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March 22, 2024

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

Re: AMC Entertainment Holdings, Inc. – 2024 Annual Meeting of Stockholders
Exclusion of Stockholder Proposals Submitted by Chris Mueller
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is submitted on behalf of our client, AMC Entertainment Holdings, Inc. (the "Company" or "AMC"), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Company received two stockholder proposals and related correspondence attached as *Exhibit A* hereto (the "Proposals") submitted by Chris Mueller (the "Proponent") for inclusion in the Company's form of proxy, proxy statement and other proxy materials (together, the "Proxy Materials") for the Company's 2024 annual meeting of stockholders (the "2024 Annual Meeting"). In reliance on several provisions of Rule 14a-8 under the Exchange Act, the Company intends to omit the Proposals from the Proxy Materials. We respectfully request the concurrence of the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "SEC") that no enforcement action will be recommended if the Company omits the Proposals from the Proxy Materials.

Pursuant to Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), the Company is submitting electronically to the Staff this letter and related exhibits. Also, in accordance with Rule 14a-8(j), a copy of this letter and related exhibits is being simultaneously provided by email on this date to the Proponent informing him of the Company's intention to exclude the Proposals from the Proxy Materials. The Company agrees to promptly forward to the Proponent any Staff response to the Company's no-action request that the Staff transmits to the Company by mail or email. Rule 14a-8(k) and SLB 14D provide that a stockholder proponent is required to send to the Company a copy of any correspondence which the proponent elects to submit to the SEC or the Staff. Accordingly, the Company hereby informs the Proponent that the undersigned is entitled on behalf of the Company to receive from the Proponent a concurrent copy of any additional correspondence submitted to the SEC or the Staff relating to the Proposals.

Separately, as the Company received the Proposals beyond the deadline for shareholder proposals and in order not to change its previously announced 2024 Annual Meeting date, the Company intends to file its preliminary proxy statement on or about April 5, 2024 and its definitive proxy statement on or about April 24, 2024. This letter is therefore being sent to the Staff fewer than 80 calendar days before such date and accordingly, as described below, the Company requests that the Staff waive the 80-day requirement set forth in Rule 14a-8(j)(1) with respect to this letter.

THE PROPOSALS

The Proposals dated January 25, 2024 were received by the Company on February 1, 2024, and read in their entirety as follows:

> *AMC Entertainment should disclose separate tallies for registered shareholder share totals on 10-Q and 10-K reports. Registered shares should be separated by DRS and DSPP form (and Cede if possible). In addition, our company should upgrade its investment plan, and move away from Computershare's boilerplate DirectStock plan.*

BASIS FOR EXCLUSION

We hereby request that the Staff concur in our view that the Proposals may be excluded from the Proxy Materials because the Proponent has failed to:

- provide the requisite proof of continuous stock ownership required by Rules 14a-8(b)(2) and 14a-8(f)(1) of the Exchange Act in response to the Company's proper requests for that information;
- timely submit the Proposals to the Company in accordance with the requirements of Rule 14a-8(e) of the Exchange Act; and
- submit only one proposal as required by Rule 14a-8(c) of the Exchange Act.

Further, the Proposals should also be excluded due to the following:

- The Disclosure Proposal (as defined below) has been substantially implemented by the Company and is excludable under Rule 14a-8(i)(10) of the Exchange Act; and
- The Investment Plan Proposal (as defined below) deals with a management function in the course of ordinary business operations and is excludable under Rule 14a-8(i)(7) of the Exchange Act, or in the alternative is impermissibly vague and indefinite so as to be materially false or misleading and is excludable under Rule 14a-8(i)(3) of the Exchange Act.

BACKGROUND

On September 27, 2023, the Company filed with the SEC the definitive proxy statement for the Company's 2023 Annual Meeting of Stockholders (the "2023 Definitive Proxy Statement") scheduled to be held on November 8, 2023 (the "2023 Annual Meeting"). Because the Company expected the 2024 Annual Meeting to be more 30 days before the anniversary of the 2023 Annual Meeting, the 2023 Definitive Proxy Statement provided the following Rule 14a-8 deadline for the 2024 Annual Meeting:

> The 2023 Annual Meeting was delayed due to pending litigation that could have impacted stockholder voting rights. We plan to return to a normalized schedule for our 2024 annual meeting of stockholders (the "2024 Annual Meeting"). Therefore, the date of 2024 Annual Meeting will change by more than 30 days from the anniversary date of the 2023 Annual Meeting. As a result, the Company is disclosing a deadline for submission of stockholder proposals for inclusion in the proxy materials for the 2024 Annual Meeting (the "2024 Proxy") pursuant to Rule 14a-8 under the Exchange Act ("Rule 14a-8"). The Company is hereby informing stockholders that to be considered for inclusion in the 2024 Proxy, stockholder proposals submitted under Rule 14a-8

> must be in writing and received by the Corporate Secretary at the Company's principal offices at One AMC Way, 11500 Ash Street, Leawood, Kansas 66211, no later than 5:00 pm Central Time on December 31, 2023, which the Company has determined to be a reasonable time before it expects to begin to print and send the 2024 Proxy. Such proposals must also comply with the remaining requirements of Rule 14a-8. Any proposal submitted after the foregoing deadline will not be considered timely and will be excluded from the 2024 Proxy. In accordance with Rule 14a-5(f) of the Exchange Act, if the stockholder proposal deadline changes, the Company will announce the new date in a quarterly report on Form 10-Q or on a current report on Form 8-K.

On February 1, 2024, the Company received a letter from the Proponent, dated January 25, 2024 (the "Proposal Letter"), requesting inclusion of the Proposals in the Proxy Materials.[1] The Proposals request that the Company (i) disclose the number of its registered holders in annual and quarterly reports with the SEC (the "Disclosure Proposal") and (ii) upgrade the Company's direct stock investment plan platform (the "Investment Plan Proposal").

Because the Proposal Letter was untimely, did not include evidence demonstrating satisfaction of the ownership requirements of Rule 14a-8(b) and impermissibly contained two proposals in contradiction of Rule 14a-8(c), on March 5, 2024, the Company sent to the Proponent (by e-mail and UPS) a notice of deficiency, a copy of which is attached hereto as *Exhibit B* (the "Deficiency Notice"), identifying these procedural defects and explaining how the Proponent could cure them. The Deficiency Notice also noted the Company's belief that the Disclosure Proposal has already been substantially implemented and that the Investment Plan Proposal relates to the Company's ordinary business operations, thereby making both proposals excludable from the Proxy Materials. The Deficiency Notice also attached a copy of Rule 14a-8, as amended, as well as copies of SLB 14D, Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F"), Staff Legal Bulletin No. 14G (Oct. 16, 2012) ("SLB 14G") and Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L").

To date, the Proponent has not responded to the Deficiency Notice, and has not had any follow up correspondence or communication with the Company.

ANALYSIS

I. The Proposals May Be Excluded Under Rules 14a-8(b)(2) and 14a- 8(f)(1) for Failure to Establish the Requisite Eligibility To Submit the Proposals

Rule 14a-8(b)(1) provides, in part, that to be eligible to submit a proposal for an annual or special meeting, a stockholder proponent must satisfy one of the ownership requirements by continuously having held either: at least (A) $2,000 in market value of the Company's securities entitled to vote on the proposal for at least three years; (B) $15,000 in market value of the Company's securities entitled to vote on the proposal for at least two years; or (C) $25,000 in market value of the Company's shares entitled to vote on the proposal for at least one year (collectively, the "Ownership Requirement"). Rule 14a-8(f) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the Ownership Requirement of Rule 14a-8(b).

Here, the Deficiency Notice (i) informed the Proponent that based on the Company's review of its records and the Proposal Letter, it could not determine whether the Proponent held the requisite amount of AMC securities for the requisite amount of time to satisfy the Ownership Requirement of Rule 14a-8(b) (the "Ownership Deficiency") and (ii) explained how the Proponent could cure the Ownership Deficiency, including providing copies

[1] It is worth noting that the Proponent submitted two almost identical proposals to two other public companies. See *Anywhere Real Estate, Inc. No Action Request* (Feb. 26, 2024); *Braemer Hotels & Resorts No Action Request* (Feb. 22, 2024).

of Rule 14a-8, SLB 14D, SLB 14F, SLB 14G and SLB 14L. To date, the Proponent has failed to provide any evidence to support that he has satisfied the Ownership Requirement.

Accordingly, we ask that the Staff concur that the Company may exclude the Proposals pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) under the Exchange Act. *See, e.g.*, *The Home Depot, Inc.* (Mar. 9, 2023) ("There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(f) because the Proponent did not comply with Rule 14a-8(b)(1)(i). As required by Rule 14a-8(f), the Company notified the Proponent of the problem, and the Proponent failed to adequately correct it."); *CNA Financial Corp*. (Feb. 20, 2024) (same); *Exxon Mobil Corp.* (Feb. 13, 2017) (concurring with the exclusion of a stockholder proposal under Rule 14a-8(b) and Rule 14a-8(f) and noting that "the proponent appears to have failed to supply, within 14 days of receipt of ExxonMobil's request, documentary support sufficiently evidencing that she satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b)"); *Amazon.com, Inc.* (Mar. 29, 2011) (same).

II. The Proposals May Be Excluded Under Rule 14a-8(e) for Submission After the Deadline for Submission of Shareholder Proposals

Rule 14a-8(e) provides that a stockholder proposal "must be received at the company's principal executive offices not less than 120 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."

Although Rule 14a-8(e)(2) does not specify what constitutes a "reasonable time" for purposes of setting a new deadline for stockholder proposals, the fundamental consideration is whether the time of submission of a proposal affords the company reasonable time to consider the proposal without causing a significant delay in the distribution of proxy materials to its stockholders. The Staff has strictly construed the Rule 14a-8 deadline in the past and has consistently permitted companies to exclude from their proxy materials those proposals that were received after an appropriate deadline. *See, e.g., Tesla, Inc.,* Mar. 23, 2023); *Hewlett Packard Enterprise Co.* (Jan. 15, 2021); *Comcast Corp.* (Apr. 4, 2019); *DTE Energy Co. (Moore)* (Dec. 18, 2018); *WalMart Stores, Inc.* (Feb. 13, 2017); *Whole Foods Market, Inc.* (Oct. 30, 2014); *Dean Foods Co.* (Jan. 27, 2014).

As discussed above, because the 2024 Annual Meeting was expected to be more than 30 days before the anniversary of the 2023 Annual Meeting, the Company set December 31, 2023 (the "14a-8 Deadline") as the Rule 14a-8 deadline for the 2024 Annual Meeting, which date the Company believed was a reasonable time before April 24, 2024, the date that the Company expects to print and send the Proxy Materials for the 2024 Annual Meeting (the "Mail Date"). Even though the 14a-8 Deadline was clearly communicated to AMC stockholders in the 2023 Proxy Statement, the Proposal Letter was not received by the Company until February 1, 2024, which is 31 days after December 31, 2023 and only 83 days from the Mail Date.

The Company believes the December 31, 2023 deadline is necessary to fully evaluate and appropriately respond to stockholder proposals, including through discussion with the Proponent, Company management, the Company's Nominating and Corporate Governance Committee and the Company's Board of Directors. The inclusion of the Proposals received after the 14a-8 Deadline could therefore lead to delays in the distribution of the Proxy Materials. Accordingly, the Company believes the Proposals may be excluded from the Proxy Materials pursuant to Rule 14a-8(e)(2) under the Exchange Act. *See, e.g., Tesla Inc.* (Mar. 23, 2023) (granting relief under Rule 14a-8(e)(2) where there were 97 days between the new 14a-8 deadline (December 22, 2022) and expected date of filing of proxy statement (March 29, 2023), and the proposal was submitted 20 days (January 11, 2023) after the new 14a-8 deadline).

III. The Proposals May Be Excluded Under Rule 14a-8(c) for Failure to Submit Only One Proposal

Rule 14a-8(c) provides that a stockholder may submit only one proposal per shareholder meeting. Here, the Proposals contain multiple elements requiring separate and distinct actions that do not involve a well-defined unifying concept. Specifically, the Disclosure Proposal focuses on Company quarterly and annual public disclosures of the number of the Company's registered holders, while the Investment Plan Proposal asks the Company to adopt a new direct stock purchase platform that is unrelated to ongoing public disclosures. The Staff has consistently recognized that Rule 14a-8(c) permits the exclusion of proposals combining separate and distinct elements that lack a single well defined unifying concept, even if the elements are presented as part of a single program and relate to the same general subject matter. See *Eaton Corp.* (Feb. 21, 2012) (excluding corporate ethics proposal because it "involves a separate and distinct matter from the proposals relating to employee compensation"); *American Electric Power Co. Inc.* (Jan. 2, 2001) (concluding that several related proposal were distinct despite the proponent's argument that they related to the governance of the registrant).

Further, in the Deficiency Notice, the Company notified the Proponent that his submission violates Rule 14a-8(c) and that the Proponent could correct this procedural deficiency by indicating which proposal the Proponent would like to submit and which proposal the Proponent would like to withdraw. The Proponent has failed to do so.

For these reasons, both Proposals are properly excludable from the Company's Proxy Materials pursuant to Rule 14a-8(c) under the Exchange Act.

IV. The Disclosure Proposal May Be Excluded Under Rule 14a-8(i)(10) as Substantially Implemented

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. Interpreting the predecessor to Rule 14a-8(i)(10), the SEC stated that the purpose of the Rule 14a-8(i)(10) exclusion is to "avoid the possibility of stockholders having to consider matters which have already been favorably acted upon by management." SEC Release No. 34-12598 (July 7, 1976). While the exclusion was originally interpreted to allow the exclusion of a stockholder proposal only when the proposal was "fully effected" by the company, the SEC has revised its approach over time to allow for the exclusion of proposals that have been "substantially implemented." SEC Release No. 34- 20091 (August 16, 1983); SEC Release No. 40018 (May 21, 1998). Applying this standard, the Staff has noted that a determination that the company has substantially implemented the proposal depends upon whether the company's existing "policies, practices and procedures" address the guidelines of the proposal. *Texaco, Inc.* (Mar. 28, 1991). In other words, substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed both the proposal's underlying concerns and its essential objective. *See, e.g.*, *Exelon Corp.* (Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (Jan. 17, 2007); *ConAgra Foods, Inc.* (Jul. 3, 2006).

When a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has consistently concurred that the proposal has been "substantially implemented" and may be excluded. *See, e.g.*, *The Brink's Company* (Feb. 5, 2015); *Visa, Inc.* (Nov. 14, 2014); *Exxon Mobil Corp.* (Mar. 23, 2009). For example, in *Starbucks Corp.* (Jan. 19, 2022), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal requesting the written and oral content of employee training materials or a report on the findings of a civil rights and non-discrimination audit, where the company's publicly disclosed reports and disclosures, including its civil rights assessment, global human rights statement, standards of business conduct, and annual global environmental and social impact report, described the company's implementation and oversight of employee training, including on civil rights and non-discrimination in the workplace. See also *Comcast Corp.* (Apr. 9, 2021)[2] (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report assessing the company's diversity and inclusion efforts, where the company had disclosed the requested information previously).

Here, the Company already provides the registered stockholder information requested by the Disclosure Proposal in its annual and quarterly reports. For example, page 37 of the Company's most recent Annual Report on

[2] Staff decision issued without a formal letter.

Form 10-K filed with the SEC on February 29, 2024 and page 41 of the Company's most recent Quarterly Report on Form 10-Q filed with the SEC on November 8, 2023 provide the following, respectively:

> On February 21, 2024, approximately 1.8 million shares of our Common Stock were directly registered with our transfer agent by 15,110 shareholders. The balance of our outstanding Common Stock was held in "street name" through bank or brokerage account.
>
> As of September 30, 2023, approximately 1.6 million shares of our Common Stock were directly registered with our transfer agent by 15,130 stockholders. The balance of our outstanding Common Stock was held in "street name" through bank or brokerage accounts.

Further, it is unclear how the separate breakdown of registered shares that are held via the direct registration system ("DRS") versus those held in book-entry via a direct stock purchase plan ("DSPP") will benefit shareholders, because "both forms of ownership record the names of the investor directly on the issuer's register, where they are recognized as registered shareholders." See Becoming a registered shareholder in US-listed companies through Computershare, at https://www.computershare.com/us/becoming-a-registered-shareholder-in-us-listed-companies.

Finally, we also note that the Staff proposed amendments to Rule 14a-8(i)(10) on July 13, 2022 (SEC Release No. 34-95267), which provide guidance on how the SEC may approach requests to exclude proposals from companies' proxy statements under "substantially implemented" grounds. Specifically, under the proposed rules, the company would have to show that it has implemented the "essential elements" of the proposal in order to grant relief for exclusion. Under the proposed release, a company can show that it has met the essential elements of the Disclosure Proposal by showing that it has accomplished its "primary objective." We believe that AMC has substantially implemented the stated primary objective of the Disclosure Proposal through its Form 10-K and Form 10-Q disclosures.

Accordingly, we ask that the Staff concur that the Company may exclude the Disclosure Proposal under Rule 14a-8(i)(10) under the Exchange Act.

V. The Investment Plan Proposal May Be Excluded Under Rule 14a-8(i)(7) for Relating to Ordinary Business Operations

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal "deals with a matter relating to the company's ordinary business operations." The underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *See Amendments to Rules on Shareholder Proposals,* Release No. 34-40018 (May 21, 1998) (the "1998 Release"). As set out in the 1998 Release, there are two "central considerations" underlying the ordinary business exclusion. One consideration is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The other consideration is that a proposal should not "seek[] to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." For the reasons set forth below, the Investment Plan Proposal falls within the parameters of the ordinary business exception contained in Rule 14a-8(i)(7) and, therefore, the Company may exclude the Investment Plan Proposal on that basis.

In general, the management of the Company's stockholder lists is the responsibility of management and the Company's SEC registered transfer agent. Under Delaware law, stockholders may be granted access to stockholder lists under certain limited circumstances, but they generally do not have the right to manage which service providers/transfer agents companies use to manage such lists. Therefore, the request to "upgrade [the Company's] investment plan, and move away from Computershare's boilerplate DirectStock plan" is not a subject of shareholder

oversight. The Staff has previously recognized that decisions concerning the selection of and relationships with vendors are matters of ordinary business and are not to be micromanaged by shareholders. *See, e.g.*, *Alaska Air Group*, Inc. (Mar. 8, 2010) (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting a report on contract repair facilities finding that a proposal regarding "decisions relating to vendor relationships are generally excludable under rule 14a-8(i)(7)"); *Continental Airlines, Inc.*(Mar. 25, 2009) (same).

For the foregoing reasons, we ask that the Staff concur that the Company may exclude the Investment Plan Proposal pursuant to Rule 14a-8(i)(7) under the Exchange Act.

VI. The Investment Plan Proposal May Be Excluded Under Rule 14a-8(i)(3) for Being Impermissibly Vague and Indefinite so as to be Materially False or Misleading.

Rule 14a-8(i)(3) permits a company to exclude a shareholder proposal "if the proposal or supporting statement is contrary to any of the [SEC's] proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." The Staff has determined that proposals may also be excluded pursuant to Rule 14a-8(i)(3) where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders in 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." See Staff Legal Bulletin 14B (Sept. 15, 2004). The Staff has also noted that a proposal may be excludable when "any action ultimately taken by the Company upon implementation [of the proposal] could be significantly different from the actions envisioned by the stockholders voting on the proposal." *See Fuqua Industries, Inc.* (Mar. 12, 1991).

Here, the Proponent requests that the Company "upgrade" its investment plan, and notes that an upgrade to the Company's investment plan will permit hybrid holding methods in single accounts and will limit the predictability of recurrent purchases. However, it is unclear what specific actions the Proponent would deem to be an "upgrade" or, on a related note, what, if any, benefit hybrid holding methods will provide to AMC stockholders and how using a different administrator from Computershare (whether through a different third party administrator or directly) will limit the predictability of recurrent purchases. Further, only our transfer agent can maintain a DSPP in which participants are registered stockholders; another third party administrator would have to hold such shares at a brokerage in street name. The Staff has previously permitted exclusion of proposals pursuant to Rule 14a-8(i)(3) that fail to provide any guidance on implementation and "would be subject to differing interpretation both by shareholders voting on the proposal and the [c]ompany's board in implementing the proposal, if adopted, with the result that any action ultimately taken by the [c]ompany could be significantly different from the action envisioned by shareholders voting on the proposal." *Exxon Corp.* (Jan. 29, 1992); *see also Ebay, Inc.* (Apr. 10, 2019) (concurring in the exclusion of a proposal requesting that the company "reform the company's executive compensation committee" because "neither shareholders … nor the [c]ompany … would be able to determine with any reasonable certainty the nature of the 'reform' the [p]roposal is requesting").

Therefore, the Investment Plan Proposal is excludable pursuant to Rule 14a-8(i)(3) under the Exchange Act.

VII. Request for Waiver Under Rule 14a-8(j)(i)

The Company further respectfully requests that the Staff waive the 80-day filing requirement set forth in Rule 14a-8(j) for good cause. Rule 14a-8(j)(1) requires that, if a company "intends to exclude a proposal from its proxy materials, it must file its reasons with the SEC no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the SEC." However, Rule 14a-8(j)(1) allows the Staff, in its discretion, to permit a company to make its submission later than 80 days before the filing of its definitive proxy statement if the company demonstrates good cause for missing the deadline. The Company is currently preparing its Proxy Materials and intends to file the preliminary proxy statement with the SEC on or about April 5, 2024 and definitive proxy statement on or about April 24, 2024, in which case the filing date will be less than 80 calendar days from the date of this letter.

As explained above, the Company did not receive the Proposals until February 1, 2024, 83 days before the Company intends to file its definitive proxy statement for the 2024 Annual Meeting and after the 14a-8 Deadline

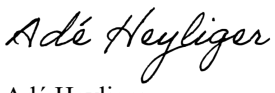
required by Rule 14a-8(e). This letter was submitted to the SEC for consideration as promptly as practicable under the circumstances, and after giving the Proponent at least 14 days to cure the deficiencies noted in the Deficiency Notice. Accordingly, we believe the Company has "good cause" for its inability to meet the 80-day requirement, and we respectfully request that the Staff waive the 80-day requirement with respect to this letter.

CONCLUSION

For the foregoing reasons we believe that the Proposals may be omitted from the Proxy Materials and respectfully request that the Staff confirm that it will not recommend any enforcement action if the Proposals are excluded.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If we can be of any further assistance in this matter, please do not hesitate to contact me at Ade.Heyliger@weil.com or (202) 682-7095, or Kevin Connor, Senior Vice President, General Counsel and Secretary, at KConnor@amctheatres.com or 913-213-2506.

Sincerely,



Adé Heyliger

Cc: Kevin Connor, AMC Entertainment Holdings, Inc.
Chris Mueller

Attachments

EXHIBIT A

Proposal Letter

January 25, 2024

AMC Entertainment
11500 Ash Street
Leawood, Kansas 66221

Members of the board.

My name is Chris Mueller, and I would like to submit a shareholder proposal for the 2024 annual shareholder meeting. I am an individual investor with a directly registered ownership position in our company. I intend to hold my position through the date of the 2024 annual shareholder meeting. I would be happy to meet with the board to discuss my proposal at any time.

My proposal: AMC Entertainment should disclose separate tallies for registered shareholder share totals on 10-Q and 10-K reports. Registered shares should be separated by DRS and DSPP form (and Cede if possible). In addition, our company should upgrade its investment plan, and move away from Computershare's boilerplate DirectStock plan.

Several issuers already disclose registered share totals with a couple sentences on each 10-Q or 10-K report. Registered holders are passionate and loyal investors who disclose their personal information to and desire a direct and close relationship with the company they invest with. Registered holder information is of material interest to investors who want to track distribution and commitment of an investor base, and can inspire more long term investors.

Regarding the investment plan, there are several reasons why we should upgrade. First - DirectStock plan does not allow hybrid holding methods in a single account. All accounts are either fully enrolled or fully not enrolled in the plan. Accounts NOT enrolled are "all DRS" (owned exclusively by the investor). By comparison, accounts that are fully enrolled are what Computershare calls DSPP consisting of "shares that underpin the plan".

Second, recurring buys through DirectStock plan are scheduled and predictable - making them prone to arbitrage and manipulation. The purchases tend to be processed through a single broker-dealer (often BofA Securities) and they tend to happen T+3 from the 1st and 15th (excluding weekends and bank holidays). The 2024 dates that these purchases will likely occur for our company are: Jan 5, Jan 19, Feb 6, Feb 21, Ma 6, Mar 20, April 4, April 18, May 6, May 20, June 6, June 21, July 5, July 18, Aug 6, Aug 20, Sept 6, Sept 19, Oct 4, Oct 18, Nov 6, Nov 21, Dec 5, and Dec 19.

Upgrading our investment plan would allow AMC Entertainment the ability to allow hybrid registered holding methods and meet the needs of materially interested long term retail investors. It would also allow for our company to either put an end to the predictable and vulnerable recurring purchases, or make sure they are less predictable and vulnerable. While it would represent an additional cost, sponsoring and administering a customized plan will be worth it.

Thank you for your time,

Chris Mueller

PII
[redacted]

Chris Mueller
PII
[redacted]

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CERTIFIED MAIL®

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JAN 25, 2024

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Corporate Secretary
AMC Entertainment
11500 Ash Street
Leawood, Kansas 66211

66211-780400

EXHIBIT B

Deficiency Notice

WE MAKE MOVIES BETTER™

KEVIN M. CONNOR, ESQ.

GENERAL COUNSEL, CORPORATE SECRETARY &
SENIOR VICE PRESIDENT

DIRECT: 913 213 2506
kconnor@amctheatres.com

March 5, 2024

Via e-mail and
UPS #1Z6813840192546949

Mr. Chris Mueller
PII
[redacted]

Re: Notice of Deficiency

Dear Mr. Mueller,

We are in receipt of your letter dated January 25, 2024 related to the stockholder proposals (the "Proposals") for inclusion in the proxy materials of AMC Entertainment Holdings, Inc. ("AMC") for the 2024 Annual Meeting of Stockholders (the "2024 Annual Meeting") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").We appreciate your interest and support of AMC, and we value you as a stockholder of the company.

As a threshold matter, we note that your letter was received past the deadline of December 31, 2023 calculated in accordance with Rule 14a-8 and previously disclosed in our definitive proxy statement for our 2023 Annual Meeting of Stockholders under the heading "*Stockholder Proposals*" on page 80 thereof. See the Exhibit A hereto. Due to this timeliness procedural deficiency (the "Timelines Deficiency"), the proposal is not eligible for inclusion in our proxy statement for the 2024 Annual Meeting.

Further, under the proxy rules of the Securities and Exchange Commission (the "SEC"), in order to be eligible to submit a stockholder proposal under Rule 14a-8 under the Exchange Act, a stockholder proponent must have continuously held (i) at least $2,000 in market value of AMC's securities entitled to vote on the proposal for at least three years; or (ii) at least $15,000 in market value of AMC's securities entitled to vote on the proposal for at least two years; or (iii) at least $25,000 in market value of AMC's securities entitled to vote on the proposal for at least one year.

Based on our review of the information in your letter, our records, and regulatory materials, we are unable to conclude that you have held the requisite amount of AMC securities for the requisite amount of time, as required by Rule 14a-8 (the "Ownership Deficiency"). Therefore, the Proposals contain an additional procedural deficiency, which SEC regulations require us to bring to your attention. Unless you can remedy this separate deficiency with confirming documentation in the proper time frame, as discussed below, you will not be eligible to submit the Proposals for inclusion in our proxy materials for the 2024 Annual Meeting.

You may remedy the Ownership Deficiency by providing a written statement from the record holder of your shares (usually a bank or broker) and a participant in the Depository Trust Company (DTC) verifying that, at the time you submitted the Proposals, you had beneficially held the requisite number of AMC securities continuously for the requisite amount of time. For information regarding the acceptable methods of proving your ownership of the minimum number of AMC securities, please see Exchange Act Rule 14a-8(b)(2) in Exhibit B. For reference, the SEC's Staff Legal Bulletin Nos. 14D, 14F, 14G and 14L provide additional guidance with respect to the standard for proof of ownership and are also included in Exhibit B hereto.

Separately, Exchange Act Rule 14a-8 permits a shareholder to submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. We believe that the Proposals set forth the two separate and distinct proposals (the "Multiple Proposals Deficiency"), namely the requirement for AMC to disclose separate tallies for registered shareholder totals on its Form 10-Q and Form 10-K reports (the "DRS Proposal") and the update of AMC's investment plan (the "Investment Plan Proposal"). You can correct this procedural deficiency by indicating which proposal you would like to submit and which proposal you would like to withdraw.

Even if the Ownership Deficiency and Multiple Proposals Deficiency are remedied, we believe that there are also substantive deficiencies to the Proposals. For example, AMC already provides the information requested by the DRS Proposal (see Item 5 of our Annual Report on Form 10-K filed on February 28, 2024 and attached as Exhibit C hereto) and the Investment Plan Proposal relates to AMC's ordinary business operations not proper for stockholder action.

Although your Proposals were received after the stated deadline for submission and, as such, we believe they are ineligible for inclusion in our proxy statement for the 2024 Annual Meeting. SEC rules require us to notify you of all other identified procedural deficiencies and to provide you with adequate time to correct them. As such, you may direct your response to my attention at kconnor@amctheatres.com. Your documentation must be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Once we receive your additional documentation relating to the procedural deficiencies noted above (other than the Timelines Deficiency), we will be in a position to determine whether the Ownership Deficiency and Multiple Proposals Deficiency have been cured. We also reserve the right to submit a no-action request to the staff of the

SEC, as appropriate, to exclude the Proposals, in light of the substantive and procedural grounds noted above.

Very truly yours,

Kevin M. Connor
Senior Vice President, General
Counsel and Secretary

Attachments

Exhibit A

(See attached)

STOCKHOLDER PROPOSALS

The 2023 Annual Meeting was delayed due to pending litigation that could have impacted stockholder voting rights. We plan to return to a normalized schedule for our 2024 annual meeting of stockholders (the "2024 Annual Meeting"). Therefore, the date of 2024 Annual Meeting will change by more than 30 days from the anniversary date of the 2023 Annual Meeting. As a result, the Company is disclosing a deadline for submission of stockholder proposals for inclusion in the proxy materials for the 2024 Annual Meeting (the "2024 Proxy") pursuant to Rule 14a-8 under the Exchange Act ("Rule 14a-8"). The Company is hereby informing stockholders that to be considered for inclusion in the 2024 Proxy, stockholder proposals submitted under Rule 14a-8 must be in writing and received by the Corporate Secretary at the Company's principal offices at One AMC Way, 11500 Ash Street, Leawood, Kansas 66211, no later than 5:00 pm Central Time on December 31, 2023, which the Company has determined to be a reasonable time before it expects to begin to print and send the 2024 Proxy. Such proposals must also comply with the remaining requirements of Rule 14a-8. Any proposal submitted after the foregoing deadline will not be considered timely and will be excluded from the 2024 Proxy. In accordance with Rule 14a-5(f) of the Exchange Act, if the stockholder proposal deadline changes, the Company will announce the new date in a quarterly report on Form 10-Q or on a current report on Form 8-K.

Furthermore, in accordance with the advance notice provisions set forth in the Company's Bylaws, in order for a stockholder proposal submitted outside of Rule 14a-8 or a director nomination submitted by a stockholder to be considered timely when an annual meeting is changed by more than 30 days from the anniversary of the prior annual meeting, it must be received no earlier than 60 days prior to such annual meeting and not later than the close of business on the later of the 30th day prior to such annual meeting or the 10th day following the public announcement of the meeting date. When the 2024 Annual Meeting date is determined, we will announce the deadlines for such proposals in a quarterly report on Form 10-Q or in a current report on Form 8-K.

In addition to satisfying the foregoing requirements under the Company's Bylaws when an annual meeting is changed by more than 30 days from the anniversary of the prior annual meeting, to comply with the universal proxy rules, shareholders who intend to solicit proxies in support of director nominees other than the Company's nominees must provide notice that sets forth the information required by Rule 14a-19 under the Exchange Act no later than the close of business on the later of the 60th day prior to such annual meeting or the 10th day following the public announcement of the meeting date. When the 2024 Annual Meeting date is determined, we will announce the deadlines for such notices in a quarterly report on Form 10-Q or in a current report on Form 8-K.

Please note that the Company plans to adopt the Fourth Amended and Restated Bylaws, reflecting changes that will become effective if and to the extent Proposals No. 1, 3, 4 and 5 of this Proxy Statement are approved. In addition, such Fourth Amended and Restated Bylaws are expected to include certain other revisions approved by the Board to become effective after the Annual Meeting, some of which will impact the deadlines outlined above. These revisions do not require approval by the stockholders and will be described in a Form 8-K to be filed with the SEC after the Annual Meeting.

Exhibit B

(See attached)

Title 17 - Commodity and Securities Exchanges
Chapter II - Securities and Exchange Commission
Part 240 - General Rules and Regulations, Securities Exchange Act of 1934

Source: Sections 240.21F-1 through 240.21F-17 appear at 76 FR 34363, June 13, 2011.
Source: 72 FR 33620, June 18, 2007, unless otherwise noted.
Source: Sections 240.16c-1 through 240.16c-4 appear at 56 FR 7273, Feb. 21, 1991, unless otherwise noted.
Source: Sections 240.16b-1 through 240.16b-8 appear at 56 FR 7270, Feb. 21, 1991, unless otherwise noted.
Source: Sections 240.15Fb1-1 through 240.15Fb6-2 appear at 80 FR 49013, Aug. 14, 2015, unless otherwise noted.
Source: Sections 240.15.Ca1-1 through 240.15Cc1-1 appear at 52 FR 16839, May 6, 1987, unless otherwise noted.
Source: Sections 240.13d-1 through 240.13f-1 appear at 43 FR 18495, Apr. 28, 1978, unless otherwise noted.
Source: Sections 240.12d1-1 through 240.12d-6 appear at 19 FR 670, Feb. 5, 1954, unless otherwise noted.
Source: Sections 240.12b-1 through 240.12b-36 appear at 13 FR 9321, Dec. 31, 1948, unless otherwise noted.
Source: 77 FR 30751, May 23, 2012, unless otherwise noted.
Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted. Section 240.3a4-1 also issued under secs. 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121 as amended; Section 240.3a12-8 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), and 23(a), 15 U.S.C. 78w(a); *See Part 240 for more*

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

§ 240.14a-8 Shareholder proposals.

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

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

(b) ***Question 2:*** Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

(1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

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

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

(C) At least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

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

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

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

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

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

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

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

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

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

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

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

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

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

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

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

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

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

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

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

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

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

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

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

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

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

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

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

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

(e) *Question 5:* What is the deadline for submitting a proposal?

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

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

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

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

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

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

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

(h) ***Question 8:*** Must I appear personally at the shareholders' meeting to present the proposal?

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

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

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

(i) ***Question 9:*** If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

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

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

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

(3) ***Violation of proxy rules:*** If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) ***Personal grievance; special interest:*** If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) ***Relevance:*** If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) ***Absence of power/authority:*** If the company would lack the power or authority to implement the proposal;

(7) ***Management functions:*** If the proposal deals with a matter relating to the company's ordinary business operations;

(8) ***Director elections:*** If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) ***Conflicts with company's proposal:*** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

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

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

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

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

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

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

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

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

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

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

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

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

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

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

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

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.

Shareholder Proposals

Staff Legal Bulletin No. 14D (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 7, 2008

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 legal bulletin represent the views of the Division of Corporation Finance. This bulletin is not a rule, regulation, or statement of the Securities and Exchange Commission. Further, the Commission has neither approved nor disapproved its content. The references to "we," "our," and "us" are to the Division of Corporation Finance.

Contacts: For further information, please contact the Office of Chief Counsel in the Division of Corporation Finance at (202) 551-3500.

A. What is the purpose of this bulletin?

This bulletin is part of a continuing effort by the Division of Corporation Finance to identify and provide guidance on issues that commonly arise under rule 14a-8. Specifically, this bulletin contains information regarding:

- shareholder proposals that recommend, request, or require a board of directors to unilaterally amend the company's articles or certificate of incorporation;
- a new e-mail address established for the receipt of rule 14a-8 no-action requests and related correspondence;
- whether a company must send a notice of defect if the company's records indicate that the proponent has not owned the minimum amount of securities for the required period of time as set forth in rule 14a-8(b); and
- the requirement that a proponent send copies of correspondence to the company and the manner in which the company and a proponent should provide additional correspondence to us and to each other.

The following additional guidance regarding rule 14a-8 is available on the Commission's web site:

- SLB No. 14, which explains the rule 14a-8 no-action process and addresses matters of interest to companies and proponents;
- SLB No. 14A, which clarifies our position on shareholder proposals related to equity compensation plans;
- SLB No. 14B, which clarifies and updates some of the guidance contained in SLB No. 14; and
- SLB No. 14C, which addresses additional matters of interest to companies and proponents, and clarifies and updates some of the guidance contained in SLB No. 14 and SLB No. 14B.

B. A shareholder proposal recommends, requests, or requires that the board of directors amend the company's charter. If, under applicable state law, the charter can be amended only if the amendment is initiated by the board and subsequently approved by the shareholders, may a company exclude a proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6) based solely on the argument that the board does not have the unilateral authority or power under state law to amend the charter?

If a proposal recommends, requests, or requires the board of directors to amend the company's charter, we may concur that there is some basis for the company to omit the proposal in reliance on rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6) if the company meets its burden of establishing that applicable state law requires any such amendment to be initiated by the board and then approved by shareholders in order for the charter to be amended as a matter of law. In accordance with longstanding staff practice, however, our response may permit the proponent to revise the proposal to provide that the board of directors "take the steps necessary" to amend the company's charter. If the proponent revises the proposal in this manner within the time frame specified in our response letter, we do not believe there would be a basis for the company to exclude the proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6). The chart below includes examples of revisions that we have previously permitted in response to no-action requests similar to those discussed in this question and answer.

Company	Proposal	Date of our response	Our response

Company	Proposal	Date of our response	Our response

SBC Communications Inc.

Resolved that as of December 31, 2005 the number of SBC Board of Director seats will be reduced from twenty one (21) to fourteen (14).

Jan. 11, 2004

We concurred in the company's view that the proposal could be excluded under rules 14a-8(i)(2) and 14a-8(i)(6), unless the proponent revised the proposal as a recommendation or request that the board of directors take the steps necessary to implement the proposal.

Gyrodyne Co. of America, Inc.

It is proposed that the classified board be abolished and all Directors, effective after the election of Directors in 1999, be elected annually.

Aug. 18, 1999

We concurred in the company's view that the proposal could be excluded under rule 14a-8(i)(1), unless the proponent revised the proposal as a recommendation or request that the board of directors take the steps necessary to implement the proposal.

Sears, Roebuck and Co.

Resolved: That the stockholders . . . urge the Board of Directors to amend the Company's Restated Certificate of Incorporation to declassify the Board of Directors for the purpose of Director elections.

Feb. 17, 1989

We concurred in the company's view that the proposal could be excluded under rules 14a-8(c)(2) and 14a-8(c)(6) [now rules 14a-8(i)(2) and 14a-8(i)(6)], unless the proponent revised the proposal to urge that the board of directors take the steps necessary to effect the proposed amendment to the certificate of incorporation.

C. May companies and shareholders e-mail us rule 14a-8 no-action requests and related correspondence?

Yes. We have established a new e-mail address for the receipt of no-action requests and correspondence related to rule 14a-8. Companies and proponents may submit requests for no-action relief under rule 14a-8 and related correspondence to us at shareholderproposals@sec.gov. This mailbox should not be used to submit other types of no-action requests or correspondence. Please include your name and telephone number in any submission directed to this mailbox. Remember that your e-mail is not confidential, and others may intercept and read your e-mail. We will process no-action requests and related correspondence received through this mailbox in the same manner as requests and correspondence submitted in paper.

D. If a proponent is listed in a company's records as a registered holder, and the records indicate that the proponent has not owned the minimum amount of securities for the required period of time as set forth in rule 14a-8(b), must the company send the proponent a notice of defect if it wishes to exclude the proposal on eligibility grounds?

Yes. If a proponent is listed in a company's records as a registered holder, the company can confirm that the proponent's holdings satisfy the ownership eligibility requirements of rule 14a-8(b). Because the proponent can also hold the company's securities by other means, however, such as through a broker or bank, the company's records do not prove conclusively that the proponent fails to meet the ownership eligibility requirement. As a result, in situations in which a company's records indicate that the proponent does not satisfy the ownership eligibility requirement in rule 14a-8(b), the company must inform the proponent that the proponent must provide proof of ownership that satisfies the requirements of rule 14a-8(b) if the company intends to exclude the proposal based upon the proponent's failure to satisfy the requirements of rule 14a-8(b).

E. Does rule 14a-8 require proponents to provide companies with any correspondence they send to us? If so, how should the correspondence be transmitted?

Yes. Rule 14a-8(k) requires a proponent to provide the company with a copy of any correspondence submitted in response to the company's no-action request. In addition, as stated in section G.9 of SLB No. 14, both the company and the proponent should promptly forward to each other copies of all correspondence provided to us in connection with rule 14a-8 no-action requests. We encourage companies and proponents to use the same means of transmitting correspondence to each other as they use to transmit materials to us. For example, if a company transmits correspondence to us via overnight mail, the company should transmit a copy to the proponent via overnight mail as well.

F. Conclusion

We hope that this bulletin, along with SLB No. 14, SLB No. 14A, SLB No. 14B, and SLB No. 14C, helps you gain a better understanding of rule 14a-8, the no-action request process, and our views on some significant issues that commonly arise during our review of rule 14a-8 no-action requests. We believe that these bulletins contain information that will assist in the efficient operation of the rule 14a-8 process for both companies and shareholders.

Modified: Nov. 7, 2008

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

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

Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Modified: Oct. 18, 2011

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)...."

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

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

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

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

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

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

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

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

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

D. Use of website addresses in proposals and supporting statements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Modified: Oct. 16, 2012

Announcement

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

Division of Corporation Finance
Securities and Exchange Commission

Action: Publication of CF Staff Legal Bulletin

Date: November 3, 2021

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

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

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

A. The Purpose of This Bulletin

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

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

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

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

1. Background

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

2. Significant Social Policy Exception

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

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

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

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

3. Micromanagement

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

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

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

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

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

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

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

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

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

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

Rule 14a-8(i)(5), the "economic relevance" exception, permits a company to exclude a proposal that "relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business."

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

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

1. Background

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

2. The Use of Images in Shareholder Proposals

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

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

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

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

E. Proof of Ownership Letters[18]

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

In Section C of SLB No. 14F, we identified two common errors shareholders make when submitting proof of ownership for purposes of satisfying Rule 14a-8(b)(2).[20] In an effort to reduce such errors, we provided a suggested format for shareholders and their brokers or banks to follow when supplying the required verification of ownership.[21] Below, we have updated the suggested format to reflect recent changes to the ownership thresholds due to the Commission's 2020 rulemaking.[22] We note that brokers and banks are not required to follow this format.

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

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

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

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

F. Use of E-mail

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

1. Submission of Proposals

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

2. Delivery of Notices of Defects

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

3. Submitting Responses to Notices of Defects

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

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

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

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

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

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

[6] 1998 Release.

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

[8] *See* 1998 Release and 1976 Release.

[9] *See, e.g., PayPal Holdings, Inc.* (Mar. 6, 2018) (granting no-action relief for exclusion of a proposal asking the company to prepare a report on the feasibility of achieving net-zero emissions by 2030 because the staff concluded it micromanaged the company); *Devon Energy Corporation* (Mar. 4, 2019) (granting no-action relief for exclusion of a proposal requesting that the board in annual reporting include disclosure of short-, medium- and long-term greenhouse gas targets aligned with the Paris Climate Agreement because the staff viewed the proposal as requiring the adoption of time-bound targets).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[25] *See* 2020 Release.

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

Exhibit C

(See attached)

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

Our common equity consists of Class A common stock ("Common Stock"). Our Common Stock has traded on the New York Stock Exchange (the "NYSE") since December 18, 2013 under the symbol "AMC". There was no established public trading market for our Class B common stock and on February 1, 2021, all outstanding Class B common stock was converted to Common Stock, which resulted in the retirement of Class B common stock.

From August 22, 2022 until August 24, 2023, we also had outstanding depositary shares of Series A Convertible Participating Preferred Stock in the form of AMC Preferred Equity Units that traded on the NYSE under the symbol "APE". On August 24, 2023, all outstanding AMC Preferred Equity Units were converted to Common Stock, which resulted in the retirement of the AMC Preferred Equity Units.

Holders of Shares

On February 21, 2024, approximately 1.8 million shares of our Common Stock were directly registered with our transfer agent by 15,110 shareholders. The balance of our outstanding Common Stock was held in "street name" through bank or brokerage accounts.

Dividend Policy

Since April 24, 2020, we have been prohibited from making dividend payments in accordance with the covenant suspension conditions in our Credit Agreement (as defined in Note 8-Corporate Borrowings and Finance Lease Liabilities to the Consolidated Financial Statements included in Part II, Item 8 thereof). The payment of future dividends after expiration of our covenant suspension conditions (for further information see Note 8-Corporate Borrowings and Finance Lease Liabilities to the Consolidated Financial Statements included in Part II, Item 8 on this Annual Report on Form 10-K) is subject to our Board of Directors' discretion and dependent on many considerations, including limitations imposed by covenants in the agreements governing our indebtedness, operating results, capital requirements, strategic considerations and other factors.

We will only be able to pay dividends from our available cash on hand and funds received from our subsidiaries. Their ability to make any payments to us will depend upon many factors, including our operating results, cash flows and the terms of the Credit Agreement and the indentures governing our debt securities. The declaration and payment of any future dividends will be at the sole discretion of our Board of Directors after taking into account various factors, including legal requirements, our subsidiaries' ability to make payments to us, our financial condition, operating results, cash flow from operating activities, available cash and current and anticipated cash needs. See the Liquidity and Capital Resources section of Item 7 of Part II thereof for further information regarding the dividend restrictions.

Securities Authorized for Issuance Under Equity Compensation Plans

See Item 12 of Part III of this Annual Report on Form 10-K.

Unregistered Sales of Equity Securities and Use of Proceeds

Sale of Unregistered Securities

Except as reported Item 3.02 of in our Current Reports on Form 8-K filed with the SEC on February 9, 2023 (as amended by the Form 8-K filed on February 13, 2023), August 14, 2023, December 12, 2023, December 15, 2023, December 19, 2023, December 22, 2023and January 2, 2024, all of which are incorporated by reference into this Annual Report on Form 10-K, there were no sales of unregistered securities during the fiscal year ended December 31, 2023.

Issuer Purchase of Equity Securities

None.