



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-3010

January 16, 2009

Erik T. Hoover
Senior Counsel
E. I. du Pont de Nemours and Company
DuPont Legal, D8048-2
1007 Market Street
Wilmington, DE 19898

Re: E. I. du Pont de Nemours and Company
Incoming letter dated December 23, 2008

Dear Mr. Hoover:

This is in response to your letters dated December 23, 2008 and January 8, 2009 concerning the shareholder proposal submitted to DuPont by the Free Enterprise Action Fund. We also have received letters on the proponent's behalf dated December 30, 2008 and January 12, 2009. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Heather L. Maples
Senior Special Counsel

Enclosures

cc: Steven J. Milloy
Managing Partner & General Counsel
Action Fund Management, LLC
12309 Briarbush Lane
Potomac, MD 20854

January 16, 2009

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: E. I. du Pont de Nemours and Company
Incoming letter dated December 23, 2008

The proposal relates to a report.

There appears to be some basis for your view that DuPont may exclude the proposal under rule 14a-8(h)(3). We note your representation that DuPont included the proponent's proposal in its proxy statement for its 2008 annual meeting, but that neither the proponent nor its representative appeared to present the proposal at this meeting. Moreover, the proponent has not stated a "good cause" for the failure to appear. Under the circumstances, we will not recommend enforcement action to the Commission if DuPont omits the proposal from its proxy materials in reliance on rule 14a-8(h)(3). This response will also apply to any future submissions to DuPont by the same proponent with respect to an annual meeting held during calendar year 2010. In reaching this position, we have not found it necessary to address the alternative basis for omission upon which DuPont relies.

Sincerely,

Michael J. Reedich
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

action fund
management, LLC

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f 301/330 3440

January 12, 2009

RECEIVED
2009 JAN 13 PM 3:50
OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

VIA OVERNIGHT DELIVERY

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

Re: Shareowner Proposal of the Free Enterprise Action Fund to E.I. du Pont de Nemours and Company under Exchange Act Rule 14a-8

Dear Ladies and Gentlemen:

This letter is submitted on behalf of the Free Enterprise Action Fund ("FEAOX") in response to a January 8, 2009 addendum to a request from E.I. du Pont de Nemours and Company ("DuPont") to the Division of Corporation Finance ("Staff") for a no-action letter concerning the above-captioned shareowner proposal.

Action Fund Management, LLC is the investment advisor to the FEAOX and is authorized to act on its behalf in this matter.

We believe that DuPont's addendum is without merit and that there is no legal or factual basis for Dupont to exclude the Proposal from its 2009 Proxy Materials.

The Proposal is Not Excludable Under Rule 14a-8(h)(3)


Dupont's interpretation of Rule 14a-8(h)(3) directly contravenes Rule 14a-8(c)(12) concerning resubmissions of proposals. Moreover, Dupont's interpretation would deny shareholders the opportunity Dupont itself provided shareholders to vote on the Proposal in 2008. Those shareholders voted in sufficient numbers (greater than 3 percent) to automatically include the Proposal in the 2009 proxy.

Conclusion

Based upon the forgoing analysis, we respectfully request that the Staff reject DuPont's request for a "no-action" letter concerning the Proposal. If the Staff does not concur with our position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response. Also, we request to be party to any and all communications between the Staff and DuPont and its representatives concerning the Proposal.

A copy of this correspondence has been timely provided to DuPont and its counsel. In the interest of a fair and balanced process, we request that the Staff notify the undersigned if it receives any correspondence on the Proposal from DuPont or other persons, unless that correspondence has specifically confirmed to the Staff that the Proponent or the undersigned have timely been provided with a copy of the correspondence. If we can provide additional correspondence to address any questions that the Staff may have with respect to this correspondence or DuPont's no-action request, please do not hesitate to call me at 301-258-2852.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line extending to the right.

Steven J. Milloy
Managing Partner & General Counsel

cc: Erik Hoover, DuPont



Erik T. Hoover
DuPont Legal, D8048-2
1007 Market Street
Wilmington, DE 19898
Telephone: (302) 774-0205
Facsimile: (302) 773-5176

January 8, 2009

VIA ELECTRONIC 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: **E. I. DU PONT DE NEMOURS AND COMPANY
PROXY STATEMENT – 2009 ANNUAL MEETING
PROPOSAL BY THE FREE ENTERPRISE ACTION FUND**

Ladies and Gentlemen:

I am writing on behalf of E. I. du Pont de Nemours and Company, a Delaware corporation (“DuPont”), in response to the letter submitted on December 30, 2008 (attached hereto as Exhibit A) by the Free Enterprise Action Fund (“Proponent”) addressing our December 23, 2008 no-action request (“No-Action Request”) in the above-referenced matter. Any capitalized terms not defined herein shall have the same meaning ascribed to them in the No-Action Request. This response to the Proponent’s position is being submitted via electronic mail in accordance with *Staff Legal Bulletin No. 14D* (Nov. 7, 2008). A copy of this letter is also being sent to the Proponent.

The Proposal is Excludable under Rule 14a-8(h)(3)

The Proponent cites no authority for its position that DuPont should be precluded from relying on Rule 14a-8(h)(3) because it allowed the 2007 Proposal to be voted on at its 2008 annual meeting of shareholders. Rule 14a-8(h)(3) simply provides that if the proponent of a shareholder proposal or its 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.”

Neither the Proponent nor its qualified representative appeared at DuPont’s 2008 annual meeting of shareholders to present the 2007 Proposal. DuPont allowed a vote on the 2007 Proposal for the convenience of the shareholders because it was contained in the 2008 Proxy. However, the Proponent’s failure to appear, or have a qualified representative appear, to present a proposal at the annual meeting is not cured if the proposal is ultimately voted upon at the meeting. See e.g. *Proctor & Gamble Co.* (Jul.

24, 2008); *Anthracite Capital, Inc.* (Feb. 5, 2008); *Intel Corporation* (Jan. 22, 2008); *Safeway Inc.* (Mar. 7, 2002); *Eastman Chemical Company* (Feb. 27, 2001); *Entergy Corporation* (Feb. 9, 2001).

The Proposal is Excludable Under Rule 14a-8(i)(12)

Proponent has unilaterally identified a select portion of its 2006 Proposal, namely “costs and benefits to the Company of its climate policy” as the focus of that proposal, ignoring that, among other things, the proposal also requested a report on how “company activity will significantly alter global climate.” Instead, Proponent has chosen to focus on one part of the 2006 Proposal to the exclusion of the rest of that proposal. Proponent’s argument further ignores the following excerpt from our No-Action Request:

To illustrate, the 2007 and 2008 Proposals request that DuPont prepare a report which “may describe and discuss how action taken to date by DuPont to reduce its impact on global climate change has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided.” Similarly, the 2006 Proposal requests that DuPont report on the “[e]xtent to which the Company believes human and Company activity will significantly alter global climate, whether such climate change is necessarily undesirable and whether a cost-effective strategy for mitigating any undesirable change is practical.”

As discussed in our No-Action Request, even where proposals recommended that the company take different actions, but shared similar underlying social or policy issues, the Staff has permitted the exclusion of the later-submitted proposal. See e.g., *Pilgrims Pride Corp.* (Nov. 6, 2006); *Medtronic Inc.* (Jun. 2, 2005); *Dow Jones & Co., Inc.* (Dec. 17, 2004).

For the foregoing reasons, DuPont believes that the arguments contained in Proponent’s December 30, 2008 letter are without merit. If you have any questions or require additional information, please contact me at (302) 774-0205 or my colleague, Mary Bowler, at (302) 774-5303.

Very Truly Yours,



Erik T. Hoover
Senior Counsel

CWB/ETH/rtp
Hoover, Erik/2009 PROXY STATEMENT SHAREHOLDER PROPOSAL
cc: Free Enterprise Action Fund
c/o Action Fund Management, LLC
Attn: Steven J. Milloy
12309 Briarbush Lane
Potomac, MD 20854
Facsimile (301) 330-3440

Exhibit A

action fund
management, LLC

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December 30, 2008

RECEIVED
2009 JAN -9 AM 11:31
CHIEF COUNSEL
CORPORATION FINANCE

VIA OVERNIGHT DELIVERY

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

Re: Shareowner Proposal of the Free Enterprise Action Fund to E.I. du Pont de Nemours and Company under Exchange Act Rule 14a-8

Dear Ladies and Gentlemen:

This letter is submitted on behalf of the Free Enterprise Action Fund ("FEAOX") in response to a December 23, 2008 request from E.I. du Pont de Nemours and Company ("DuPont") to the Division of Corporation Finance ("Staff") for a no-action letter concerning the above-captioned shareowner proposal.

Action Fund Management, LLC is the investment advisor to the FEAOX and is authorized to act on its behalf in this matter.

We believe that DuPont's request is without merit and that there is no legal or factual basis for Dupont to exclude the Proposal from its 2009 Proxy Materials.

Finally, we request that Mr. Thomas J. Kim, chief counsel of the Division of Corporation Finance and a former attorney for the General Electric Company, formally recuse himself from any role in this matter.

I. The Proposal is Not Excludable Under Rule 14a-8(h)(3)

Although the Proponent did not present the Proposal at the meeting, Dupont forfeited its right to rely on Rule 14a-8(h)(3).

Since the Proponent did not attend the meeting, Dupont's initial remedy was to not submit the Proposal to shareholder vote. Instead, Dupont proceeded with the vote. The Proposal received in excess of 3 percent of the shareholder vote.

That Dupont permitted shareholders to vote — votes were reported on Dupont's Form 10-Q for the period ending June 30, 2008 — and that the Proposal received enough votes to

earn automatic inclusion in the 2009 proxy statement, precludes Dupont from excluding the Proposal.

Dupont's attempt to exclude the Proposal is tantamount to denying shareholder votes that it had previously accepted and publicly reported.

II. The Proposal is Not Excludable Under rule 14a-8(i)(12)

Dupont pretends that the Proponent's 2006 Proposal and 2007 Proposal are the same. Although both address global warming, they are materially different.

The 2006 Proposal (*see* Dupont's Exhibit C) focuses on the impact of Dupont's climate policy on Dupont itself — e.g., “costs and benefits to the Company of its climate policy.”

In contrast, the 2007 Proposal (*see* Dupont's Exhibit B) focuses on the impact of Dupont's climate policy on the environment, specifically global climate — e.g., “how action taken to date by DuPont to reduce its impact on global climate has affected global climate...”

Since Dupont and global climate differ materially from one another, the 2006 Proposal and 2007 Proposal also differ materially. Therefore, the 2007 Proposal only needed to attain 3 percent of the shareholder vote, which it did.

III. Thomas Kim should recuse himself from this matter.

We request that Thomas Kim, chief counsel of the Staff, recuse himself from this matter because he is a former attorney for the General Electric Company (“GE”) and he may be biased against the FEAOX because of its shareholder activities.

While Mr. Kim was employed by GE:

- The Staff three times refused to grant GE no-action requests on global warming shareholder proposals filed by the FEAOX;
- A member of Gibson, Dunn & Crutcher, GE's law firm, was sanctioned by his employer for sending an obscene e-mail to the FEAOX related to a shareholder proposal filed with GE. *See* <http://blogs.wsj.com/law/2007/02/12/law-blog-email-of-the-day-by-gibson-dunns-larry-simms/>.
- GE joined the U.S. Climate Action Partnership, many members of which have received shareholder proposals from the FEAOX.

III. Conclusion

Based upon the forgoing analysis, we respectfully request that the Staff reject DuPont's request for a "no-action" letter concerning the Proposal. If the Staff does not concur with our position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response. Also, we request to be party to any and all communications between the Staff and DuPont and its representatives concerning the Proposal.

A copy of this correspondence has been timely provided to DuPont and its counsel. In the interest of a fair and balanced process, we request that the Staff notify the undersigned if it receives any correspondence on the Proposal from DuPont or other persons, unless that correspondence has specifically confirmed to the Staff that the Proponent or the undersigned have timely been provided with a copy of the correspondence. If we can provide additional correspondence to address any questions that the Staff may have with respect to this correspondence or DuPont's no-action request, please do not hesitate to call me at 301-258-2852.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Milloy", with a long horizontal flourish extending to the right.

Steven J. Milloy
Managing Partner & General Counsel

cc: Erik Hoover, DuPont

action fund
management, LLC

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December 30, 2008

RECEIVED
2009 JAN -9 AM 11:31
CHIEF COUNSEL
CORPORATION FINANCE

VIA OVERNIGHT DELIVERY

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

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- A member of Gibson, Dunn & Crutcher, GE's law firm, was sanctioned by his employer for sending an obscene e-mail to the FEAOX related to a shareholder proposal filed with GE. *See* <http://blogs.wsj.com/law/2007/02/12/law-blog-email-of-the-day-by-gibson-dunns-larry-simms/>.
- GE joined the U.S. Climate Action Partnership, many members of which have received shareholder proposals from the FEAOX.

III. Conclusion

Based upon the forgoing analysis, we respectfully request that the Staff reject DuPont's request for a "no-action" letter concerning the Proposal. If the Staff does not concur with our position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response. Also, we request to be party to any and all communications between the Staff and DuPont and its representatives concerning the Proposal.

A copy of this correspondence has been timely provided to DuPont and its counsel. In the interest of a fair and balanced process, we request that the Staff notify the undersigned if it receives any correspondence on the Proposal from DuPont or other persons, unless that correspondence has specifically confirmed to the Staff that the Proponent or the undersigned have timely been provided with a copy of the correspondence. If we can provide additional correspondence to address any questions that the Staff may have with respect to this correspondence or DuPont's no-action request, please do not hesitate to call me at 301-258-2852.

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Steven J. Milloy
Managing Partner & General Counsel

cc: Erik Hoover, DuPont



Erik T. Hoover
DuPont Legal, D8048-2
1007 Market Street
Wilmington, DE 19898
Telephone: (302) 774-0205
Facsimile: (302) 773-5176

December 23, 2008

VIA ELECTRONIC 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: **E. I. DU PONT DE NEMOURS AND COMPANY
PROXY STATEMENT – 2009 ANNUAL MEETING
PROPOSAL BY THE FREE ENTERPRISE ACTION FUND**

Ladies and Gentlemen:

I am writing on behalf of E. I. du Pont de Nemours and Company, a Delaware corporation (“DuPont”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, to respectfully request that the Staff of the Division of Corporate Finance (“Staff”) of the Securities Exchange Commission (“Commission”) concur with DuPont’s view that, for the reasons stated below, the shareholder proposal (“2008 Proposal”) submitted by the Free Enterprise Action Fund (“Proponent”) may properly be omitted from DuPont’s 2009 Annual Meeting Proxy Statement (“2009 Proxy”) to be distributed in connection with the company’s 2009 annual meeting of shareholders.

This request is being submitted via electronic mail in accordance with *Staff Legal Bulletin No. 14D* (Nov. 7, 2008). A copy of this letter is also being sent to the Proponent as notice of DuPont’s intent to omit portions of the Proposal from the 2009 Proxy. DuPont intends to file the 2009 Proxy with the Commission on or about March 20, 2009. Accordingly, we are submitting this letter not less than eighty (80) days before the company intends to file its definitive proxy statement.

The 2008 Proposal requests that DuPont’s Board of Directors:

prepare by October 2009, at reasonable expense and omitting proprietary information, a Global Warming Report. The report may describe and discuss how action taken to date by DuPont to reduce its impact on global climate change has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided.

A copy of the 2008 Proposal is attached hereto as Exhibit A. On November 14, 2007, DuPont received from the Proponent an identical proposal (“2007 Proposal”) for inclusion in DuPont’s 2008 Annual Meeting Proxy Statement (“2008 Proxy”). A copy of the 2007 Proposal as it appeared in the 2008 Proxy is attached hereto as Exhibit B. On November 17, 2006, DuPont received from the Proponent a proposal (“2006 Proposal”) for inclusion in DuPont’s 2007 Annual Meeting Proxy Statement (“2007 Proxy”) which dealt with substantially the same subject matter as the 2007 and 2008 Proposals. A copy of the 2006 Proposal as it appeared in the 2007 Proxy is attached hereto as Exhibit C.

The Proposal is Excludable Under Rule 14a-8(h)(3)

DuPont respectfully requests that the Staff concur with the company’s view that it may exclude the 2008 Proposal from the 2009 Proxy because the Proponent failed to appear and present the 2007 Proposal at DuPont’s 2008 annual meeting of shareholders. In addition, and as permitted under *Staff Legal Bulletin No. 14* (Jul. 13, 2001), DuPont respectfully requests that the Staff confirm that it will not recommend enforcement action if DuPont excludes from its 2010 Annual Meeting Proxy Statement any future proposals submitted by the Proponent.

The cover letter to the 2007 Proposal specifically stated that “[e]ither Mr. Milloy or Dr. Borelli will present the Proposal for consideration at the annual meeting of shareholders.” However, neither the Proponent nor its qualified representative appeared to present the 2007 Proposal at the DuPont’s 2008 annual meeting of shareholders held on April 30, 2008. As evidence of the foregoing, a copy of the relevant excerpt from the transcript of that meeting is attached as Exhibit D.

Rule 14a-8(h)(1) requires from each proponent of a shareholder proposal that “[e]ither 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.” Rule 14a-8(h)(3) further provides that “[i]f 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.”

DuPont held its 2008 annual meeting of shareholders on April 30, 2008. After Mary E. Bowler, Corporate Secretary, placed the 2007 Proposal before the meeting, Charles O. Holliday, Chief Executive Officer and Chairman of the Board of Directors of DuPont, asked if anyone would like to introduce the proposal. Neither the Proponent nor its qualified representative appeared to present the 2007 Proposal. Moreover, the Proponent has not provided any information that would constitute “good cause” for failing to so appear and present the proposal.

The Staff has consistently permitted companies to exclude shareholder proposals under Rule 14a-(h)(3) because a proponent or its qualified representative, without good cause, failed to appear to present a proposal. See, e.g., *Procter & Gamble Co.*, (Jul. 24, 2008); *Comcast Corporation* (Feb. 25, 2008); *Anthracite Capital, Inc.* (Feb. 5, 2008);

Intel Corporation (Jan. 22, 2008); *Crown Holdings, Inc.* (Jan. 9, 2008); *Eastman Kodak Company* (Dec. 31, 2007); *Exxon Mobil Corporation* (Dec. 20, 2007); *Caterpillar Inc.* (Mar. 19, 2007); *Wm. Wrigley Jr. Company* (Dec. 5, 2006); *Eastman Kodak Company* (Jan. 30, 2006); *Community Health Systems, Inc.* (Jan. 25, 2006); *The Coca-Cola Company* (Jan. 23, 2006); *Entergy Corporation* (Jan. 10, 2006).

For the foregoing reason, DuPont respectfully requests that the Staff concur with DuPont's opinion that it may exclude the 2008 Proposal from its 2009 Proxy under Rule 14a-8(h)(3).

The Proposal is Excludable Under Rule 14a-8(i)(12)

DuPont respectfully requests that the Staff concur with the company's view that it may exclude the 2008 Proposal from its 2009 Proxy because: (i) DuPont included the 2007 Proposal in its 2008 Proxy; (ii) DuPont included the 2006 Proposal in its 2007 Proxy; and (iii) the 2007 Proposal failed to received the requisite percentage of votes required under Rule 14a-8(i)(12)(ii).

Rule 14a-8(i)(12) provides that:

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:

- (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

The 2006 Proposal requested that

[T]he Board of Directors prepares by October 2007, at reasonable expense and omitting proprietary information, a Global Warming Right-to-Know Report. The report may discuss the:

1. Specific scientific and economic data and studies relied on to formulate the Company's climate policy;
2. Extent to which the Company believes human and Company activity will significantly alter global climate, whether such climate change is necessarily undesirable and whether a cost-

- effective strategy for mitigating any undesirable change is practical;
3. Estimates of costs and benefits to the Company of its climate policy;
 4. Cash and in-kind contributions made to nonprofit groups that advocate for greenhouse gas emission schemes like the Kyoto Protocol.

The SEC has concluded that the analysis of a request under Rule 14a-8(i)(12) should be “based upon a consideration of the substantive concerns raised by a proposal rather than the specific language or actions proposed to deal with those concerns.” *Exchange Act Release No. 34-20091* (August 16, 1983). In its responses to a number of previous no-action requests, the Staff has not required proposals be identical in order for the company to rely on Rule 14a-8(i)(12). Instead, the Staff has focused on the substantive concerns raised by the proposal, consistently concluding that companies may exclude a proposal that is based on similar substantive concerns as presented in a prior proposal, regardless of differences in language or actions recommended. See, e.g. *Ford Motor Company* (Feb. 28, 2007) (proposal requesting that the company institute and report on an executive compensation program that tracks progress in improving the fuel economy of the company's new light truck and passenger vehicles was excludable as substantially the same subject matter as a prior proposal requesting that the company institute, and report on, an executive compensation review linking a significant portion of senior executive compensation to progress in reducing lifetime product greenhouse gas emissions from the its new passenger vehicles); *Bank of America Corporation* (Jan. 11, 2007) (proposal requesting that the company report on certain detailed information relating to its political contributions and expenditures, with such report presented to the company's audit committee and published on its website, was excludable as substantially the same subject matter as a prior proposal requesting that the company publish annually a very broad and detailed statement of political contributions, including dates, amounts and the identity of the recipient); *Bristol-Myers Squibb Company* (Feb. 11, 2004) (proposal requesting that the company review and report on pricing and marketing policies and its response to pressure to increase access to prescription drugs was excludable as substantially the same subject matter as prior proposals requesting the creation and implementation of a policy of price restraint on pharmaceutical products).

Even where proposals recommended that the company take different actions, but shared similar underlying social or policy issues, the Staff has permitted the exclusion of the later-submitted proposal. See, e.g., *Pilgrims Pride Corp.* (Nov. 6, 2006) (proposal requesting that the company report on its evaluations of controlled-atmosphere killing was excludable as substantially the same subject matter as a prior proposal requesting that the company report on the feasibility of the company requiring its suppliers to phase in controlled-atmosphere killing); *Medtronic Inc.* (Jun. 2, 2005) (proposal requesting that the company consider listing on the company's website all political and charitable contributions was excludable as substantially the same subject matter as a prior proposal requesting that no charitable contributions be made at the corporate level); and *Dow Jones & Co., Inc.* (Dec. 17, 2004) (proposal requesting that the company publish in its

proxy statement information relating to its process for donating to a not-for-profit organization was excludable as substantially the same subject matter as a prior proposal requesting an explanation of the procedures governing charitable donations by the company).

Although the language of the 2006 Proposal was different from the 2007 and 2008 Proposals, it clearly addressed the same subject matter, namely the extent to which DuPont believes its actions to reduce global warming have impacted the global climate. To illustrate, the 2007 and 2008 Proposals request that DuPont prepare a report which “may describe and discuss how action taken to date by DuPont to reduce its impact on global climate change has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided.” Similarly, the 2006 Proposal requests that DuPont report on the “[e]xtent to which the Company believes human and Company activity will significantly alter global climate, whether such climate change is necessarily undesirable and whether a cost-effective strategy for mitigating any undesirable change is practical.” Although the 2006 Proposal also asks for the additional information described in numbered paragraphs (1), (3) and (4) thereof, such information is best characterized as a more detailed request than the request to “describe and discuss” from the 2007 and 2008 Proposals.

Because the 2008 Proposal deals with substantially the same subject matter as other proposals that have been previously included in DuPont’s proxy materials in two (2) of the preceding five (5) calendar years, DuPont may exclude the 2008 Proposal if the last time a proposal dealing with substantially the same subject matter was voted on at an annual meeting, it received less than six percent (6%) of the vote.

When the 2007 Proposal was submitted and voted upon at the 2008 Annual Meeting, 18,059,079 votes were cast “for” the Proposal and 536,222,623 votes were cast “against” the Proposal. Pursuant to *Staff Legal Bulletin No. 14* (Jul. 13, 2001), only votes cast “for” and “against” a proposal are included in the calculation of the shareholder vote on the proposal. Accordingly, the number of shares voting “for” the 2007 Proposal constituted 3.26% of the total number of shares voting on the Proposal, well below the 6% threshold established in Rule 14a-8(i)(12)(ii).

For the foregoing reason, DuPont respectfully requests that the Staff concur with DuPont’s opinion that it may exclude the 2008 Proposal from its 2009 Annual Meeting Proxy Statement under Rule 14a-8(i)(12).

If you have any questions or require additional information, please contact me at (302) 774-0205 or my colleague, Mary Bowler, at (302) 774-5303.

Very Truly Yours,



Erik T. Hoover
Senior Counsel

CWB/ETH/rtp
Hoover, Erik/2009 PROXY STATEMENT SHAREHOLDER PROPOSAL

cc: with attachment
Free Enterprise Action Fund
c/o Action Fund Management, LLC
Attn: Steven J. Milloy
12309 Briarbush Lane
Potomac, MD 20854
Facsimile (301) 330-3440

EXHIBIT A

action fund
management, LLC

12309 briarbush lane
potomac, md 20854
T 301/258 2852
F 301/330 3440

BY FAX

November 17, 2008

Mary E. Bowler
Corporate Secretary
Dupont
1007 Market Street
Wilmington, DE 19898

Dear Ms. Bowler:


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

The Free Enterprise Action Fund ("FEAOX") is the beneficial owner of approximately 776 shares of the Company's common stock, 481 shares of which have been held continuously for more than a year prior to this date of submission. The FEAOX intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder's appropriate verification of the FEAOX's beneficial ownership will follow.

The FEAOX's designated representatives on this matter are Mr. Steven J. Milloy and Dr. Thomas J. Borelli, both of Action Fund Management, LLC, 12309 Briarbush Lane, Potomac, MD 20854. Action Fund Management, LLC is the investment adviser to the FEAOX. Either Mr. Milloy or Dr. Borelli will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Mr. Milloy at 301-258-2852. Copies of correspondence or a request for a "no-action" letter should be forwarded to Mr. Milloy c/o Action Fund Management, LLC, 12309 Briarbush Lane, Potomac, MD 20854.

Sincerely,



Steven J. Milloy
Managing Partner
Investment Adviser to the FEAOX, Owner of Dupont Common Stock

Attachment: Shareholder Proposal: Global Warming Report

Copies: Feary - Ann - Erik

RECEIVED
NOV 18 2008

BY:

Global Warming Report

Resolved: The shareholders request that the Board of Directors prepare by October 2009, at reasonable expense and omitting proprietary information, a Global Warming Report. The report may describe and discuss how action taken to date by Dupont to reduce its impact on global climate change has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided.

Supporting Statement:

Dupont says on its web site that it supports action on global warming. Dupont is a member of the U.S. Climate Action Partnership (USCAP), a group that lobbies for global warming regulation.

But scientific data show that atmospheric levels of carbon dioxide, the greenhouse gas of primary concern in global warming, do not drive global temperature. *See e.g.*, <http://youtube.com/watch?v=XDI2NVTYRXU>.

Even assuming for the sake of argument that atmospheric carbon dioxide levels affect global temperatures, the U.S. Environmental Protection Agency recently projected that U.S. regulation of manmade greenhouse gas emissions would have a trivial impact on atmospheric concentrations of carbon dioxide. *See* <http://www.epa.gov/climatechange/downloads/s1766analysispart1.pdf>.

So U.S. greenhouse gas regulation is not likely to discernibly affect global climate.

Global warming regulation is expected to harm the economy. The Congressional Budget Office, U.S. Department of Energy and prominent economists such as Alan Greenspan, Arthur Laffer and Greg Mankiw all say that cap-and-trade — a type of greenhouse gas regulation promoted by USCAP — would reduce economic growth. *See e.g.*, http://www.junkscience.com/failure_to_disclose.pdf.

Shareholders want to know how Dupont's actions relating to global warming may be affecting global climate.



FAX

To: Mary Bowler
Fax: 302-773-2631
Pages: 3
Re: Shareholder Proposal

From: Steven Milloy
Action Fund Management, LLC
advisor to the Free Enterprise Action Fund
12309 Briarbush Lane
Potomac, MD 20854

T: 301-258-2852
F: 301-330-3440
E: steve@feaox.com
W: www.feaox.com

RECEIVED
NOV 18 2004

BY:

Note: The information contained in this fax is intended only for the individual to whom it is addressed or for the agent responsible to deliver it to the intended recipient. If you have received this communication in error please immediately notify us by telephone. If there are any problems with the receipt of this document, please call us at **301.258.2852**.



Mary E. Bowler
Corporate Secretary & Corporate Counsel
DuPont Legal
1007 Market Street, D9058
Wilmington, DE 19898
Tel. (302) 774-5303; Fax (302) 774-4031
E-mail: Mary.E.Bowler@usa.dupont.com

November 26, 2008

VIA EMAIL AND OVERNIGHT MAIL

Mr. Steven J. Milloy
Managing Partner
Action Fund Management LLC
12309 Briarbush Lane
Potomac, MD 20854

Dear Mr. Milloy:

This is to confirm that DuPont is in receipt of your letter dated November 17, in which you request that the Company include in the proxy materials for its 2009 Annual Meeting a proposal related to a report on global warming. SEC Rules 14a-8(b) and (f), copies of which are enclosed, require proponents of shareholder proposals to provide documentary support for beneficial ownership of the Company's common stock. Please forward to me a brokerage statement or other documentation reflecting your ownership of DuPont stock, as required by the enclosed rules.

We will advise you in due course of management's position on your proposal.

Very truly yours,

Mary E. Bowler
Corporate Counsel &
Corporate Secretary

cc: Erik Hoover

MEB/pae

Attachment

red where necessary rather than the costs of mailing.

2. 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-7(e)(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 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 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter) and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, 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 10-QSB (§ 249.308b 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 mail 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 mail its proxy materials.

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

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

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

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

(h) Question 8: Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

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

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to ex-

EXHIBIT B

5 — STOCKHOLDER PROPOSAL ON GLOBAL WARMING REPORT

The Free Enterprise Action Fund, owner of 776 shares of DuPont Common Stock, has given notice that it will introduce the following resolution and statement in support thereof:

Resolved: The shareholders request that the Board of Directors prepare by October 2008, at reasonable expense and omitting proprietary information, a Global Warming Report. The report may describe and discuss how action taken to date by DuPont to reduce its impact on global climate change has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided.

Stockholder's Statement

DuPont says on its web site that it supports action on global warming. DuPont is a member of the U.S. Climate Action Partnership (USCAP), a group that lobbies for global warming regulation.

But scientific data show that atmospheric levels of carbon dioxide, the greenhouse gas of primary concern in global warming, do not drive global temperature. See e.g., <http://youtube.com/watch?v=XDI2NVTYRXU>.

Even assuming for the sake of argument that atmospheric carbon dioxide levels affect global temperatures, the U.S. Environmental Protection Agency recently projected that U.S. regulation of manmade greenhouse gas emissions would have a trivial impact on atmospheric concentrations of carbon dioxide. See <http://www.epa.gov/climatechange/downloads/s1766analysispart1.pdf>.

So U.S. greenhouse gas regulation is not likely to discernibly affect global climate.

Global warming regulation is expected to harm the economy. The Congressional Budget Office, U.S. Department of Energy and prominent economists such as Alan Greenspan, Arthur Laffer and Greg Mankiw all say that cap-and-trade — a type of greenhouse gas regulation promoted by USCAP — would reduce economic growth. See e.g., http://www.junkscience.com/failure_to_disclose.pdf.

Shareholders want to know how DuPont's actions relating to global warming may be affecting global climate.

EXHIBIT C

8 — STOCKHOLDER PROPOSAL ON GLOBAL WARMING

Action Fund Management, LLC, 12309 Briarbush Lane, Potomac, Maryland 20854, owner of 481 shares of DuPont Common Stock has given notice that it will introduce the following resolution and statement in support thereof:

Resolved: The shareholders request that the Board of Directors prepare by October 2007, at reasonable expense and omitting proprietary information, a Global Warming Right-to-Know Report. The report may discuss the:

1. Specific scientific and economic data and studies relied on to formulate the Company's climate policy;
2. Extent to which the Company believes human and Company activity will significantly alter global climate, whether such climate change is necessarily undesirable and whether a cost-effective strategy for mitigating any undesirable change is practical;
3. Estimates of costs and benefits to the Company of its climate policy;
4. Cash and in-kind contributions made to nonprofit groups that advocate for greenhouse gas emission schemes like the Kyoto Protocol.

Stockholder's Statement

DuPont participates in public policy advocacy and/or lobbying activities the goal of which is to enact legislation and/or promulgate regulation to limit emissions of greenhouse gases, such as the Kyoto Protocol and similar international treaties.

But the Kyoto Protocol and other schemes to limit greenhouse gas emissions may only raise energy prices and reduce economic growth without providing commensurate environmental benefits.

DuPont stated in its annual report for 2005 and its quarterly report for the period ending September 30, 2006 that, "Price increases for energy costs and raw materials could have a significant impact on the company's ability to sustain and grow earnings."

DuPont, therefore, may be advocating and/or lobbying against its own earnings and shareholder value by promoting schemes to limit greenhouse gas emissions.

Shareholders have the right to know the basis of the Company's advocating for greenhouse gas limits and whether such advocacy may adversely impact shareholder value.

EXHIBIT D

1 care to comment on the proposal? Anyone like to
2 speak opposite this proposal?

3 MS. BOWLER: Proposal No. 5 is
4 submitted by the Free Enterprise Action Fund and
5 requests that the Board prepare a global warming
6 report. The proposal begins on page 52 of the
7 proxy statement. The resolution included in the
8 proposal is before the meeting.

9 MR. HOLLIDAY: Someone like to
10 introduce this proposal? Are there any comments
11 or questions from others about -- microphone No.
12 1.

13 MR. BAKER: Mr. Chairman, my name is
14 Joe Baker. I am the custodian for DuPont stock
15 for my seven grandchildren, and I'd like to speak
16 in opposition to Proposal 5.

17 I spent seven years supervising a
18 National Guard meteorology crew, and in the March
19 edition of "Mensa" magazine, there were a series
20 of articles concerning global warming and the
21 politics surrounding it. There's plenty of
22 political input.

23 If you analyze Al Gore's book, you'll
24 find it long on political reasoning, very short



1 on substantial scientific data. They do
2 cherry-picking in citing examples to support
3 their input. For example, while it's certainly
4 true that there is some global warming at the
5 North Pole, there is actually global cooling at
6 the South Pole. And as most anybody acquainted
7 with long-range studies of meteorology can tell
8 you, the axis of the earth does shift from time
9 to time. And if you look at the history of
10 weather, you'll find that global warming for the
11 entire earth has changed about eight-tenths of
12 1 degree Celsius since 1880.

13 We're asked to spend billions of
14 dollars in expense and in restrictions which are
15 counterproductive to the progress of humanity to
16 support a political agenda. There are over 400
17 scientists that are not in agreement with some of
18 the proposals of people like Al Gore and Ralph
19 Nader.

20 The culture of EPA, and Nader-run
21 organizations, public citizen for this, that and
22 the other, are never satisfied. Ralph Nader
23 started in the -- started attacking the
24 automobile business in the 1960s, and if you had



1 an air bag between each of your toes, he still
2 wouldn't be satisfied.

3 Violation of Congressional-mandated
4 public hearings, when EPA moves in, is standard.
5 They don't obey the law.

6 Innovation is fine. Certainly a
7 company like DuPont contributes greatly to our
8 progress and innovation. The increase in the
9 supply of food is not only laudable, but
10 critically important.

11 But spending for something --
12 spending large amounts of money for something
13 that will not affect the course of global warming
14 significantly at all is a waste of time, a waste
15 of money, and not in the best interest of DuPont
16 customers, shareholders, or employees. Thank
17 you, sir.

18 MR. HOLLIDAY: Thank you, Mr. Baker.
19 We appreciate your comments.

20 Other comments on this proposal? No.
21 1.

22 MR. WEIGERT: My name is Frank
23 Weigert. I would like to speak against the
24 shareholders' proposal. Most of you probably



1 don't have time to read the references that they
2 cite, but understanding what they cited and why
3 they cited it is important to understand what
4 their agenda is.

5 The first one is to YouTube. This is
6 a site where teenagers present videos of their
7 drunken exploits. It is not where you go to read
8 about scientific truth.

9 The second one is more promising.
10 It's an EPA site. They say that the EPA says
11 that nothing America can do will influence global
12 warming. That, in fact, is not what the site
13 says. The senate asked the EPA to evaluate three
14 very specific bills, and the EPA responded that
15 none of those bills would do anything to mitigate
16 global warming. To therefore say that because
17 none of those bills do, the U.S. can do nothing
18 is simply illogical.

19 The third one is to a site called
20 junkscience.com. I encountered this site over a
21 decade ago, and I started worrying about it
22 because I could not tell, in general surfing,
23 whether it was debunking junk science or
24 presenting it. So I looked up the issue of Freon



1 ozone, and they said -- and this was 10 years
2 after DuPont phased out the Freons -- that the
3 Freon ozone controversy was junk science.

4 I concluded, after reading a few
5 more, that junkscience.com is a site about junk
6 science, not one that debunks it. And this is
7 what the shareholders' proposal sites in support
8 of their proposal. This proposal is junk. It
9 should be rejected, and even more strongly, it
10 should be rejected globally.

11 MR. HOLLIDAY: Thank you for your
12 comments.

13 Other comments on this proposal?

14 Mary.

15 MS. BOWLER: Proposal No. 6 is
16 submitted by The Sisters of Charity of Saint
17 Elizabeth and a number of co-filers identified in
18 the proxy statement. It requests that the Board
19 review and amend the company's human rights
20 policy to include respect for, and adherence to,
21 seed-saving rights. The proposal begins on page
22 54 of the proxy statement, and the resolution
23 included in the proposal is before the meeting.

24 MR. HOLLIDAY: Would someone like to

