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September 26, 2014

Via E-mail (IMshareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Division of Investment Management
Office of Disclosure and Review
100 F Street, N.E.
Washington, D.C. 20549-8626

Re: Ellsworth Fund Ltd.
Securities Exchange Act of 1934 - Section 14(a), Rule 14a-8;
Omission of Shareholder Proposal Submitted by Robert H. Daniels

Ladies and Gentlemen:

This letter will serve to inform the staff (the "Staff") of the Securities and Exchange Commission (the "Commission"), in accordance with Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that our client, Ellsworth Fund Ltd. (the "Fund"), intends to exclude from its definitive proxy statement and form of proxy for its 2015 annual meeting of shareholders (collectively, the "2015 Proxy Materials") a shareholder proposal submitted by Robert H. Daniels, Esquire (the "Proponent") pursuant to his letter dated July 22, 2014 (the "Proposal"). On behalf of the Fund, we respectfully request confirmation that the Staff will not recommend enforcement action if the Fund excludes the Proposal from the 2015 Proxy Materials on the bases set forth below.

The Fund expects to file its 2015 Proxy Materials with the Commission on or about December 15, 2014.

Pursuant to Section C of SEC Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), this submission is being made via e-mail to the Staff. In accordance with Rule 14a-8(j), a copy of this submission is also being provided simultaneously to the Proponent. Pursuant to Rule 14a-8(k) and SLB 14D, we hereby request that the Proponent provide me and the Fund with any correspondence the Proponent may choose to send to the Staff.

1. The Proposal

The Proposal, a copy of which is attached hereto as Exhibit A, requests that Fund shareholders vote on the following resolution at the 2015 Annual Meeting:

> Resolved: The shareholders of Ellsworth Fund request that the Trustees begin the process of amending the Declaration of Trust to provide that:
>
> If the shares of Ellsworth Fund Ltd. have traded at an average discount to net asset value of more than 10% during a fiscal year of the Fund, then the Fund will promptly make an [sic] self-tender offer to all shareholders to repurchase 20% of its outstanding shares for cash at 98% of net asset value, with proration if more than 20% are tendered.

2. Exchange of Correspondence Between Proponent and Fund Representatives

On August 5, 2014, the Fund notified the Proponent (the "Response Letter") that the Fund had not received proof of the requisite ownership by the Proponent of the Fund's shares, as required by Rule 14a-8(b) and that the deadline for submitting shareholder proposals for inclusion in the 2015 Proxy Materials (receipt by the Fund no later than August 1, 2014) had passed. For these reasons, the Fund notified the Proponent that the Proposal was not eligible for inclusion in the 2015 Proxy Materials. A copy of the Response Letter is attached hereto as Exhibit B.

Subsequently, the Fund received the Proponent's letter dated July 31, 2014 (but postmarked after the August 1, 2014 deadline), which accompanied a letter dated July 28, 2014 from Vanguard Brokerage Services (the "First Vanguard Letter") concerning the Proponent's ownership of the Fund's shares. The First Vanguard Letter and its cover letter are attached hereto as Exhibit C. Later yet, the Fund received a letter from the Proponent (attached hereto as Exhibit D) dated August 12, 2014 via e-mail in reply to the Response Letter. In this letter, the Proponent acknowledged the eligibility problem inherent in the Proposal, but maintained, erroneously, that the Proposal was nonetheless timely.

In response to the First Vanguard Letter and its cover letter, Ballard Spahr LLP ("Ballard"), legal counsel to the Fund, wrote the Proponent on August 22, 2014. This letter, which is attached hereto as Exhibit E, pointed out several reasons why the Proponent had not complied with Rule 14a-8.

Finally, the Proponent sent a letter, dated August 24, 2014, via e-mail to Ballard. This letter is attached hereto as Exhibit F. Attached to this letter was a second letter from Vanguard Brokerage Services dated August 18, 2014 (the "Second Vanguard Letter") which purported to correct the error contained in the First Vanguard Letter regarding the share ownership time period.

3. Bases for Exclusion of the Proposal

The Proposal may be excluded under Rule 14a-8 for several reasons: (1) contrary to the requirements of Rule 14a-8(b), the Proposal was incomplete when originally made; (2) the First Vanguard Letter covered a time period which did not comply with the requirements of Rule 14a-8(b), *a fact which the Proponent himself acknowledged* in his letter dated August 24, 2014 (Exhibit F); and

(3) the Proponent sent the (noncompliant) First Vanguard Letter *after* the August 1, 2014 deadline for submission of proposals and sent the (remedial) Second Vanguard Letter almost four weeks after the deadline.

First, Rule 14a-8(b)(2) instructs a proponent that, when he or she is not the registered holder of the shares (as is the case for the Proponent), "*at the time you submit your proposal*, you must prove your eligibility to the company . . ." [emphasis added]. However, the Proposal failed to include any proof of Fund share ownership by Proponent. In fact, the Proponent acknowledged this deficiency in his initial letter to the Fund (Exhibit A): "I am obtaining and will send under separate cover a confirmation from Vanguard Brokerage Services that I have owned at least $2,000 worth of Fund shares in my self-directed Roth-IRA account continuously for at least one year through the date of my proposal."[1] The lack of any accompanying proof of ownership, therefore, constituted a failure to meet the applicable requirement of Rule 14a-8(b)(2).

The Staff has made clear that submitting a shareholder proposal without proper proof of ownership does not comply with Rule 14a-8(b) even if the proponent subsequently submits such proof. In SEC Staff Legal Bulletin No. 14F, Section C (Oct. 18, 2011) ("SLB 14F") the Staff stated that "we believe that shareholders can avoid the two errors highlighted above [that is, a proof of ownership letter covering a one-year period that is too early or too late] by arranging to have their broker or bank provide the required verification of ownership *as of the date they plan to submit* the proposal . . ." [emphasis added]; and in SEC Staff Legal Bulletin No. 14, Section G (July 13, 2001), the Staff further stated that a shareholder "should contact the record holder *before* submitting a proposal to ensure that the record holder will provide the written statement and knows how to provide a written statement that will satisfy the requirements of rule 14a-8(b)" [emphasis added]. These advance arrangements confirm that some planning is necessary to be able to submit the proof of ownership "at the time you submit your proposal." Moreover, if proof could be provided at a time *after* the proposal was made, there would be no need for such advance contact to the record holder.

Second, footnote 10 of SLB 14F makes clear that a shareholder proposal is made when it is sent. In this case, therefore, the Proposal was made on July 22, 2014. Correspondingly, the Proponent was obligated to prove his beneficial ownership under Rule 14a-8(b) for the one-year time period ending on July 22, 2014. However, the First Vanguard Letter covered a beneficial ownership period that began on a date (July 24, 2013) that was less than a full year before the Proposal date, and such letter—quite aside from the fact that it did not accompany the Proposal as stated above—was therefore deficient in meeting the holding period requirement of Rule 14a-8(b). The Proponent himself acknowledged this oversight (Exhibit F): "I spotted that [error] myself when reviewing the file . . ."

[1] At a minimum, Proponent should have included some evidence of ownership with this Proposal. For example, Proponent certainly could have included a Vanguard securities account statement, for example—but he failed to do so.

Third, last year's proxy materials for the Fund state that, for a shareholder of the Fund to be eligible to have a proposal included in the 2015 Proxy Materials, the Fund must have received the proposal not later than August 1, 2014. Although the Proposal itself arrived before the deadline, the Fund received the (noncompliant) First Vanguard Letter almost a week after the August 1, 2014 deadline. (In fact, the First Vanguard Letter wasn't even postmarked until after the deadline.) Therefore, the First Vanguard Letter and its cover letter were both sent and received after the August 1, 2014 deadline. Worse yet, attempting to correct the prior error, Proponent sent the Second Vanguard Letter almost four weeks after the stated deadline.[2] Companies have been permitted to exclude proposals if they have been submitted just one day after the established deadline.[3] Although such a strict construction may seem harsh, it is an appropriate result because companies have strict timetables to which they must adhere in the scheduling of annual shareholder meetings and arranging for the related preparation and distribution of proxy materials. They do not have the ability, and Rule 14a-8 does not require them, to accommodate late-arriving proposals.

One might argue that Proponent's submissions of the Vanguard Letters at times other than the Proposal submission date were, in effect, attempts to resubmit the Proposal at such times (even though the Proposal did not accompany either Vanguard Letter). The difficulty in this argument is that both such submissions were made after the August 1 deadline. If one views a proposal to have been deemed resubmitted at a later date when ownership is proved, one might find deemed compliance with the "at the time you submit your proposal" requirement; however, even such a reading does not give a proponent the right to extend the issuer's published deadline for submission.

The Fund believes that the circumstances surrounding the Proposal differ materially from the facts presented in the no-action request of *Liberty All-Star Growth Fund, Inc.* (May 10, 2012), where the Liberty All-Star Growth Fund, Inc. (the "Liberty Fund") sought to exclude, pursuant to Rule 14a-8(e), a shareholder proposal submitted by the Proponent (the very same Robert H. Daniels who is the Proponent here) because the proposal was incomplete when it was initially submitted, and the Proponent did not complete his submission until after the deadline for submitting proposals had passed. First, in *Liberty All-Star Growth Fund, Inc.*, the Liberty Fund did not send the Proponent a deficiency notice under Rule 14a-8(f)(1). In the instant matter, by contrast, the Fund's Response

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[2] Rule 14-a-8 requires that Proponent be the beneficial owner of the shares. A beneficial owner is one with investment or voting power. See Rule 13d-3 promulgated under the Exchange Act. Proponent asserts that his Roth-IRA account is "self-directed," which, if accurate, would constitute beneficial ownership. We note in passing, however, that the Vanguard letters merely state that the Proponent has held Fund shares in a Roth IRA Vanguard Brokerage Account, and do not state whether Proponent has the required powers to prove beneficial ownership. In effect, Proponent asks the Fund to rely on his statement to that effect without corroboration. This is not consistent with the letter or spirit of the Rule.

[3] *See, e.g., Datastream Systems, Inc.* (Mar. 9, 2005) and *American Express Co.* (Dec. 21, 2004).

Letter informed the Proponent of his deficiencies and pointed out that the time for making shareholder proposals for 2015 had expired.

Second, unlike the situation in *Liberty All-Star Growth Fund Inc*. where the proof of ownership was supplied a few days after the deadline, in the present case the Second Vanguard Letter did not arrive until Proponent's third try – over a month after the Proposal and about four weeks after the deadline for submission of shareholder proposals.

The Proponent is no inexperienced or naïve shareholder. An honor graduate of Harvard College and Harvard Law School, he is the author of many prior shareholder proposals for other funds and companies, and he has teamed up with well known activists in the past in making his proposals. He knows the proxy rules and is familiar enough with Staff Legal Bulletins to refer to their guidance in his correspondence; he should be held to a strict interpretation of those rules. It would be a great burden on the Fund—as it would be for any company—to have to wait almost four weeks (the time period involved here) after an established deadline to see whether a shareholder proposal was required to be included in its proxy materials.

As the Staff has observed, Rule 14a-8 is a very prescriptive rule. Nonetheless, compliance is not difficult with the appropriate advance planning, particularly for an experienced practitioner such as the Proponent. What's more, the deadlines in Rule 14a-8 are not capricious; they serve the beneficial purpose of giving certainty to issuers about when they are able to proceed with arranging for their annual shareholder meetings.

To require the Fund to include the Proposal in the 2015 Proxy Materials, one would need to re-interpret Rule 14a-8 to say that proof of ownership has to be provided at the time the proposal is submitted, or at a reasonable time thereafter, even if such later submission is after the deadline established by the issuer for submission of shareholder proposals. What's more, one would have to view a hiatus of more than a month between the time the Proposal is made and the date proof of ownership is finally established as being a "reasonable time thereafter." Such a reading would allow a proponent to throw sand in the gears of an issuer's proxy machinery by promising at an unspecified later date to supply evidence that should have accompanied the proposal. Such an interpretation of Rule 14a-8 would do such great damage to regulatory interpretation as to render the results of such interpretation all but arbitrary.

Conclusion

On the basis for exclusion noted above and on behalf of the Fund, we respectfully request that the Staff confirm that it will not recommend enforcement action if the Fund omits the Proposal from the 2015 Proxy Materials.

If you have any questions or require any additional information, please do not hesitate to call me at (215) 864-8604. If the Staff is unable to agree with our conclusion without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to issuance of any written response to this letter.

Kindly acknowledge receipt of this letter by return e-mail. Thank you for your consideration on this matter.

Sincerely

Steven B. King

SBK/ds
Enclosures

cc: Robert H. Daniels
Thomas H. Dinsmore

Exhibit A

Proposal

ROBERT H. DANIELS
1685 EIGHTH AVENUE
SAN FRANCISCO, CA 94122-3717

Tel. (415-) 731-3151 Fax (415-) 373-9340 E-mail: rhdlaw@pacbell.net

July 22, 2014

Ellsworth Fund, Ltd.
Att'n: Fund Secretary
65 Madison Avenue Suite 550
Morristown, New Jersey 07960

Via Priority Mail

Dear Fund and Fund Secretary:

Enclosed please find a shareholder proposal and supporting statement that I am submitting in accordance with SEC Rule 14a-8 for consideration at the Fund's next shareholder meeting and for inclusion in the proxy statement for that meeting. I am obtaining and will send under separate cover a confirmation from Vanguard Brokerage Services that I have owned at least $2,000 worth of Fund shares in my self-directed Roth-IRA account continuously for at least one year through the date of this proposal. I currently hold 4,051.842 shares of ECF, and I intend to hold them continuously through the date of the next annual meeting.

My interest in this proposal and the benefit I expect from it is that of a shareholder seeking to maximize the value of an investment. I am not associated with any other person with respect to this proposal or my investment in ECF.

Please let me know what, if any, additional action must be taken or information provided in order to ensure that this proposal will be included in the proxy statement and considered at the next shareholder meeting. Thank you for your assistance.

Sincerely,

Robert H. Daniels

Ellsworth Fund - Shareholder Proposal - Rule 14a-8

Proposal: REQUIRE SELF-TENDER IF DISCOUNT EXCEEDS 10% TARGET

Resolved: The shareholders of Ellsworth Fund request that the Trustees begin the process of amending the Declaration of Trust to provide that:

If the shares of Ellsworth Fund Ltd. have traded at an average discount to net asset value of more than 10% during a fiscal year of the Fund, then the Fund will promptly make an self-tender offer to all shareholders to repurchase 20% of its outstanding shares for cash at 98% of net asset value, with proration if more than 20% are tendered.

Statement in Support

Fellow long-term shareholders:

The market price of our fund has languished far too long at discounts of 15% or more below net asset value. Ellsworth Fund regularly appears high on the list of closed-end funds ranked by market discount to NAV.

These excessive discounts are not in the interest of long-term holders, for "long-term" does not mean "forever". Someday we may decide to sell – to pay tuition, to fund retirement, to meet redemption requests. And while anyone can buy shares trading far below market, those selling at depressed prices are by definition existing shareholders. Someday we may be in their position.

We commend the Trustees for their recent decision to buy back 3% of the shares through open market purchases. It is time to follow up. This resolution sets a target of a 10% discount, and lets the Trustees and the Adviser decide how best to achieve it. If -- and only if -- they fall short, the fund would then make a self-tender for 20% of its shares at 98% of NAV. If, as I hope, the Trustees and Adviser succeed in managing the discount, then no self-tender would be required.

Thank you for your support.

Exhibit B

Response Letter

ELLSWORTH FUND LTD.

65 MADISON AVENUE, SUITE 550 • MORRISTOWN, NEW JERSEY 07960-7308 • (973) 631-1177 • www.ellsworthfund.com

August 5, 2014

Via UPS Next Day Air

Robert H. Daniels, Esq.
1685 Eighth Avenue
San Francisco, CA 94122-3717

Dear Mr. Daniels:

Thank you for your letter of July 22, 2014 by which you submitted a shareholder proposal for inclusion in the proxy statement for the next shareholder meeting of Ellsworth Fund Ltd. (the "Fund").

First, I want to assure you that the Trustees and Management (all of whom are shareholders of the Fund) all share your frustration regarding the continuing sizable difference between the market price of the Fund's shares and the Fund's net asset value per share. At every Board meeting, the Trustees vigorously discuss this difference and examine the advisability of taking steps that may reduce that discount. Regrettably, the increase in the Fund's discount in 2013 parallels the general trend among all closed-end funds of a widening spread between their market prices and net asset values. The Fund has not been immune from this trend, but we do not believe that the Fund's increasing discount over this time period has been any more pronounced than that of similar closed-end funds.

Second, as you acknowledge in your materials, the Board has taken steps to address the discount and what it believes to be an undervaluation of the Fund's shares. One such action was the Board's authorization, in October 2013, of a share repurchase program of up to 3% of the Fund's outstanding shares. Following the implementation of this program, the Fund's discount has in fact decreased.

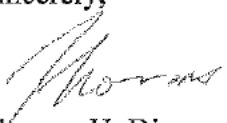
Finally, with respect to your proposal, more particularly, Rule 14a-8(b) promulgated under the Securities Exchange Act of 1934 requires that, in order for a shareholder to be eligible to submit a proposal, such shareholder must provide proof of ownership that he or she has "continuously held at least $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 [the shareholder] submit[s] the proposal." Division of Corporation Finance, Securities and Exchange Commission, *Staff Legal Bulletin No. 14F* (Oct. 18, 2011) (emphasis in original). The date of the submission of your proposal, July 22, 2014, has passed. Also, the deadline for shareholder proposals for inclusion in the proxy statement for the next annual meeting of the Fund's shareholders has also passed. As of August 4, 2014, the Fund has not received proof of

ownership in support of your proposal. Therefore, the proposal is not eligible for inclusion in the proxy statement for the upcoming annual meeting of shareholders of the Fund.

Please look at the authority cited in the preceding paragraph (a copy of which is enclosed with this letter for your convenience of reference) and let me know if you will agree to withdraw the proposal for this year; if you do not do so, we will have to expend Fund resources to communicate with the SEC regarding the matter.

The Board appreciates your thoughts on this subject. You have the Board's assurance that the Trustees will continue to monitor the Fund's trading discount regularly and will consider taking additional actions which it believes may reduce the discount.

Sincerely,



Thomas H. Dinsmore

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

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

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

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

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

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

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

center/DTC/alpha.ashx.

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

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

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

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

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

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

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

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

Second, many letters fail to confirm continuous ownership of the securities.

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to

accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

http://www.sec.gov/interps/legal/cfslb14f.htm

Home | Previous Page

Modified: 10/18/2011

Exhibit C

Cover Letter and First Vanguard Letter

ROBERT H. DANIELS
1685 EIGHTH AVENUE
SAN FRANCISCO, CA 94122-3717

Tel. (415-) 731-3151 Fax (415-) 731-3734 E-mail: rhdlaw@pacbell.net

July 31, 2014

Ellsworth Fund, Ltd.
Att'n: Fund Secretary
65 Madison Avenue Suite 550
Morristown, New Jersey 07960

Dear Fund and Fund Secretary:

I am writing to follow up on my Rule 14a-8 shareholder proposal letter to you, which according to the US Post Office was delivered on July 24 and signed for by "J Dougherty". Enclosed please find an original letter from Vanguard Brokerage Services confirming that at the time of making this proposal I had owned at least $2,000 worth of Fund shares continuously for at least one year in my Roth IRA account [redacted]. I currently hold 4,051.842 shares of ECF in that account, and I intend to hold them continuously through the date of the next annual meeting.

Sincerely,

Robert H. Daniels

P.O. Box 1170
Valley Forge, PA 19482-1170

www.vanguard.com

July 28, 2014

ROBERT HOYT DANIELS
1685 8TH AVE
SAN FRANCISCO, CA 94122-3717

RE: Account Information

To Whom It May Concern:

This letter serves as confirmation that Robert Hoyt Daniels has continuously held shares of Ellsworth Fund Ltd. (ECF) in his Roth IRA Vanguard Brokerage Account [redacted] from July 24, 2013, through July 24, 2014. The shares of ECF held in his account have had a daily market value of $2,000.00 or more during that time period.

If you have any questions, please call Vanguard Brokerage Services® at **800-992-8327**. You can reach us on business days from 8 a.m. to 10 p.m. or on Saturdays from 9 a.m. to 4 p.m., Eastern Time.

Sincerely,

Retail Investor Group
Vanguard Brokerage Services

01A

10641260

Robert H. Daniels
1685 8th Avenue
San Francisco, CA 94122-3717

SAN FRANCISCO CA 940

02 AUG 2014 PM 4 L

Ellsworth Fund, Ltd.
Att'n: Fund Secretary
65 Madison Avenue Suite 550
Morristown, New Jersey 07960

07960738825

Exhibit D

Letter Received by Fund on August 12, 2014

---------- Forwarded message ----------
From: **Robert Daniels** <rhdlaw@pacbell.net>
Date: Tue, Aug 12, 2014 at 2:51 AM
Subject: Robert Daniels Rule 14a-8 Proposal
To: info@ellsworthfund.com

ROBERT H. DANIELS

1685 EIGHTH AVENUE

SAN FRANCISCO, CA 94122-3717

Tel. (415-) 731-3151 Fax (415-) 373-9340 E-mail: rhdlaw@pacbell.net

August 11, 2014

Ellsworth Fund, Ltd.

Att'n: Thomas H. Dinsmore

65 Madison Avenue Suite 550

Morristown, New Jersey 07960

Dear Mr. Dinsmore:

Thank you for your August 5 letter regarding my Rule 14a-8 shareholder proposal for Ellsworth Fund's next annual meeting. Your inquiry as to my eligibility appears to have crossed in the mail with my July 31 letter to the Fund, which included a statement from Vanguard Brokerage confirming that I held at least $2,000 worth of ECF shares continuously for at least one year in my Roth IRA account [redacted] Another copy of that statement is enclosed.

I appreciate your including a copy of Staff Legal Bulletin 14F with your letter, but you seem to have overlooked the distinction between the proposal itself, which was timely submitted, and the broker's statement confirming my eligibility to submit it. Beneficial owners have a logistics problem, because a broker's "confirmation of ownership through the date of the proposal" is not always immediately available for inclusion on the very same day that the proposal itself is being made. The solution is

found in Rule 14a-8(f), which gives a proponent 14 days to effect a cure when properly notified of an eligibility problem. Staff Legal Bulletins Nos. 14, 14B, and 14G explain what such notices should say: "[C]ompanies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects." Because your letter failed to provide any such detail, but instead told me, incorrectly, that there could be no remedy, SEC staff would be fully justified in denying a no-action request. *See* Staff Legal Bulletin #14G Part C.

The proposal itself was timely, and I held the required number of shares in ECF long enough, so I do not intend to withdraw it. Your letter says that "we" must then expend Fund resources on communications with the SEC, but gives no reason why the Board would be obliged to oppose, on the merits, a proposal aimed at limiting the discount. I hope that the Board would carefully consider the views of SEC staff, as expressed in no-action letters such as *Liberty All-Star Growth Fund* (5/10/2012) and *Firsthand Technology Value Fund* (2/11/2014), and let ECF's investors vote on the proposal, rather choosing to waste my time, the shareholders' money and the SEC staff's patience in dealing with whatever sophistic objections counsel might conjure up.

On a more positive note, however, your letter also appears to invite a dialog about ways to address ECF's trading discount from net asset value. My proposal essentially targets an average annual discount level under 10%, with a significant self-tender only as a backup if this target is missed. The means to reach the target are left to the discretion of the Board and the Adviser. Is this an acceptable approach? Is there a better way? It would further a dialog if you could let me know. Similarly:

Does the Board agree that the trading discount should be limited somehow? What target level does the Board think would be appropriate?

Does the Board believe that there are measures it could take, or direct the Adviser to take, that would affect the discount? What are they? What would be the ongoing costs to the shareholders and to the Adviser?

Finally, to avoid having future communications cross in the mail, I suggest that we follow the SEC's lead (Staff Legal Bulletin 14F Part F) and use e-mail as a primary means of communication, with electronic receipts or physical mail as backup. In any event, I thank you for your consideration.

Sincerely,

Also via e-mail to:

info@ellsworthfund.com

and via fax to:

1-973-631-9893

/s/

Robert H. Daniels

Vanguard®

P.O. Box 1170
Valley Forge, PA 19482-1170

www.vanguard.com

July 28, 2014

ROBERT HOYT DANIELS
1685 8TH AVE
SAN FRANCISCO, CA 94122-3717

RE: Account Information

To Whom It May Concern:

This letter serves as confirmation that Robert Hoyt Daniels has continuously held shares of Ellsworth Fund Ltd. (ECF) in his Roth IRA Vanguard Brokerage Account [redacted] from July 24, 2013, through July 24, 2014. The shares of ECF held in his account have had a daily market value of $2,000.00 or more during that time period.

If you have any questions, please call Vanguard Brokerage Services® at **800-992-8327**. You can reach us on business days from 8 a.m. to 10 p.m. or on Saturdays from 9 a.m. to 4 p.m., Eastern Time.

Sincerely,

Retail Investor Group
Vanguard Brokerage Services

01A

10641260

Exhibit E

Letter E-mailed from Ballard on August 22, 2014

Ballard Spahr LLP

1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
TEL 215.665.8500
FAX 215.864.8999
www.ballardspahr.com

Steven B King
Tel: 215 864 8604
Fax: 215 864 8999
kings@ballardspahr com

August 22, 2014

Via E-mail (rhdlaw@pacbell.net) and U.S. Mail

Robert H. Daniels, Esq.
1685 Eighth Avenue
San Francisco, CA 94122-3717

Re: Ellsworth Fund

Dear Mr. Daniels:

Tom Dinsmore, Chairman of our client, Ellsworth Fund Ltd. (the "Fund"), has asked me to communicate with you about the shareholder proposal contained in your recent correspondence with the Fund. This correspondence includes (a) your letter dated July 22, 2014 together with the proposal; (b) your letter dated July 31, 2014, together with a letter dated July 28, 2014 from Vanguard Brokerage Services (the "Vanguard Letter"); and (c) your letter dated August 11, 2014. These materials fail to satisfy the requirements of Rule 14a-8 promulgated under the Securities Exchange Act of 1934 for several reasons, including the ones discussed below. First, the shareholder must prove to the issuer his or her eligibility (based on the share ownership requirements of Rule 14a-8(b)) "at the time you submit your proposal." Rule 14a-8(b)(2). According to the Securities and Exchange Commission's Division of Corporation Finance *Staff Legal Bulletin No.14F* (Oct. 18, 2011) (the "14a-8 Staff Legal Bulletin"), this common error can be avoided by arranging to receive the substantiation letter from the record holder in advance of the date on which the shareholder makes his or her proposal. 14a-8 Staff Legal Bulletin Section C. The Fund never received a shareholder proposal that accompanied, at the time of such proposal, proof of your eligibility in accordance with Rule 14a-8(b)(2) and, therefore, the shareholder proposal made does not comply with the rule.

Second, as you know, the Vanguard Letter must show that you have continuously held the required amount of securities for at least one year by the date you submit the proposal. The Vanguard Letter is a deficient attempt to prove ownership under Rule 14a-8(b) because the one-year time period covered by the Vanguard Letter begins on a date (July 24, 2013) that is less than a year before your July 22, 2014 submission. Even if one argued that your July 31 letter constituted a renewed submission of the proposal, the Vanguard Letter is deficient because the one-year time period covered in that letter ended on July 24, 2014, several days before the date of the arguably resubmitted proposal. The 14a-8 Staff Legal Bulletin points out that similar deficiencies are a common occurrence:

> 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.

14a-8 Staff Legal Bulletin Section C. Finally, on this point, I understand that you believe the proposal was made on July 24, the date your proposal was actually received by the Fund; however, note 10 of the 14a-8 Staff Legal Bulletin is clear that the proposal is made when sent (i.e., July 22), not when received.

Third, August 5, 2014, the date when the Fund received your letter of July 31, 2014, is after August 1, 2014, the date by which, according to the Fund's proxy statement for its annual shareholder meeting of this past January, the Fund must receive a shareholder proposal for inclusion in the Fund's proxy statement for its 2015 annual shareholder meeting. Moreover, your second letter wasn't postmarked until August 2, 2014 which is, therefore, also untimely.

We have looked at the two authorities cited in your August 11 letter. We do not find anything in either of them to persuade us that the foregoing analysis is incorrect.

Finally, we understand that on at least one prior occasion where you made a shareholder proposal, certain well-known activists were the largest shareholders of the target fund. Consequently, I want to make you aware that eleven well known closed-end fund activists, including Bulldog Investors, are parties to a contract by which they have agreed, among other things, not to, *directly or indirectly*, "initiate any shareholder proposal to be voted at a meeting of . . . [Ellsworth Fund Ltd.]; or induce, encourage, assist, or give material support to any Person to do or attempt to do any of the foregoing . . ." Although I have no reason to believe anyone is in violation of this provision, your prior activity prompts me to inform you of these facts.

For the foregoing reasons, among others, the Fund is disinclined to include your proposal in the proxy statement for the Fund's upcoming annual shareholder meeting. Nonetheless, I understand that Fund representatives have invited a meeting with you to discuss the substance of your proposal. I encourage that dialog and hope that your discussion is constructive.

Please advise me by September 15, 2014 or, if you are represented by legal counsel, have your legal counsel advise me by September 15, 2014, whether you will withdraw your proposal for the current year's shareholder meeting so we may avoid the expensive and potentially prolonged experience of dealing with the SEC on this matter.

Sincerely,

Steven B. King

Exhibit F

Letter E-mailed from Proponent, dated on August 24, 2014,
and
Second Vanguard Letter

ROBERT H. DANIELS
1685 EIGHTH AVENUE
SAN FRANCISCO, CA 94122-3717

Tel. (415-) 731-3151 Fax (415-) 373-9340 E-mail: rhdlaw@pacbell.net

August 24, 2014

Steven B. King, Esq.
Ballard Spahr, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599

Re: Ellsworth Fund - Rule 14a-8 Shareholder Proposal

Via post & e-mail to kings@ballardspahr.com

Dear Mr. King:

Thank you for your e-letter of the 22nd regarding my shareholder proposal for the next Ellsworth Fund annual meeting. Chairman Dinsmore has invited a dialog about various approaches to reducing ECF's trading discount, and I hope to be able to discuss this with him before the September 15 date mentioned in your letter..

Two points in your letter, however, warrant attention now:

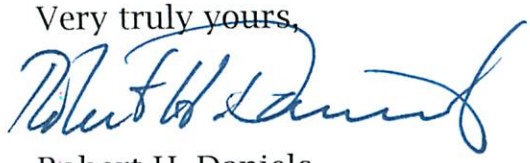
The first involves the confirmation from Vanguard Brokerage that I owned over $2,000 worth of ECF for a full year by the date I submitted the proposal. You pointed out that Vanguard's 7/28/14 letter failed to confirm the first two days of the one-year holding period ending July 22, 2014. I had spotted that myself when reviewing the file after receiving Mr. Dinsmore's August 5 letter, and even though he hadn't mentioned it, I asked Vanguard for a correction. After one false start (they had the year wrong), they sent me the attached letter dated August 18, 2014 which confirms that I also owned the requisite shares in ECF from 7/22/13 through 7/24/13, the first two days of the one-year holding period.

The second item is your allusion to a contract whereby Bulldog Investors and ten other well known closed-end fund activists supposedly agreed not to assist anyone, directly or indirectly, in making a shareholder proposal at ECF. Is this a matter of public record? Where might it be found? I know that Bulldog affiliates were involved in proxy litigation with Bancroft Fund some years back, but I am not aware of any

proceedings to which ECF itself was a party. In any event, as I said in the cover letter for my proposal: "I am not associated with any other person with respect to this proposal or my investment in ECF."

Your letter closed by suggesting that if I do not capitulate by September 15, the alternative will be an "expensive and potentially prolonged experience of dealing with the SEC on this matter". I trust this was not meant the way it sounds, because I decline to be bullied. I hope that my discussions with fund representatives prove productive, but if not, then ECF's Directors should be advised that the Fund can easily avoid this expense – presumably in the form of your firm's anticipated fees – simply by allowing the shareholders to vote on my proposal. I will be in further contact by the 15th.

Very truly yours,



Robert H. Daniels

Vanguard®

August 18, 2014

P.O. Box 1170
Valley Forge, PA 19482-1170

www.vanguard.com

ROBERT HOYT DANIELS
1685 8TH AVE
SAN FRANCISCO, CA 94122-3717

To Whom It May Concern:

This letter serves as confirmation that Robert Hoyt Daniels has continuously held shares of Ellsworth Fund Ltd. (ECF) in his Roth IRA Vanguard Brokerage Account [redacted] from July 22, 2013, through July 24, 2013. The shares of ECF held in his account have had a daily market value of $2,000.00 or more during that time period.

If you have any questions, please call Vanguard Brokerage at **800-992-8327**. You can reach us on business days from 8 a.m. to 10 p.m. or on Saturdays from 9 a.m. to 4 p.m., Eastern time.

Sincerely,

Retail Investor Group
Vanguard Brokerage Services

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10646563

ROBERT H. DANIELS
1685 EIGHTH AVENUE
SAN FRANCISCO, CA 94122-3717

Tel. (415-) 731-3151 Fax (415-) 373-9340 E-mail: rhdlaw@pacbell.net

October 6, 2014

Via e-mail to: *IMshareholderproposals@sec.gov*

U.S. Securities and Exchange Commission
Division of Investment Management
Office of Disclosure and Review
100 F Street, N.E.
Washington, D.C. 20549-8626

Re: Ellsworth Fund, Ltd. Rule 14a-8 Shareholder Proposal
Proponent's Reply to Fund's Request for a No-Action Letter

Dear SEC:

Ellsworth Fund Ltd. ("ECF" or "the Fund"), a publicly traded closed-end investment company, seeks a "no-action" letter in order to exclude my Rule 14a-8 shareholder proposal from the proxy for its 2015 annual meeting. That proposal (see page 9 of Fund Counsel's September 26 Request Letter) asks ECF to adopt a discount management plan such that the Fund will self-tender for 20% of its shares at 98% of net asset value if the average trading discount for a prior fiscal year exceeds 10%. The supporting statement notes that Fund shares have long languished at market prices 15% or more below net asset value, and that such excessive discounts are not in the interest of ECF's shareholders..

The "no-action" request centers on one issue: should shareholders be denied the opportunity to vote on the proposal because the broker's letter confirming that I was eligible to submit it was sent separately from the proposal itself? The Fund has made no objection to the substantive content of the proposal. It concedes that it received the proposal on July 24, before the August 1st deadline stated in the prior year's proxy. Nor does it question the fact that I actually held the requisite $2,000 worth of ECF shares for the obligatory one year before submitting the proposal. And while Rule 14a-8(f) provides a timetable and procedure for questioning eligibility and curing defects, the Fund does not claim that it

followed the Rule or the relevant guidance in Staff Legal Bulletins 14, 14B, 14F and 14G, because it didn't.

Introduction: The Burden of Persuasion Is On the Fund

Rule 14a-8(g) is to the point: "Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal." Fund Counsel's request letter suggests otherwise. It calls on Staff to raise the bar for my proposal, because:

> "The Proponent is no inexperienced or naïve shareholder. An honor graduate of Harvard College and Harvard Law School, he is the author of many prior shareholder proposals for other funds and companies, and he has teamed up with well known activists in the past in making his proposals. He knows the proxy rules and is familiar enough with Staff Legal Bulletins to refer to their guidance in his correspondence; he should be held to a strict interpretation of those rules." (Request Letter, p. 5)

While I appreciate the compliment (if that's what it is), I assure the reader that I am an individual investor, not a professional one. Staff Legal Bulletin 14 §C-6(a) explicitly rejects the notion that companies should tailor their responses to the assumed sophistication of proponents:

> "No. Companies should not assume that any shareholder is familiar with the proxy rules or give different levels of information to different shareholders based on the fact that the shareholder may or may not be a frequent or "experienced" shareholder proponent."

The suggestion that Staff should discriminate among proponents based on their personal history and characteristics raises irony to the point of comedy, coming as it does from Fund Counsel Steven B. King, Esq., the Practice Leader of his firm's Investment Management Group and himself an honors graduate of Harvard Law School, though in a class two years after mine[1].

[1] http://www.ballardspahr.com/people/attorneys/king_steven.aspx

1) The Proposal Was Timely.

A "proposal", according to Rule 14a-8(a): "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." ECF's proxy for the last annual meeting, Form DEF 14A filed November 27, 2013, said that shareholder proposals for the next annual meeting had to be received no later than August 1, 2014. Exhibit 1, attached, is a true and correct copy of a US Postal Service Signature Confirmation Receipt for the proposal and cover letter, which were mailed to Ellsworth Fund Ltd. on July 22, 2014.[2] Exhibit 2 is a true and correct copy of a US Postal Service Delivery E-Notice showing that the item was delivered on July 24 and signed for by "J Dougherty". ECF's latest semiannual report on Form N-CSRS, filed last May 29, lists "Judith M. Dougherty" as an Assistant Vice President and Assistant Secretary.

The Fund's August 5 reply (attached as pp. 11-12 to Counsel's Request Letter) began by thanking me "for your letter of July 22, 2014 by which you submitted a shareholder proposal for inclusion in the proxy statement for the next shareholder meeting." Having conceded that the proposal was timely, the reply went on to say that it wasn't eligible for inclusion in the proxy because I hadn't provided proof that I had owned ECF stock for a year. The Request Letter (at p. 3) elaborates the argument: "The proposal was 'incomplete'", because:

> "The Staff has made clear that submitting a shareholder proposal without proper proof of ownership does not comply with Rule 14a-8(b) even if the proponent subsequently submits such proof."

This statement is simply wrong. It confuses the proposal itself – the action recommendation – with the procedural proof of eligibility to submit it, and overlooks the notice and correction procedure of Rule 14a-8(f) (*infra*). To support its view, the Request Letter quotes a fragment from Rule 14b-8(b)(2), with double ellipsis: "'*at the time you submit your*

[2] The Staff has indicated that "companies should include copies of the postmark or evidence of electronic transmission with their no-action requests." SLB 14G §C. The materials submitted by ECF in support of its request include a postmark from *later* correspondence, but missed the one from the original mailing.

proposal, you must prove your eligibility to the company . . .' [emphasis added]." But in the very next sentence, the Rule shifts to the past tense:

> "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* the securities for at least one year." (emphasis added)

The Fund's reading of the Rule would make compliance impractical or impossible. As I explained in my August 11 follow-up letter to the Fund (Request Letter at pp. 27-29; a more legible copy is attached hereto as Exhibit 3), a broker's "confirmation of ownership through the date of the proposal" is not always immediately available to be stuffed into the same envelope with the proposal itself.[3] Vanguard Brokerage, which holds my ECF shares, is headquartered near Philadelphia and has no San Francisco office. I communicate with Vanguard by e-mail, to which their "Voyager" service promises a response in two business days. Hard copy letters, they say, may take as long as ten days to arrive.

But, argues ECF, that just shows the need for "appropriate advance planning." According to Fund Counsel's August 22 letter to me (Request Letter, pp. 32-33) this means that proponents must arrange:

> "[T]o receive the substantiation letter from the record holder in advance of the date on which the shareholder makes his or her proposal.[4]"

So "appropriate advance planning" means getting a broker's letter today that confirms the number of shares I'll own at some date in the future. What honest broker would do that? Any broker with such power to see

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[3] Fund Counsel claims (p. 3, fn. 1) that I should at least have included a current account statement with the proposal letter. This can't be a serious suggestion, because: "a shareholder's monthly, quarterly or other periodic investment statements" do **not** "demonstrate sufficiently continuous ownership of the securities." SLB 14 §C-1(b)(6); see also No-action letter Guggenheim Enhanced Equity Strategy Fund, March 21, 2012

[4] Fund Counsel's August 22 letter cites SLB 14F §C, but has replaced the phrase "as of the date" that appears in the Bulletin with the phrase "*in advance of* the date" – a somewhat different notion.

into the future would likely have retired already with a sizeable fortune – or been exposed as a charlatan willing to sign anything for a fee.

2. The Fund Failed to Give Timely Notice of Defect or Permit a Cure

Rule 14a-8(f) says what a company should do if a proponent has submitted a proposal without demonstrating eligibility;

> "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."[5]

Staff guidance says that such notices should specifically identify the problem, and "provide adequate detail about what the shareholder must do to remedy all eligibility or procedural defects." SLB 14 §G-3. If proof of ownership is at issue, the company is to ask the proponent to provide a written statement from the holder of record "verifying that, at the time the shareholder proponent submitted the proposal, the shareholder proponent continuously held the securities for at least one year." SLB 14B §C-2.

The most recent *Bulletin* went to some length in explaining how companies are supposed to handle these ownership issues:

> "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. …. 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

[5] The Request Letter ignores this provision and its specific timeline, arguing instead that allowing an indefinite "reasonable" time might somehow damage the "gears" of the Fund's "proxy machinery". This sort of rhetorical device is called "attacking a straw man"; it's irrelevant.

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." SLB 14G §C (*emphasis added*)

Look closely at the Fund's August 5 letter (Request Letter pp. 11-12). It was indeed sent within 14 days of July 24, the day the Fund received the proposal. It does say that the proposal was submitted on July 22, a date that "has passed." But it does **not** say what needs to be done to fix the problem, or set a date for my response. Instead, it flatly asserts that the proposal is not eligible for inclusion in the proxy, and asks me to withdraw it. That is **not** what SLB 14G tells the Fund to do.

That letter crossed in the mail with one that I sent enclosing Vanguard's confirmation of my ownership (Request Letter pp. 23 - 24). To be sure, Vanguard's letter referred to July 24, the date the Fund received the proposal, not July 22, the date on which I mailed it. Had the Fund's August 5 letter said, as it was supposed to, that I needed to provide a letter confirming ownership from July 22, 2013 through July 22, 2014, I would have promptly sought one. Instead, I was left to puzzle over the Fund's reference to "July 22" – was it a typo? was it retroactive? – until I came acros the "mailbox rule" in footnote 10 to SLB 14F[6]. Without any

[6] The use of a "mailbox rule" that treats 14b-8 proposals as "submitted" when postmarked, is not intuitive. It leads to a curious result – a proposal can be "submitted" before the proxy deadline but nonetheless fail to qualify if it is *received* after that deadline. And, as SLB 14G notes, it aggravates the problem of

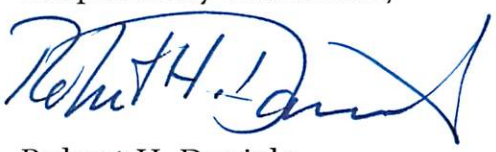
prompting by the Fund, I decided to ask Vanguard to confirm that I did indeed own the requisite shares as of that date as well.

As a result, when I received Fund Counsel's letter dated August 22 – a letter written more than four weeks after the proposal had been submitted and received – I could respond on August 24 by forwarding Vanguard's confirmation that I did indeed own the necessary ECF shares on those two additional days (Request Letter, pp. 35-37).[7] The Request Letter argues that this came too late, but fails to recognize it as a prompt response to Fund Counsel's tardy attempt to make up for his client's failure to follow SLB 14G in the first place.

Conclusion

Fund Counsel's August 22 letter closed by asking me to withdraw my proposal: "so we may avoid the expensive and potentially prolonged experience of dealing with the SEC on this matter." It is unfortunate that the Fund has decided to waste my time, shareholder money and the Staff's patience on flimsy objections to eligibility while overlooking its own failure to follow the rules. ECF has not justified its request, and the "No-action" letter should not be issued.

Respectfully submitted,



Robert H. Daniels

cc: ECF and Fund Counsel

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proving ownership, since a proponent might not know on what date a paper submission will be postmarked.

7 The Request Letter quotes my reply as "I spotted that [error] myself when reviewing the file . . ." Of course, that "[error]" wasn't in the original, and the three little dots cut off my explanation: "...after receiving Mr. Dinsmore's August 5 letter, and even though he hadn't mentioned it, I asked Vanguard for a correction."

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Morristown NJ 07960

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JUL 22 2014

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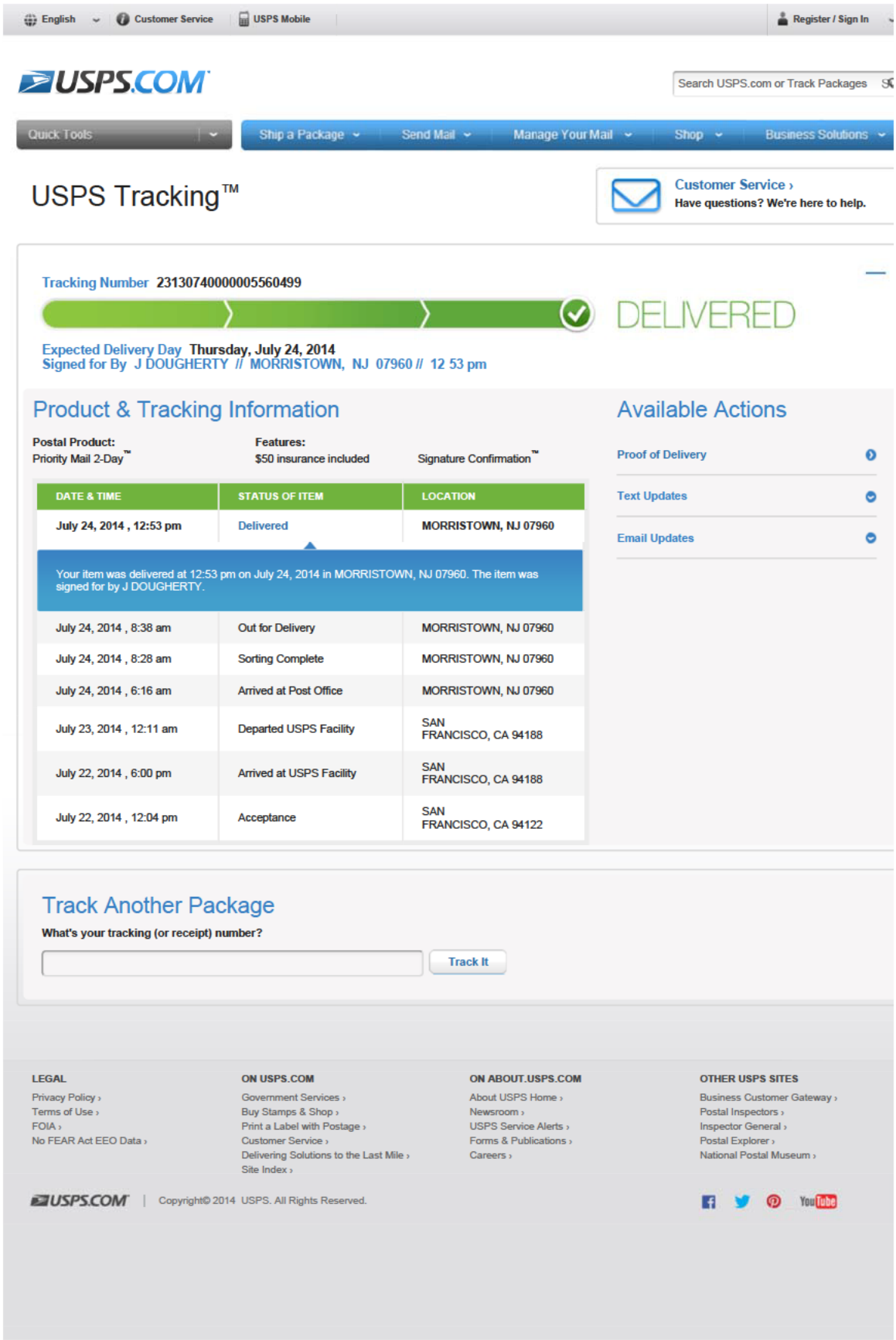
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Search USPS.com or Track Packages
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Send Mail
Manage Your Mail
Shop
Business Solutions
USPS Tracking™
Customer Service ›
Have questions? We're here to help.
Tracking Number 23130740000005560499
DELIVERED
Expected Delivery Day Thursday, July 24, 2014
Signed for By J DOUGHERTY // MORRISTOWN, NJ 07960 // 12 53 pm
Product & Tracking Information
Postal Product:
Priority Mail 2-Day™
Features:
$50 insurance included
Signature Confirmation™
DATE & TIME
STATUS OF ITEM
LOCATION
July 24, 2014 , 12:53 pm
Delivered
MORRISTOWN, NJ 07960
Your item was delivered at 12:53 pm on July 24, 2014 in MORRISTOWN, NJ 07960. The item was signed for by J DOUGHERTY.
July 24, 2014 , 8:38 am
Out for Delivery
MORRISTOWN, NJ 07960
July 24, 2014 , 8:28 am
Sorting Complete
MORRISTOWN, NJ 07960
July 24, 2014 , 6:16 am
Arrived at Post Office
MORRISTOWN, NJ 07960
July 23, 2014 , 12:11 am
Departed USPS Facility
SAN FRANCISCO, CA 94188
July 22, 2014 , 6:00 pm
Arrived at USPS Facility
SAN FRANCISCO, CA 94188
July 22, 2014 , 12:04 pm
Acceptance
SAN FRANCISCO, CA 94122
Available Actions
Proof of Delivery
Text Updates
Email Updates
Track Another Package
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Tel. (415-) 731-3151 Fax (415-) 373-9340 E-mail: rhdlaw@pacbell.net

August 11, 2014

Ellsworth Fund, Ltd.
Att'n: Thomas H. Dinsmore
65 Madison Avenue Suite 550
Morristown, New Jersey 07960

Dear Mr. Dinsmore:

Thank you for your August 5 letter regarding my Rule 14a-8 shareholder proposal for Ellsworth Fund's next annual meeting. Your inquiry as to my eligibility appears to have crossed in the mail with my July 31 letter to the Fund, which included a statement from Vanguard Brokerage confirming that I held at least $2,000 worth of ECF shares continuously for at least one year in my Roth IRA account #[redacted]. Another copy of that statement is enclosed.

I appreciate your including a copy of Staff Legal Bulletin 14F with your letter, but you seem to have overlooked the distinction between the proposal itself, which **was** timely submitted, and the broker's statement confirming my eligibility to submit it. Beneficial owners have a logistics problem, because a broker's "confirmation of ownership through the date of the proposal" is not always immediately available for inclusion on the very same day that the proposal itself is being made. The solution is found in Rule 14a-8(f), which gives a proponent 14 days to effect a cure when properly notified of an eligibility problem. Staff Legal Bulletins Nos. 14, 14B, and 14G explain what such notices should say: "[C]ompanies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects." Because your letter failed to provide **any** such detail, but instead told me, incorrectly, that there could be no remedy, SEC staff would be fully justified in denying a no-action request. *See* Staff Legal Bulletin #14G Part C.

The proposal itself was timely, and I held the required number of shares in ECF long enough, so I do not intend to withdraw it. Your letter

says that "we" must then expend Fund resources on communications with the SEC, but gives no reason why the Board would be obliged to oppose, on the merits, a proposal aimed at limiting the discount. I hope that the Board would carefully consider the views of SEC staff, as expressed in no-action letters such as *Liberty All-Star Growth Fund* (5/10/2012) and *Firsthand Technology Value Fund* (2/11/2014), and let ECF's investors vote on the proposal, rather choosing to waste my time, the shareholders' money and the SEC staff's patience in dealing with whatever sophistic objections counsel might conjure up.

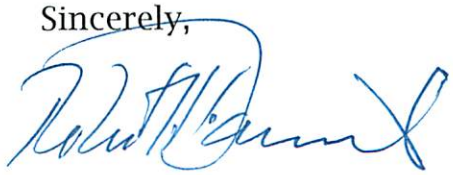
On a more positive note, however, your letter also appears to invite a dialog about ways to address ECF's trading discount from net asset value. My proposal essentially targets an average annual discount level under 10%, with a significant self-tender only as a backup if this target is missed. The means to reach the target are left to the discretion of the Board and the Adviser. Is this an acceptable approach? Is there a better way? It would further a dialog if you could let me know. Similarly:

Does the Board agree that the trading discount should be limited somehow? What target level does the Board think would be appropriate?

Does the Board believe that there are measures it could take, or direct the Adviser to take, that would affect the discount? What are they? What would be the ongoing costs to the shareholders and to the Adviser?

Finally, to avoid having future communications cross in the mail, I suggest that we follow the SEC's lead (Staff Legal Bulletin 14F Part F) and use e-mail as a primary means of communication, with electronic receipts or physical mail as backup. In any event, I thank you for your consideration.

Sincerely,



Robert H. Daniels

Also via e-mail to:
info@ellsworthfund.com
and via fax to:
1-973-631-9893

Vanguard®

P.O. Box 1170
Valley Forge, PA 19482-1170

www.vanguard.com

July 28, 2014

ROBERT HOYT DANIELS
1685 8TH AVE
SAN FRANCISCO, CA 94122-3717

RE: Account Information

To Whom It May Concern:

This letter serves as confirmation that Robert Hoyt Daniels has continuously held shares of Ellsworth Fund Ltd. (ECF) in his Roth IRA Vanguard Brokerage Account [redacted] from July 24, 2013, through July 24, 2014. The shares of ECF held in his account have had a daily market value of $2,000.00 or more during that time period.

If you have any questions, please call Vanguard Brokerage Services® at **800-992-8327**. You can reach us on business days from 8 a.m. to 10 p.m. or on Saturdays from 9 a.m. to 4 p.m., Eastern Time.

Sincerely,

Retail Investor Group
Vanguard Brokerage Services

01A

10641260

Ballard Spahr LLP

1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
TEL 215.665.8500
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Tel: 215.864.8604
Fax: 215.864.8999
kings@ballardspahr.com

October 8, 2014

Via E-mail (IMshareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Division of Investment Management
Office of Disclosure and Review
100 F Street, N.E.
Washington, D.C. 20549-8626

Re: Ellsworth Fund Ltd.
Securities Exchange Act of 1934 - Section 14(a), Rule 14a-8;
Omission of Shareholder Proposal Submitted by Robert H. Daniels

Ladies and Gentlemen:

We are legal counsel to Ellsworth Fund Ltd. (the "Fund"). As described in our letter dated September 26, 2014, the Fund intends to exclude from its definitive proxy materials the shareholder proposal of Robert H. Daniels ("Proponent"). This letter is written in reply to Proponent's response letter dated October 6, 2014.

Proponent's letter would like to obscure his tardiness and multiple non-compliances with Rule 14a-8 promulgated under the Securities Exchange Act of 1934 while professing that "The Fund made no objection to the substantive content of the proposal."[1] However, the following recitation is a straight forward summary of the facts: The Fund's published deadline for submission of shareholder proposals was August 1, 2014. Proponent submitted a proposal to the Fund on July 22, 2014 without including any evidence that he was the beneficial owner of Fund shares. The Fund replied within 14 days and pointed out that Proponent failed to include evidence of his share ownership and that the proposal was, therefore, non-compliant. The Fund letter also stated that the published deadline for submission of proposals had expired.[2] The Proponent's proof of ownership (postmarked after the

1 Surely this statement is misleading: the Fund notified Proponent that "We do not believe the proposal is in the interest of Fund shareholders for many reasons . . ." (letter of August 21, 2014) and amplified and explained those reasons in a subsequent telephone call with Proponent initiated by the Fund.

2 Citing to staff guidance, Proponent seeks to excuse his failures by blaming the Fund. He complains that the Fund's notice letter failed to identify his non-compliance with sufficient particularity. However, the cited guidance dealt with a situation where proof of ownership *had* been submitted but failed to cover the correct holding period or in some other technical way was noncompliant and the

published deadline) arrived but covered an incorrect one-year time period, a fact that the Proponent himself acknowledged. On his third try - - four weeks after the published deadline - - the Proponent finally demonstrated that he had established a Roth IRA account which owned Fund shares during the necessary time period. Proponent claims that the account is "self-directed," a non-trivial point because that fact is necessary to prove beneficial ownership. (See footnote 2 of the September 26, 2014 letter.) Neither of the Vanguard letters submitted by Proponent confirms this fact.

Proponent, in effect, asks whether Rule 14a-8 can be interpreted to condone a shareholder's taking as many attempts and as much time as necessary - - even as much as four weeks -- after a company's published deadline for making a shareholder proposal in an effort to demonstrate satisfaction of Rule 14a-8's modest share ownership requirement. Looked at another way, Proponent asks whether Rule 14a-8 can be used to force an issuer to wait weeks past its published deadline to determine whether it is even required to include a shareholder proposal in its proxy materials. We believe these questions answer themselves and require Proponent, with appropriate advance planning, to submit his proposal next year in a manner that complies with Rule 14a-8.

Sincerely

Steven B. King

SBK/ds
Enclosures

cc: Robert H. Daniels
Thomas H. Dinsmore

---

issuer was, in the staff's view, intentionally non-transparent about the nature of the problem. Here, the Fund was very clear: No proof of ownership had been submitted at all and the deadline for submissions had past.