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

DIVISION OF
CORPORATION FINANCE

April 24, 2024

Kevin Greenslade
Hogan Lovells US LLP

Re: Dell Technologies Inc. (the "Company")
Incoming letter dated February 27, 2024

Dear Kevin Greenslade:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Center for Public Policy Research for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company's board of directors list on the Company website any recipient of material donations from the Company, excluding employee matching gifts.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(b)(1)(i) and Rule 14a-8(f). In our view, the Proponent has supplied clear documentary support evidencing the Proponent's eligibility to submit the Proposal. The requirements the Company argues must be imposed on the Proponent are not supported by a plain reading of Rule 14a-8(b)(2)(ii).

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We do not believe that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal does not address ordinary business matters and does not seek to micromanage the Company.

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

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February 27, 2024

Rule 14a-8(b)(1)
Rule 14a-8(f)(l)
Rule 14a-8(i)(7)
Rule 14a-8(i)(3)

Via Online Shareholder Proposal Form

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

Re: Dell Technologies Inc.
Exclusion of Shareholder Proposal by the National Center for Public Policy Research

To whom it may concern:

We are writing on behalf of our client, Dell Technologies Inc. ("**Dell**" or the "**Company**"), to notify the Securities and Exchange Commission (the "**Commission**") of the Company's intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2024 annual meeting of shareholders (the "**Proxy Materials**"), the enclosed shareholder proposal and supporting statement (collectively, the "**Proposal**") submitted by the National Center for Public Policy Research (the "**Proponent**"). The Company respectfully requests that the staff of the Division of Corporation Finance (the "**Staff**") of the Commission confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials for the reasons discussed below.

In accordance with relevant Staff guidance, the Company is submitting this letter and its attachments electronically to the Staff via the online Shareholder Proposal Form located on the Commission's website. Pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), we are filing this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive Proxy Materials with the Commission and a copy of this correspondence is being concurrently sent to the Proponent as notification of the Company's intention to exclude the Proposal from its Proxy Materials.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (October 18, 2011) ("**SLB 14F**"), we ask that the Staff provide its response to this request to the undersigned via e-mail at the address noted in the last paragraph of this letter. The Company agrees to promptly

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forward to the Proponent any Staff response to the Company's no-action request that the Staff transmits to the Company by mail, e-mail and/or facsimile. Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008) ("**SLB 14D**") provide that a shareholder proponent is required to send to the company a copy of any correspondence which the proponent elects to submit to the Commission or the Staff. Accordingly, the Company hereby informs the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent should concurrently furnish a copy of that correspondence to the undersigned on behalf of the Company by email.

Background

On December 13, 2023, the Company received the Proposal from the Proponent. The Proposal sets forth the following resolution:

> **Resolved**: The Proponent requests that the Board of Directors list on the Company website any recipient of material donations from the Company, excluding employee matching gifts. Optimally, this list would include all recipients of $5,000 or more, or would include an explanation of why such donations are not material to the company but still appropriate for the company to undertake.
>
> Included with the Proposal was the following Supporting Statement:
>
> **Supporting Statement**
>
> Dell is a technology company that designs, manufactures and sells computer hardware and software products. As such, shareholders invest in Dell because of its value as a leading technology company, and the Board's fiduciary duty requires it to create value for shareholders by serving that fundamental purpose.
>
> Dell has partnerships with a number of organizations that promote the practice of gender transition surgeries on minors and evangelize gender theory to minors. Why are Dell shareholders funding the efforts to spread an ideology seeking to mutilate the reproductive organs of children before they finish puberty?
>
> Proponents of gender theory claim that children arc sexually mature enough to make permanent decisions such as taking puberty blockers and undergoing gender transition surgeries. However, most people (which includes Dell shareholders) understand that children are not sexual beings and that there is a reason why minors cannot consent to sexual activity.[1]

[1] https://www.foxnews.com/politics/americans-oppose-transgender-surgeries-anti-puberty-blockers-for-minors-poll

This contentious and vast disagreement between radical gender theory activists and the general public has nothing to do with Dell making and selling computer products. Yet, Dell is partnered with the Human Rights Campaign (HRC),[2] GenderCool Project[3] and Texas Competes[4] — all of which are intent on spreading such ideas to minors and which celebrate the genital mutilation of minors.

The burden of proof is on the Board to explain why this particularly divisive and unordinary use of shareholder resources is deemed to be congruent with its fiduciary duty.

As a Delaware business corporation, Dell is required to first serve the interests of its shareholders.[5] However, the child gender transition agenda pushed by HRC,[6] GenderCool[7] and Texas Competes[8] is unrelated to the Company's fiduciary duty.

Recent events have made clear that company bottom-lines, and therefore value to shareholders, drop when companies engage in overtly political and divisive partnerships. Following Bud Light's embrace of partisanship, its revenue fell $395 million in North America compared to a year prior.[9] This amounts to roughly 10 percent of its revenue in the months following its leap into contentious politics.[10] Target's market cap fell over $15 billion amid backlash for similar actions.[11] And Disney stock fell 44 percent in 2022 — its worst performance in nearly 50 years —amid its decision to put extreme partisan agendas ahead of parents' rights.[12]

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[2] https://www.hrc.org/about/corporate-partners
[3] https://gendercool.org/partners-and-supporters/
[4] https://www.texascompetes.net/roster
[5] https://law.justia.com/cases/delaware/court-of-chancery/2012/ca-7164-ven-0.html, *et al.*
[6] https://www.hrc.oreresources/transgender-children-and-youth-understanding-the-basics; https://www.hrc.org/resources/supporting-caring-for-transgender-children
[7] https://gendercool.org/our-story/; https://gendercool.org/what-we-do/; https://gendercool.org/what-we-offer/
[8] https://www.texascompetes.net/news/blog/texas-competes-statement-on-govemment-intrusion-into-family-healthcare
[9] https://www.cnn.com/2023/08/03/business/anheuser-busch-revenue-bud-light-intl-hnk/index.html;
[10] https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch
[11] https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash
[12] https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began; https://www.hollywoodreporter.com/business/business-news/disney-stock-2022-1235289239/; https://markets.businessinsider.com/news/stocks/disney-stock-price-dechne-bob-iger-pandemic-inflation-recession-streaming-2022-12

Considering that Dell is partnered with numerous radical organizations that advance the very agenda that so disastrously affected Disney, Target and Bud Light, such partnerships pose a clear risk to Dell shareholders as well.

Basis for Exclusion

As discussed more fully below, the Company believes that it may omit the Proposal from its Proxy Materials in reliance on:

- Rule 14a-8(b)(1) and Rule 14a-8(f)(l) because the Proponent failed to provide the Company with the requisite proof of continuous stock ownership after receiving notice of such deficiency;
- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business and seeks to micromanage the Company; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague, indefinite and subject to multiple interpretations, such that it violates the proxy rules.

I. The Proposal May Be Excluded Under Rule 14a-8(b)(1) And Rule 14a-8(f)(1) Because The Proponent Failed to Establish Eligibility To Submit The Proposal Despite Proper Notice

A. Background of Rule 14a-8(b)(1) and Rule 14a-8(f)(1).

Rule 14a-(8)(b)(1) provides that, to be eligible to submit a shareholder proposal, a shareholder proponent must have continuously held: (i) at least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; (ii) at least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or (iii) at least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year.

Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the requisite ownership requirements under Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within 14 days from the date the proponent received such notice. If a proponent is not a registered shareholder of a company and has not made a filing with the Commission detailing his or her ownership of the company's shares, Rule 14a-8(b)(2) provides that the proponent must prove his or her eligibility to submit a proposal by providing the company with a written statement from the "record" holder of the proponent's securities.

SLB 14F specifies that, if the shareholder is not a record holder and owns the shares in "street name," through a bank or broker who holds the securities through the Depository Trust Company ("**DTC**"), "[t]he shareholder will need to obtain proof of ownership from the DTC participant through which [his or her] securities are held." SLB 14F further explains that proof of ownership letters fail to satisfy the ownership requirement under Rule 14a-8(b)(1) if "they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted." A letter fails to verify the requisite ownership if it "speaks as of a date before the date the proposal is submitted...[or] speaks as of a date after the date the proposal was submitted but covers a period of only one year...." In addition, SLB 14F notes that another common deficiency of ownership letters occurs "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." *See* SLB 14F, Section C.

B. Background of the Proposal Submission.

The Proposal was submitted to the Company by Ethan Peck on behalf of the Proponent on December 11, 2023 (the "**Submission Date**") via FedEx and received by the Company on December 13, 2023. Mr. Peck's submission did not include any documentary evidence of the Proponent's ownership of Company shares. The Company reviewed its share records, which did not indicate that the Proponent was a record owner of Company shares. Accordingly, on December 20, 2023, which was within 14 calendar days of the Company's receipt of the Proposal, the Company sent the Proponent a letter identifying a proof of ownership deficiency, notifying the Proponent of the requirements of Rule 14a-8 and explaining how the Proponent could cure the procedural deficiencies identified (the "**Deficiency Notice**"). The Deficiency Notice provided detailed information regarding the "record" holder requirements, as clarified by SLB 14F and Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("**SLB 14L**"), and attached a copy of Rule 14a-8, SLB 14F and SLB 14L. Specifically, the Deficiency Notice stated: the ownership requirements of Rule 14a-8(b); that according to the Company's stock records, the Proponent was not a record owner of sufficient Company shares; that, as of the date of the Deficiency Notice, the Company had not received any documentation evidencing the Proponent's proof of continuous ownership, as required under Rule 14a-8(b); the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including "a written statement from the 'record' holder of the Proponent's shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the [o]wnership [r]equirements" of Rule 14a-8(b); and that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice. The Company sent the Deficiency Notice to the Proponent via email and overnight delivery.

Subsequently, on December 30, 2023, the Company received an email from Stefan Padfield, on behalf of the Proponent, stating, "please find attached our proof of ownership."

Attached to the email was a letter from Wells Fargo Advisors dated December 27, 2023 (the "**Wells Fargo Letter**"), stating that:

> As of December 27, 2023, the National Center for Public Policy Research holds, and has held continuously since December 10, 2020, more than $2,000 of Dell Technologies Inc common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred. Wells Fargo N.A. is record owner of these shares.

The Wells Fargo Letter did not contain any indication that Wells Fargo was affiliated with UBS or was otherwise authorized to speak on behalf of UBS. The Wells Fargo Letter also did not attach any documentation from UBS. Copies of the Proposal, the Deficiency Notice, the Proponent's response of December 30, 2023 and the Wells Fargo Letter are attached hereto as Exhibit A.

C. The Stock Ownership Letter Submitted by the Proponent to the Company Fails to Demonstrate the Proponent's Continuous Ownership of the Company Shares for the Requisite Time Period.

The Wells Fargo Letter is insufficient because it does not satisfy Rule 14a-8(b)(2)(ii)'s requirement of a written statement from the "record" holder of the Proponent's securities demonstrating that as of the submission date the Proponent had satisfied one of the ownership requirements of Rule 14a-8(b). Specifically, the Wells Fargo letter confirms that Wells Fargo N.A. is the record holder of the Proponent's Company shares, but does not confirm that Wells Fargo N.A. has been the record holder of the Proponent's shares continuously for the entire period purportedly covered by the letter (i.e., December 10, 2020 through December 27, 2023). In fact, the Wells Fargo Letter explicitly states that the duration of the holdings discussed in the letters is based on information obtained from UBS in connection with the transfer of the Proponent's holdings. As such, Wells Fargo Advisors is unable to independently provide adequate documentation confirming the Proponent's continuous ownership for the period during which Wells Fargo N.A. was not the record holder of the Proponent's shares.

In this situation, each record holder must provide proof of ownership for the period in which they held the shares, as was done for example by the record holders in *The AES Corp.* (avail. Jan. 21, 2015) (providing one ownership letter from BNY Mellon verifying the proponent's ownership from October 20, 2013 through October 31, 2013 and a second letter from State Street verifying the proponent's ownership from November 1, 2013 through October 20, 2014). The Staff has consistently concurred with the exclusion of proposals pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) where, after receiving proper notice from a company, the proof of ownership submitted failed to establish that as of the date the shareholder submitted the proposal the shareholder had continuously held the requisite amount of company securities for the entire required period. *See Amazon.com, Inc.* (*Phyllis Ewen Trust*) (avail. Apr. 3, 2023) (concurring in the exclusion of a

shareholder proposal when the proponent provided proof of ownership of company shares that covered a holding period of only 122 days); *see also Starbucks Corp.* (avail. Dec. 11, 2014) (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for one year as of September 26, 2014, but the proponent submitted the proposal on September 24, 2014); *PepsiCo, Inc. (Albert)* (avail. Jan. 10, 2013) (concurring with the exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where the proponent's purported proof of ownership covered the one-year period up to and including November 19, 2012, but the proposal was submitted on November 20, 2012); *Union Pacific Corp.* (avail. Mar. 5, 2010) (letter from broker stating ownership for one year as of November 17, 2009 was insufficient to prove continuous ownership as of November 19, 2009); *The McGraw Hill Companies, Inc.* (avail. Jan. 28, 2008) (letter from broker stating ownership for one year as of November 16, 2007 was insufficient to prove continuous ownership for one year as of November 19, 2007).

When a proponent's shares were transferred during the applicable holding period, the proponent can satisfy Rule 14a-8(b)'s requirement to provide sufficient proof of continuous ownership by submitting letters from each record holder demonstrating that there was no interruption in the proponent's chain of ownership. For example, in *Associated Estates Realty Corp.* (avail. Mar. 17, 2014), the proponent submitted letters from its introducing broker and the two record holders that held the proponent's shares during the previous one-year period. The first record holder's letter confirmed that the proponent's account held the company's securities "until December 7, 2012 on which dates the [s]hares were transferred out," and the second record holder's letter confirmed that it "became the registered owner . . . on December 7, 2012 . . . when the shares were transferred . . . at the behest of [the proponent] as a broker to broker transfer between accounts . . . ." Similarly, in *Bank of America Corp.* (avail. Feb. 29, 2012), the proponent provided proof of ownership of the company's shares by submitting letters from TD Ameritrade, Inc. and Charles Schwab & Co. The TD Ameritrade letter confirmed ownership of the company's shares "from December 03, 2009 to April 21, 2011," and the Charles Schwab letter confirmed that the company's shares "have been held in this account continuously since April 21, 2011." *See also Moody's Corp.* (avail. Jan. 29, 2008) (the proponent's continuous ownership of the company's shares was verified by two letters, with the first letter stating that "[a]ll securities were transferred from Morgan Stanley on November 8, 2007" and the second letter stating that the proponent transferred the company's securities into his account on November 8, 2007); *Eastman Kodak Co.* (avail. Feb. 19, 2002) (the proponent provided letters from Merrill Lynch & Co., Inc. and Salomon Smith Barney Inc. to demonstrate his continuous ownership, with the Merrill Lynch letter stating that the proponent's shares were "transferred to Salomon Smith Barney Inc. on 09-28-2001" and the Salomon Smith Barney letter confirming that the shares were "transferred over from Merrill Lynch on 09/28/01"); *Comshare, Inc.* (avail. Sept. 5, 2001) (the proponent demonstrated sufficient ownership in response to the company's deficiency notice by providing two broker letters, with one letter stating that the proponent owned at least $2,000 of the company's shares "from March 30, 2000 until March 26, 2001 when the account was transferred to Charles Schwab," and the

second letter stating that the proponent has held the shares "continuously at Charles Schwab & Co., Inc. since March 26, 2001 to present").

Consistent with the foregoing examples, the Proponent should have provided documentary evidence from each record holder (i.e., UBS and Wells Fargo Advisors) verifying that the end date of the first record holder's holding period matched the start date of the second record holder's holding period. Documentary evidence also should have been provided concerning the start date of the first record holder's holding period. As the Company informed the Proponent in the Deficiency Notice, the Proponent was required to provide a written statement from the record holder verifying that the Proponent maintained continuous ownership throughout the three-year period. This principle applies to each record holder throughout the holding period. Despite the clear instruction in the Deficiency Notice, the Proponent failed to provide documentary evidence of continuous ownership from the record holders. As such, the Proponent has not demonstrated eligibility under Rule 14a-8 to submit the Proposal because the Proponent failed to provide adequate documentary evidence of ownership of Company shares. Accordingly, we respectfully ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Company's Ordinary Business

A. Background of Rule 14a-8(i)(7).

Rule 14a-8(i)(7) permits the omission of a shareholder proposal if it "deals with a matter relating to the company's ordinary business operations" that does not focus on a significant policy issue. 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 relates to the subject matter of the proposal, recognizing 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 relates to the "degree to which the proposal seeks 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." Framing a shareholder proposal in the form of a request for information, including requesting information about charitable donations, does not change the nature of the proposal.

B. The Proposal is Excludable Because it Addresses the Ordinary Business Matter of the Company's Charitable Contributions

The Proposal directs Dell's Board of Directors (the "**Board**") to disclose on the Company's website "any recipient of material donations from the Company" without regard to the Company's right to control its public relations, including how to publicize its charitable giving strategy, as part of its ordinary business operations. The Supporting Statement makes clear that the Proponent objects to the Company's partnerships with certain specific charitable organizations, including what it considers to be "overtly political and divisive partnerships." However, the Staff has consistently recognized a company's public relations and marketing activity as part of its ordinary business operations, which includes whether, and how, the company comments on or otherwise participates in social or other community-oriented issues, including causes supported by charitable organizations. As recently as the last annual meeting cycle, the Staff has concurred in the exclusion of proposals requesting that companies prepare reports seeking information concerning voluntary partnerships. For example, a proponent sought that MetLife, Inc. issue a report "on the risks created by Company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue business relationships." *MetLife, Inc.* (avail. Apr. 24, 2023) ("**MetLife**"). MetLife argued that the requested evaluation and report would touch on multiple aspects of the company's day-to-day business, including its relationship with customers, suppliers, employees and shareholders, in addition to the products and services it offers, all of which have been the subject of prior exclusions permitted by the Staff. The Staff concurred that the proposal relates to, and does not transcend, ordinary business matters and was therefore excludable. Similarly, the same proponent sought that McDonald's Corp. issue a report "listing and analyzing policy endorsements made in recent years," which would include, among other things, "public endorsements, including press statements released by the company and signing of public statements associated with activist groups." The Staff likewise concurred with the exclusion of such proposal in the company's proxy statement under Rule 14a-8(i)(7). *McDonald's Corp.* (avail. April 3, 2023) ("**McDonald's**"). The Staff has concurred with the exclusion of other recent proposals requesting that companies prepare reports focused on public relations activities. *See, e.g., Walmart Inc.* (avail. Apr. 10, 2023) ("**Walmart**") (a similar proposal with the same outcome as McDonald's).

As was the case for *MetLife*, *McDonald's* and the other proposals referenced above, the Proposal seeks to improperly introduce shareholder oversight over the Company's management of its involvement with charitable organizations and related public relations and other community-oriented initiatives, which are core to its ordinary business operations. The Company makes charitable contributions to hundreds of organizations each year and its involvement with these organizations is initiated for a variety of reasons, ranging from local community needs and activities to regional and national groups focused on various issues that can impact the Company's industry, hiring, and ability to innovate. As such, involvement in charitable organizations can benefit the Company by supporting employee morale and engagement, improving the Company's standing in local, state and federal arenas, and enhancing the Company's reputation. All of these

community and charitable relationships are properly overseen by management and not the Company's shareholders.

These types of human resources and public relations functions have been repeatedly recognized by the Staff as ordinary business matters, rendering the Proposal excludable under Rule 14a-8(i)(7). Corporate social responsibility is an important part of the Company's culture, which the Company and its employees express in a number of different ways. Decisions regarding the charitable organizations and initiatives that are supported are complex and based on a range of factors that require management, with input from a variety of stakeholders, to align charitable activities with several goals, including promoting projects that align with the Company's business strategy, meeting the needs of the communities in which the Company operates, and selecting among competing projects in the context of limited resources.

The Company has an established corporate governance structure to oversee its involvement with charitable organizations and public relations matters. The review and approval of donations to charitable organizations can be effectuated at the corporate level or at the business unit level based on the nature of the donation and the priorities of each group. In general, the Board oversees public policy matters through its Nominating and Corporate Governance Committee (the "**Committee**"), whose charter has evolved to provide for broad oversight over the Company's public policy and social responsibility matters, including social, political and environmental trends and public policy issues that affect or could affect the Company's business, assisting the Board in determining how the Company can anticipate and adjust to public policy trends and/or actively participate in the policy dialogue, and advise management on elements of the Company's ESG program, including social responsibility programs and initiatives and public policy positions and advocacy.

As is the case for countless other public companies, the Board (including the Committee) and management should retain responsibility over these public relations and other community matters as part of their day-to-day management and/or oversight of the Company. The Company's management of its public relations function, including engagement with community groups and charitable organizations, has been an integral component of its business strategy for decades, and the Proposal seeks to improperly introduce shareholder involvement into this cornerstone of the Company's ordinary business operations.

C. The Proposal is Excludable Because it Targets the Company's Charitable Contributions to, and Support for, Specific Types of Organizations

In contrast to shareholder proposals that relate to a company's charitable contributions generally, the Staff has consistently permitted the exclusion of shareholder proposals under Rule 14a-8(i)(7) when the proposals focus on a company's relationships with or contributions to specific organizations or types of organizations. In *The Walt Disney Co.* (November 20, 2014), the Staff concurred in exclusion under Rule 14a-8(i)(7) of a proposal because the proposal related to "charitable contributions to a specific type of organization," and in *PepsiCo, Inc.* (February 24,

2010), the Staff concurred in exclusion of a proposal requesting that the company specifically prohibit financial or other support of any "organization or philosophy which either rejects or supports homosexuality," noting that "[p]roposals that concern charitable contributions directed to specific types of organizations are generally excludable under rule 14a-8(i)(7)." See also *Target Corp.* (March 31, 2010) (concurring in exclusion of a proposal requesting a report on charitable donations and a feasibility study of policy changes, "including minimizing donations to charities that fund animal experiments," on the basis that it related to the company's ordinary business operations in that it concerned "charitable contributions directed to specific types of organizations"); *Starbucks Corp.* (December 16, 2009) (concurring in exclusion of a proposal nearly identical to the proposal at issue in Target Corp.); and *Wachovia Corp.* (January 25, 2005) (concurring in exclusion of a proposal recommending that the board disallow the payment of corporate funds directed at Planned Parenthood and any other organizations involved in providing abortion services).

The fact that the Proposal's resolution itself initially appears to be facially neutral does not change the analysis. Substantial precedent exists that recognizes that even where the language of a resolution does not target specific charities or types of charities, a proposal may still be excluded under Rule 14a-8(i)(7) where the supporting statement – as is the case with the Proposal – makes clear that the proposal in fact would serve as a shareholder referendum on corporate contributions to a particular charity or type of charity. For example, in *Netflix, Inc.* (April 9, 2021)*, the Staff concurred in exclusion under Rule 14a-8(i)(7) of a proposal that requested a wide-ranging report listing and analyzing charitable contributions made or committed during the prior year, including identifying organizational and individual recipients of donations in excess of $5,000, where the supporting statement referenced "highly divisive" political and social events, with accompanying footnotes containing links to articles discussing recent racial and social justice protests and the company's contributions to causes associated with said protests. The company argued, among other things, that despite the "facially neutral" way in which the proposal was drafted, when read together with the supporting statement and accompanying footnotes, the proposal clearly related to the company's contributions to organizations supporting Black Lives Matter. In *AT&T Inc.* (January 15, 2021)*, the Staff concurred in exclusion under Rule 14a-8(i)(7) of a similar proposal, despite the "facially neutral" way in which the proposal was drafted, where, when read together with the supporting statement and accompanying footnotes, the proposal clearly related to the company's contributions to organizations supporting Black Lives Matter. *See also Starbucks Corp.* (December 23, 2020)* (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report listing and analyzing charitable contributions made or committed during the prior year where the proposal, when read together with the supporting statement and the supporting statement's footnotes, sought to conduct a shareholder referendum opposing the company's charitable contributions to "a specific cause to which the [p]roponent is opposed—BLM"); *The Walt Disney Co.* (December 23, 2020)* (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report listing and analyzing charitable contributions made or committed

* Citations marked with an asterisk indicate Staff decisions issued without a letter.

during the prior year where the supporting statement referred to "highly divisive" charitable commitments, including the NAACP and unspecified organizations that support social justice); *JPMorgan Chase & Co.* (February 28, 2018) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board issue a report disclosing the company's standards for choosing organizations that receive charitable contributions, where the supporting statement focused on the company's contributions to, among others, Planned Parenthood and the Southern Poverty Law Center, and thus "contributions to specific types of organizations"); *Starbucks Corp.* (January 4, 2018) (concurring in exclusion under Rule 14a-8(i)(7) of a facially neutral proposal requesting that the board issue a report disclosing the company's standards for choosing organizations that receive charitable contributions, where the supporting statement also focused on the company's relationship with Planned Parenthood and the Southern Poverty Law Center, thus making clear that the proposal was directed at contributions to specific types of organizations); *PG&E Corp.* (February 4, 2015) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal suggesting the board "make appropriate changes to avoid future losses due to anti-family contributions and how to limit anti-family contributions"); *Home Depot, Inc.* (March 18, 2011) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish on its website a list of recipients of "corporate charitable contributions or merchandise vouchers of $5,000 or more" where the proposal's supporting statement focused primarily on the gay, lesbian, bisexual and transgender community, and associated organizations and therefore related to "charitable contributions to specific types of organizations"); *Johnson & Johnson* (February 12, 2007), *Pfizer Inc.* (February 12, 2007) and *Wells Fargo & Co.* (February 12, 2007) (in each of which the Staff concurred in exclusion of a facially neutral proposal requesting that each company publish all charitable contributions on its website, but where the statements surrounding the resolution indicated that the proposal was, in fact, intended to serve as a shareholder referendum on donations to a particular charity or type of charity, specifically Planned Parenthood and other charitable groups involved in abortions and same-sex marriages, noting that the proposal related to the companies' ordinary business operations (i.e., contributions to specific types of organizations)); and *Bank of America Corp.* (January 24, 2003) (concurring in exclusion of a facially neutral proposal to refrain from making any charitable contributions, where the supporting statements identify the proponents primary mission as "challenging the agenda of Planned Parenthood worldwide).

Moreover, the Staff in recent years permitted exclusion under Rule 14a-8(i)(7) of multiple proposals submitted by the Proponent requesting disclosure of charitable donations. For example, in *Netflix, Inc.* (Apr. 9, 2021)*, *Facebook, Inc.* (Mar. 26, 2021)*, *McDonald's Corporation* (Mar. 26, 2021)*, *AT&T Inc.* (Jan. 15, 2021)* and *Starbucks Corp.* (Dec. 23, 2020)*, the same Proponent submitted similar proposals with a "Resolved" clause in each that requested a detailed but facially neutral report regarding those companies' general charitable giving activities. However, the supporting statements in the proposals included references, including through online articles in

* Citations marked with an asterisk indicate Staff decisions issued without a letter.

footnotes, to each company's support for or contributions to organizations supportive of the Black Lives Matter movement. The Staff permitted exclusion of each such proposal.

Here, the Proposal's resolution broadly includes "any recipient of material donations" but the examples cited in the Proposal specifically list Human Rights Campaign, GenderCool Project and Texas Competes, three groups that support the transgender and LGBT communities, despite the fact that the Company associates with hundreds of nonprofit and charitable organizations. The Proposal when read together with the Supporting Statement reveals a clear intention to pressure the Company into limiting or ceasing charitable giving to LGBTQ+ organizations. The Supporting Statement contends that the referenced organizations "promote the practice of gender transition surgeries on minors and evangelize gender theory to minors." It is clear that the Proposal is not addressed generally to the Company's policies toward charitable giving, but rather seeks to put to a shareholder vote the Company's hypothetical support for organizations or groups that support an agenda that the Proponent does not support.

Thus, consistent with the reasons set forth and the precedents cited above, we respectfully ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(i)(7).

D. The Proposal Does Not Focus on a Significant Policy Issue that Transcends the Company's Ordinary Business Operations

The fact that a proposal may touch upon a significant policy issue is not alone sufficient to avoid the application of Rule 14a-8(i)(7) when a proposal implicates ordinary business matters. While "proposals...focusing on sufficiently significant social policy issues…generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. In SLB 14L, the Staff stated that it will "focus on the social policy significance of the issue that is the subject of the shareholder proposal" and that "in making this determination, the [S]taff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." Further, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) ("In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole").

As Staff precedent has established, the mention of a significant policy issue in a proposal, without defining the scope of actions addressed in a proposal and with only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business. *See, e.g. Amazon.com Inc.* (Apr. 8, 2022) (permitting exclusion of a proposal requesting a report on the "impact of the

[c]ompany's workforce turnover on the Company's diversity, equity, and inclusion" ("**DEI**"), where the company argued that the focus was actually on management of the company's operations despite references to DEI). In the Amazon.com proposal, the Staff agreed with the company's argument that the proposal did not focus on a significant policy issue that transcends the company's ordinary business operations. Similarly, in *MetLife*, the company faced a similarly broad proposal seeking information about the establishment, rejection or failure to continue its business relationships. There, the company noted that "the proposal does not appear to raise a significant policy issue," that "[t]he Proposal's resolved clause is bereft of any reference to any policy issues, much less significant policy issues" and that "[e]ven if the Proposal were viewed to touch on a potential significant policy issue, the Proposal's overwhelming focus relates to the Company's business relationships and products and services, which demonstrates that the Proposal relates to ordinary business matters." Ultimately, the Staff concurred with the exclusion of the proposal. *See also Walmart* (where the company argued that the same proposal as in *McDonald's* did not focus on a significant social policy issue despite references to specific important social issues in the proposal's supporting statement); *Intel Corp.* (avail. Mar. 18, 2022) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company prepare a report to shareholders on whether, and/or to what extent, the public display of the pride flag has impacted current, past and prospective employee views of the company as a desirable place to work, as relating to ordinary business operations); and *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "implement equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity," where the company argued that the resolution extended beyond the company's equal employment opportunity policy to include the company's advertising and marketing policies, how it sells its products, and its charitable giving practices, impermissibly delving into ordinary business matters).

Here, it can be argued that the Proposal does not involve a significant policy issue. The Supporting Statement references the Board's fiduciary duty to create value for shareholders and expresses a concern that Dell's involvement with certain organizations could negatively impact the Company's bottom-line. However, it does not address an issue with broad societal impact that transcends the Company's ordinary business operations. Instead, the Supporting Statement focuses on the Company's specific relationship with three organizations that support LGBTQ+ rights -- Human Rights Campaign, GenderCool Project and Texas Competes. Rather than provide evidence that the Company's involvement with these organizations has harmed or would harm Dell's revenues or stock price, the Supporting Statement makes clear that the Proposal is an attempt to hold a shareholder referendum on the Company's relationships with specific organizations. As noted, the Company has made contributions to, and entered into partnerships with, numerous organizations that support a variety of causes. It cannot be the case that all, most, or perhaps even any, of the Company's donations in excess of $5,000 raise a significant social policy issue. Accordingly, the Proposal concerns the Company's ordinary business decisions and is excludable under Rule 14a-8(i)(7).

E. The Proposal is Excludable Because it Seeks to Micromanage the Company

The Proposal may be excluded in reliance on Rule 14a-8(i)(7) on the basis that it seeks to micromanage the Company with regard to the reporting of its charitable contributions. In particular, the Proposal would specify that the Company consider listing every charitable contribution made by the Company of $5,000 or greater, excluding employee matching gifts. In SLB 14L, the Staff clarified that in evaluating companies' micromanagement arguments, it 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." The Staff further noted that 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*" (emphasis added).

Here, the Proposal requests that the Board determine which donations are "material" or, instead, to either list all recipients who received $5,000 or more in donations or explain why those donations are not material to the company but still appropriate to undertake. Any effort by the Company to prepare such disclosure would require a substantial investment of time and resources and would serve as a significant distraction to the Board, management and employees. In addition, requiring the Board to make determinations concerning the materiality of donations could subject directors to unnecessary exposure to litigation brought by individuals and organizations, like the Proponent, who do not support a particular charity's purpose or activities. As a result, it could deprive the Company's management of the flexibility and discretion to address the complex matters of the Company's charitable giving strategy, charitable contributions and public relations activities. Further, as demonstrated above, the Proposal is an attempt to limit the specific types of organizations to which the Company contributes. In this regard, the Proposal seeks to dictate not only the method and contents of the disclosure of the Company's charitable contributions, but also the ultimate recipients of its charitable contributions.

The Staff has previously concurred in the exclusion of proposals requesting disclosure of charitable contributions on the grounds that they seek to micromanage a company's management. In *Merck & Co., Inc.* (March 29, 2023), the Staff concurred in exclusion under Rule 14a-8(i)(7) of a proposal similar to this Proposal, which requested that the company "list the recipients of corporate charitable contributions of $5,000 or more on its website, along with any material limitations, if any, and/or the monitoring of the contributions and its uses, if any, that the [c]ompany undertakes." In concurring in exclusion of the Merck proposal, the Staff noted the "the [p]roposal seeks to micromanage the [c]ompany." *See also Verizon Communications Inc.* (March 17, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish annually the written and oral content of diversity, inclusion, equity or related employee-training materials offered to the company's employees on the basis that the proposal "micromanages the [c]ompany by probing too deeply into matters of a complex nature by seeking

disclosure of intricate details regarding the [c]ompany's employment and training practices"); and *American Express Company* (March 11, 2022) (same).

Similar to the proposals cited above, publication of a list of all recipients of $5,000 or more in charitable donations by the Company would probe too deeply into matters of a complex nature by seeking disclosure of intricate details about the Company's policies and practices. The Company's charitable giving consists of numerous types and forms of donations, including in-kind donations of computers, peripherals, software, and support. Under the Proposal, all of these types of charitable donations valued at $5,000 or more to a single recipient would be disclosable on the Company's website, requiring the Company to disclose intricate and granular details about its charitable giving. This disclosure is not the type of "large strategic corporate matters" the Staff has stated shareholders should be able to provide "high-level direction on" (*see* SLB 14L); rather, it is an attempt to micromanage the extent to which, and how, the Company publicizes its charitable contributions. As a result, the Proposal would micromanage the Company and is precisely the type of effort that Rule 14a-8(i)(7) is intended to prevent.

Therefore, for the reasons set forth above, and in accordance with the above-cited no-action letters, the Proposal may be excluded in reliance on Rule 14-8(i)(7) because the Proposal seeks to micromanage the Company with regard to its charitable giving and disclosures of the same.

III. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague, Indefinite And Subject To Multiple Interpretations, Such That It Violates The Proxy Rules.

Rule 14a-8(i)(3) provides that a shareholder proposal may be excluded from a proxy statement "if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits false or misleading statements in proxy soliciting materials."

The Staff has interpreted Rule 14a-8(i)(3) to include shareholder proposals that are vague and indefinite. Specifically, the Staff has agreed that reliance on Rule 14a-8(i)(3) may be appropriate to exclude a statement where the proposal is "so inherently vague or indefinite that neither the stockholders 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 (Sep. 15, 2004). In addition, the Staff has noted that a proposal may be excludable when the "meaning and application of terms and conditions...in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations" such that "the proposal would be subject to differing interpretations" and "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal." *See Fuqua Industries, Inc.* (Mar. 12, 1991). The Staff has also noted that a proposal may be excludable under Rule 14a-8(i)(3) to the extent that the proposal fails to define key terms.

See, e.g., The Walt Disney Co. (Grau) (Jan. 19, 2022) (concurring with the exclusion under Rule 14a-8(i)(3) as vague and indefinite a proposal that requests a prohibition on communications by or to cast members, contractors, management or other supervisory groups within the Company of "politically charged biases regardless of content or purpose," where the Staff stated that "in applying this proposal to the [c]ompany, neither shareholders nor the [c]ompany would be able to determine with reasonable certainty exactly what actions or measures the [p]roposal requests"); *Apple Inc.* (Dec. 6, 2019) (permitting exclusion of a proposal seeking to "improve guiding principles of executive compensation" that did not provide an explanation or definition of the key term "executive compensation"); *Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board "not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action," where it was unclear what board actions would "prevent the effectiveness of [a] shareholder vote" and how the essential terms "primary purpose" and "compelling justification" would apply to board actions); *AT&T Inc.* (Feb. 21, 2014) (permitting exclusion of a proposal requesting a review of policies and procedures related to the "directors' moral, ethical and legal fiduciary duties and opportunities," where such phrase was undefined); *International Paper Co.* (Feb. 3, 2011) (allowing exclusion of a proposal requesting the adoption of a particular executive stock ownership policy because it did not sufficiently define "executive pay rights"); and *Verizon Communications Inc.* (Feb. 21, 2008) (allowing exclusion of a proposal where the proposal failed to define certain critical terms, such as "Industry Peer group" and "relevant period of time"). The courts have also ruled on this issue, finding that "[s]hareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote" (New York City Employees' Retirement System v. Brunswick Corp., 789 F. Supp. 144, 146 (S.D.N.Y. 1992)).

In this instance, the Proposal is inherently vague and misleading as it fails to define several key terms, rendering it likely impossible for shareholders and the Company to reach a consensus as to what the Proposal seeks to accomplish. First, the Proposal requests "that the Board of Directors list on the Company website any recipient of material donations from the Company." It is not clear if the intent is to designate materiality based on the amount of the donation or its significance. It is also not clear whether materiality should be determined based on the donation's impact on the recipient or on the Company. It would be difficult for Dell's Board to determine materiality on behalf of each of the hundreds of organizations who receive donations from, or otherwise partner with, the Company. And given Dell's size, clearly a donation would have to be exponentially greater than $5,000 before it would be material to the Company's financial results.

Second, the Proposal suggests that "[o]ptimally, this list would include all recipients of $5,000 or more, or would include an explanation of why such donations are not material to the company but still appropriate for the company to undertake." As discussed above, a donation of $5,000 would not be considered "material" to a company the size of Dell. So, the Board would be asked to justify why all such donations are not material but why they are "appropriate" for the company to undertake. It is not clear on what basis the Proponent believes the Board should

determine whether a donation is "appropriate" and why any such determination process would be a productive use of the Board's time notwithstanding the inherent ambiguity.

Accordingly, we respectfully ask that the Staff concur that the Company may exclude the Proposal from its 2024 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Proposal is inherently vague and indefinite and, thus, violates the proxy rules.

Conclusion

For the foregoing reasons, and consistent with the Staff's prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials. If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at kevin.greeslade@hoganlovells.com or (703) 610-6189. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,

Kevin Greenslade

Enclosures

cc: Christopher Garcia, Dell Technologies Inc.
Ethan Peck, National Center for Public Policy Research

Exhibit A

December 11, 2023

Richard J. Rothberg
Attn: Corporate Secretary
Dell Technologies Inc.
One Dell Way, RR1-33
Round Rock, Texas 78682

Dear Mr. Rothberg,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Dell Technologies Inc. (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as an Associate of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding $2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2024 annual meeting of shareholders. Proof of ownership documents will be forthcoming.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal January 4 or 5, 2024 from 2-5 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [redacted] so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to [redacted].

Sincerely,

Ethan Peck

cc: Scott Shepard, FEP Director
Enclosure: Shareholder Proposal

Material Donations Disclosure

Supporting Statement:

Dell is a technology company that designs, manufactures and sells computer hardware and software products. As such, shareholders invest in Dell because of its value as a leading technology company, and the Board's fiduciary duty requires it to create value for shareholders by serving that fundamental purpose.

Dell has partnerships with a number of organizations that promote the practice of gender transition surgeries on minors and evangelize gender theory to minors. Why are Dell shareholders funding the efforts to spread an ideology seeking to mutilate the reproductive organs of children before they finish puberty?

Proponents of gender theory claim that children are sexually mature enough to make permanent decisions such as taking puberty blockers and undergoing gender transition surgeries. However, most people (which includes Dell shareholders) understand that children are not sexual beings and that there is a reason why minors cannot consent to sexual activity.[1]

This contentious and vast disagreement between radical gender theory activists and the general public has nothing to do with Dell making and selling computer products. Yet, Dell is partnered with the Human Rights Campaign (HRC),[2] GenderCool Project[3] and Texas Competes[4] – all of which are intent on spreading such ideas to minors and which celebrate the genital mutilation of minors.

The burden of proof is on the Board to explain why this particularly divisive and unordinary use of shareholder resources is deemed to be congruent with its fiduciary duty.

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[1] https://www.foxnews.com/politics/americans-oppose-transgender-surgeries-anti-puberty-blockers-for-minors-poll

[2] https://www.hrc.org/about/corporate-partners

[3] https://gendercool.org/partners-and-supporters/

[4] https://www.texascompetes.net/roster

As a Delaware business corporation, Dell is required to first serve the interests of its shareholders.[5] However, the child gender transition agenda pushed by HRC,[6] GenderCool[7] and Texas Competes[8] is unrelated to the Company's fiduciary duty.

Recent events have made clear that company bottom-lines, and therefore value to shareholders, drop when companies engage in overtly political and divisive partnerships. Following Bud Light's embrace of partisanship, its revenue fell $395 million in North America compared to a year prior.[9] This amounts to roughly 10 percent of its revenue in the months following its leap into contentious politics.[10] Target's market cap fell over $15 billion amid backlash for similar actions.[11] And Disney stock fell 44 percent in 2022 – its worst performance in nearly 50 years – amid its decision to put extreme partisan agendas ahead of parents' rights.[12]

Considering that Dell is partnered with numerous radical organizations that advance the very agenda that so disastrously affected Disney, Target and Bud Light, such partnerships pose a clear risk to Dell shareholders as well.

Resolved: The Proponent requests that the Board of Directors list on the Company website any recipient of material donations from the Company, excluding employee matching gifts. Optimally, this list would include all recipients of $5,000 or more, or would include an explanation of why such donations are not material to the company but still appropriate for the company to undertake.

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[5] https://law.justia.com/cases/delaware/court-of-chancery/2012/ca-7164-vcn-0.html, *et al.*

[6] https://www.hrc.org/resources/transgender-children-and-youth-understanding-the-basics; https://www.hrc.org/resources/supporting-caring-for-transgender-children

[7] https://gendercool.org/our-story/; https://gendercool.org/what-we-do/; https://gendercool.org/what-we-offer/

[8] https://www.texascompetes.net/news/blog/texas-competes-statement-on-government-intrusion-into-family-healthcare

[9] https://www.cnn.com/2023/08/03/business/anheuser-busch-revenue-bud-light-intl-hnk/index.html;

[10] https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch

[11] https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash

[12] https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began; https://www.hollywoodreporter.com/business/business-news/disney-stock-2022-1235289239/; https://markets.businessinsider.com/news/stocks/disney-stock-price-decline-bob-iger-pandemic-inflation-recession-streaming-2022-12

DELL Technologies

December 20, 2023

Via Email and Overnight Courier

Ethan Peck
National Center for Public Policy Research
2005 Massachusetts Ave NW
Washington, DC 20036
[redacted]

Dear Mr. Peck:

Dell Technologies Inc. (the "***Company***") is in receipt of your letter dated December 11, 2023, including the shareholder proposal regarding material donations disclosure (the "***Submission***"). The purpose of this letter is to inform you that your Submission does not comply with the requirements of Rule 14a-8 under the Securities Exchange Act of 1934 and therefore is ineligible for inclusion in our proxy materials for our 2024 Annual Meeting of Stockholders. SEC regulations require us to bring the following deficiencies to your attention.

Failure to Establish Ownership for Requisite Period

In accordance with Rule 14a-8(f), we hereby notify you of your failure to comply with the eligibility and procedural requirements of Rule 14a-8 pertaining to ownership of shares of the Company's common stock.

As you know, Rule 14a-8(b) under the Securities Exchange Act of 1934 currently provides that to be eligible to submit a shareholder proposal, a proponent must submit sufficient proof of its continuous ownership of company shares. Thus, with respect to a proposal, Rule 14a-8 requires that a proponent demonstrate that it has continuously owned at least:

1) $2,000 in market value of the company's shares entitled to vote on the proposal for at least three years preceding and including the submission date;

2) $15,000 in market value of the company's shares entitled to vote on the proposal for at least two years preceding and including the submission date; or

3) $25,000 in market value of the company's shares entitled to vote on the proposal for at least one year preceding and including the submission date.

Our records do not list the National Center for Public Policy Research as a registered holder of shares of the Company's common stock.

To comply with the requirement, please provide proof of your beneficial ownership of the Company's common stock by either:

1. providing a written statement from the record holder (which may be a DTC participant or an affiliate of a DTC participant) of the securities verifying that you have satisfied at least one of the ownership requirements listed above; or

2. providing a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or any amendments to those documents or updated forms, reflecting your ownership of the requisite number or value of shares of the Company's common stock in satisfaction of at least one of the ownership requirements listed above.

The staff of the Division of Corporation Finance of the U.S. Securities and Exchange Commission ("***SEC***") has provided guidance to assist companies and investors with complying with Rule 14a-8(b)'s eligibility criteria. This guidance, contained in Staff Legal Bulletin No. 14F (October 18, 2011), Staff Legal Bulletin No. 14G (October 16, 2012) and Staff Legal Bulletin No. 14L (November 3, 2021), clarifies that proof of ownership for Rule 14a-8(b) purposes must be provided by the "record holder" of the securities, which is either the person or entity listed on the company's stock records as the owner of the securities or a DTC participant (or an affiliate of a DTC participant). Thus, you will need to obtain the required written statement from the DTC participant through which your shares of Company common stock are held. If you are not certain whether your broker or bank is a DTC participant, you may check the DTC's participant list, which is currently available on the Internet at https://www.dtcc.com/client-center/dtc-directories

If the broker or bank that holds your securities is not on DTC's participant list, you will need to obtain proof of ownership from the DTC participant through which your securities are held. If the DTC participant knows the holdings of your broker or bank, but does not know your holdings, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, you satisfied at least one of the ownership requirements listed above - with one statement from your broker or bank confirming the required ownership, and the other statement from the DTC participant confirming the broker or bank's ownership. Please see the enclosed copies of Staff Legal Bulletin Nos. 14F, 14G and 14L for further information.

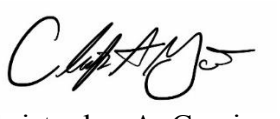
* * *

Please note that your response to cure the deficiencies noted above must be postmarked or transmitted no later than 14 calendar days from the date you receive this notice. Kindly provide the requested information to me via e-mail at [redacted].

In accordance with SEC Staff Legal Bulletin Nos. 14 and 14B, a copy of Rule 14a-8, including Rule 14a-8(b), is enclosed for your reference. Also enclosed for your reference are copies of Staff Legal Bulletin Nos. 14F, 14G and 14L.

Please do not hesitate to call me at [redacted] or James Williamson at [redacted] if you have any questions.

Sincerely,



Christopher A. Garcia
Senior Vice President and Assistant Secretary
Dell Technologies Inc.

Enclosures

cc: Dell Technologies Inc.
Richard J. Rothberg
James Williamson

Hogan Lovells US LLP
Kevin K. Greenslade

§ 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) [*Expired* January 1, 2023; See SEC Release No. 34-89964; September 23, 2020.]

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

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

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

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

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

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly

scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

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

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

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

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

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

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

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

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

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

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

Note to paragraph (i)(1):

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

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

Note to paragraph (i)(2):

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

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

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

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

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

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

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

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

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

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

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

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

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

Note to paragraph (i)(9):

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

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

Note to paragraph (i)(10):

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

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

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

Yes, you may submit a response, but it is not required. You should try to submit any response to

us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

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

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

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

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

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

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

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

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

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

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

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Modified: Oct. 18, 2011

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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

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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. 14I (Nov. 1, 2017) and is republished here with only minor, conforming changes.

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

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

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

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

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

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

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

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

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

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

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

[25] *See* 2020 Release.

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

Modified: Nov. 3, 2021

From: Stefan Padfield <[redacted]>
Sent: Saturday, December 30, 2023 12:22 PM
To: Garcia, Christopher A (Legal) <[redacted]>
Cc: Ethan Peck <[redacted]>
Subject: proof of ownership

[EXTERNAL EMAIL]

As requested in your letter to us dated 12/20/23, please find attached our proof of ownership. Please confirm receipt.

Regards,
Stefan

Stefan J. Padfield, JD
Deputy Director
Free Enterprise Project
National Center for Public Policy Research
https://nationalcenter.org/ncppr/staff/stefan-padfield/ [nationalcenter.org]

WELLS FARGO Advisors

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Suite 500
McLean, Virginia 22102

Tel: 703.893.5700
Fax: 703.448.0406

12/27/2023

National Center for Public Policy Research Inc
2005 Massachusetts Avenue NW
Washington DC 20036-1030

RE: Verification of Assets for Account Number ending in [redacted]

To Whom It May Concern:

In connection with your recent request regarding the verification of certain information about your investment account relationship with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), we are providing this letter as confirmation that:

(i) You maintain a Brokerage Cash Service account with Wells Fargo Advisors, number ending in [redacted].

(ii) As of December 27, 2023, the National Center for Public Policy Research holds, and has held continuously since December 10, 2020, more than $2,000 of Dell Technologies Inc common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred. Wells Fargo N.A. is record owner of these shares.

This letter is provided for informational purposes and does not represent future Account value, if this said Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within. This report is not the official record of your account. However, it has been prepared to assist you with your investment planning and is for informational purposes only. Your Wells Fargo Advisors Client Statement is the official record of your account. Therefore, if there are any discrepancies between this report and your Client Statement, you should rely on the Client Statement and call your local Sales Location Manager with any questions. Cost data and acquisition dates provided by you are not verified by Wells Fargo Advisors. Transactions requiring tax consideration should be reviewed carefully with your accountant or tax advisor. Unless otherwise indicated, market prices/values are the most recent closing prices available at the time of this report and are subject to change. Prices may not reflect the value at which securities could be sold. Past performance does not guarantee future results.

Sincerely,

David A. Bos
Senior Vice President - Investments
Branch Manager – Private Client Group
[redacted]

Investment and Insurance Products are:

- **Not Insured by the FDIC or Any Federal Government Agency**
- **Not a Deposit or Other Obligation of, or guaranteed by, the Bank or Any Bank Affiliate**
- **Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested**

Investment products and services are offered through Wells Fargo Advisors,
a trade name used by Wells Fargo Clearing Services, LLC, Member SIPC,
a registered broker-dealer and non-bank affiliate of Wells Fargo & Company.

March 27, 2024

Via Online Shareholder Proposal Form

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

Re: No-Action Request from Dell Technologies Inc. Regarding Shareholder Proposal by the National Center for Public Policy Research

Ladies and Gentlemen:

This correspondence is in response to the letter of Kevin Greenslade on behalf of Dell Technologies Inc. (the "Company" or "Dell") dated February 27, 2024, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our shareholder proposal (the "Proposal") from its 2024 proxy materials for its 2024 annual shareholder meeting.

RESPONSE TO THE COMPANY'S CLAIMS

Our Proposal asks the Company to:

> list on the Company website any recipient of material donations from the Company, excluding employee matching gifts. Optimally, this list would include all recipients of $5,000 or more, or would include an explanation of why such donations are not material to the company but still appropriate for the company to undertake.

The Company makes the following arguments:

> (1) "The Proposal May Be Excluded Under Rule 14a-8(b)(l) And Rule 14a-8(f)(l) Because The Proponent Failed to Establish Eligibility To Submit The Proposal Despite Proper Notice"
>
> (2) "The Proposal is Excludable Because it Addresses the Ordinary Business Matter of the Company's Charitable Contributions"

(3) "The Proposal is Excludable Because it Targets the Company's Charitable Contributions to, and Support for, Specific Types of Organizations"

(4) "The Proposal Does Not Focus on a Significant Policy Issue that Transcends the Company's Ordinary Business Operations"

(5) "The Proposal is Excludable Because it Seeks to Micromanage the Company"

(6) "The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague, Indefinite And Subject To Multiple Interpretations, Such That It Violates The Proxy Rules."

The issues raised by items (1)-(5) have recently been resolved by the Staff in Proponent's favor in *Pfizer Inc.* (Feb. 28, 2024). Item (6) will be addressed below.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

I. The Proposal Is Not Impermissibly Vague, Indefinite, Or Subject To Multiple Interpretations

Under Rule 14a-8(i)(3), a company may exclude a shareholder proposal in its entirety "if the language of the proposal or the supporting statement render the proposal so vague and indefinite that neither the stockholders 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."[1]

The Company's vagueness argument falls apart when the Proposal's resolution is read in its entirety – as will obviously be the case for both the shareholders who vote on it and the Company when it implements it. The relevant language is as follows (emphasis added).

> Resolved: The Proponent requests that the Board of Directors list on the Company website any recipient of material donations from the Company, excluding employee matching gifts. Optimally, this list would include all recipients of $5,000 or more, or would include an explanation of why such donations are not material to the company but still appropriate for the company to undertake.

The Company is simply mistaken when it asserts that "clearly a donation would have to be exponentially greater than $5,000 before it would be material to the Company's financial results" and "a donation of $5,000 would not be considered 'material' to a company the size of Dell." The problem with this analysis is that it utterly ignores the potential impact of even relatively small donations on a corporation's reputation, which is obviously a focus of the Proposal in light of its supporting statement. The fact that

[1] See Staff Legal Bulletin No. 14B (September 15, 2004) ("SLB 14B") (emphasis added).

Proponent needs to make the Company aware of this aspect of materiality merely underscores the need for, and importance of, the Proposal.[2] Also, while any given $5,000 donation is a *de minimis* amount of money, charitable contributions by Dell overall are likely not *de minimis* and calculated by Dell for purposes of tax compliance, among other things. But the total figure of Dell's charitable contributions alone cannot allow for risk evaluation, meaning that the record of the underlying donations should be supplied to the shareholders, owners of the company, so they can see the individual recipients that make up the total. This should hardly a burden, as no additional work should be involved – unless that number isn't a reliably compiled one.

Thus, when the resolution is read as set forth in the Proposal (as opposed to the piecemeal approach proffered by the Company in its letter), it becomes clear that any recipient of $5,000 or more in donations will be deemed have received a material donation unless the Company explains why such donations are immaterial but nonetheless still appropriate for the company to make. On this latter point, it is important to note that while a corporation may in some jurisdictions have the power to make donations without demonstrating a corporate benefit (i.e., such donations are not deemed *ultra vires*), the exercise of that power by corporate decision-makers must always be consistent with fiduciary duties.[3] Thus, a donation that provides no material benefit to the corporation could be deemed to constitute a breach of duty as having been made in bad faith or constituting a waste of corporate assets. All of which addresses the Company's second vagueness argument. There is nothing vague about "appropriate" in this context. It is inappropriate to made donations in bad faith or when they constitute a waste of corporate assets, and thus appropriate donations are those made in good faith and with a discernable benefit to the Company.

Although reasonable minds may differ as to the use of equally appropriate terms or phrases when drafting a shareholder proposal, the applicable standard as previously noted is whether the company implementing the proposal "would be able to *determine with any reasonable certainty* exactly what actions or measures the proposal requires." (emphasis added). Absolute certainty, therefore, is not required. When it comes to the instant Proposal, there is nothing about it that prevents the Company, Board, or shareholders from being able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Feigning confusion as a means to exclusion should not be encouraged. We presume that both the shareholders and the Board of Directors is able to understand simple language and basic propositions. They will understand that should shareholders vote for the Proposal, they will have instructed the Board to list on the Company website any recipient of material donations from the Company, excluding employee matching gifts. Certainly, if the Directors cannot understand this intensely simple proposition, then the Company failed in its duty of care by recommending that they be elected to their positions. Cf. *Levi Strauss & Co.* (March 8, 2024) (rejecting vagueness argument where company argued it was confused by words and phrases such as "corporate

[2] Cf. Faith Stevelman & Sarah C. Haan, *Boards in Information Governance*, 23 U. PA. J. BUS. L. 179, 272 (2020) (discussing political spending and noting that "reputational risk make the issue material, elevating the matter to the board level").

[3] Cf. Stephen Bainbridge, *Corporate Philanthropy*, PROFESSORBAINBRIDGE.COM (July 28, 2008) ("Corporate charitable donations are subject to attack under two doctrines: ultra vires and breach of fiduciary duty."), available at https://www.professorbainbridge.com/professorbainbridgecom/2008/07/corporate-philanthropy.html .

financial sustainability"; "board committee on corporate financial sustainability"; "social and political matters"; "alienate").[4]

Accordingly, the Proposal is not impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of Rule 14a-8(i)(3).

II. Issuing relief to the Company would raise serious constitutional and administrative law concerns.

For the reasons discussed above, our proposal's merits under Commission and Staff rules, interpretations, guidance, and precedent require that Staff deny the Company's request for relief. If the Staff elects to issue relief to the Company despite its clear merits, the Staff's decision would raise a host of constitutional and administrative law issues.

A. The Company is asking the Staff to discriminate on the basis of viewpoint in violation of the First Amendment.

Our proposal relates to the socially significant issue of the company's charitable and politically motivated spending, which the Staff have previously recognized is not excludable under Rule 14a-8(i)(7). By urging the Staff to issue relief for the Proposal regardless, the Company invites the Staff to itself discriminate based on viewpoint.

It is well-established that the government cannot engage in viewpoint discrimination.[5] This principle prevents governments from regulating speech "because of the speaker's specific motivating ideology, opinion, or perspective."[6] And the Supreme Court defines "the term 'viewpoint' discrimination in a broad sense."[7] This is because "[v]iewpoint discrimination is a poison to a free society."[8]

The rule against viewpoint discrimination prevents allowing speech based on one "political, economic, or social viewpoint" while disallowing other views on those same topics.[9] It also prohibits excluding views that the government deems "unpopular"[10] or because of a perceived hostile reaction to the views expressed.[11]

Here, the Company invites the Staff to engage in viewpoint discrimination by issuing relief on our proposal.

Just last year, in *The Walt Disney Co.* (Jan. 12, 2023) and *The Kroger Co*. (Apr. 25, 2023) the Staff denied companies no-action relief for proposals seeking the disclosure of charitable contributions where the proponents praised corporate "support of Planned Parenthood" and the "Southern Poverty Law Center .

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[4] While the proposal in *Levi Strauss & Co.* (March 8, 2024) addressed the company's "policy positions, advocacy, partnerships" in addition to its "charitable giving," the approach the Staff took to analyzing vagueness there is certainly relevant here. Cf. *Pfizer, Inc.* (Feb. 28, 2024) (including proponent's argument connecting analysis of charitable contributions and political donations).

[5] Matal v. Tam, 137 S. Ct. 1744 (2017); Iancu v. Brunetti, 139 S. Ct. 2294 (2019).

[6] Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 820 (1995).

[7] Matal, 137 S. Ct. at 1763.

[8] Iancu, 139 S. Ct. at 2302 (Alito, J., concurring).

[9] Rosenberger, 515 U.S. at 831.

[10] McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 357 (1995).

[11] Forsyth Cnty., Ga. v. Nationalist Movement, 505 U.S. 123, 134 (1992).

. . since they included several conservative Christian organizations in their list of hate groups." These proposals clearly espoused the viewpoint that corporate charitable contributions to groups associated with the political left were praiseworthy and grounded their advocacy for the proposal on that basis. Similarly, the Staff has denied relief to companies seeking to avoid proposals to disclose political expenditures aligned with the political right like "problematic company sponsored advocacy efforts" to "undercut public health policies."[12]

Our Proposal addresses the same issue of corporate contributions—but from a different viewpoint. Where the Staff blessed proposals last year that praised contributions to left-aligned groups like Planned Parenthood and the Southern Poverty Law Center, our proposal notes the controversy surrounding contributions to left-aligned groups like the Human Rights Campaign, GenderCool Project, and Texas Competes. So if the Staff opts to issue relief to exclude our Proposal, one might reasonably conclude that it could only do so because of its opinion of the distinctive political *views* our Proposal expresses.

The Staff—and the Commission—needs a principled basis for such a distinction. The Company proposes none. As the Supreme Court has explained, to avoid viewpoint discrimination the government must have "narrow, objective, and definite" standards to prevent officials from covertly discriminating based on viewpoint through subjective and unclear terms.[13] And here, the Staff has complete discretion to determine what "issues" are significant and do not "micromanage" the company and even to censor on the same issue when they are presented by speakers with different political views. The Staff should choose not to exercise this discretion here by denying the Company's request for no-action relief.

B. The Company is asking the Staff to take arbitrary and capricious action under the Administrative Procedure Act.

If the Staff grants no-action relief to the Company for our Proposal, it must explain how our Proposal is distinct from prior charitable contribution and political expenditure disclosure proposals that it has blessed.

Under the Administrative Procedure Act (APA), agency action that is "arbitrary and capricious" may be set aside.[14] The Supreme Court has succinctly explained that "[t]he APA's arbitrary and capricious standard requires that agency action be reasonable and reasonably explained."[15] Under this precedent, in order for action to be reasonable and reasonably explained, the agency must at least consider the record before it and rationally explain its decision.[16]

Additionally, where an agency seeks to change its position from a prior regime, it must "display awareness that it is changing position," "show that there are good reasons for the new policy" and provide an even "more detailed justification" when the "new policy rests upon factual findings that contradict those which underlay its prior policy," and "take[] into account" "reliance interests" on the prior policy.[17]

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[12] *PepsiCo, Inc.* (March 12, 2022).
[13] Forsyth Cnty., Ga., 505 U.S. at 131.
[14] 5 U.S.C. § 706(2)(A).
[15] FCC v. Prometheus Radio Project, 141 S. Ct. 1150, 1158 (2021); see also Motor Vehicle Mfs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 50 (1983).
[16] See FCC, 141 S. Ct. at 1160.
[17] FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

Given the Staff's prior precedent on charitable contributions and political expenditures, issuing relief to the Company would undoubtedly be a change in its position. At a bare minimum, the Staff—or the Commission—would have to explain its reasoning for the reversal in position to comply with the APA.

C. The Company is requesting relief the Staff lacks statutory authority to issue.

Regardless, the Staff lack statutory authority to grant the Company no-action relief. The Company has notice that we intend to submit our proposal, which is valid under state law, for consideration at the annual meeting. The Staff may not give the company its blessing to exclude an otherwise valid proposal from its proxy statement.

Section 14(a) of the Exchange Act prohibits anyone from "solicit[ing] any proxy" "in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."[18] While this authority might be read "broadly," "it is not seriously disputed that Congress's central concern [in enacting § 14(a)] was with disclosure."[19] The purpose of Section 14(a) was to ensure that investors had "adequate knowledge" about the "financial condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders' meetings."[20]

While Section 14(a) gave the Commission authority to compel investor-useful disclosures, the substantive regulation of stockholder meetings was left to the "firmly established" state-law jurisdiction over corporate governance.[21] Recognizing that state law provides the "confining principle" to Section 14(a)'s otherwise "vague 'public interest' standard," the D.C. Circuit has held that "the Exchange Act cannot be understood to include regulation of" "the substantive allocation" of corporate governance that is "traditionally left to the states."[22] Under Section 14(a), then, the SEC may compel the disclosure in a company's proxy materials of items that will be before shareholders at the annual meeting.

Under state law, a shareholder proposal may be presented for consideration at the corporation's annual meeting if the proposal is a proper subject for action by the corporation's stockholders.[23] A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders' power to adopt.[24]

Our proposal is valid under state law. Under Section 14(a), the SEC only has power to compel that the Company disclose our proposal in its proxy materials. The Staff therefore may not then give the Company no-action relief to exclude it.

Conclusion

Our Proposal seeks only a disclosure of readily available charitable contributions, not in any way the micromanagement of the Company. Furthermore, the Proposal implicates issues of significant social policy that transcend the ordinary business of the Company. In addition, issuing relief to the Company

[18] 15 U.S.C. § 78n(a)(1).
[19] Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).
[20] S. Rep. No. 792 at 12 (1934).
[21] Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).
[22] Id.
[23] See CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227 (Del. 2008).
[24] Id. at 232.

would raise serious constitutional and administrative law concerns, including concerns related to improper viewpoint discrimination, arbitrary and capricious action, and exceeding statutory authority.

The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company's request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [redacted] and at [redacted].

Sincerely,

Scott Shepard
FEP Director
National Center for Public Policy Research

Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Kevin Greenslade ([redacted])