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DIVISION OF CORPORATION FINANCE

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

Received SEC

FEB 05 2013

February 5, 2013

Washington, DC 20549

Meredith Sanderlin Thrower  
Dominion Resources Services, Inc.  
meredith.s.thrower@dom.com

Act: 1934  
Section: \_\_\_\_\_  
Rule: 14a-8  
Public  
Availability: 02-05-2013

Re: Dominion Resources, Inc.

Dear Ms. Thrower:

This is in regard to your letter dated February 4, 2013 concerning the shareholder proposal submitted by Marion Edey for inclusion in Dominion's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the proponent has withdrawn the proposal, and that Dominion therefore withdraws its December 21, 2012 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Erin E. Martin  
Attorney-Advisor

cc: Marion Edey

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

NO ACT

16  
2-4-13

Dominion Resources Services, Inc.  
Law Department  
P.O. Box 26532, Richmond, VA 23261



February 4, 2013

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Dominion Resources, Inc. – Exclusion of Shareholder Proposal Submitted by  
Marion Edey Pursuant to Rule 14a-8

Ladies and Gentlemen:

In a letter dated December 21, 2012, we requested that the staff of the Division of Corporation Finance of the Securities and Exchange Commission (the “SEC”) would not recommend any enforcement action to the SEC if Dominion Resources, Inc. (the “Company”) omitted from its proxy materials to be distributed in connection with its 2013 annual meeting of shareholders a proposal (the “Proposal”) and supporting statement submitted to the Company on November 16, 2012 by Marion Edey (the “Proponent”).

Enclosed as Exhibit A is a letter from the Proponent, dated January 23, 2013, withdrawing the Proposal. In reliance of this letter, we hereby withdraw the December 21, 2012 no action request relating to the Company’s ability to exclude the Proposal pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended.

If you have any questions or need any additional information, please contact the undersigned at (804) 819-2139, or at [meredith.s.thrower@dom.com](mailto:meredith.s.thrower@dom.com).

Sincerely,

Meredith Sanderlin Thrower  
Senior Counsel – Corporate Finance, Securities and M&A

Enclosures

cc: Marion Edey  
Mary S. Booth

Exhibit A  
Correspondence

Marion Edev

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

Dominion Resources Services, Inc.  
Law Department  
Attn: Meredith S. Thrower  
P.O. Box 26532  
Richmond, VA 23261

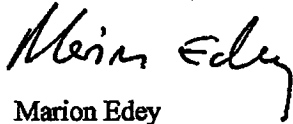
January 23, 2013

Re: Dominion Resources Inc. – Withdrawal of Shareholder Proposal Submitted by Marion Edev

Dominion Resources:

I hereby withdraw the shareholder resolution submitted to Dominion Resources for consideration at its 2013 shareholder meeting, which asked the company to cease investments in biomass power.

Sincerely,

A handwritten signature in cursive script that reads "Marion Edev".

Marion Edev

RECEIVED

2013 FEB -4 PM 3:25

OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Marion Edey

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

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

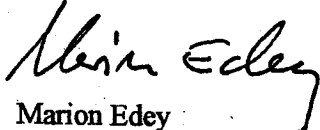
January 23, 2013

Re: Dominion Resources Inc. – Withdrawal of Shareholder Proposal Submitted by Marion Edey

To the SEC:

As documented in the enclosed letter, I have withdrawn my shareholder resolution to Dominion Resources for consideration at its 2013 shareholder meeting, which asked the company to cease investments in biomass power.

Sincerely,



Marion Edey

RECEIVED

2013 FEB -4 PM 3: 26

Marion Edey

OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

Dominion Resources Services, Inc.  
Law Department  
Attn: Meredith S. Thrower  
P.O. Box 26532  
Richmond, VA 23261

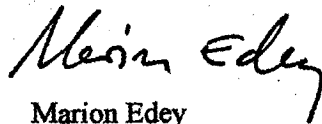
January 23, 2013

Re: Dominion Resources Inc. – Withdrawal of Shareholder Proposal Submitted by Marion Edey

Dominion Resources:

I hereby withdraw the shareholder resolution submitted to Dominion Resources for consideration at its 2013 shareholder meeting, which asked the company to cease investments in biomass power.

Sincerely,



Marion Edey

Dominion Resources Services, Inc.  
Law Department  
P.O. Box 26532, Richmond, VA 23261



December 21, 2012

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Dominion Resources, Inc. – Exclusion of Shareholder Proposal Submitted by  
Marion Edey Pursuant to Rule 14a-8

Ladies and Gentlemen:

This letter respectfully requests that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "SEC") advise Dominion Resources, Inc., a Virginia corporation (the "Company"), that it will not recommend any enforcement action to the SEC if the Company omits from its proxy materials to be distributed in connection with its 2013 annual meeting of shareholders (the "Proxy Materials") a proposal (the "Proposal") and supporting statement submitted to the Company on November 16, 2012 by Marion Edey ("Ms. Edey" or the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the SEC no later than eighty (80) calendar days before the Company intends to file its definitive 2013 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

The Company anticipates that its Proxy Materials will be available for mailing on or about March 19, 2013. We respectfully request that the Staff, to the extent possible, advise the Company with respect to the Proposal consistent with this timing.

The Company agrees to forward promptly to Ms. Edey any response from the Staff to this no-action request that the Staff transmits by e-mail or facsimile to the Company only.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that

the proponents elect to submit to the SEC or Staff. Accordingly, we are taking this opportunity to inform the Proponent that if Proponent elects to submit additional correspondence to the SEC or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

### **THE PROPOSAL**

The Proposal states:

**RESOLVED:** That by October 1, 2013, Dominion cease conversions of coal plants to biomass and cease other investments in biomass power, due to the admitted high carbon emissions from biomass power plants and the increasing rejection of “carbon neutral” status for biomass power at the state and federal level.

A copy of the Proposal and supporting statement, as well as the related correspondence regarding the Proponent’s share ownership, is attached to this letter as Exhibit A.

### **BASIS FOR EXCLUSION**

The Company believes the Proposal may be properly excluded from the Proxy Materials pursuant to:

- Rule 14a-8(i)(6) because the Company lacks the power and authority to implement the Proposal;
- Rule 14a-8(i)(7) because the Proposal deals with matters related to the Company’s ordinary business operations; and
- Rules 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders under the laws of Virginia, the jurisdiction of the Company’s organization.

### **DISCUSSION**

#### **I. GROUNDS FOR ABSENCE OF POWER OR AUTHORITY EXCLUSION**

Under Rule 14a-8(i)(6), a proposal may be omitted if the company would lack the power or authority to implement the proposal. In Staff Legal Bulletin No. 14, the Staff warns proponents that their proposals must be within the power of the registrant to implement. In this case, the Proponent wishes the Company to cease the conversion of three electric generating facilities from coal to biomass (the “Biomass Conversions”), which are underway, subject to a major Engineering, Procurement and Construction



("EPC") contract, among others, and have already received requisite major regulatory approvals, including amended Certificates of Public Convenience and Necessity ("CPCNs") from the Virginia State Corporation Commission ("VSSC") and a related cost-recovery Rate Adjustment Clause ("RAC") rider, approved by the VSSC as Rider B. To cease the Biomass Conversions at this stage would require major contracts including the EPC contract and that to engineer and supply required boiler modification equipment to be terminated. In addition, the Company would be required to seek regulatory approvals to address the CPCNs and "undo" the RAC treatment for cost recovery of the approximately \$1 million already spent on the Biomass Conversions. The Proposal thus could not be implemented barring significant regulatory approvals – assuming such approvals would be granted at all – and further, would involve the violation of existing legal obligations pursuant to, among others, the EPC and boiler modification contracts.

As background on the Biomass Conversions, on March 16, 2012, Virginia Electric and Power Company ("DVP"), the wholly-owned electric utility subsidiary of the Company, received VSSC approval to convert three Virginia power stations from using coal to using biomass, a renewable energy source, and for the associated RAC for cost recovery related to the conversions (VSSC Case No. PUE-2011-00073). The conversions will provide environmental and customer benefits and generate statewide economic development benefits of up to \$120 million annually when compared to continued operations using coal. The power stations in Altavista, Hopewell and Southampton County, which would generate about 51 megawatts each after conversion, are nearly identical and went into operation as coal-fired units in 1992. The conversions are expected to begin burning biomass by the end of 2013.

SCC approval was sought to amend the CPCNs and in order to recover costs through rates with the RAC. The RAC has already been implemented and the Company is currently recovering incurred and projected costs related to the conversion of the three Biomass Conversion facilities. These proceedings included public and evidentiary hearings at which issues of the type raised by the Proponent were discussed. A second RAC for the 2013 Rate Year is currently pending before the VSSC (Case No. PUE-2012-00072), with a public and evidentiary hearing before the VSSC set for January 15, 2013. Pursuant to the VSSC order approving the Biomass Conversions, the Company must make annual RAC filings on or before August 1 of each year.

The Biomass Conversions are well underway, with substantially all of the engineering completed for all three units, and construction having already commenced at the Altavista and Hopewell units with Southampton soon to follow. As of March 31, 2012, all major equipment had been procured. Anticipated construction completion dates are May 31, 2013 for Altavista, August 30, 2013 for Hopewell and October 28, 2013 for Southampton.

The Company's only other exclusively biomass-fueled facility is its existing Pittsylvania Power Station ("Pittsylvania"), an 83 MW biomass facility in Hurt, Virginia, which is fueled predominantly with biomass waste wood and did not need to be

converted with the other three units.<sup>1</sup> Pittsylvania is one of the largest biomass power stations on the East Coast and was purchased by the Company in 2004. Pittsylvania's principle fuel source is waste wood that would otherwise be left in forests as "slash," dumped into landfills, or burned. The station supplies enough electricity to power about 20,000 houses.

The Proposal, in short, would require the Company to undertake acts that it could not carry out while requiring the Company to violate its existing legal obligations both to state utility regulators and to the primary contractors involved in the Biomass Conversions. The Company would need VSCC approval to cancel the Biomass Conversion projects prior to completion, notably because of the associated RAC under which Dominion has been recovering construction costs from customers since April 1, 2012. Unwinding and refunding to customers those rider charges, in whole or in part, would be significant and would require VSCC involvement and approval. Such regulatory approvals, assuming they were granted at all, would also not include a guarantee that Biomass Conversion project costs incurred prior to acting on the Proposal could be recovered.

In view of the foregoing, the Company has concluded that the Proposal may be excluded in reliance on Rule 14a-8(i)(6), as the Proposal is one that the Company does not have the authority to implement.

## **II. GROUNDS FOR ORDINARY BUSINESS OPERATIONS EXCLUSION**

### **A. Background**

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operation. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release the Commission stated that 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 meeting," and identified two central considerations that underlie this policy. The first was 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 second

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<sup>1</sup> The Company's Virginia City Hybrid Energy Center is equipped to use coal and up to 20% biomass for its fuel.

consideration related 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.” *Id.* (citing Exchange Act Release No. 12999) (Nov. 22, 1976).

**B. The Proposal may be Excluded Because it Relates to Decisions Regarding the Generation Resources and Technologies the Company Chooses to Use to Produce Electricity**

The Biomass Conversions were undertaken by the Company as part of its integrated resource planning process, as well as in response to existing and anticipated future environmental regulations and the low capacity factors being achieved by those units when operating on coal. DVP is required to file in Virginia in odd-numbered years (with an update in even-numbered years) and in North Carolina in even-numbered years, a comprehensive Integrated Resource Plan (“Plan”) pursuant to R8-60 of the NCUC Rules and Regulations (“Rules”) and § 56-599 of the Code of Virginia (“Va. Code”), respectively. The Plan is publicly available through the VSCC website at <http://www.scc.virginia.gov>. The relevant case number for the VSCC is Case No. PUE-2012-00099, which can be accessed under the “Obtain Case Information” and “Docket Search” tabs. The 2012 Plan is also available on the Company’s website at <https://www.dom.com/about/pdf/irp/irp-083112.pdf>. A new Plan will be submitted in Virginia by September 1, 2013 and this reporting cycle continues perpetually.

DVP’s objective in developing its integrated resource planning process is to identify the mix of generation resources necessary to meet future energy and capacity needs in an efficient and reliable manner at the lowest reasonable cost while considering uncertainties related to current and future regulations and other matters. The plan to convert the Altavista, Hopewell and Southampton facilities from coal to biomass was selected through this process, and further ratified by management as a prudent course to take in addressing the operating and regulatory realities facing the continued operation of the three units using coal. Company management’s robust and careful evaluation process for determining the right fuel types and mix of generation resources and technologies used to supply the electric needs of the customers in its service territory are the subject of a multi-layered approach, aimed at securing the right type and balance of generation needs to serve customers in a safe and reliable manner at a reasonable cost, taking into account developing technologies. With respect to coal-fired units, that analysis includes a review of the costs to retrofit the units with new environmental control equipment, versus other options such as retiring the units, repowering the units by natural gas or converting the units to burn biomass. This analysis incorporates a wide-range of factors such as anticipated fuel prices and energy costs, costs of conversion, effective and anticipated environmental regulations, fuel availability, operating costs and recent technological developments, among others.

In the case of the Biomass Conversions, conversion of the three stations will result in overall reductions of sulfur dioxide, nitrogen oxide, mercury and particulate

emissions and are projected to increase the capacity factors of these units. Management's decision to pursue the approvals and now the construction of the Biomass Conversions is driven by the decision to provide economical baseload generation and provide environmental and energy benefits for the entire anticipated 25-year service life of the refurbished and converted units. The decisions behind supplying power in a safe, reliable and cost-effective manner are a core area of Company expertise. Its process in making decisions on safe, reliable and efficient management of existing generation resources and determining the proper and cost-effective course of future planning to meet electric power needs is at the core of matters involving the Company's business and operations.

The Proposal seeks to involve shareholders in decisions regarding the generation resources and technologies the Company should utilize to produce electricity. For the reasons discussed above, decisions as to which generation resources and technologies are appropriate for the Company to pursue properly rest with the Company's management and should not be the subject of a shareholder proposal. These decisions involve operational and business matters that require the judgment of experienced management and scientists. Such matters are properly within the purview of management, which has the necessary skills, knowledge and resources to make informed decisions, and are not the type of matters that shareholders are in a position to appropriately evaluate.

On numerous occasions the Staff has allowed exclusion of a proposal under Rule 14a-8(i)(7) because the proposal relates to the company's choice of technologies. For example, in *WPS Resources Corp.* (February 16, 2001), the Staff permitted the exclusion of a shareholder proposal requesting, *inter alia*, that a utility company develop new co-generation facilities and improve energy efficiency. The Staff concurred that the proposal could be excluded on the grounds that the proposal dealt with "ordinary business operations (*i.e.*, the choice of technologies)." Similarly, the Staff concluded in *Union Pacific Corp.* (December 16, 1996) that a shareholder proposal requesting a report on the status of research and development of a new safety system for railroads was excludable because it concerned the development and adaption of new technology for Union Pacific's operations. *See Burlington Northern Santa Fe Corp.* (January 22, 1997) (similar proposal excluded because it concerned the development and adaption of new technology); *see also Applied Digital Solutions* (April 25, 2006) (proposal requesting a report on the sale and use of RFID technology and its impact on the public's privacy, personal safety and financial security was excludable as relating to ordinary business operations (*i.e.* product development)); *International Business Machines Corp.* (January 6, 2005) (permitting exclusion of a proposal requesting that the company employ specific technological requirements in its software as it related to IBM's ordinary business operations (*i.e.*, the design and development of IBM's software products)).

Because the Proposal deals with the day-to-day operations of the Company and seeks to micro-manage activities that are in the province of management, not shareholders, the Company has concluded that it may be properly excluded from the Proxy Materials under Rule 14a-8(i)(7).

**C. Touching on a Significant Policy Issue is Insufficient to Alter the Conclusion that the Proposal is Excludable under Rule 14a-8(i)(7) as Relating to Ordinary Business Matters**

Staff Legal Bulletin No. 14E (CF) (October 27, 2009) provides that proposals generally will not be excludable if the underlying subject matter transcends the day-to-day business of the company and raises policy issues so significant that it would be appropriate for a shareholder vote. The Company does not believe the Proposal deals with a significant policy issue of the type that is excluded from the scope of Rule 14a-8(i)(7).

The Staff has consistently concurred that a proposal may be excluded in its entirety when it addresses ordinary business matters, even if it also touches upon a significant social policy issue. For example, in *Wal-Mart Stores, Inc.* (March 15, 1999), the Staff concurred that a company could exclude a proposal requesting a report to ensure that the company did not purchase goods from suppliers using forced labor, convict labor and child labor because the proposal also requested that the report address ordinary business matters. In *General Electric Co.* (February 10, 2000), the Staff concurred that the entire proposal was excludable under Rule 14a-8(i)(7) because a portion of the proposal related to ordinary business matters (*i.e.*, the choice of accounting methods). The Staff has also concurred that proposals touching upon nuclear energy are excludable where the focus of the proposal is on ordinary business decisions. *See, e.g., Carolina Power & Light* (March 8, 1990) (proposal requesting a report regarding specific aspects of the Company's nuclear operations relating to, *inter alia*, safety, regulatory compliance, emissions problems, hazardous waste disposal and related cost information was excludable as implicating the company's ordinary business operations); *General Electric Co.* (February 2, 1987) (proposal on preparing a cost-benefit analysis of the company's nuclear promotion from 1971 to present, including costs related to lobbying activity and the promotion of nuclear power to the public was excludable as implicating ordinary business matters).

*Lowe's Companies, Inc.* (February 1, 2008) provides further support for the exclusion of matters which touch on significant policy issues but relate to a company's ordinary business operations. The proposal at issue in *Lowe's* asked the company to end its sale of a particular product (glue traps) that the proponent believed raised issues of social and public policy. The Staff concurred that there was a basis for exclusion under Rule 14a-8(i)(7), "as relating to Lowe's ordinary business operations (*i.e.*, the sale of a particular product)." The Staff has also concurred in the exclusion under Rule 14a-8(i)(7) of proposals requesting the adoption of policies barring the financing of companies engaged in mountaintop removal coal mining. *See JPMorgan Chase & Co.* (March 12, 2010); *Bank of America Corp.* (February 24, 2010).

The Proposal focuses on decision-making of the Company in connection with the Company's ordinary business operations. As noted above, a proposal may be excluded in its entirety when it addresses ordinary business matters even if it also touches upon a

policy matter. The fact that the Proposal mentions biomass and carbon emissions does not remove it from the scope of Rule 14a-8(i)(7) because the Proposal fundamentally addresses issues the Company faces as a result of its ordinary business operations. Accordingly, based on the precedents described above, the Company believes that it may properly exclude the Proposal from the Proxy Materials under Rule 14a-8(i)(7) and request that the Staff concur in its conclusion.

### III. GROUNDS FOR EXCLUSION AS IMPROPER UNDER STATE LAW

A company may omit a shareholder proposal from its proxy materials under Rule 14a-8(i)(1) if the proposal is improper under state law. The note to this section of the rule states that “some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders.” In addition, Staff Legal Bulletin No. 14 notes that “when drafting a proposal, shareholders should consider whether the proposal, if approved by shareholders, would be binding on the company. In our experience we have found that proposals that are binding on the company face a much greater likelihood of being improper under state law and, therefore, excludable under rule 14a-8(i)(1).”

The Company is incorporated under the laws of the Commonwealth of Virginia. Under Virginia law, the board of directors of a corporation generally has the exclusive authority to manage the business and affairs of the company. Section 13.1-673(B) of the Virginia Stock Corporation Act (the “VSCA”) provides that “[a]ll corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in [a voting agreement].” The Company’s Articles of Incorporation (the “Articles”) place the management of the corporation’s business and affairs in the hands of the board of directors without limitation. Article V of the Articles states that “[t]he business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors . . . .”

Choosing among generation resources is a critical part of the management of the Company’s business and affairs. Neither the Company’s Articles nor its bylaws grant shareholders the authority to determine which generation resources the Company will utilize. Instead, they grant the Company’s board exclusive authority to manage the business and affairs of the Company. That authority encompasses approval of the Company’s integrated resource planning process and the selection of particular generation resources. In other words, by law it is the exclusive province of the board to make the sort of strategic decision that the Proponent seeks to place in the hands of shareholders. Moreover, Section 13.1-690 of the VSCA requires a director to “discharge his duties as a director . . . in accordance with his good faith business judgment of the best interests of the corporation.” The Proposal, if adopted, would deny members of the board the opportunity to satisfy their obligation to exercise their good faith business judgment in accordance with Virginia law. Instead, it would limit the board’s authority

to act without permitting the board to consider what action is in the best interests of the Company.

The Staff has previously allowed the omission of shareholder proposals that mandate or require a company's board of directors to take a specified action if inconsistent with the power given to the board under state law. *See, e.g., Washington Mutual, Inc.* (January 26, 2004); *PG&E Corporation* (February 18, 2003); *American Electric Power Company, Inc.* (January 16, 2002). The language contained in the Proposal is more than a recommendation. It is a mandate from the shareholders regarding the discontinuation of use of a particular generation resource. Consequently, it would deprive the board of its exclusive authority over the management of the Company's business and of the opportunity to exercise its business judgment, both as required by Virginia law. Thus, the binding nature of the Proposal would require the board to act in a manner inconsistent with Virginia law. An opinion from McGuireWoods LLP concurring with this conclusion is attached hereto as Exhibit B.

For these reasons, the Company believes it is appropriate to exclude the Proposal from the Proxy Materials under Rule 14a-8(i)(1). In the alternative, if the Staff concludes that the Proposal is not properly excludable on these grounds or on the other grounds set forth above, the Company respectfully requests that the Staff require that the Proposal be revised as a recommendation or request and concur in the Company's view that the Proposal may be excluded if it is not so revised within seven days of the Proponent's receipt of the Staff's response.

#### CONCLUSION

For the reasons stated above, we believe that the Proposal may be properly excluded from the Proxy Materials. If you have any questions or need any additional information with regard to the enclosed or the foregoing, please contact the undersigned at (804) 819-2139, or at [meredith.s.thrower@dom.com](mailto:meredith.s.thrower@dom.com).

Sincerely,



Meredith Sanderlin Thrower  
Senior Counsel – Corporate Finance, Securities and M&A

Enclosures

cc: Marion Edey  
Mary S. Booth

Exhibit A  
Correspondence



**Karen Doggett (Services - 6)**

---

**From:** Carter Reid (Services - 6)  
**Sent:** Tuesday, November 20, 2012 3:57 PM  
**To:** Karen Doggett (Services - 6)  
**Subject:** Fwd: Shareholder resolution offered by Marion Edey  
**Attachments:** Resolution offered by Marion Edey for Dominion 2013 meeting.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

**From:** "Mary S. Booth" <[mbooth.pfpi@gmail.com](mailto:mbooth.pfpi@gmail.com)>  
**Date:** November 20, 2012 11:05:57 AM CST  
**To:** "Carter Reid (Services - 6)" <[carter.reid@dom.com](mailto:carter.reid@dom.com)>  
**Subject:** Shareholder resolution offered by Marion Edey

Dear Ms. Reid,

Enclosed you'll find a copy of a shareholder resolution that we hope will be included in the docket for the 2013 Dominion shareholder meeting, submitted by shareholder Marion Edey. Another copy is coming by US Post.

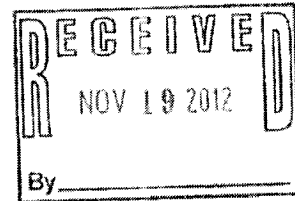
Thank you very much for your consideration,

Mary S. Booth

--  
Mary S. Booth, PhD  
Director, Partnership for Policy Integrity | 917-885-2573 | [mbooth@pfpi.net](mailto:mbooth@pfpi.net)  
[www.pfpi.net](http://www.pfpi.net)

Marion Edey

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*



Carter M. Reid  
Vice President of Governance & Corporate Secretary  
Dominion Resources, Inc.  
120 Tredegar Street  
Richmond, Virginia 23219

November 16, 2012

Dear Ms. Reid,

I am enclosing a resolution regarding Dominion's development of biomass power for consideration at the 2013 shareholder meeting. I am a shareholder of sufficient duration to submit this resolution, and will have affirmation of this fact sent from my brokerage, Eaton Vance.

Please direct any correspondence on this resolution to Mary S. Booth,  
54 Arnold Rd, Pelham, MA 01002, mbooth@pfpi.net, (413) 253-3256.

Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Marion Edey".

Marion Edey

**WHEREAS**, Dominion is meeting a portion of its renewable energy obligations with biomass power, including the 83 MW Pittsylvania plant, conversion of the Hopewell, Altavista, and Southampton coal plants to biomass (150 MW) and up to 20% (~117 MW) co-firing at the Virginia Hybrid Energy Center, and

Dominion publically states that biomass power reduces greenhouse gas emissions.<sup>1</sup> However, biomass power plants actually emit more carbon dioxide per megawatt-hour than coal-fired power plants,<sup>2</sup> as Dominion has admitted in testimony before the Virginia State Corporation Commission,<sup>3</sup> and

The Environmental Protection Agency panel convened to advise how emissions of biogenic carbon from power plants should be counted under the Clean Air Act has advised that biomass, including forest residues (the purported fuel for the Altavista, Hopewell, and Southampton plants), should not be considered carbon neutral,<sup>4</sup> and

Due to low efficiency and high carbon dioxide emissions, facilities like Hopewell, Altavista, and Southampton are no longer considered carbon neutral and thus no longer qualify for renewable energy certificates in Massachusetts,<sup>5</sup> other states are considering policies to limit renewable energy subsidies for biomass power, and

Dominion's testimony before the Virginia State Corporation Commission states that economic viability for the three coal-to-biomass conversions depends on the assumption of carbon neutrality, and that without this assumption, the net present value of operation is less than if the plants continued to operate on coal.<sup>6</sup>

**RESOLVED:** That by October 1, 2013, Dominion cease conversions of coal plants to biomass and cease other investments in biomass power, due to the admitted high carbon emissions from biomass power plants and the increasing rejection of "carbon neutral" status for biomass power at the state and federal level.

<sup>1</sup> Dominion's "Green Power" brochure (<https://www.dom.com/dominion-virginia-power/customer-service/energy-conservation/pdf/gp-brochure.pdf>) states, "Your participation in Dominion Green Power supports renewable energy and creates environmental benefits". One benefit listed is "reduce greenhouse gas emissions".

<sup>2</sup> Lb CO<sub>2</sub>/MWh: Gas: 1,218; Coal: 2,086; Biomass: 3,029 (assumes standard power plant efficiency values and fuel heat content values from EIA and DOE).

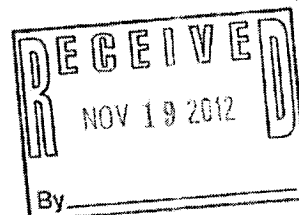
<sup>3</sup> Commonwealth of Virginia State Corporation Commission. Case No. PUE-2011-00073. Testimony from January 12, 2011.

<sup>4</sup> "Science Advisory Board Review of EPA's Accounting Framework for Biogenic CO<sub>2</sub> Emissions from Stationary Sources", September 2011. "Carbon neutrality cannot be assumed for all biomass energy a priori... For logging residues and other feedstocks that decay over longer periods, decomposition cannot be assumed to be instantaneous." Burning forest residues is considered to have emissions that affect the climate (Table 1, page 15).

([http://yosemite.epa.gov/sab/SABPRODUCT.NSF/57B7A4F1987D7F7385257A87007977F6/\\$File/EPA-SAB-12-011-unsigned.pdf](http://yosemite.epa.gov/sab/SABPRODUCT.NSF/57B7A4F1987D7F7385257A87007977F6/$File/EPA-SAB-12-011-unsigned.pdf)).

<sup>5</sup> The Massachusetts Department of Energy Resources now requires biomass power plants to be at least 50% efficient, and achieve a 50% reduction in greenhouse gas emissions over 20 years compared to a combined cycle natural gas unit, to qualify for one-half REC per MWh. (<http://www.mass.gov/eea/pr-2012/120817-pr-biomass.html>).

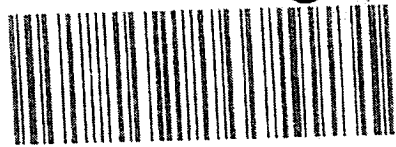
<sup>6</sup> Testimony before the State Corporation Commission of Virginia, Case No. PUE-2011-00073, regarding conversion of the Altavista Power Station, filed June 27, 2011, Volume 2 of 3. Figure 7, page 13 shows that under a "no carbon neutrality" scenario, the Net Present Value is less than under continued operations on coal.



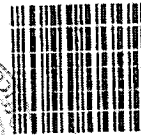
Mar Edey

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

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By \_\_\_\_\_

*Carter M. Reid*  
*Vice President of Governance & Corporate Secretary*  
*Dominion Resources Inc.*  
*120 Tredegar Street*  
*Richmond, VA 23219*  
23219430620



Eaton Vance Investment Counsel  
Two International Place  
Boston, MA 02110  
(617) 482-8260  
[www.eatonvancecounsel.com](http://www.eatonvancecounsel.com)

November 16, 2012

Ms. Carter Reid  
Vice President of Governance & Corporate Security  
Dominion Resources  
P.O. Box 26532  
Richmond, VA 23261

Dear Ms. Reid,

As of November 16, 2012, our client Marion Edey held, and has held continuously for at least one year, 865 shares of Dominion Resources Inc. (D) common stock. The market value exceeded \$2,000 at all times during the last year.

Marion Edey's shares are held in an account custodied at State Street Bank and Trust Company (DTC participant #2319) and her investment portfolio is managed by Eaton Vance Investment Counsel (tax identification #20-1227351).

Our client intends to hold all of these shares through the date of the 2012 annual meeting.

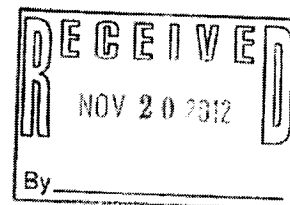
Please feel free to call me if you have any questions or require anything additional. I can be reached at (617) 672-8757.

Sincerely,

  
Susan R. Martland  
Vice President

SRM/ejm

cc: Marion B. Edey



Dominion Resources Services, Inc.  
120 Tredegar Street, Richmond, VA 23219  
Mailing Address: P.O. Box 26532  
Richmond, VA 23261



November 20, 2012

***Sent via Overnight Mail***

Ms. Marion Edey

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Dear Ms. Edey:

This letter confirms receipt on Monday, November 19, 2012 via postal mail, of your shareholder proposal that you have submitted for inclusion in Dominion Resources, Inc.'s (Dominion) proxy statement for the 2013 Annual Meeting of Shareholders.

In accordance with Securities and Exchange Commission (SEC) regulations, we are required to notify you of any eligibility or procedural deficiencies related to your proposal. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, states that in order to be eligible to submit your proposal, you must submit proof of continuous ownership of at least \$2,000 in market value, or 1%, of Dominion's common stock for the one-year period preceding and including the date you submitted your proposal. As of the date of this letter, we have not received your proof of ownership of Dominion common stock. In addition, you must also provide a written statement that you intend to hold the requisite number of shares through the date of Dominion's 2013 Annual Meeting of Shareholders.

According to Dominion's records, you are not a registered holder of Dominion common stock. As explained in Rule 14a-8(b), if you are not a registered holder of Dominion common stock, you may provide proof of ownership by submitting either:

- a written statement from the record holder of your Dominion common stock (usually a bank or broker) verifying that, at the time you submitted your proposal, you continuously held the shares for at least one year; or
- if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 with the SEC, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level and your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement.

Please note that, pursuant to Staff Legal Bulletins 14F and 14G issued by the SEC (SLB 14F and SLB 14G), only Depository Trust Company (DTC) participants or affiliated DTC participants should be viewed as record holders of the securities deposited at DTC.

In order for your proposal to be eligible, you must provide the following:

- Proof of beneficial ownership of Dominion common stock from the record holder of your shares verifying continuous ownership of at least \$2,000 in market value, or 1% of Dominion's common stock for the one-year period preceding and including November 19, 2012, the date you submitted your proposal.
- Your written statement of your intent to hold the requisite number of shares through the date of Dominion's 2013 Annual Meeting of Shareholders

The SEC's Rule 14a-8 requires that any response to this letter must be postmarked or transmitted electronically to Dominion no later than 14 calendar days from which you receive this letter. Your documentation and/or response may be sent to me at Dominion Resources, Inc., 120 Tredegar Street, Richmond, VA 23219, via facsimile at (804) 819-2232 or via electronic mail at karen.doggett@dom.com.

Finally, please note that in addition to the eligibility deficiency cited above, Dominion reserves the right in the future to raise any further bases upon which your proposal may be properly excluded under Rule 14a-8(i) of the Securities Exchange Act of 1934, as amended.

If you should have any questions regarding this matter, I can be reached at (804) 819-2123. For your reference, I have enclosed a copy of Rule 14a-8, SLB 14F and SLB 14G.

Sincerely,



Karen W. Doggett  
Director-Governance and Executive Compensation

cc: Ms. Mary S. Booth (via electronic and overnight mail)

beneficial owner for whom a request was made to the extent necessary to effectuate the communication or solicitation. The security holder shall return the information provided pursuant to paragraph (a)(2)(ii) of this section and shall not retain any copies thereof or of any information derived from such information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

*Note 1 to § 240.14a-7.* Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

*Note 2 to § 240.14a-7.* When providing the information required by § 240.14a-7(a)(1)(ii), if the registrant has received affirmative written or implied consent to delivery of a single copy of proxy materials to a shared address in accordance with § 240.14a-3(c)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.

#### Rule 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) In order to be eligible to submit a proposal, you 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 meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) 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 securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a

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\*Effective September 20, 2011, Rule 14a-8 was amended by revising paragraph (i)(8) as part of the amendments facilitating shareholder director nominations. See SEC Release Nos. 33-9259; 34-65343; IC-29788; September 15, 2011. See also SEC Release Nos. 33-9136; 34-62764; IC-29384 (Aug. 25, 2010); SEC Release Nos. 33-9149; 34-63031; IC-29456 (Oct. 4, 2010); SEC Release Nos. 33-9151; 34-63109; IC-29462 (Oct. 14, 2010).



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:

(i) 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. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule I3D, Schedule I3G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

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

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

**(c) Question 3: How many proposals may I submit?**

Each shareholder may submit no more than one proposal to a company 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 Rule 14a-8?**

(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 Rule 14a-8 and provide you with a copy under Question 10 below, Rule 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 Rule 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 Rule 14a-8 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 deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

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\*Effective September 20, 2011, Rule 14a-8 was amended by revising paragraph (i)(8) as part of the amendments facilitating shareholder director nominations. See SEC Release Nos. 33-9259; 34-65343; IC-29788; September 15, 2011. See also SEC Release Nos. 33-9136; 34-62764; IC-29384 (Aug. 25, 2010); SEC Release Nos. 33-9149; 34-63031; IC-29456 (Oct. 4, 2010); SEC Release Nos. 33-9151; 34-63109; IC-29462 (Oct. 14, 2010).

- (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;
- (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
- (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(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, Rule 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.

[The next page is 5733.]

(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 it files definitive copies of its proxy statement and form of proxy under Rule 14a-6.

**Rule 14a-9. False or Misleading Statements.\***

(a) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

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

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

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

**\*\*\*a.** Predictions as to specific future market values.

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\*Effective September 20, 2011, Rule 14a-9 was amended by adding paragraph (c) and redesignating Notes (a), (b), (c), and (d) as a., b., c., and d., respectively, as part of the amendments facilitating shareholder director nominations. See SEC Release Nos. 33-9259; 34-65343; IC-29788; September 15, 2011. See also SEC Release Nos. 33-9136; 34-62764; IC-29384 (Aug. 25, 2010); SEC Release Nos. 33-9149; 34-63031; IC-29456 (Oct. 4, 2010); SEC Release Nos. 33-9151; 34-63109; IC-29462 (Oct. 14, 2010).

\*\*Effective September 20, 2011, Rule 14a-9 was amended by adding paragraph (c) as part of the amendments facilitating shareholder director nominations. See SEC Release Nos. 33-9259; 34-65343; IC-29788; September 15, 2011. See also SEC Release Nos. 33-9136; 34-62764; IC-29384 (Aug. 25, 2010); SEC Release Nos. 33-9149; 34-63031; IC-29456 (Oct. 4, 2010); SEC Release Nos. 33-9151; 34-63109; IC-29462 (Oct. 14, 2010).

\*\*\*Effective September 20, 2011, Rule 14a-9 was amended by redesignating Notes (a), (b), (c), and (d) as a., b., c., and d., respectively, as part of the amendments facilitating shareholder director nominations. See SEC Release Nos. 33-9259; 34-65343; IC-29788; September 15, 2011. See also SEC Release Nos. 33-9136; 34-62764; IC-29384 (Aug. 25, 2010); SEC Release Nos. 33-9149; 34-63031; IC-29456 (Oct. 4, 2010); SEC Release Nos. 33-9151; 34-63109; IC-29462 (Oct. 14, 2010).



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](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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

## **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.<sup>4</sup> 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.<sup>5</sup>

## **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.<sup>6</sup> 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<sup>2</sup> 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,<sup>8</sup> 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/downloads/membership/directories/dtc/alpha.pdf>.

*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.<sup>9</sup>

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).<sup>10</sup> 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]."<sup>11</sup>

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).<sup>12</sup> 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.<sup>13</sup>

### **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,<sup>14</sup> 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.<sup>15</sup>

## **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.<sup>16</sup>

#### **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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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> 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.").

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

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

<sup>7</sup> 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.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> 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.

<sup>10</sup> 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.

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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

<sup>15</sup> 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.

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

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

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Modified: 10/18/2011



Division of Corporation Finance  
Securities and Exchange Commission

## Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

**Action:** Publication of CF Staff Legal Bulletin

**Date:** October 16, 2012

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

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

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

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

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

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

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

(i)

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

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

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

### **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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<sup>1</sup> 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.

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

<sup>3</sup> 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.

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

<http://www.sec.gov/interps/legal/cfs1b14g.htm>

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**Karen Doggett (Services - 6)**

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**From:** Marion Edey | \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*  
**Sent:** Saturday, November 24, 2012 12:44 AM  
**To:** Karen Doggett (Services - 6); Marion "ME" Edey  
**Subject:** Dominion shareholder resolution  
**Attachments:** Doc1.doc

Dear Ms.Doggett:

Attached is my letter affirming my intention of holding on to my Dominion stock through the date of the 2013 annual shareholder meeting.

My stock is held in a custody account at the State Street Bank, which should be confirming this fact by separate mail.

Sincerely,  
Marion Edey

Marion Edey

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Karen Doggett  
Governance and Executive Compensation  
Dominion Resources  
120 Tredegar Street  
Richmond, VA 23219

Dear Ms. Doggett:

I am the owner of 865 shares of Dominion Resources stock, and I am writing to affirm that I intend to continue to hold all these shares of stock until after the date of Dominion's 2013 Annual shareholder meeting.

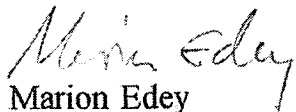
I absolutely will not sell any of my Dominion stock until after that meeting, or at any time during the calendar year 2013.

My shares are held in a custody account at State Street Bank, and I believe the bank is writing to you by separate mail to confirm my ownership of the stock.

If there is anything else I need to do to satisfy your requirements regarding my proposed shareholder resolution, please let me know. You can reach me by email at

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Sincerely,

  
Marion Edey

M. Edey

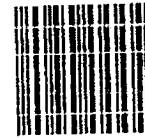
\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*



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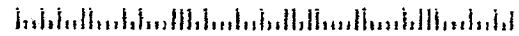
23219

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Karen Doggett  
Governance & Executive Compensation  
Dominion Resources  
120 Tredegar Street  
Richmond, VA 23219

2321984306



**Karen Doggett (Services - 6)**

---

**From:** Emily Murphy [EMurphy@EatonVance.Com]  
**Sent:** Monday, November 26, 2012 3:02 PM  
**To:** Karen Doggett (Services - 6)  
**Cc:** Marion Edey; Susan Martland  
**Subject:** Confirmation of common stock ownership  
**Attachments:** Dominion Resources fbo Edey.PDF

Hello,

As instructed, I am emailing you a copy of a letter stating our client, Marion B. Edey, has held continuously for at least one year, shares of Dominion Resources (D) common stock, custodied at State Street Bank & Trust.

The original of this letter will be sent to you today via certified mail.

Thank you,  
Emily J. Murphy

Emily J. Murphy  
Portfolio Administrator  
Eaton Vance Investment Counsel  
Two International Place - 14th Floor  
Boston, MA 02110

Phone: 617.672.8763  
eFax: 617.672.1763  
[emurphy@eatonvance.com](mailto:emurphy@eatonvance.com)



**STATE STREET.**  
*For Everything You Invest In™*

November 21, 2012

Ms. Carter Reid  
Vice President of Governance & Corporate Security  
Dominion Resources  
P.O. Box 26532  
Richmond, VA 23261

Dear Ms. Reid,

State Street Bank and Trust (DTC participant #2319) is the custodian for the investment portfolio of Marion B. Edey. As of November 16, 2012, this portfolio held, and has held continuously for at least one year, 865 shares of Dominion Resources Inc. (D) common stock. The market value exceeded \$2,000 at all times during the last year.

This investment portfolio is managed by Eaton Vance Investment Counsel (tax identification #20-1227351).

Please feel free to call me if you have any questions or require anything additional. I can be reached at (617) 537-4758.

Sincerely,

A handwritten signature in cursive script that reads "Amy Jo Wilkinson".

Amy Jo Wilkinson  
Vice President  
Wealth Manager Services

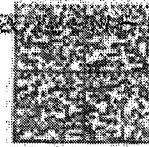
AJW/cjm

cc: Marion B. Edey



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MAILED FROM ZIP CODE 02110

Ms. Carter Reid  
Vice President of Governance & Corporate  
Security  
Dominion Resources  
P.O. Box 26532  
Richmond, VA 23261

23261653232





**STATE STREET.**  
*For Everything You Invest In™*

November 26, 2012

Ms. Karen Doggett  
Dominion Resources  
120 Tredegar Street  
Richmond, VA 23219

Dear Ms. Doggett:

State Street Bank and Trust (DTC participant #2319) is the custodian for the investment portfolio of Marion B. Edey. As of November 16, 2012, this portfolio held, and has held continuously for at least one year, 865 shares of Dominion Resources Inc. (D) common stock. The market value exceeded \$2,000 at all times during the last year.

This investment portfolio is managed by Eaton Vance Investment Counsel (tax identification #20-1227351).

Please feel free to call me if you have any questions or require anything additional. I can be reached at (617) 537-4758.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Jo Wilkinson".

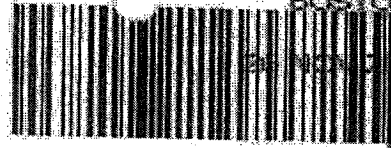
Amy Jo Wilkinson  
Vice President  
Wealth Manager Services

AJW/ejm

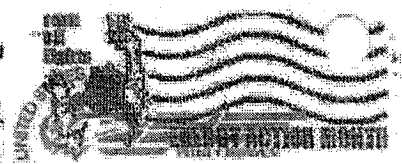
cc: Marion B. Edey

Two H... at 1st Pl - 14<sup>th</sup> Floor  
Boston, MA 02110

**REGISTERED MAIL** BOSTON, MA 020



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**\$ 05.75<sup>00</sup>**

Ms. Karen Doggett  
Dominion Resources  
120 Tredegar Street  
Richmond, VA 23219

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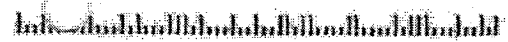


Exhibit B  
Legal Opinion

McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, VA 23219-4030  
Phone: 804.775.1000  
Fax: 804.775.1061  
www.mcguirewoods.com

McGUIREWOODS

December 21, 2012

Board of Directors  
Dominion Resources, Inc.  
120 Tredegar Street  
Richmond, VA 23219

Re: Shareholder Proposal dated November 16, 2012 Submitted by Marion Edey

Ladies and Gentlemen:

In connection with your request to the Staff of the Securities and Exchange Commission (the "Staff") regarding the exclusion from your 2013 annual meeting proxy materials of a shareholder proposal dated November 16, 2012 submitted to Dominion Resources, Inc. (the "Company") by Marion Edey (the "Shareholder Proposal"), you have asked for our opinion as to whether the Shareholder Proposal is a proper subject for shareholder action under the laws of the Commonwealth of Virginia, the Company's jurisdiction of incorporation.

In connection with this opinion letter, we have reviewed the Company's Articles of Incorporation, as in effect on the date hereof (the "Articles"), the Company's Amended and Restated Bylaws, as in effect on the date hereof (the "Bylaws"), the Shareholder Proposal and such other records and documents as we have deemed necessary for purposes of this opinion letter.

The Shareholder Proposal provides that:

**RESOLVED:** That by October 1, 2013, Dominion cease conversions of coal plants to biomass and cease other investments in biomass power, due to the admitted high carbon emissions from biomass power plants and the increasing rejection of "carbon neutral" status for biomass power at the state and federal level.

Under the laws of the Commonwealth of Virginia, the board of directors of a Virginia corporation generally has the exclusive authority to manage the business and affairs of the company. More specifically, Section 13.1-673(B) of the Virginia Stock Corporation Act (the "VSCA") provides that "[a]ll corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in [a voting agreement]." The Articles place the management of Dominion's business and affairs in the hands of its Board of Directors (the "Board") without limitation. Article V of the Articles states that "[t]he business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors . . . ."

The Shareholder Proposal would dictate management of the Company's business and affairs. Neither the Articles nor the Bylaws grant shareholders the authority to determine, or make such business decisions for the Company. Instead, the Articles and Bylaws grant the Board the exclusive authority to direct the management of the business and affairs of the Company. Thus, under Virginia law and the Company's governing documents, it is the exclusive province of the Board to make the strategic decision that the Shareholder Proposal seeks to place in the hands of shareholders. Moreover, Section 13.1-690 of the VSCA requires a director to "discharge his duties as a director . . . in accordance with his good faith business judgment of the best interests of the corporation." The Shareholder Proposal does not permit the members of the Board to satisfy their obligation to exercise their good faith business judgment in accordance with Virginia law. Instead, it would direct the Board to act without permitting the board to consider what action is in the best interests of the Company.

For the foregoing reasons, it is our opinion that the Shareholder Proposal is not a proper subject for shareholder action under the laws of the Commonwealth of Virginia.

The foregoing opinion is being furnished only for the purpose referred to in the first paragraph of this opinion letter. At your request, we hereby consent to your delivery of a copy of this opinion to the Staff in connection with your no-action letter request. The opinion set forth herein is made as of the date hereof, and we assume no obligation to supplement this letter if any applicable laws change after the date hereof or if we become aware after the date hereof of any facts that might change the opinion expressed herein.

Very truly yours,

McGuireWoods LLP