule 14a-8(i)(1) permits a company to omit a stockholder proposal “[i]f the proposal is not a proper subject for action by the stockholders under the laws of the jurisdiction of the company’s organization.” As noted above, a limitation or restriction such as that proposed in the Proposal would require individual consent by each holder of Class B Common Stock, either in the form of an individual agreement or an amendment to the Nevada Charter that is consented to by each holder of Class B Common Stock. It is clear that the Company cannot take this action unilaterally, the other stockholders cannot take this action collectively without the consent of each individual holder of Class B Common Stock, and any action to implement the Proposal requires not only the action of the Company’s board of directors, but also each individual stockholder that is impacted. Similarly, if the Proposal seeks to require the periodic conversion of Class B Common Stock to Class A Common Stock, the Company cannot compel the holders of Class B Common Stock to exercise their conversion rights with respect to the Class B Common Stock, and such conversion rights belong solely to those holders.

Even if the Proposal was read to propose or even recommend or request an amendment to the Charter to implement the restriction or the conversion requirement, as contemplated by Staff Legal Bulletin No. 14C (CF) (June 18, 2005)—which is not at all indicated by the plain language of the Proposal—the Company’s stockholders have no authority under Nevada law to directly implement the Proponent’s Proposal. NRS 78.390(1) provides, in pertinent part: “[E]very amendment to the articles of incorporation must be made in the following manner: (a) The board of directors must adopt a resolution setting forth the amendment proposed and submit the proposed amendment to the stockholders for approval. NRS 78.390(1) prescribes a two-step process that must be followed in sequence to amend a Nevada corporation’s charter. First, the board of directors must adopt a resolution setting forth a proposed amendment. Second, in addition to any additional or separate vote required under the Company’s articles of incorporation (such as are imposed by Art. V, § 12 of the Nevada Charter), the stockholders holding a majority of the voting power must approve the proposed amendment. The Staff has consistently held that stockholder proposals that mandate an amendment of a company’s charter may be excluded. *See, e.g., CytRx Corp.* (avail. June 26, 2018); *Cambridge Heart, Inc.* (avail. Mar. 25, 2008); *UAL Corp.* (avail. Feb. 7, 2001); *Boeing Co.* (avail. Feb. 6, 2001); *Great Lakes Chemical Corp.* (avail. Mar. 8, 1999). And again, even reading this Proposal to ask or mandate the Company to amend the Nevada Charter is reading well beyond the words of the Proposal. The Proposal would thereby circumvent the statutory scheme for charter amendments prescribed by the NRS and thus is not proper subject for stockholder action. *See CytRx Corp.* (avail. June 26, 2018); *Cambridge Heart, Inc.* (avail. Mar. 25, 2008); *Watt Industries Inc.* (avail. July 10, 1998); *Hechinger Co.* (avail. Mar. 31, 1997). Further, as described above, an amendment to the Nevada Charter would not be sufficient to implement the Proposal unless the holders of Class B Common Stock approved on a stockholder-by-stockholder basis – that is, even approval by the holders of a majority of the voting power of the Company or approval by the holders

**WILSON
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Office of Chief Counsel
March 6, 2025
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of the Class B Common Stock voting as a separate class would not be sufficient to enforce the provision against every holder of Class B Common Stock.

Accordingly, we ask that the Staff concur that the Company may exclude the Proponent's Proposal under Rule 14a-8(i)(1).

The Company lacks the power to implement the Proposal.

Similarly, Rule 14a-8(i)(6) permits a Company to exclude a proposal if the Company lacks the power or authority to implement the Proposal. For the reasons discussed above, unless each holder of Class B Common Stock affirmatively voted to approve, or agreed to, the "vesting" provisions in the Proposal, the Company and the board of directors would be unable to implement or enforce such provisions. The Company has no legal basis to require its stockholders who currently own shares to consent to such transfer restrictions or to otherwise mandate that such stockholders convert their shares of Class B Common Stock to Class A Common Stock, even if the other stockholder would prefer that they do so. As a result, the Company lacks the power to impose such restrictions without the consent of such stockholders.

The Proposal is vague and misleading.

We have not repeated our analysis as it is not impacted by the Nevada Reincorporation.

4. Conclusion

The Company requests that the Staff concur with its view that, for the reasons stated above, it may exclude the Proposal from the 2025 Proxy Materials.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

DocuSigned by:

Lisa Stimmell

4E631B7FFF814F1...

Enclosures

cc: Dropbox, Inc.
Half Moon Capital, LLC

Annex A
Legal Opinion

March 6, 2025

Dropbox, Inc.
1800 Owens Street
San Francisco, CA 94158

To the addressee set forth above:

We have acted as Nevada counsel to Dropbox, Inc., a Nevada corporation (the "Company"), in connection with a proposal (the "Proposal") submitted by Half Moon Capital, LLC (the "Proponent") for inclusion in the Company's proxy statement and a form of proxy for the Company's 2025 annual meeting of stockholders (the "Annual Meeting"). This opinion letter is being delivered to you at your request in connection with the Proposal.

For the purpose of issuing this opinion letter, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true copies, of the following records, documents, instruments and certificates:

- (i) the Proposal, including its supporting statement (the "Proposal Statement");
- (ii) the articles of incorporation of the Company, as amended to date (the "Articles"), and the bylaws of the Company, as amended to date; and
- (iii) the certificate, dated as of the date hereof, of an officer of the Company with respect to certain factual matters (the "Certificate").

We have made such legal and factual examinations and inquiries as we have deemed necessary or appropriate for purposes of this opinion letter. We have been furnished with, and with your consent have relied upon, as to factual matters, the Certificate and such assurances and other certificates of the officers and other representatives of the Company, and of public officials, as we have deemed necessary for the purpose of issuing the opinion set forth herein. As to questions of fact material to our opinion, we have also relied upon the statements of fact and the representations and warranties as to factual matters contained in the documents we have examined; however, except as otherwise expressly indicated, we have not been requested to conduct, nor have we undertaken, any independent investigation to verify the content or veracity thereof or to determine the accuracy of any statement, and no inference as to our knowledge of any matters should be drawn from the fact of our representation of the Company.

Without limiting the generality of the foregoing, in issuing this opinion letter, we have, with your permission, assumed without independent verification that (i) all documents submitted to us as originals are authentic, the signatures on all documents that we have examined are genuine and all documents submitted to us as certified, conformed, photostatic, electronic or facsimile copies conform to the original

document; and (ii) all corporate records made available to us by the Company, and all public records we have reviewed, are accurate and complete.

As used herein, all references to “NRS” and sections thereof are to the Nevada Revised Statutes as in effect on the date hereof.

We are qualified to practice law in the State of Nevada. The opinion set forth herein is expressly limited to the effect on the Proposal only of the internal corporate laws of the State of Nevada, and we do not purport to be experts on, or to express any opinion with respect to the applicability thereto or the effect thereon of, any other laws or the laws of any other jurisdiction. We express no opinion concerning, and we assume no responsibility as to laws or judicial decisions related to, or any orders, consents or other authorizations or approvals as may be required by, any federal laws, rules or regulations, including, without limitation, any federal securities laws, rules or regulations, or any state securities or “blue sky” laws, rules or regulations.

Based upon the foregoing, and subject to the qualifications, limitations, exceptions and assumptions set forth herein, we are of the opinion that the Proposal, if adopted and implemented as set forth in the Proposal Statement, would violate (a) the Articles and (b) NRS 78.242(2), 78.390(1) and 78.390(2).

The opinion expressed herein is subject to and further limited by the following qualifications, exceptions, limitations, restrictions and assumptions:

(A) We have assumed that the terms of the Proposal, and the means of implementation thereof, are as set forth in the Proposal Statement.

(B) While the terms and intent of the Proposal Statement are unclear, it is our understanding that the Proposal seeks, by unilateral action of “Dropbox shareholders”, either to:

(i) impose new and additional transfer restrictions on the Company’s Class B common stock, par value \$0.00001 per share (the “Class B Common Stock”), by, at a minimum, (a) mandating a periodically determined restriction or prohibition on the amount of Class B Common Stock that may be owned by a person or group of persons, and/or (b) prohibiting or restricting the transfer of Class B Common Stock to, or the ownership of Class B Common Stock by, designated persons or classes of persons; or

(ii) compel the periodic conversion of shares of Class B Common Stock into shares of the Company’s Class A common stock, par value \$0.00001 per share (the “Class A Common Stock”), based on the then-prevailing trading price of the Class A Common Stock.

(C) We note that NRS 78.242(2) provides: “A restriction on the transfer or registration of transfer of the stock of a corporation, or on the amount of a corporation’s stock that may be owned by a person or group of persons, may be imposed by the articles of incorporation or by the bylaws or by an agreement among any number of stockholders or between or among one or more stockholders and the corporation. No restriction so imposed is binding upon any stockholder with respect to the shares of stock

owned by such stockholder at the time the restriction is adopted, regardless of any later effective time of such restriction, unless such stockholder is a party to the agreement or voted in favor of the restriction." (Emphasis added.) The Proposal purports to unilaterally impose, by collective action of the "Dropbox shareholders", restrictions on transfer on each individual holder of the Company's outstanding Class B Common Stock without such holder's agreement, consent or vote, which is a statutory prerequisite to the effectiveness of any such restriction.

(D) We note that NRS 78.195(1) provides, in pertinent part: "The voting powers, designations, preferences, limitations, restrictions, relative rights and distinguishing designation of each class or series of stock must be described in the articles of incorporation. . . ." Article V, Section 5 of the Articles sets forth the terms by which and conditions on which the Class B Common Stock is convertible, and may be converted, into Class A Common Stock, which terms and conditions do not include or contemplate any of the requirements, restrictions, terms or conditions that are indicated in or suggested by the Proposal Statement. As such, we must conclude that the Proposal proposes that the "Dropbox shareholders" unilaterally authorize and adopt an amendment to the Articles to impose the restrictions on transfer and mandatory conversion provisions indicated by the Proposal Statement.

(E) We note the following:

(i) NRS 78.390(1) provides, in pertinent part: "[E]very amendment to the articles of incorporation must be made in the following manner: (a) The board of directors must adopt a resolution setting forth the amendment proposed and submit the proposed amendment to the stockholders for approval. (b) If stockholders holding shares in the corporation representing at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series . . . or as may be required by the provisions of the articles of incorporation, have approved the amendment, an officer of the corporation shall sign a certificate setting forth the amendment, or setting forth the articles of incorporation as amended, and the vote by which the amendment was adopted. (c) The certificate so signed must be filed with the Secretary of State." (Emphasis added.) The Proposal Statement contemplates unilateral action by the Company's stockholders to amend the Articles without the prior approval of the board of directors as required by Nevada law.

(ii) NRS 78.390(2) provides, in pertinent part: "[I]f any proposed amendment would adversely alter or change any preference or any relative or other right given to any class or series of outstanding shares, then, in addition to any approval otherwise required, the amendment must be approved by the holders of shares representing a majority of the voting power of each class or series adversely affected by the amendment regardless of limitations or restrictions on the voting power thereof." The Proposal Statement contemplates unilateral collective action by "Dropbox shareholders" to amend the Articles without a separate class vote of the holders of the Class B Common Stock as required by Nevada law.

(F) We note the following:

(i) Article V, Section 12 of the Articles provides, in pertinent part: “[T]he Corporation shall not, without the prior affirmative vote of the holders of a majority of the outstanding shares of Class B Common Stock, voting as a separate class, in addition to any other vote required by applicable law or these Articles . . . directly or indirectly, whether by amendment, or through merger, recapitalization, consolidation or otherwise, amend or repeal, or adopt any provision of these Articles inconsistent with, or otherwise alter, any provision of these Articles that modifies the voting, conversion or other rights, powers, preferences, privileges or restrictions of the Class B Common Stock.” (Emphasis added.) The Proposal Statement contemplates unilateral collective action by “Dropbox shareholders” to amend the Articles without a separate class vote of the holders of the Class B Common Stock as required by the Articles.

(ii) Article X, Section 2 of the Articles provides, in pertinent part: “[N]otwithstanding any other provision of these Articles or any provision of law that might otherwise permit a lesser vote, but in addition to any vote of the holders of any class or series of the stock of this Corporation required by law or by these Articles, (i) prior to the Final Conversion Date, (a) the affirmative vote of the holders of at least two-thirds of the voting power of the outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, change or repeal any provision contained in these Articles or adopt any new provision of these Articles and (b) the affirmative vote of a majority of the outstanding shares of Class A Common Stock and the affirmative vote of a majority of the outstanding shares of Class B Common Stock, each voting separately as a class, shall be required to amend or repeal, or adopt any provision of these Articles inconsistent with, Article V . . . of these Articles. . . .” (Emphasis added.) The Proposal Statement contemplates unilateral collective action by “Dropbox shareholders” to amend the Articles without satisfying the mandatory stockholder voting threshold and class vote requirements imposed by the Articles.

The opinion expressed herein is based upon the applicable corporate laws of the State of Nevada and the facts in existence on the date of this opinion letter. In delivering this opinion letter to you, we disclaim any obligation to update or supplement the opinion set forth herein or to apprise you of any changes in any laws or facts after the date hereof. No opinion is offered or implied as to any matter, and no inference may be drawn, beyond the strict scope of the specific matters expressly addressed by the opinion set forth herein.

This opinion letter is issued only to you, and is solely for your benefit, in connection with the Proposal, and may not be relied upon or used by you for any other purpose, or otherwise circulated or furnished to, or relied upon, quoted from or referred to by any other person, firm or entity for any purpose without our prior written consent in each instance, except that, subject to all qualifications, exceptions, limitations, restrictions and assumptions set forth herein, you may furnish a copy of this opinion letter to the United States Securities and Exchange Commission for informational purposes in connection with the Proposal and the Annual Meeting.

Very truly yours,



Exhibit A
Original Letter



Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
O: 650.493.9300
F: 650.493.6811

January 10, 2025

VIA ONLINE PORTAL SUBMISSION

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

**Re: Shareholder Proposal of Half Moon Capital, LLC
Submitted to Dropbox, Inc.**

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended, we are writing on behalf of our client, Dropbox, Inc., a Delaware corporation (the “Company”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, it may exclude the stockholder proposal and supporting statement (together, the “Proposal”) submitted by Half Moon Capital, LLC (the “Proponent”) from the proxy materials to be distributed by the Company in connection with its 2025 Annual Meeting of Stockholders (the “2025 Proxy Materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (CF) (Nov. 7, 2008) (“SLB 14D”), the Company is emailing this letter to the Staff. Simultaneously, pursuant to Rule 14a-8(j), the Company is sending a copy of this letter to the Proponent, as notice of the Company’s intention to exclude the Proposal from the 2025 Proxy Materials. The Company will promptly forward to the Proponent any response from the Staff to this no-action request that the Staff transmits by email or fax to the Company. Also pursuant to Rule 14a-8(j), this letter is being filed no later than 80 calendar days before the Company files its 2025 Proxy Materials.

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

**WILSON
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Office of Chief Counsel
January 10, 2025
Page 2

1. The Proposal

The text of the Proposal is set forth below:

Proposal: Half Moon Capital, LLC is proposing Dropbox shareholders APPROVE a 3-year vesting schedule for the Class B shares to convert into Class A. We propose the Class B shares vest 33.33% in each year the Class A stock subsequently remains below \$30, \$35, and \$40 on the 1, 2 and 3 year anniversary of adoption.

A copy of the Proposal is attached as Exhibit A.

2. Basis for Exclusion

The Company requests that the Staff concur in its view that it may exclude the Proposal from the 2025 Proxy Materials pursuant to:

Rule 14a-8(i)(2) – the Proposal would, if implemented, cause the Company to violate any state, federal or foreign law to which it is subject;

Rule 14a-8(i)(1) – the Proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization;

Rule 14a-8(i)(6) – the Company lacks the power or authority to implement the Proposal;
and

Rule 14a-8(i)(3) – the Proposal is impermissibly vague and indefinite as to be inherently misleading in violation of Rule 14-9.

3. Background

While it is unclear exactly what the Proponent has in mind with the concept of “vesting” as it relates to the convertibility of the Company’s Class B common stock (the “Class B Common Stock”), we understand that the Proposal either seeks to (i) impose new and additional transfer restrictions on the Class B Common Stock or (ii) require the periodic conversion of shares of Class B Common Stock to shares of the Company’s Class A common stock (the “Class A Common Stock”) based on the prevailing trading price of the Class A Common Stock. The Company’s Restated Certificate of Incorporation (the “Charter”) provides that each share of Class B Common Stock is convertible at any time at the option of the holder into one share of Class A Common Stock. Shares of Class B Common Stock will automatically convert into shares of Class A Common Stock upon sale or transfer except for certain permitted transfers described in the Charter, which primarily consist of estate planning transfers where sole dispositive power and exclusive voting control with respect to the shares of Class B Common Stock are retained by the transferring holder and transfers between our co-founders. Class B Common Stock

**WILSON
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Office of Chief Counsel
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Page 3

generally has the same rights, preferences and privileges as the Class A Common Stock except in principal part that each share of Class B Common Stock is entitled to 10 votes, whereas the Class A Common Stock is entitled to one vote per share. There is no liquid market for the Class B Common Stock. Therefore, shares of Class B Common Stock must be converted into Class A Common Stock, which is listed and traded on the Nasdaq Global Select Market, to be sold or freely transferred. We note that as of December 31, 2024, the Company had approximately 84 holders of Class B Common Stock.

4. Analysis

The Proposal, if approved, would violate Delaware law.

Rule 14a-8(i)(2) permits a company to omit a proposal if it would violate state, federal or foreign law. The Proposal would impose “vesting” restrictions on already issued and fully vested shares of Class B Common Stock and such vesting restrictions would appear to prohibit or restrict the conversion of such shares. We note that these shares are not restricted stock awards subject to repurchase, nor are they equity compensation awards subject to existing vesting provisions. All shares of Class B Common Stock currently outstanding are fully paid shares not subject to any right of repurchase. There is no public market for the Class B Common Stock and shares can only be sold if converted. In fact, shares automatically convert to Class A Common Stock if there is a sale or transfer of such shares and the owner does not maintain sole dispositive power and voting control. Accordingly, any prohibition on conversion of the Class B Common Stock, including by imposing a “vesting” requirement, effectively prevents sales or transfers of such shares. The Staff has historically permitted exclusion of proposals that purport to impose holding requirements on already owned shares on the basis that such restrictions violate state law. *See, e.g., Citigroup* (avail. Feb. 18, 2009); *NiSource Inc.* (avail. March 22, 2010). We discuss the Delaware law violations of this Proposal below and reference the legal opinion provide herewith and attached as Annex A.

Section 202(b) of the Delaware General Corporation Law (the “DGCL”) provides that new transfer restrictions may be validly imposed on previously issued securities only with the consent of the holders of those securities, either in the form of an agreement with respect to the transfer restriction or a vote in favor of the transfer restriction.¹ *See also Henry v. Phixios Holdings, Inc.*, 2017 WL 2928034, at *8 (Del. Ch. Jul. 10, 2017) (holding that “[a]n existing stockholder must affirmatively assent to the restriction in order to be bound either by becoming

¹ Section 202(b) of the DGCL states, in pertinent part:

A restriction on the transfer or registration of transfer of securities of a corporation . . . may be imposed by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. *No restrictions so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.* (emphasis added)

**WILSON
SONSINI**

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a party to an agreement or by voting in favor of the restriction”). The proposed vesting conditions constitute a restriction on the transfer of securities under Delaware law because the Proposal calls for the adoption of provisions that would impose a new limitation on the transferability and alienability of shares of Class B Common Stock. *See Brown v. Matterport, Inc.*, 2024 WL 2745822, at *8 (Del. Ch. May 28, 2024); *Moran v. Household Int’l, Inc.*, 490 A.2d 1059, 1079 (Del. Ch. 1985), rev’d on other grounds[Ryan, why delete?]; *see also Williams v. Geier*, 1987 WL 11285, at *4 (Del. Ch. May 20, 1987) (citing favorably the characterization of transfer restrictions in *Moran*). The Proposal, if approved, would violate Delaware law on its face and could not be legally enforced as proposed.

We further note that the Company has not issued Class B Common Stock since the Company’s initial public offering (the “IPO”), except upon vesting or settlement of equity awards that were outstanding prior to the IPO, and the Company has not issued new awards of Class B Common Stock under its equity compensation plans since the IPO. All awards for the issuance of Class B Common Stock issued prior to the IPO are fully vested. The Company’s equity compensation plans do not permit new awards of Class B Common Stock, and the Charter prohibits reissuance of Class B Common Stock that may be acquired by the Company. Finally, without the consent of the holders of the Class B Common Stock, voting as a class, Class B Common Stock may not be issued except for pursuant to awards that were outstanding at the IPO. Accordingly, even if the Proposal was intended to be forward-looking and apply to future awards of Class B Common Stock, the Proposal would be inapplicable.

If the Proposal is meant to require the periodic conversion of shares of Class B Common Stock to shares of Class A Common Stock based on the prevailing trading price of the Class A Common Stock, then the Proposal similarly would violate Delaware law on its face and could not be legally enforced. The rights of conversion of the Class B Common Stock are as stated in the Charter. These bargained-for rights are rights of the holders of Class B Common Stock and cannot be unilaterally changed without an amendment to the Charter, which would require stockholder approval and a class vote of the Class B Common Stock. *See, e.g.*, 8 *Del. C.* § 151(e) (“Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation . . . as shall be stated in the certificate of incorporation . . .”); *Greenmont Capital Partners I, LP. v. Mary’s Gone Crackers, Inc.*, 2012 WL 4479999, at *6–7 (Del. Ch. Sept. 28, 2012) (noting that, when set forth in the certificate of incorporation, the convertibility of stock is a part of the “bundle of rights, privileges, and restrictions” held by the stockholder); Restated Cert. of Inc. of Dropbox, Inc., Art. V, § 12, filed with Del. Sec’y of State, Mar. 27, 2018. Similarly, the Company has no right to obligate the holders of Class B Common Stock to choose to convert their shares at any given time or for any given reason. The Charter is a contract among the Company’s stockholders, and the Company and its stockholders have the rights and obligations as set forth therein. *Airgas, Inc. v. Air Prods. & Chemicals, Inc.*, 8 A.3d 1182, 1188 (Del. 2010). Accordingly, the Proposal, if approved and to the extent it seeks to



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require a conversion of the Class B Common Stock, would violate Delaware law on its face and could not be legally enforced because the Company does not have the power under its Charter to obligate the holders of Class B Common Stock to convert their shares, as the right to convert such shares is held solely by the holders of Class B Common Stock.

The Proposal is not a proper subject for action by stockholders.

Rule 14a-8(i)(1) permits a company to omit a stockholder proposal “[i]f the proposal is not a proper subject for action by the stockholders under the laws of the jurisdiction of the company’s organization.” As noted above, a limitation or restriction such as that proposed in the Proposal would require individual consent by each holder of Class B Common Stock, either in the form of an individual agreement or an amendment to the Charter that is consented to by each holder of Class B Common Stock. It is clear that the stockholders cannot take this action unilaterally, and any action to implement the Proposal requires not only the action of the Company, but also each individual stockholder that is impacted. Similarly, if the Proposal seeks to require the periodic conversion of Class B Common Stock to Class A Common Stock, the Company cannot compel the holders of Class B Common Stock to exercise their conversion rights with respect to the Class B Common Stock, and such conversion rights belong solely to those holders. The Proposal does not, in any way, recommend or request the Company to take action.

Even if the Proposal was read to propose or even recommend or request an amendment to the Charter to implement the restriction or the conversion requirement, as contemplated by Staff Legal Bulletin No. 14C (CF) (June 18, 2005)—which is not at all indicated by the plain language of the Proposal which makes no reference to the Charter—Dropbox stockholders have no authority under Delaware law to directly implement the Proponent’s Proposal. Section 242(b) of the DGCL (“Section 242”) provides that in order for a corporation that has capital stock to amend its certificate of incorporation, “its board of directors shall adopt resolutions setting forth the amendment proposed declaring its advisability and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders.” Section 242 “prescribes a two-step process that must be followed in precise sequence to amend a Delaware corporation’s charter.” *AGR Halifax Fund Inc. v. Fiscina*, 743 A.2d 1188, 1192 (Del. Ch. 1999). First, the board of directors must adopt a resolution setting forth a proposed amendment declaring its advisability and directing that it be considered at a special meeting of the stockholders or at the next annual meeting of the stockholders. *Id.* Second, the stockholders must approve the proposed amendment at either the special or annual stockholders meeting. *Id.* “Both steps must occur in that sequence, and under no circumstances may the stockholders act before the mandated board action proposing and recommending the amendment.” *Id.* (citing *Williams v. Geier*, 671 A.2d 1368, 1381 (Del. 1996)). The Staff has consistently held that stockholder proposals that mandate an amendment of a company’s charter may be excluded. *See, e.g., CytRx Corp.* (avail. June 26, 2018); *Cambridge*

**WILSON
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Heart, Inc. (avail. Mar. 25, 2008); *UAL Corp.* (avail. Feb. 7, 2001); *Boeing Co.* (avail. Feb. 6, 2001); *Great Lakes Chemical Corp.* (avail. Mar. 8, 1999). And again, even reading this Proposal to ask or mandate the Company to amend the Charter is reading well beyond the words of the Proposal. The Proposal would thereby circumvent the statutory scheme for charter amendments prescribed by Delaware law and thus is not proper subject for stockholder action. *See CytRx Corp.* (avail. June 26, 2018); *Cambridge Heart, Inc.* (avail. Mar. 25, 2008); *Watt Industries Inc.* (avail. July 10, 1998); *Hechinger Co.* (avail. Mar. 31, 1997). Further, as described above, an amendment to the Charter would not be sufficient to implement the Proposal unless the holders of Class B Common Stock approved on a stockholder by stockholder basis – that is, even approval by the holders of the Company’s outstanding capital stock or approval by the holders of the Class B Common Stock as a class would not be sufficient to enforce the provision against every holder of Class B Common Stock.

Accordingly, we ask that the Staff concur that the Company may exclude the Proponent’s Proposal under Rule 14a-8(i)(1).

The Company lacks the power to implement the Proposal.

Similarly, Rule 14a-8(i)(6) permits a Company to exclude a proposal if the Company lacks the power or authority to implement the Proposal. For the reasons discussed above, unless each holder of Class B Common Stock affirmatively voted to approve, or agreed to, the vesting provisions, the Company and the board of directors would be unable to implement or enforce the vesting provisions described in the Proposal. The Company has no legal basis to require its stockholders who currently own shares to consent to such transfer restrictions or to otherwise require that such stockholders convert their shares of Class B Common Stock to Class A Common Stock. As a result, the Company lacks the power to impose such restrictions without the consent of such stockholders.

The Proposal is vague and misleading.

Notwithstanding the Company’s discussion above, the Company’s analysis of the exclusions is based on *potential* readings of the Proposal, which the Company has inferred for purposes of this letter. However, the Proposal is not at all clear as to the action to be taken if approved. For example, all shares of Class B Common Stock are owned, free and clear without restriction. All of such shares were purchased prior to the IPO or were issued upon exercise or vesting of equity awards granted prior to the IPO and therefore, any vesting conditions were met prior to issuance of the shares of Class B Common Stock. Such shares are owned by over 80 stockholders. If the Proposal is approved, it is not clear whether the Proposal is intended to immediately result in restrictions on these stockholders and their owned shares. Further, it is not clear what the Proponent intends by its use of the term “vest” in relation to conversion or what the price-based terms represent. Class B Common Stock is not an option to purchase, nor does it represent any other right to acquire, Class B Common Stock or Class A Common Stock, nor is it restricted stock subject to a right of repurchase. Accordingly, it is not clear whether the

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intent of the Proposal is that the Company must meet the stock price targets (which are entirely arbitrary as it relates to Company performance) in order for holders of Class B Common Stock to be able to convert and sell their shares, that the Class B Common Stock be subject to periodic conversion if such stock price targets are not met, or if there are other rights and privileges that the Proponent intends to restrict by implementing the arbitrary three-year vesting schedule. Finally, the Proposal implies that Class B Common Stock is held by “insiders” who should be held “accountable” for the Company’s performance. While the majority holder of the Class B Common Stock is the Company’s Chief Executive Officer, and a small number of holders are management employees of the Company, many of the remaining holders of Class B Common Stock are long-time employees of the Company or are no longer involved at the Company at all other than in their capacity as stockholders. The Company has attempted to infer what the Proponent intends with this Proposal for purposes of this letter, but the Company does not have any certainty how to implement the Proposal, and it is unrealistic to expect that the Company’s stockholders will understand in any meaningful way or with any reasonable certainty what they are voting on. The Proposal makes incorrect and misleading statements about the holders of the Class B Common Stock as well as the ability of stockholders to impose this action.

5. Conclusion

The Company requests that the Staff concur with its view that, for the reasons stated above, it may exclude the Proposal from the 2025 Proxy Materials.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

DocuSigned by:

Lisa Stimmell

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Enclosures

cc: Dropbox, Inc.
Half Moon Capital, LLC

Annex A
Legal Opinion



Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
O: 650.493.9300
F: 866.974.7329

January 10, 2025

Dropbox, Inc.
1800 Owens Street
San Francisco, CA 94158

Re: Stockholder Proposal of Half Moon Capital, LLC

Ladies and Gentlemen:

We have acted as Delaware counsel to Dropbox, Inc., a Delaware corporation (the “Company”), in connection with a proposal (the “Proposal”) submitted by Half Moon Capital, LLC (the “Proponent”) for inclusion in the Company’s proxy statement and form of proxy for the Company’s 2025 annual meeting of stockholders (the “Annual Meeting”). In this regard, you have requested our opinion as to certain matters under Delaware law, including the [General Corporation Law of the State of Delaware] (the “DGCL”).

In rendering the opinions expressed below, we have examined executed originals or copies of the following documents:

- (a) the Restated Certificate of Incorporation of the Company, as amended to date;
- (b) the Amended and Restated Bylaws of the Company; and
- (c) the Proposal and its supporting statement.

In addition, we have examined and relied upon such corporate records of the Company as we have deemed necessary or appropriate for purposes of the opinions expressed below.

With your permission and without any verification by us, we have assumed for purposes of rendering the opinions set forth herein: (a) the genuineness of all signatures; (b) the legal capacity of all natural persons to execute and deliver documents; (c) the authenticity and completeness of documents submitted to us as originals; (d) the completeness and conformity with authentic original documents of all documents submitted to us as copies; (e) that the dated documents match the executed but undated versions thereof delivered to us; and (f) that all documents, books and records made available to us by the Company are accurate and complete.

The Proposal

The text of the Proposal is set forth below:

Proposal: Half Moon Capital, LLC is proposing Dropbox shareholders APPROVE a 3-year vesting schedule for the Class B shares to convert into Class A. We propose the Class B shares vest 33.33% in each year the Class A stock subsequently remains below \$30, \$35, and \$40 on the 1, 2 and 3 year anniversary of adoption.

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January 10, 2025
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Discussion

You have asked for our opinion whether implementation of the Proposal would violate Delaware law. For the reasons set forth below, in our opinion, the Proposal, if adopted and implemented, would violate Delaware law.

The specific terms and intent of the Proposal are unclear. However, we understand that the Proposal either seeks to (i) impose new and additional transfer restrictions on the Company's Class B common stock (the "Class B Common Stock") or (ii) require the periodic conversion of shares of Class B Common Stock to shares of the Company's Class A common stock (the "Class A Common Stock") based on the prevailing trading price of the Class A Common Stock. Based on either reading, the Proposal, if adopted and implemented, would violate Delaware law.

The Proposal, if adopted and implemented, would implement a vesting schedule on all shares of Class B Common Stock regardless of when such stock was issued or how it was obtained by virtue of preventing conversion into the Company's freely tradeable Class A Common Stock. The foregoing restrictions would be considered transfer restrictions governed by Section 202 of the DGCL. See Leondard Loventhal v. Hilton Hotels Corp., 2000 WL 1528909, at *7 (Del. Ch. Oct. 10, 2000) (citations omitted) ("Statutorily speaking, 8 Del. C. § 202 defines what constitutes a transfer restriction on stock under Delaware law. More generally, one set of commentators has defined transfer restrictions as 'provisions which prevent or establish preconditions for the disposition by stockholders of their stock or other securities.');" see also Moran v. Household Int'l, Inc., 490 A.2d 1059, 1079 (Del Ch. 1985); Williams v. Geier, 1987 WL 11285, at *4 (Del. Ch. May 20, 1987).

Section 202 of the DGCL governs the manner in which transfer restrictions may be validly imposed on a corporation's securities, including shares of its capital stock. With respect to the imposition of transfer restrictions on previously issued securities, Section 202(b) provides, in relevant part:

A restriction on the transfer or registration of transfer of securities of a corporation . . . may be imposed by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restrictions so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

8 Del. C. § 202(b) (emphasis added).

In Henry v. Phixios Holdings, Inc., 2017 WL 2928034, at *8 (Del. Ch. Jul. 10, 2017), the Court stated that "[a]n existing stockholder must affirmatively assent to the [transfer] restriction in order to be bound either by becoming a party to an agreement or by voting in favor of the restriction. A restriction cannot be retroactively imposed on a current stockholder without his express consent." As stated in DiLoreto v. Tiber Holding Corp., "[t]he purpose of § 202 is to protect a shareholder's investment from diminishment through post-purchase restrictions placed on the shareholder's shares by the corporation or its other shareholders. (Otherwise, others might circumscribe the stockholder's ability to transfer his or

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her shares, reducing the investment's liquidity and value.)" DiLoreto v. Tiber Holding Corp., 1999 WL 1261450, at *6 (Del. Ch. Jun. 29, 1999); see also Henry, 2017 WL 2928034, at *24. Thus, Section 202(b) provides that neither the board of directors, nor stockholders, may impose transfer restrictions on securities issued prior to the adoption of the transfer restriction without the consent of the holders of the securities, either in the form of an agreement or a vote in favor of the restriction. See Joseph E. Seagram & Sons, Inc. v. Conoco, Inc., 519 F.Supp. 506, 513 (D. Del. 1981) (stating that a board of directors may not "unilaterally . . . impose stock transfer restrictions, which might be of significant economic consequence, on existing shares without the consent of the corporation's shareholders"); Geier, 1987 WL 11285, at *4; R. Franklin Balotti & Jesse A. Finkelstein, DELAWARE LAW OF CORPORATIONS & BUSINESS ORGANIZATIONS, § 6.6 (4th ed., 2025-1 supp.) (stating that Section 202(b) "provides that the holders of securities outstanding at the time a restriction is imposed are not bound by the restriction unless they assent to it"); Robert S. Saunders, Allison L. Land & Jennifer C. Voss, FOLK ON THE DELAWARE GENERAL CORPORATION LAW, 202.6 (6th ed. 2025-1 supp.) ("[A] restriction, however imposed, cannot retroactively bind any current stockholder without the stockholder's express consent, either by voting in favor of the restriction—if the restriction is imposed by amendment to the certificate or bylaws—or by becoming a party to an agreement imposing the restriction.").

As indicated above, the Proposal would require the restrictions contemplated thereby to be imposed, by unilateral action of the stockholders, on previously issued and currently outstanding shares of Class B Common Stock. The imposition of such restrictions, however, may not be validly imposed by the stockholders on previously issued and currently outstanding shares unless the holder of those shares has consented to or voted in favor of the restriction. See 8 Del. C. § 202(b); Henry, 2017 WL 2928034, at *24; Di Loreto, 1999 WL 1261450, at *6; Geier, 1987 WL 11285, at *4. Because the outstanding shares of Class B Common Stock are presently not subject to the restrictions on transfer contemplated by the Proposal, the restrictions contemplated by the Proposal cannot now be validly imposed on such shares by unilateral action of the stockholders or the board of directors. Accordingly, the Proposal, if adopted and implemented, would purport to permit the stockholders to unilaterally impose a transfer restriction on currently outstanding shares of Class B Common Stock in violation of Section 202 of the DGCL.

If the Proposal is instead meant to require the periodic conversion of shares of Class B Common Stock to shares of Class A Common Stock based on the prevailing trading price of the Class A Common Stock, then the Proposal similarly would violate Delaware law. The rights of conversion of the Class B Common Stock are as stated in the Company's Restated Certificate of Incorporation (the "Charter"). See 8 Del. C. § 151(e) ("Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation . . . as shall be stated in the certificate of incorporation . . ."). The Charter is a contract among the Company's stockholders, and the Company and its stockholders have the rights and obligations as set forth therein. Airgas, Inc. v. Air Prods. & Chemicals, Inc., 8 A.3d 1182, 1188 (Del. 2010); see also Greenmont Capital Partners I, LP. v. Mary's Gone Crackers, Inc., 2012 WL 4479999, at *6–7 (Del. Ch. Sept. 28, 2012) (noting that, when set forth in the certificate of incorporation, the convertibility of stock is a part of the "bundle of rights, privileges, and restrictions" held by the stockholder). Neither the Company nor its stockholders have a right to obligate the holders of Class B Common Stock to convert their shares to Class A Common Stock, as the right of conversion is personally

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Dropbox, Inc.
January 10, 2025
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held by the holders of Class B Common Stock as specifically set forth in the Charter. Accordingly, the Proposal, if approved and to the extent it seeks to require a conversion of the Class B Common Stock, would violate Delaware law because neither the Company nor the board of directors has the power under the Charter to obligate the holders of Class B Common Stock to convert their shares, and the right to convert such shares is held solely by the holders of Class B Common Stock.

Conclusion

Based upon and subject to the foregoing, and subject to the limitations stated herein, it is our opinion that the Proposal, if adopted and implemented, would be invalid under Delaware law.

The opinions set forth above are subject to the following exceptions, qualifications and limitations:

- A. We express no opinion as to any matter relating to laws of any jurisdiction other than the DGCL, as in effect on the date hereof, and we have made no inquiry into, and we express no opinion as to, the statutes, regulations, treaties, common laws or other laws of any other nation, state or jurisdiction.
- B. This opinion speaks only at and as of its date and is based solely on the facts and circumstances known to us at and as of such date. We express no opinion as to the effect of any statute, rule, regulation or other law which is enacted or becomes effective after, or of any court decision which changes the law relevant to such rights which is rendered after, the date of this opinion or the conduct of the parties following the closing of the contemplated transaction. In addition, in rendering this opinion, we assume no obligation to revise or supplement this opinion should the present laws of the jurisdictions mentioned herein be changed by legislative action, judicial decision or otherwise.

This opinion is intended solely for your benefit in connection with the matters addressed herein and may be relied upon for such purpose. We understand that you may furnish a copy of this opinion letter to the United States Securities and Exchange Commission in connection with the matters addressed herein and that you may refer to it in your proxy statement for the Annual Meeting, and we consent to your doing so. Except as stated in this paragraph, this opinion may not be relied upon by you for any other purpose or relied upon or furnished or quoted to any other person without our prior written consent.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

DocuSigned by:

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Exhibit A
(see attached)

From: [REDACTED]
Date: Thu, Oct 31, 2024 at 10:17 AM
Subject: HMC - Proxy Shareholder Proposal

To: [REDACTED]
Cc: [REDACTED]

Hi Tim,

As we discussed during our call in June 2024, we are submitting a shareholder proposal to be included in the Company-sponsored proxy statement for the 2025 AGM. In accordance with SEC Rule 14a-8, we have included our proposal, a recent account statement and confirmation from our custodian of ownership over the past year. We believe we are in compliance with all requirements outlined in the Dropbox proxy and SEC Rule 14a-8. As a recent precedent, a similar proposal has been made by Starboard Value with News Corp (NWSA).

We have addressed our letter to Mr. Donald W. Blair as he is our Lead Independent Director. Could you please confirm receipt?

Please let us know if you would like to discuss as always

Thanks,

Brandon

Brandon Carnovale
Half Moon Capital, LLC

Phone (Direct): [REDACTED]

Phone (Office): [REDACTED]

www.halfmooncapital.com

October 31st, 2024

Dropbox, Inc.
Attention: Corporate Secretary
1800 Owens Street
San Francisco, California 94158
IR@dropbox.com

Dear Mr. Blair, Lead Independent Director,

Half Moon Capital, LLC (“Half Moon Capital”) is submitting a stockholder proposal to be included in the company-sponsored 2025 proxy statement and held for a shareholder vote at the 2025 Annual General Meeting. In accordance with SEC Rule 14a-8, we have included a written statement from Goldman Sachs & Co. LLC, our custodian, stating we have owned over \$25,000 of shares in Dropbox for more than 1 year. For added transparency we have included a recent account statement as well. We intend to own over \$25,000 of shares, in accordance with SEC Rule 14a-8, through next year’s annual general meeting. We are available to discuss our stockholder proposal during regular business hours (9am – 5pm ET), in-person or through a video conference at your earliest convenience. Please contact us through Eric DeLamarter, [REDACTED] and Brandon Carnovale, [REDACTED]. Please find our proposal to be included in the company-sponsored Proxy Statement below.

Stockholder Proposal:

Proposal: Half Moon Capital, LLC is proposing Dropbox shareholders APPROVE a 3-year vesting schedule for the Class B shares to convert into Class A. We propose the Class B shares vest 33.33% in each year the Class A stock subsequently remains below \$30, \$35, and \$40 on the 1, 2, and 3 year anniversary of adoption.

Issue: We believe the dual-class structure has created a misalignment between the majority owners (i.e. Class A holders) of Dropbox and the insiders who control the super voting Class B shares. We believe this has prevented shareholders from holding insiders accountable as significant missteps continue to erode shareholder value.

Supporting Reasons:

- Since Dropbox’s IPO, Class A shares have grossly underperformed, generating a 3.19% annualized return compared to 20.93% for the S&P 500 Index with dividends reinvested through 9/30/24.
- Peers such as BackBlaze (Nasdaq:BLZE) and Nutanix (Nasdaq:NTNX) have eliminated their dual-class share structures in the public markets as a best practice for corporate governance.
- Additional benefits potentially include improved strategic value, corporate governance, ESG ratings, broader shareholder base and possible index inclusions.

Regards,



Eric DeLamarter
Managing Partner



Brandon Carnovale
Senior Analyst

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Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
O: 650.493.9300
F: 650.493.6811

March 31, 2025

VIA ONLINE PORTAL SUBMISSION

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

Re: Dropbox, Inc. -- Shareholder Proposal Submitted by the Half Moon Capital, LLC

Dear Sir or Madam:

By letter dated October 31, 2024, Half Moon Capital, LLC (the “**Proponent**”) submitted to Dropbox, Inc. (the “**Company**”), a stockholder proposal regarding the imposition of vesting provisions on the Company’s Class B common stock (the “**Proposal**”) for inclusion in the Company’s proxy statement (the “**2025 Proxy Statement**”) for its 2025 annual meeting of stockholders.

By letter dated January 10, 2025, we, on behalf of the Company, requested that the staff of the Division of Corporation Finance of the Securities and Exchange Commission not recommend any enforcement action if the Company omitted the Proposal from the 2025 Proxy Statement in reliance on Rule 14a-8(i)(1), 14a-8(i)(2), 14a-8(i)(3) and Rule 14a-8(i)(6), and following the Company’s reincorporation to Nevada, on March 6, 2025, we submitted supplemental information (the January and March submissions, collectively, the “**No-Action Request**”).

The Company has further considered the Proposal and has determined to include it in the 2025 Proxy Statement. As a result, the Company hereby withdraws its No-Action Request.

If you have any questions or require additional information, please do not hesitate to call the undersigned at (650) 493-9300. The Company is sending a copy of this letter and enclosures to the Proponent.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

DocuSigned by:

Lisa Stimmell

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cc:

Dropbox, Inc.
Half Moon Capital, LLC