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

DIVISION OF
CORPORATION FINANCE

March 14, 2018

Robert A. Cantone
Proskauer Rose LLP
rcantone@proskauer.com

Re: Celgene Corporation
Incoming letter dated February 6, 2018

Dear Mr. Cantone:

This letter is in response to your correspondence received on February 6, 2018 and February 22, 2018 concerning the shareholder proposal (the "Proposal") submitted to Celgene Corporation (the "Company") by James McRitchie and Myra K. Young (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponents dated February 11, 2018 and February 25, 2018, and correspondence on the Proponents' behalf dated February 8, 2018. Copies of all of the correspondence on which this response is based 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,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: John Chevedden
***

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

March 14, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Celgene Corporation
Incoming letter dated February 6, 2018

The Proposal asks the board to amend the Company's proxy access bylaw provisions in the manner specified in the Proposal.

We are unable to concur in your view that the Company may exclude the Proposal under rules 14a-8(b) and 14a-8(f). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information presented, we are unable to conclude that the Company's proxy access provisions compare favorably with the guidelines of the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Evan S. Jacobson
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 proposal 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 and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate 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 adversarial procedure.

It is important to note that the staff'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 company's management omit the proposal from the company's proxy materials.

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

February 25, 2018

Re: Celgene Corporation
Shareholder Proposal submitted by James McRitchie & Myra K. Young
SEC Rule 14a-8

To Whom It May Concern:

This is in response to a February 22, 2018, rebuttal by Proskauer Rose LLP, acting as an agent of Celgene Corporation (the "Company"). This supplements our letter of February 11, 2018. Below I address the Company's remarks in the order raised.

Staff Legal Bulleting 14I

The Company raises no new information in this section. By use of the term "purportedly" in the opening paragraph and other mechanisms elsewhere, the Company continues to attempt to cast doubt on the fact that we appointed Mr. Chevedden to act as our agent and clearly designated stockholder proxy access amendments as the specific topic of our proposal. The evidence already presented is clear. Mr. Chevedden acted as our agent and the specific topic of our proposal was clearly identified.

Rule 14a-8(i)(3)

Again, there is nothing new in the latest rebuttal. The Company lost any credibility in attacking the supposed ambiguity of the meaning of "average member" when they cited *H&R Block* (July 21, 2017) for its clarity.

> In H&R Block, the proposal's goal was clear – by not including a limit on the number of shareholders that can aggregate their shares to achieve the ownership threshold, 'each' member of the nominating group would, mathematically and logically, not need to hold as many shares of the company's stock *on average*." (our emphasis)

I wrote the draft language used in H&R Block but revised it for greater clarity before submitting similar language to the Company. As we pointed out in our rebuttal of

February 11, 2018, raising the cap does not change the ownership threshold for *each* member of a nominating group; it changes the *average* ownership threshold. Substitute the word ‘average’ for the word ‘each’ in the Company’s sentence and we no longer need those last two key words, ‘on average.’ As pointed out, the Company has essentially disproven their own argument, since they needed to include ‘on average’ for clarification in their objection to our use of the word average.

Unlike the many no-actions cited by the Company, the actions sought by the Proposal of the Company are clear. The Company would remove the 20-member cap on stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors under our Company’s proxy access provisions.

Rule 14a-8(i)(10)

The Company actually makes a point in this section. Their bylaws are different than those of many firms and do not require that each member of a nominating group hold a specific number of shares over the three year holding period, only that the same 20 do so in aggregate.

However, in its letter to Staff of February 6, 2018, the Company asserted their top 20 institutional shareholders have “all held their shares of Company Common stock for at least three years.” The table we presented shows that at least one of the top 20 owned *no* shares prior to the September 2017 reporting period. Therefore, we have already shown the Company’s statement to be wrong.

In order to credibly make such a statement, the Company would need to include at least twelve quarters of data for each of the top 20 institutional shareholders. They submitted no such data but merely presented an unsupported statement, which was proven untrue.

The Company has done nothing to address the Proposal’s underlying concern, decreasing the average amount of stock that must be held by the average member of a nominating group. An aggregation limit of 20 does not substantially implement or compare favorably to an aggregation limit of infinity.

Despite the burden resting with the Company, the no-action request is devoid of any significant analysis of the impact of the holding period on the number of eligible shares and the ability of stockholders to form nominating groups. The analysis fails to even look back two quarters and certainly not twelve quarters.

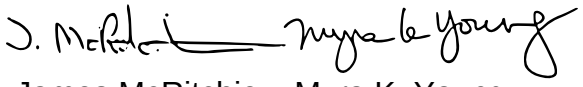
Reference Rule 14a-8(g):

> 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.

Conclusion

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of subdivisions (b), (f), (i)(3) or (i)(10), therefore, have the burden of showing ineligibility, failure to meet procedural requirements when a deficiency has been duly notified and was not corrected, violation of proxy rules, and substantial implementation of the proposal. The Company has failed to meet this burden on all counts and Staff must deny the no-action request. I would be pleased to respond to Staff questions. You can reach me directly by e-mailing jm@corpgov.net.

Sincerely,



James McRitchie Myra K. Young
Shareholder Advocate

cc: Mr. Gerald F. Masoudi <GMasoudi@celgene.com>
Mr. John Chevedden ***

Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

February 22, 2017

Robert A. Cantone
Member of the Firm
d 212.969.3235
f 212.969.2900
rcantone@proskauer.com
www.proskauer.com

By Email

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

Re: Celgene Corporation – Notice of Intent to Omit Stockholder Proposal from Proxy Materials Pursuant to Rule 14a-8 Promulgated under the Securities Exchange Act of 1934, as Amended, and Request for No-Action Ruling

Dear Ladies and Gentlemen:

We refer to our letter dated February 6, 2018 (the "No-Action Request") submitted on behalf of our client, Celgene Corporation ("Celgene"), under Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended, to notify the Securities and Exchange Commission of Celgene's intention to exclude from the proxy materials for Celgene's 2018 Annual Meeting of Stockholders to be held on June 13, 2018 (the "2018 Proxy Materials") a shareholder proposal (the "Proposal") submitted by John Chevedden, purportedly as agent on behalf of James McRitchie and Myra K. Young (the "Proponents").

This letter is in response to the letter to the Staff, dated February 11, 2018, submitted by one of the Proponents, Mr. McRitchie (the "McRitchie Letter"), and supplements Celgene's No-Action Request. A copy of this letter also is being sent to Mr. McRitchie and Mr. Chevedden.

Application of Staff Legal Bulletin 14I

As we noted in the No-Action Request, on December 19, 2017, in accordance with Rule 14a-8(f), Celgene sent a letter to Mr. Chevedden notifying him that the documentation provided by him purportedly evidencing his authority to act as agent for the Proponents (a copy of which was attached as Exhibit A to the No-Action Request) (the "Original Delegation Letter") failed to comply with the specificity requirement of Staff Legal Bulletin 14I ("SLB 14I"), among other defects. A copy of such letter to Mr. Chevedden (the "Deficiency Letter") was attached to the No-Action Request as Exhibit B. On December 29, 2018, Mr. Chevedden responded to the Deficiency Letter in a manner that, as explained in the No-Action request, failed to satisfy SLB 14I's specificity requirement any more than the Original Delegation Letter did. A copy of that

letter submitted by Mr. Chevedden was attached as Exhibit C to the No-Action Request (the "Chevedden Response Letter"). At no time prior to the February 11, 2018 did either of the Proponents themselves respond to the Deficiency Letter.

Now, the McRitchie Letter appears to contend, without citing authority, that (1) Celgene was obliged in its Deficiency Letter to tell the Proponents how they should go about complying with the specificity requirement of SLB 14I, and (2) that Celgene was obliged to send the Proponents a second deficiency letter with respect to Chevedden's Response Letter. Moreover, the McRitchie Letter appears to assert that, having failed to comply with these purported obligations, Celgene may not assert in the No-Action Request that the Original Delegation Letter and the Chevedden Response Letter failed to conform to SLB 14I. Celgene believes that it has satisfied its obligations to the Proponents pursuant to Rule 14a-8(f) and that the example provided in SLB 14I provides perfect clarity about the level of specificity that is expected with respect to a proposal involving a specific stock ownership threshold. The McRitchie Letter's attempt to shift responsibility for the Proponents' non-compliance with SLB 14I to Celgene is without basis in SLB 14I or Rule 14a-8.

Exclusion Under Rule 14a-8(i)(3)

Although the McRitchie Letter contends that the phrase "average member of a nominating group," as used in the resolution they propose to be voted on, is not impermissibly vague and indefinite, the McRitchie Letter fails to explain what an "average member of a nominating group" actually means. Instead, the McRitchie Letter elides the ambiguity by addressing only the average stock ownership of members of a group. It does not address the concern expressed in the No-Action Request that the Proposal is unclear about how removing the proxy access by-law's aggregation cap of 20 stockholders would achieve the Proposal's stated goal of decreasing the average amount of Celgene common stock held by the "average" member of the nominating group. We submit that the Proponents are unable to address that concern because the phrase "average member" is, in the context of the Proposal, simply incomprehensible.

Exclusion Under Rule 14a-8(i)(10)

The McRitchie Letter attempts to refute Celgene's contention that its Proxy Access By-Law substantially implements the primary objective of the Proposal by deriding Celgene's analysis of publicly available information about the stock holdings of Celgene's top 20 institutional stockholders as of September 30, 2017. It does so by asserting that there have been changes in the stock ownership level of all but one of such institutions "in the last quarter" and that Celgene's "bylaws require not just that a shareholder hold some Company stock but the "Required Shares" be held "continuously for at least three years."

In fact, Celgene's Proxy Access By-Law defines an "Eligible Stockholder," in relevant part, as follows:

> "Eligible Stockholder" means a stockholder or group of no more than twenty stockholders (counting as one stockholder, for this purpose, any two or more funds that are part of the same Qualifying Fund Group) that (A) has Owned continuously for at least three years (the "Minimum Holding Period") a number of shares of stock of the Corporation that represents at least three percent of the outstanding shares of each class of stock of the Corporation entitled to vote as of the date the Nomination Notice is delivered to or mailed and received by the Secretary in accordance with this Section 1.9 (the "Required Shares") …"

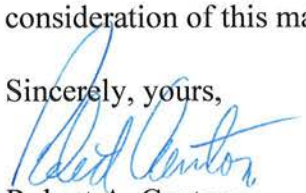
The Proxy Access By-Law does not, as the McRitchie Letter suggests, require that each member of a group have held the same number of shares for three years. Although the Proponents argue that the "bylaws require not just that a shareholder hold some shares of stock … for three years," that is precisely what the Proxy Access By-Law requires of each member of a group, provided that the group has owned continuously the requisite percentage for three years.

Conclusion

For the reasons stated above and in the No-Action Request, we respectfully request, on behalf of Celgene, that the Staff confirm that it will not recommend enforcement action if the Proposal is excluded from Celgene's 2018 Proxy Materials. We would be pleased to provide any additional information and answer any questions that the Staff may have regarding this matter. I can be reached by phone at (212) 969-3235 and by email at rcantone@proskauer.com.

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

Sincerely, yours,



Robert A. Cantone

cc: James McRitchie
John Chevedden

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

February 11, 2018

Re: Celgene Corporation
Shareholder Proposal submitted by James McRitchie & Myra K. Young
SEC Rule 14a-8

To Whom It May Concern:

We are submitting this letter pursuant to Rule 14a-8(j) of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), to request that staff of the Division of Corporate Finance (the "Staff") deny the no-action request by Proskauer Rose LLP, "purportedly" acting as an agent of Celgene Corporation (the "Company"), dated Feb. 6, 2018, with respect to the Company's plans to exclude the James McRitchie & Myra K. Young (the Proponents) shareholder proposal ("Proposal") to amend the Company's shareholder proxy access requirements from the Company's proxy materials for its 2018 annual meeting of shareholders.

In advancing their arguments, the Company has not met the burden of proof required by Rule 14a-8(g). They misinterpret SEC guidance, failed to provide 14 day notice regarding specific defects, demonstrate the failure of their own attempt to confuse the meaning of 'average' by resorting the word 'average' in arguing that 'each' would have been a better choice of words, present unverifiable data, dismiss the importance of their own bylaw requirement regarding the need to hold "Required Shares" "continuously for at least three years," misinterpret the meaning of substantial implementation, and present arguments that belong in an opposition statement, not a no-action request.

Company falsely claims Proposal may be excluded under Rule 14a-8(b)/(f) because the Proponents failed to properly delegate authority.

The Company bases its contention on a misreading of SLB 14I. According to the Company:

> …documentation that authorizes a proxy to make a shareholder proposal must not only identify the general nature of the eligibility requirement (ownership of a certain percentage of the outstanding shares), but also the specific

> percentage sought by the proposal. Thus, in the SLB 14I example, a proxy authorization specifying only a proposal to lower the threshold for calling a special meeting or a proposal to amend a threshold for calling a special meeting would not be sufficient…

SLB 14I notes that a shareholder's delegation of authority is expected to "identify the specific proposal to be presented." SLB 14I goes on to provide an *example* for a "proposal to lower the threshold for calling a special meeting from 25% to 10%" but there is nothing mandating "the specific percentage sought by the proposal" or requiring the authorization to include all the exact details of each provision of a proposal. If Staff wanted such detail, they could have simply required the shareholder to sign the proposal itself. They did not.

The Company notes it sent the "Deficiency Letter" on December 19, 2017. However, with regard to this issue, that letter states in relevant part:

> …we note the letter states that the Proponents are "delegating John Chevedden to act as our agent regarding *this Rule 14a-8 proposal*" (emphasis added). However, the letter signed by the Proponents does not identify the submitted proposal regarding an amendment to Calgene's proxy access bylaws as the specific proposal for which they are delegating you to act as their agent, or proxy, as required by SLB 14I.

This makes it appear the Company did not know Proponents had delegated Mr. Chevedden to submit the Proposal regarding an amendment to Calgene's proxy access bylaws. However, as the Company acknowledges in the last paragraph on page 3 of their no-action request, the original delegation letter had already stated "that the Proponents are submitting a shareholder proposal 'to amend proxy access requirements.'"

Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder's failure to provide required information are required to notify the proponent of "the specific defect(s)" within 14 days of receiving the proposal. Since the Company claimed the specific defect was that the delegation letter did not identify the amendment of Calgene's proxy access bylaws as the specific proposal being delegated, we simply noted that again in a more prominent place at the bottom of the original delegation letter. We signed it once again so there would be no mistake that we were indeed authorizing Mr. Chevedden to file the specified proposal entitled "Stockholder Proxy Access Amendments."

If the Company had asked us to sign the Proposal itself, we would have gladly done so. Instead, the Company conveyed to us that the specific defect was that we had not identified the Proposal as one "regarding an amendment to Calgene's proxy access bylaws," when we clearly had done so. If there was any defect in the delegation, the Company failed to notify the Proponent of the specific defect(s) within 14 days, as required.

It is only through the no-action letter that we learn that the Company appears to interpret SLB 14I as requiring that the delegation letter specifically provide "the specific percentage sought by the proposal in detail." Although we disagree with the Company's interpretation of SLB 14I, we would have responded differently if they had said the delegation failed to identify the specific percentage sought by the Proposal, instead of saying the Proposal did not identify proxy access amendments as the specific topic.

Company falsely claims Proposal may be excluded under Rule 14a-8(i)(3) as vague, indefinite and inherently misleading.

The Company claims it would be unable "to determine with any reasonable certainty exactly what actions or measures the Proposal requires" because they are unclear how removing the cap on stockholders that can aggregate their shares can achieve the Proposal's goal of decreasing the average amount of Calgene common stock required to be held by the average member of the nominating group.

First, what the Proposal "requires" is very explicit, whether or not the Company fails to grasp the rationale for such a change.

> No limitation shall be placed on the number of stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors under our Company's proxy access provisions.

Second, decreasing the average amount of stock held by the average member of the nominating group is not a difficult mathematical concept. The Company clearly knows what average means and how it applies to the current 20 member limit. At the end of the first full paragraph on page 11 of their no-action request, the Company states as follows (my emphasis):

> In addition, as of September 30, 2017, 102 institutional investors, representing more than 58.11% of the Company's outstanding common stock, owned 0.15% or more of the Company's outstanding common stock, which is the minimum *average* percentage of common stock required to be owned by each individual stockholder in a 20-stockholder nominating group.

Obviously, if the Company raised the number of stockholders that can form a nominating group from 20 to 40, the *average* percentage of common stock required to be owned by each would fall from 0.15% to 0.075%. If the cap is removed altogether, the average falls even further.

The Company claims the language used in *H&R Block* (July 21, 2017) "was clear – by not including a limit on the number of shareholders that can aggregate their shares to achieve the ownership threshold, 'each' member of the nominating group would, mathematically and logically, not need to hold as many shares of the company's stock *on average*." (my emphasis)

The last two words are key. Raising the cap does not change the ownership threshold for *each* member of a nominating group, it changes the *average* ownership threshold. Substitute the word ‘average’ for the word ‘each’ in the Company’s sentence and we no longer need those last two key words, ‘on average.’ The Company has essentially disproven their own argument, since they needed to include ‘on average’ for clarification in their objection to our use of the word average.

The Company claims stockholders would be “unable to determine exactly what actions the Proposal requests of the Company.” Unlike the many no-actions cited by the Company, the actions sought by the Proposal of the Company are clear. The Company would remove the 20-member cap on stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors under our Company’s proxy access provisions.

Company falsely claims Proposal may be excluded under Rule 14a-8(i)(10) due to substantial implementation.

The Company claims it has already addressed the underlying concerns and essential objectives of the Proposal. However, the Company misreads that objective as “providing a meaningful proxy access right.”

While the current proxy access right may be “meaningful,” the Proposal seeks to decrease the average amount of stock the average member of a nominating group would be required to hold for three years to satisfy the requirements.

The Company has done nothing to meet the standard of Rule 14a-8(i)(10), which is “substantial implementation.” The average stockholder in a nominating group still needs to have held an average of 0.15% of the Company’s common stock for three years continuously. The Company has done nothing to address the Proposal’s underlying concern. An aggregation limit of 20 does not substantially implement or compare favorably to an aggregation limit of infinity.

On page 9 of their request, the Company cites 29 no-action letters granted last year where the subject matter of the proposals involved proxy access. However, none of these cases is analogous to the Proposal under consideration. Most, if not all, involved proposals that sought to move an aggregation limit of 20 to 50. In granting the no-action letters, Staff essentially agreed with companies that there is not a significant difference between aggregation limits of 20 and 50. None of the cited no-actions involved proposals that sought to remove the cap altogether.

In *NVR* (Mar. 25, 2016) and *Oshkosh* (Nov. 4, 2016) proponents asked for a number of features. Since most features were implemented, especially the minimum number of shares, Staff granted the no-actions based on substantial implementation.

The no-action request of *H&R Block* (July 21, 2017) most closely resembles the subject request. That no-action was denied. Both *H&R Block* and the Proposal focus

on one feature, the cap. Whereas it can be argued there is not a significant difference between 20 and 50. It is difficult to argue there is no significant difference between 20 and infinity.

In arguing against applying the logic of *H&R Block,* the Company notes the popularity of a 20-stockholder aggregation limit. However, then the Company admits the fallacy of their own argument near the top of page 11.

> While this consensus does not automatically mean that the Proxy Access By-Law substantially implements the Proposal, it does support the conclusion that a 20-stockholder aggregation limit affords shareholders ample opportunity to combine with other shareholders to form a nominating group.

Yes, popularity has nothing to do with whether or not the Proposal has been substantially implemented. Likewise, popularity provides no evidence of "ample opportunity to combine with other shareholders." This is not evidence. It is a confession that the Company's assertion is based on a giant leap of faith.

Popularity has no relevance to Rule 14a-8(i)(10), which is concerned with substantial implementation. The Company appears to believe Staff is empowered to review the Proposal on its merits, not on whether it is legally allowable.

The SEC has no vote in such matters and such statements should be reserved for the Company's opposition statement in the proxy. As explained in Staff Legal Bulletin No. 14 (7/13/2001):

> **7. Do we judge the merits of proposals?**
> No. We have no interest in the merits of a particular proposal. Our concern is that shareholders receive full and accurate information about all proposals that are, or should be, submitted to them under rule 14a-8.

The Company then proceeds to argue the current 20-stockholder aggregation limit offers many opportunities for combining to meet the 3% ownership threshold. Many of these arguments are deeply flawed. For example, the Company asserts their top 20 institutional shareholders have "all held their shares of Company common stock for at least three years."

Exactly what the Company is asserting is unclear. Have the 20 institutional shareholders held *all* their shares for at least three years? That assertion does not comport with the evidence I found through FactSet. As can be seen from the table on the next page, only one fund (Carmignac Gestion SA) out of the top twenty reported no position change in the last quarter.

Comprehensive Ownership Deta

Name:	Holders:	Shares O/S:
CELGENE CORP COM (CELG)	All	787,317,000

N	Holder Name	Position	Pos Change
1	The Vanguard Group, Inc.	53,187,472	989,395
2	BlackRock Fund Advisors	39,473,198	261,680
3	SSgA Funds Management, Inc.	31,533,937	-876,768
4	Fidelity Management & Research Co.	16,884,255	4,659,086
5	T. Rowe Price Associates, Inc.	11,220,508	-1,153,174
6	Northern Trust Investments, Inc.	10,702,640	255,520
7	Edgewood Management LLC	10,556,896	98,943
8	Wellington Management Co. LLP	10,186,455	1,387,356
9	Jennison Associates LLC	9,815,811	-5,146,596
10	Henderson Global Investors Ltd.	9,410,233	1,001,272
11	Columbia Management Investment Advi...	8,331,777	-407,644
12	Geode Capital Management LLC	7,964,756	137,310
13	Janus Capital Management LLC	7,882,220	843,247
14	Carmignac Gestion SA	7,595,821	0
15	Invesco PowerShares Capital Managem...	6,553,854	-43,198
16	Jackson Square Partners LLC	6,345,918	-824,669
17	Franklin Advisers, Inc.	6,143,346	-371,836
18	Norges Bank Investment Management	5,996,647	5,503,623
19	TIAA-CREF Investment Management LLC	5,903,516	164,374
20	Standard Life Investments (USA) Ltd.	5,605,832	3,766,802

Records found: **2148.**

Perhaps the Company is asserting their top 20 institutional shareholders have all held *some* shares for at least three years. However, Company bylaws require not just that a shareholder hold some Company stock but that “Required Shares” be held “continuously for at least three years.” In order to exaggerate the “ease” of forming a nominating group, the Company uses either deception or ignorance to underplay the amount of changing ownership among its shareholders and its potential impact on implementing proxy access.

Despite the burden resting with the Company, the no-action request is devoid of any significant analysis of the impact of the holding period on the number of eligible shares and the ability of stockholders to form nominating groups. Reference Rule 14a-8(g): “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.”

Just as the Company here argues the group member limit of 20 compares favorably to no group member limit, *3M Company* argued that being able to call a special meeting with 25% of shareholders represented “substantial adoption” of a proposal to lower the threshold needed to call a special meeting from 25% to 10%. Staff denied the request. (2/17/2009)

Allegheny Energy, Inc. (1/15/2009) similarly rejected the company argument that a 25% threshold substantially implemented the essential objective of a proposed 10% threshold to hold a special meeting. *General Dynamics Corporation* argued the same and was denied (1/24/2011).

The list of similar denied no-action requests under Rule 14a-8(i)(10) for lowering the special meeting threshold is lengthy. Most are 5-8 years old because companies no longer attempt to make the specious argument that differing thresholds compare

favorably. By the same logic, with regard to a proposal to amend a proxy access bylaw, a cap on group members of 20 does not compare favorably to the Proposal's requested removal of any such limitation. With regard to no-actions for proxy access amendment proposals, see also AES Corporation (Dec. 20, 2016) and BorgWarner Inc. (Feb. 9, 2018).

Conclusion

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of subdivisions (b), (f), (i)(3) or (i)(10), therefore, have the burden of showing ineligibility, failure to meet procedural requirements when a deficiency has been duly notified and was not corrected, violation of proxy rules, and substantial implementation of the proposal. The Company has failed to meet this burden on all counts and Staff must deny the no-action request. I would be pleased to respond to Staff questions. You can reach me directly by e-mailing jm@corpgov.net.

Sincerely,

James McRitchie
Shareholder Advocate

cc: Mr. Gerald F. Masoudi <GMasoudi@calgene.com>
Mr. John Chevedden ***

***

JOHN CHEVEDDEN

***

February 8, 2018

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

 # 1 Rule 14a-8 Proposal
Celgene Corporation (CELG)
Stockholder Proxy Access Amendments
James McRitchie

Ladies and Gentlemen:

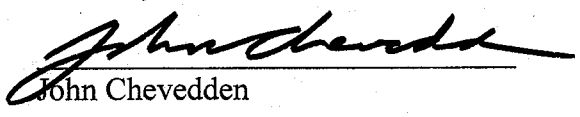
This is in regard to the February 6, 2018 no-action request.

The initial December 8, 2017 cover letter noted the topic of the proposal (page 16 of the company no action request). This already made the December 19, 2017 company letter unnecessary on the topic of the proposal, SLB 14I.

The cover letter (last page of the company no action request) with redundant December 29, 2017 signatures was provided as a special accommodation to the company

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: James McRitchie
Myra K. Young

Gerald Masoudi <gmasoudi@celgene.com>

***

December 8, 2017

Gerald F. Masoudi, EVP
Corporate Secretary
Celgene Corporation
86 Morris Avenue
Summit, New Jersey 07901
Attention: Corporate Secretary
GMasoudi@celgene.com

Dear Corporate Secretary:

We are pleased to be shareholders in Celgene Corporation (CELG) and appreciate the company's leadership. However, we also believe our company has further unrealized potential that can be unlocked through low or no cost measures by making our corporate governance more competitive.

We are submitting a shareholder proposal for a vote at the next annual shareholder meeting to amend proxy access requirements. The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year. We pledge to continue to hold stock until after the date of the next shareholder meeting. Our submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that we are delegating John Chevedden to act as our agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding our rule 14a-8 proposal to John Chevedden *** to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. Please acknowledge receipt of my proposal promptly by email to ***

Sincerely,

J. McRitchie — December 8, 2017

James McRitchie — Date

Myra K. Young — December 8, 2017

Myra K. Young — Date

cc: investors@celgene.com
ir@celgene.com

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

[CELG – Rule 14a-8 Proposal, December 8, 2017]
[This line and any line above it – *Not* for publication]
Proposal [4*] – Stockholder Proxy Access Amendments

RESOLVED: Stockholders of Celgene Corp (the "Company") ask the board of directors (the "Board") to amend its proxy access bylaw provisions and any associated documents, to include the following change for the purpose of decreasing the average amount of Company common stock the average member of a nominating group would be required to hold for three years to satisfy the aggregate ownership requirements to form a nominating group:

> No limitation shall be placed on the number of stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors under our Company's proxy access provisions.

Supporting Statement: Under current provisions, even if the 20 largest public pension funds were able to aggregate their shares, they would not meet the 3% holding criteria at most of companies examined by the Council of Institutional Investors. Allowing an unlimited number of shareholders to aggregate shares would facilitate greater participation by individuals and institutional investors in meeting the stock ownership requirements, 3% of the outstanding common stock entitled to vote.

The SEC's universal proxy access Rule 14a-11 (https://www.sec.gov/rules/final/2010/33-9136.pdf) was vacated after a court decision regarding the SEC's cost-benefit analysis. Therefore, proxy access rights must be established on a company-by-company basis. Subsequently, a cost-benefit analysis by CFA Institute, *Proxy Access in the United States: Revisiting the Proposed SEC Rule* (http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1), found proxy access would "benefit both the markets and corporate boardrooms, with little cost or disruption," raising US market capitalization by up to $140.3 billion.

Proxy Access: Best Practices 2017 (http://www.cii.org/files/publications/misc/Proxy_Access_2017_FINAL.pdf) by the Council of Institutional Investors (CII), notes "while proxy access has gained broad acceptance, some adopting companies have included, or are considering including, provisions that could significantly impair shareholders' ability to use it."

Governance Changes through Shareholder Initiatives (https://cba.unl.edu/academic-programs/departments/finance/about/seminar-series/documents/Iliev.pdf) found the announcement of shareholder proposals for proxy access submitted to 75 U.S. public companies resulted in $10.6 billion of increased shareholder value across targeted firms.

Although the Company's Board adopted a proxy access bylaw, it contains troublesome provisions that significantly impair the ability of shareholders to participate because of the large average amount of common shares each is required to hold for three years given the current aggregation limit of 20. Adoption of the requested amendment would come closer to meeting best practices as described by CII. Last year dozens of funds voted FOR a similar proposal, including Wells Fargo Advisors, Invesco Advisors and PNC Capital Advisors. The proposal is especially important shareholders, given Company underperformance relative to the Nasdaq.

Increase Stockholder Value
Vote for Stockholder Proxy Access Amendments – Proposal [4*]
[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

February 6, 2018

Robert A. Cantone
Member of the Firm
d 212.969.3235
f 212.969.2900
rcantone@proskauer.com
www.proskauer.com

By Email

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

Re: Celgene Corporation – Notice of Intent to Omit Stockholder Proposal from Proxy Materials Pursuant to Rule 14a-8 Promulgated under the Securities Exchange Act of 1934, as Amended, and Request for No-Action Ruling

Dear Ladies and Gentlemen:

This firm represents Celgene Corporation, a Delaware corporation ("Celgene" or the "Company"), on whose behalf we are filing this letter under Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of Celgene's intention to exclude a stockholder proposal (the "Proposal") submitted by John Chevedden, purportedly as agent on behalf of James McRitchie and Myra K. Young (collectively, the "Proponents"), from the proxy materials for Celgene's 2018 Annual Meeting of Stockholders to be held on June 13, 2018 (the "2018 Proxy Materials").

Celgene asks that the staff of the Commission's Division of Corporation Finance (the "Staff") provide a no-action letter such that it would not recommend that enforcement action be taken by the Commission against Celgene if Celgene excludes the Proposal from Celgene's 2017 Proxy Materials. The Proposal is properly excluded under:

(i) Rule 14a-8(b)/(f) because the Proponents failed to properly delegate authority to their agent who submitted the Proposal;

(ii) Rule 14a-8(i)(3) because the Proposal is vague and indefinite; and

(iii) Rule 14a-8(i)(10) because the Proposal has been substantially implemented.

Pursuant to Staff Legal Bulletin 14D (November 7, 2008), we are transmitting this letter by electronic mail to the Staff at shareholderproposals@sec.gov. We are also sending a copy of this letter to Mr. Chevedden, the purported agent designated by the Proponents, to receive correspondence regarding the Proposal, at the e-mail address provided to us. Celgene plans to

file its definitive proxy statement with the Commission on or about April 30, 2018. Accordingly, in compliance with Rule 14a-8(j), we are submitting this letter not less than 80 days before Celgene intends to file its definitive proxy statement.

THE PROPOSAL

The Proposal requests that the Company amend its proxy access bylaw provisions. In particular, the proposal states:

> RESOLVED: Stockholders of Celgene Corp [*sic*] (the "Company") asks [*sic*] the board of directors (the "Board") to amend its proxy access bylaw provisions and any associated documents, to include the following change for the purpose of decreasing the average amount of Company common stock the average member of a nominating group would be required to hold for three years to satisfy the aggregate ownership requirements to form a nominating group:
>
> > No limitation shall be placed on the number of stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors under our Company's proxy access provisions.

A copy of the Proposal and the supporting statement is attached to this letter as Exhibit A.

GROUNDS FOR EXCLUSION

I. The Proposal May Be Excluded Under Rule 14a-8(b)/(f) Because the Proponents Failed to Properly Delegate Authority to Their Agent Who Submitted the Proposal.

A. Background

The Staff has historically permitted a shareholder who satisfies the eligibility requirements of Rule 14a-8(b) to submit a shareholder proposal through an agent, a practice commonly referred to as "proposal by proxy." In Staff Legal Bulletin 14I (November 1, 2017) ("SLB 14I"), the Staff set forth certain information that it expected to be provided in the shareholder's documentation that delegates authority to the shareholder's agent or proxy. Specifically, the Staff expects the documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;

- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and

- be signed and dated by the shareholder.

As of the date of this letter, it does not yet appear that the Staff has acted on a no-action request to exclude a shareholder proposal pursuant to Rule 14a-8(b)/(f) on the basis of non-compliance with SLB 14I's requirement addressed in the fourth bullet above—to identify the specific proposal to be submitted. However, we understand this requirement as a curtailment of "blank check" authorizations that would otherwise enable proxies to use their independent judgement, rather than the shareholder's, to make Rule 14a-8 proposals. SLB 14I's intent in that regard is evident from the example cited by the Staff which specifically identifies both the new and old thresholds for the affected bylaw provision (i.e., the percentage of outstanding shares required to call a special meeting, in the case of the example). The example clearly indicates that with respect to an important corporate governance right that is conditioned on a specific eligibility requirement, documentation that authorizes a proxy to make a shareholder proposal must not only identify the general nature of the eligibility requirement (ownership of a certain percentage of the outstanding shares), but also the specific percentage sought by the proposal. Thus, in the SLB 14I example, a proxy authorization specifying only a proposal to lower the threshold for calling a special meeting or a proposal to amend a threshold for calling a special meeting would not be sufficient, as neither description would demonstrate that the shareholder (rather than the his or her agent) held a specific view or belief concerning a key element of the proposal ultimately made by the agent concerning an important corporate right.

B. Application of SLB 14I to the Proposal

The Proposal, albeit vague and indefinite as discussed below, relates in general to the number of stockholders that can aggregate their shares to achieve the ownership threshold required to nominate a director under Celgene's proxy access bylaw. In the documentation purportedly provided by the Proponents that purports to delegate authority to Mr. Chevedden to act as their agent, a copy of which is attached to this letter as Exhibit A (the "Original Delegation Letter"), the Proponents fail to "identify the specific proposal to be submitted," as expected by the Staff pursuant to SLB 14I. In this regard, we note that the Company has not received any communication directly from the Proponents. Rather, all communication, including the Original Delegation Letter, has been transmitted via email by Mr. Chevedden.

The Original Delegation Letter simply states that the Proponents are submitting a shareholder proposal "to amend proxy access requirements" and "are delegating John Chevedden to act as our agent regarding this Rule 14a-8 proposal." There are, of course, innumerable ways to amend the "proxy access requirements" of Celgene's proxy access bylaw. A proposal, for example,

might seek an amendment of the bylaw that would increase or, alternatively, decrease the minimum share ownership requirement and, in either case, the permutations of possible proposals are innumerable given the range of potential ownership levels between 0% and 100%. While the Proposal can be interpreted as seeking to place no limit on aggregation, there have been numerous Rule 14a-8 shareholder proposals submitted to companies that seek to raise the number of shareholders that may aggregate their shares to achieve the required ownership threshold from 20 to 50. See, e.g., *The Dun & Bradstreet Corp.* (Feb. 10, 2017); *General Dynamics Corp.* (Feb. 10, 2017); *NextEra Energy, Inc.* (Feb. 10, 2017); *PPG Industries, Inc.* (Feb. 10, 2017); *Reliance Steel & Aluminum Co.* (Feb. 10, 2017); *United Continental Holdings, Inc.* (Feb 10, 2017). Failing to comply with SLB 14I's specificity requirement, the Proponents have given Mr. Chevedden a "blank check" to submit any Rule 14a-8 proposal related in any manner to amending Celgene's proxy access bylaw. Had the Proponents adhered to the Staff's example in SLB 14I of a specifically identified proposal, the Proponents would have stated that they are designating Mr. Chevedden to act as agent for a proposal to amend Celgene's proxy access bylaw to eliminate any limit on the number of stockholders that can aggregate their shares.

On December 19, 2017, in accordance with Rule 14a-8(f), Celgene sent a letter to Mr. Chevedden notifying him of the Proponents' non-compliance with SLB 14I's specificity requirement, among other defects (the "Deficiency Letter"). A copy of the Deficiency Letter is attached as Exhibit B. On December 29, 2017, Mr. Chevedden (not the Proponents) sent documents to Celgene in an attempt to respond to the Deficiency Letter (the "Proponents' Response Letter"). A copy of the Proponents' Response Letter submitted by Mr. Chevedden is attached as Exhibit C. The Proponents' Response Letter includes a revised letter purporting to delegate authority to Mr. Chevedden (the "Revised Delegation Letter"). The Revised Delegation Letter is the same as the Original Delegation Letter in all respects, except that in the bottom right corner, it includes the words "Proposal [4*] – Stockholder Proxy Access Amendments."

The Proponents' Response Letter does not explicitly state that the inclusion of the additional words in the Revised Delegation Letter constituted their attempt to comply with SLB 14I's specificity requirement. In any case, Celgene does not believe that the Revised Delegation Letter satisfies SLB 14I's specificity requirement any more than the Original Delegation Letter did. The Original Delegation Letter had already stated that the Proponents were submitting a shareholder proposal to "amend proxy access requirements." The inclusion of the statement "Proposal [4*] – Stockholder Proxy Access Amendments" in the Revised Delegation Letter does not provide any additional specificity; although the proposal submitted by Mr. Chevedden as purported agent of the Proponents bears a designation as "Proposal [4*]", there is no indication that the Proponents have ever seen this document, much less have asked that it be submitted on their behalf. On its face, the Revised Delegation Letter, which does not attach the proposal, is as unclear and deficient as the Original Delegation Letter. Both the Original Delegation Letter and the Revised Delegation Letter fail to indicate what specific amendment or amendments the

Proponents are seeking with respect to Celgene's proxy access bylaw. Accordingly, the right, recognized by the Staff, of a shareholder to make a specific proposal through an agent, does not extend to the instant delegation purportedly made by the Proponents.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague and Indefinite So As To Be Inherently Misleading

A. Background

Rule 14a-8(i)(3) permits a company to exclude a shareholder proposal or supporting statement "[i]f 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." The Staff stated in Staff Legal Bulletin No. 14B (Sept. 15, 2004) that reliance on Rule 14a-8(i)(3) to exclude a proposal or portions of a supporting statement may be appropriate in only a few limited instances, one of which is when the language of the proposal or the supporting statement renders the proposal so vague or indefinite that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." The Staff has further explained that a shareholder proposal can be sufficiently misleading and therefore excludable under Rule 14a-8(i)(3) when the company and its shareholders might interpret the proposal differently such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *Fuqua Industries, Inc.*(March 12, 1991); *see also Walgreens Boots Alliance, Inc.* (October 7, 2016) (granting exclusion under Rule 14a-8(i)(3) and noting that "neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires").

B. The Proposal is impermissibly vague and indefinite so as to be inherently misleading

The Proposal, which is reproduced below with emphasis added, is excludable under Rule 14a-8(i)(3) because the Proposal's goal of decreasing the average amount of Celgene common stock the "average" member of a nominating group would be required to hold is so vague and indefinite that neither stockholders nor Celgene's board of directors (the "Board") would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires.

> RESOLVED: Stockholders of Celgene Corp [*sic*] (the "Company") asks [*sic*] the board of directors (the "Board") to amend its proxy access bylaw provisions and any associated documents, to include the following change for the purpose of decreasing the average amount of Company common stock the ***average*** member

> of a nominating group would be required to hold for three years to satisfy the aggregate ownership requirements to form a nominating group:
>
> > No limitation shall be placed on the number of stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors under our Company's proxy access provisions.

H&R Block, Inc. received a similar proposal during the 2017 proxy season, which is reproduced below with emphasis added. See *H&R Block, Inc.* (July 21, 2017).

> RESOLVED: Shareholders ask our board of directors to amend its proxy access bylaws (primarily found in section 21: "Shareholder Nominations Included in the Corporation's Proxy Materials") and any other associated bylaw sections and other documents, to include the following change for the purpose of decreasing the average amount of Company common stock ***each*** member of a nominating group would have to hold for 3-years to satisfy the aggregate ownership requirements to form a nominating group:
>
> > No limitation shall be placed on the number of shareholders that can aggregate their common shares to achieve the 3% "Required Shares" for an "Eligible Shareholder."

In *H&R Block*, the proposal's goal was clear – by not including a limit on the number of shareholders that can aggregate their shares to achieve the ownership threshold, "each" member of the nominating group would, mathematically and logically, not need to hold as many shares of the company's stock on average.

However, the Proposal's reference to the "average" member of a nominating group renders the Proposal vague and indefinite because it is unclear how removing the proxy access bylaw's aggregation cap of 20 stockholders can achieve the Proposal's goal of decreasing the average amount of Celgene common stock held by the "average" member of the nominating group. In this regard, the Proposal does not clarify who the "average" member of the nominating group is or how such member should be determined. However, the Proponents' concept of the "average" member of the nominating group is key to the Proposal because the Proponents clearly state that the purpose of the Proposal is to decrease "the average amount of [Celgene] common stock the average member of a nominating group would be required to hold."

Without knowing how to identify the "average" member of the nominating group, the Board would be unable to implement the Proposal in a way that achieves its purpose of decreasing the average amount of Celgene common stock held by this "average" member. Likewise, Celgene's stockholders would be unable to determine exactly what actions the Proposal requests of the Company. Accordingly, the Proposal is vague and indefinite for purposes of Rule 14a-8(i)(3).

The Staff has consistently permitted exclusion of a proposal pursuant to Rule 14a-8(i)(3) where the proposal, like the instant Proposal, contains a vague and indefinite term. *See, e.g., Walgreens Boots Alliance, Inc.* (October 7, 2016) (concurring with the omission of a proposal as vague and indefinite where the proposal requested that the board make a determination as to whether there is a "compelling justification" for taking any action whose primary purpose is to prevent the "effectiveness of a shareholder vote," prior to taking such action); *Morgan Stanley* (Mar. 12, 2013) (concurring with the omission of a proposal as vague and indefinite where the proposal requested the appointment of a committee to explore "extraordinary transactions" that could enhance stockholder value); *The Boeing Co.* (Mar. 2, 2011) (concurring with the omission of a proposal as vague and indefinite where the proposal requested, among other things, that senior executives relinquish certain "executive pay rights" because such phrase was not sufficiently defined); *AT&T Inc.* (Feb. 16, 2010) (concurring with the omission of a proposal as vague and indefinite where the proposal sought disclosures on, among other things, payments for "grassroots lobbying" without sufficiently clarifying the meaning of that term); *Puget Energy Inc.* (Mar. 1, 2002) (concurring with the omission of a proposal as vague and indefinite where the proposal requested a policy of "improved corporate governance"); and *Norfolk Southern Corp.* (Feb. 13, 2002) (concurring with the omission of a proposal as vague and indefinite where the proposal requested that the board of directors "provide for a shareholder vote and ratification, in all future elections of directors, candidates with solid background, experience, and records of demonstrated performance in key managerial positions within the transportation industry").

III. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) Because It Has Been Substantially Implemented by the Company

At a meeting of the Board held on December 8, 2016, the Board amended and restated Celgene's by-laws (the "Amended and Restated By-laws") to permit stockholders to include their nominees to the Board in Celgene's proxy materials under specified conditions that have been widely adopted by public companies. See Section 1.9 of the Amended and Restated By-Laws (the "Proxy Access By-Law"), which is filed as Exhibit 3.1 to Celgene's Form 8-K filed on December 12, 2016. As discussed in more detail below, the policies, practice and procedures contained in the Proxy Access By-Law compare favorably with the guidelines of the proposal, and accordingly, the proposal may be excluded from the Company's proxy materials under Rule 14a-8(i)(10).

A. Background

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal. In explaining the scope of a predecessor to Rule 14a-8(i)(10), the Commission said that the exclusion is "designed to avoid the possibility of shareholders having to consider matters which already have been favorably

acted upon by the management." *See Release No. 34-12598* (July 7, 1976) (discussing the rationale for adopting the predecessor of Rule 14a-8(i)(10), which provided as a substantive basis for omitting a stockholder proposal that "the proposal has been rendered moot by the actions of the management"). At one time, the Staff interpreted the predecessor rule narrowly, considering a proposal to be excludable only if it had been "'fully' effected" by the company. *See Release No. 34-19135* at § II.B. 5 (Oct. 14, 1982). The Commission later recognized, however, that the Staff's narrow interpretation of the predecessor rule "may not serve the interests of the issuer's security holders at large and may lead to an abuse of the security holder proposal process," in particular by enabling proponents to argue "successfully on numerous occasions that a proposal may not be excluded as moot in cases where the company has taken most but not all of the actions requested by the proposal." *Id*. Accordingly, the Commission proposed in 1982 and adopted in 1983 a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented." *See Release No. 34-20091* at § II.E.6 (Aug. 16, 1983) (indicating that the Staff's "previous formalistic application of" the predecessor rule "defeated its purpose" because the interpretation allowed proponents to obtain a stockholder vote on an existing company policy by changing only a few words). The Commission later codified this revised interpretation in *Release No. 34-40018* at n.30 (May 21, 1998) (the "1998 Release"). Thus, when a company can demonstrate that it has already taken action to address the underlying concerns and essential objectives of a stockholder proposal, the Staff has concurred that the proposal has been "substantially implemented" and may be excluded. *See, e.g., General Electric Co.* (Mar. 3, 2015); *Exelon Corp.* (Feb. 26, 2010); *Exxon Mobil Corp. (Burt)* (Mar. 23, 2009); *Anheuser-Busch Companies, Inc.* (Jan. 17, 2007); *ConAgra Foods, Inc.* (July 3, 2006); *Johnson & Johnson* (Feb. 17, 2006); *Talbots Inc.* (Apr. 5, 2002); *Exxon Mobil Corp.* (Jan. 24, 2001); *Masco Corp.* (Mar. 29, 1999); and *The Gap, Inc.* (Mar. 8, 1996).

Applying this standard, the Staff has noted that "a determination that a company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991). Even if a company's actions do not go as far as those requested by the stockholder proposal, they nonetheless may be deemed to "compare favorably" with the requested actions. *See, e.g., Walgreen Co.* (Sept. 26, 2013) (permitting exclusion of a proposal requesting elimination of supermajority voting requirements in the company's governing documents where the company had eliminated all but one of the supermajority voting requirements.); *Johnson & Johnson* (Feb. 17, 2006) (permitting exclusion of a proposal that requested the company to confirm the legitimacy of all current and future U.S. employees because the company had verified the legitimacy of 91% of its domestic workforce); *Masco Corp.* (Mar. 29, 1999) (permitting exclusion of a proposal seeking adoption of a standard for independence of the company's outside directors because the company had adopted a standard that, unlike the one specified in the proposal, added the qualification that only material relationships with affiliates would affect a director's independence). In other words, a company can satisfy the substantial implementation standard under Rule 14a-8(i)(10) by satisfactorily

addressing the underlying concerns and essential objectives of a stockholder proposal even where the company's actions do not precisely mirror the terms of such proposal.

Similarly, the Staff has recognized on numerous occasions that an aggregation limit is consistent with the essential objective of proxy access even where a stockholder sought to increase the aggregation limit. *See, e.g., Leidos Holdings, Inc.* (Mar. 27, 2017); *Quest Diagnostics Inc.* (Mar. 23, 2017); *PayPal Holdings, Inc.* (Mar. 22, 2017); *Ecolab Inc.* (Mar. 16, 2017); *ITT Inc.* (Mar. 16, 2017); *Edwards Lifesciences Corp.* (Mar. 13, 2017); *Omnicom Group Inc.* (Mar. 8, 2017); *Amazon.com, Inc.* (Mar. 7, 2017); *Equinix, Inc.* (Mar. 7, 2017); *General Motors Co.* (Mar. 7, 2017); *Amphenol Corp.* (Mar. 2, 2017); *Anthem, Inc.* (Mar. 2, 2017); *Citigroup Inc.* (Mar. 2, 2017); *International Paper Co.* (Mar. 2, 2017); *PG&E Corp.* (Mar. 2, 2017); *Sempra Energy* (Mar. 2, 2017); *Target Corp.* (Mar. 2, 2017); *Time Warner Inc.* (Mar. 2, 2017); *United Health Group, Inc.* (Mar. 2, 2017); *VeriSign, Inc.* (Mar. 2, 2017); *Xylem Inc.* (Mar. 2, 2017); *Northrop Grumman Corp.* (Feb. 17, 2017); *Raytheon Co.* (Feb. 17. 2017); *Eastman Chemical Co*. (Feb. 14, 2017); *The Dun & Broadstreet Corp*. (Feb. 10, 2017); *General Dynamics Corp*. (Feb. 10, 2017); *NextEra Energy, Inc.* (Feb. 10, 2017); *PPG Industries, Inc.* (Feb. 10, 2017); *Reliance Steel & Aluminum Co.* (Feb. 10, 2017); and *United Continental Holdings, Inc.* (Feb. 10, 2017). In each of these letters, the Staff generally agreed that the company could exclude the proposals as substantially implemented, provided the company demonstrated how the existing aggregation limit achieved the proposal's goal of providing a meaningful proxy access right.

B. The Company has substantially implemented the Proposal

The Staff's reasoning in these letters is consistent with the earlier approach taken by the Staff in *NVR, Inc.* (Mar. 25, 2016) and *Oshkosh Corp.* (Nov. 4, 2016). In *NVR*, for example, a stockholder proposed an "enhancement package" to the company's existing proxy access bylaw, which, among other things, requested that the company eliminate a 20-stockholder aggregation limit. *NVR* implemented a few of the proponent's suggestions, but it did not eliminate the aggregation limit. The Staff nevertheless agreed that the proposal was excludable under Rule 14a- 8(i)(10), noting that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal." The Staff reached the same conclusion on substantially similar facts in *Oshkosh Corp.* In the context of a company's existing proxy access bylaw, it appeared that the Staff did not view the stockholder aggregation limit as so critical to the essential objective of providing meaningful proxy access to stockholders that it would deny exclusion under Rule 14a-8(i)(10) based on a company's failure to adopt the stockholder aggregation limit precisely as requested in a stockholder proposal.

Despite the positions taken in the letters identified above, the Company is aware that the Staff has rejected at least one company's request for no-action relief based on substantial implementation of a proxy access proposal similar to the Proposal. *See H&R Block, Inc.* (July 21, 2017). H&R Block had sought exclusion of a proposal under Rule 14a-8(i)(10) to eliminate the

cap on stockholder aggregation to achieve the 3% eligibility threshold. While the Company does not know the rationale for the Staff's decision or whether it signals a shift in the Staff's position on substantial implementation of proxy access with respect to stockholder aggregation limits, the Proxy Access By-Law is a product of engagement and consultation by the Company with its shareholders, and the Proposal should be considered against this backdrop.

By focusing on just one element of the Proxy Access By-Law, the Proponents seek to shift the focus from whether shareholders currently have a meaningful proxy access right to secondary details of that right. To evaluate one element of the Company's Proxy Access By-Law without considering the totality of the circumstances in which that By-Law was adopted elevates form over substance and would be contrary to the Staff's regulatory objective that led the Commission to revise its interpretation of the "substantial implementation" standard in 1983. A stockholder aggregation limit, or other tailored details of a proxy access bylaw, may be different than what a proponent seeks to amend, but as the Staff has explained and demonstrated by way of its other no-action positions, "different" does not mean that the primary objective of a proposal has not already been substantially implemented. Otherwise, companies will have an ever-moving target that allows stockholders to escape exclusion under Rule 14a-8(i)(10) by simply changing one or two words of an existing proxy access by-law (or any other by-law provision or company policy). Such an approach would turn the Staff's "substantial implementation" analysis on its head.

The Proxy Access By-Law currently permits the Company's stockholders to aggregate their holdings for purposes of satisfying the 3% ownership threshold, with a limit of 20 on the number of stockholders that may so aggregate. An aggregation limit is designed to minimize the burden on the Company in reviewing and verifying the information and representations that each member of a stockholder group must provide to establish the group's eligibility, while assuring that all stockholders have a fair and reasonable opportunity to nominate director candidates by forming groups with like-minded stockholders who also each own fewer than the minimum required shares. As discussed more fully below, the Company's aggregation limit achieves these dual objectives by assuring that any stockholder may form a group owning more than 3% of the Company's common stock by combining with any of a large number of other stockholders, while avoiding the imposition on the Company and its other stockholders of the cost of processing nominations from an infinitely large group of stockholders.

While there is no particular "science" to determining, for any company, the aggregation limit that will best achieve a balance between making proxy access reasonably available and avoiding a process that imposes an undue burden and expense on the Company to the detriment of other stockholders, a 20-stockholder aggregation limit has achieved a consensus among companies that have adopted proxy access. Of the over 370 public companies that adopted proxy access between January 2015 and February 2017, over 92% adopted an aggregation limit of 20 stockholders or fewer. A 20-stockholder aggregation limit is also the threshold adopted in the bylaws of T. Rowe

Price Group, Inc., State Street Corporation, and Blackrock, Inc., the publicly traded parent companies of some of the largest institutional stockholders in the United States. While this consensus does not automatically mean that the Proxy Access By-Law substantially implements the Proposal, it does support the conclusion that a 20-stockholder aggregation limit affords shareholders ample opportunity to combine with other shareholders to form a nominating group.

The availability of proxy access to all stockholders under a 20-stockholder aggregation limit is particularly demonstrable in the Company's case. As of September 30, 2017, to the best of the Company's knowledge based on publicly available information, the Company had three stockholders with holdings in excess of 3%, without aggregation, all of which have held those securities continuously for three years. Together, these three stockholders own approximately 15.94% of the Company's outstanding shares of common stock. Another ten of the Company's institutional stockholders owned, continuously for at least three years, shares of common stock constituting at least 1% (but less than 3%) of the Company's common stock as of September 30, 2017. Further, the top 20 institutional stockholders as of September 30, 2017, held approximately 35.28% of the Company' outstanding shares of common stock, with each of these 20 institutional stockholders owning at least approximately 0.71% of the Company's outstanding common stock. Of such institutional stockholders, all have held their shares of Company common stock for at least three years. In addition, as of September 30, 2017, 102 institutional investors, representing more than 58.11% of the Company's outstanding common stock, owned 0.15% or more of the Company's outstanding common stock, which is the minimum average percentage of common stock required to be owned by each individual stockholder in a 20-stockholder nominating group.

As of September 30, 2017, there were 1,893 institutional stockholders that owned less than 0.15% of the Company's outstanding common stock. Such stockholders accounted for less than 20% of the Company's outstanding common stock in the aggregate as of September 30, 2017. The concentration of significant holdings among the Company's stockholders described above means that there are abundant opportunities for the Company's stockholders, including these stockholders owning less than 0.15% of the Company's common stock, to combine their holdings with other stockholders to reach the 3% minimum ownership requirement, and to do so while also meeting the Company's minimum holding period of three years. Under the aggregation limit currently set in the Proxy Access By-Law, as long as at least one stockholder owns 3% of the outstanding common stock, any other stockholder, regardless of the size of his or her holdings, may utilize proxy access simply by forming a group with that stockholder. In addition, any stockholder holding less than 0.15% of the Company's outstanding stock may combine with up to any other 19 stockholders (provided that such stockholders also meet the Company's minimum holding period of three years) as long as the aggregate amount held by such group is at least 3% of the Company's outstanding common stock. Between these two extremes, innumerable possibilities exist for a stockholder who own less than 0.15% of the Company's common stock to form a group with any number of other stockholder to achieve

aggregate ownership of 3% or more of the outstanding common stock. For example, the Company's top three institutional stockholders could on their own form a group representing 3% of the Company's common stock or any one of those three stockholders could form a group representing 3% of the Company's common stock with any combination of up to 19 of the Company's other stockholders, including one or more stockholders owning less than 0.15% of the Company's common stock. More importantly, any stockholder seeking to form a group to nominate a director candidate, regardless of the size of its holdings, could meet the ownership threshold in any number of ways, by combining with one or a small number of the 20 largest institutional investors. A stockholder group is not limited to these known institutional investors, of course, and a stockholder seeking to nominate a director candidate may approach any other stockholders to meet the 3% threshold. The 20-stockholder aggregation limit therefore does not unduly restrict any stockholder from forming a group to make a proxy access nomination.

To further illustrate the ease of forming a nominating group, as of February 2, 2018, the Company had 752,175,608 shares of common stock outstanding. Based on that number, to meet the 3% minimum ownership requirement, a stockholder or group of stockholders would have to own, and would have to have owned continuously for at least three years, 22,565,269 shares of the Company's common stock. A group of 20 stockholders would therefore need to hold an average of approximately 1,128,264 shares of common stock per group member. As highlighted above, as of September 30, 2017, 95 institutional stockholders owned at least 1,128,264 shares of the Company's common stock. There are innumerable combinations that would allow the Company's 95 largest institutional stockholders holding their shares for at least three years to form 20-stockholder groups (or smaller groups) for the purpose of making a proxy access nomination. And, again, smaller stockholders could combine with any number of these stockholders, in innumerable combinations, to form a nominating group. Moreover, while one or more small stockholders can aggregate their shares with up to 19 of these largest institutional stockholders, to meet the ownership threshold, there are many combinations of far fewer than 20 stockholders that would meet the 3% ownership requirement. Indeed, several large stockholders' holdings are so significant (with three stockholders holding more than 3% of the Company's common stock and another ten stockholders holding more than 1% (but less than 3%) of the Company's common stock, each for more than three years) that a small stockholder would be able to aggregate shares with as few as one (or if not one, just a handful) of these large stockholders to meet the 3% ownership requirement.

In an attempt to piggyback on a recent victory in *H&R Block*, the Proponents disguise their purported purpose as "decreasing the average amount of Company common stock the average member of a nominating group would be required to hold for three years to satisfy the aggregate ownership requirements to form a nominating group." However, the essential objective of the Proponents—to increase the accessibility of proxy access for the Company's smaller stockholders—is revealed in the Supporting Statement: "[a]llowing an unlimited number of shareholders to aggregate shares would facilitate greater participation by individuals and

institutional investors." Thus, the Proponents' underlying concern is that the Proxy Access By-Law should facilitate a certain level of participation by individuals and institutional investors. As described above, there are abundant opportunities for all of the Company's stockholders, including those stockholders owning less than 0.15% of the Company's common stock, to combine their holdings with other stockholders to reach the 3% minimum ownership requirement. Therefore, as demonstrated by the composition and shareholdings of the Company's institutional stockholders, the Proponents' actual essential objective has already been substantially implemented by the Company's existing proxy access provision.

The Proposal's requested "unlimited" aggregation scheme merely increases (in fact maximizes) the number of stockholder combinations that could yield a group owning more than 3% of the common stock without any evidence that those additional combinations will facilitate certain level of participation by individuals and stockholders.

There is no reason to believe that a solicitation of the type that would be required to form a group of stockholders would be more likely to attract support from 1,000 stockholders holding an average of 0.003% or even 100 stockholders holding an average of 0.03% than from 20 stockholders holding an average of 0.15% of the Company's common stock, or that the benefit of increased availability would not be nullified by the increased costs necessary to coordinate a large stockholder group. The Proponents have not explained how, or cited any facts supporting an argument that, an unlimited aggregation limit will meaningfully increase the number of stockholders that seek to use proxy access.

The Company's current 20-stockholder aggregation limit affords a real opportunity for stockholders to meet the minimum requirements under the Proxy Access By-Law and achieves the objective of making proxy access fairly and reasonably available to all stockholders, regardless of the size of their individual holdings. Accordingly, the Proxy Access By-Law substantially implements the Proposal with respect to stockholders' ability to aggregate their respective holdings to meet the 3% holding requirement.

CONCLUSION

Based upon the foregoing analysis, we hereby respectfully request, on behalf of Celgene, that the Staff confirm that it will not recommend enforcement action if the Proposal is excluded from Celgene's 2018 Proxy Materials. We would be pleased to provide any additional information and answer any questions that the Staff may have regarding this matter. I can be reached by phone at (212) 969-3235 and by email at rcantone@proskauer.com.

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

Sincerely, yours,

/s/ Robert A. Cantone

Robert A. Cantone

cc: John Chevedden

Exhibit A

Original Delegation Letter, Proposal and Supporting Statement

***

December 8, 2017

Gerald F. Masoudi, EVP
Corporate Secretary
Celgene Corporation
86 Morris Avenue
Summit, New Jersey 07901
Attention: Corporate Secretary
GMasoudi@celgene.com

Dear Corporate Secretary:

We are pleased to be shareholders in Celgene Corporation (CELG) and appreciate the company's leadership. However, we also believe our company has further unrealized potential that can be unlocked through low or no cost measures by making our corporate governance more competitive.

We are submitting a shareholder proposal for a vote at the next annual shareholder meeting to amend proxy access requirements. The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year. We pledge to continue to hold stock until after the date of the next shareholder meeting. Our submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that we are delegating John Chevedden to act as our agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding our rule 14a-8 proposal to John Chevedden *** to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. Please acknowledge receipt of my proposal promptly by email to ***.

Sincerely,

James McRitchie — December 8, 2017
Date

Myra K. Young — December 8, 2017
Date

cc: investors@celgene.com
ir@celgene.com

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

[CELG – Rule 14a-8 Proposal, December 8, 2017]
[This line and any line above it – *Not* for publication]
Proposal [4*] – Stockholder Proxy Access Amendments

RESOLVED: Stockholders of Celgene Corp (the "Company") ask the board of directors (the "Board") to amend its proxy access bylaw provisions and any associated documents, to include the following change for the purpose of decreasing the average amount of Company common stock the average member of a nominating group would be required to hold for three years to satisfy the aggregate ownership requirements to form a nominating group:

> No limitation shall be placed on the number of stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors under our Company's proxy access provisions.

Supporting Statement: Under current provisions, even if the 20 largest public pension funds were able to aggregate their shares, they would not meet the 3% holding criteria at most of companies examined by the Council of Institutional Investors. Allowing an unlimited number of shareholders to aggregate shares would facilitate greater participation by individuals and institutional investors in meeting the stock ownership requirements, 3% of the outstanding common stock entitled to vote.

The SEC's universal proxy access Rule 14a-11 (https://www.sec.gov/rules/final/2010/33-9136.pdf) was vacated after a court decision regarding the SEC's cost-benefit analysis. Therefore, proxy access rights must be established on a company-by-company basis. Subsequently, a cost-benefit analysis by CFA Institute, *Proxy Access in the United States: Revisiting the Proposed SEC Rule* (http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1), found proxy access would "benefit both the markets and corporate boardrooms, with little cost or disruption," raising US market capitalization by up to $140.3 billion.

Proxy Access: Best Practices 2017 (http://www.cii.org/files/publications/misc/Proxy_Access_2017_FINAL.pdf) by the Council of Institutional Investors (CII), notes "while proxy access has gained broad acceptance, some adopting companies have included, or are considering including, provisions that could significantly impair shareholders' ability to use it."

Governance Changes through Shareholder Initiatives (https://cba.unl.edu/academic-programs/departments/finance/about/seminar-series/documents/Iliev.pdf) found the announcement of shareholder proposals for proxy access submitted to 75 U.S. public companies resulted in $10.6 billion of increased shareholder value across targeted firms.

Although the Company's Board adopted a proxy access bylaw, it contains troublesome provisions that significantly impair the ability of shareholders to participate because of the large average amount of common shares each is required to hold for three years given the current aggregation limit of 20. Adoption of the requested amendment would come closer to meeting best practices as described by CII. Last year dozens of funds voted FOR a similar proposal, including Wells Fargo Advisors, Invesco Advisors and PNC Capital Advisors. The proposal is especially important shareholders, given Company underperformance relative to the Nasdaq.

Increase Stockholder Value
Vote for Stockholder Proxy Access Amendments – Proposal [4*]
[This line and any below are *not* for publication]
Number 4* to be assigned by the Company

James McRitchie and Myra K. Young, *** sponsored this proposal.

Notes:
This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***

Exhibit B

Deficiency Letter

Neil S. Belloff
Senior Corporate Counsel

Celgene Corporation
86 Morris Avenue
Summit, NJ 07901
Tel: 908-673-9760
Fax: 908-673-2162
Cell: 646-250-2858
nbelloff@celgene.com

December 19, 2017

VIA EMAIL: olmsted7p@earthlink.net

John Chevedden
***

Dear Mr. Chevedden:

We are in receipt of the Rule 14a-8 shareholder proposal purported to be submitted by James McRitchie and Myra K. Young (the "Proponents"), naming you as agent, which was received by us on December 8, 2017 for inclusion in Celgene Corporation's 2018 proxy materials. This notice is to inform you of certain deficiencies with respect to the submitted shareholder proposal. First, we have not received the requisite verification of ownership of Celgene common stock by the Proponents, nor have we been able to verify any such ownership independently, in order to establish the Proponents' eligibility to submit a shareholder proposal under Rule 14a-8. Second, the Proponents fail to properly identify you as their agent, or proxy, for the submitted shareholder proposal.

Verification of Ownership

Rule 14a-8(b)(1) requires the proponent of a shareholder proposal to have continuously held at least $2,000 in market value, or 1%, of a company's securities entitled to be voted on the proposal at the meeting for at least one year by the date the proponent submits the proposal (*i.e.*, for the one-year prior to and including December 8, 2017). Rule 14a-8(b)(2) requires, among other things, the submission of (i) a written statement from the "record" holder of the proponent's securities (usually a broker or bank) verifying that, at the time the proposal was submitted, the proponent continuously held the securities for at least one year, or (ii) a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, as filed with the Securities and Exchange Commission ("SEC"), reflecting ownership of the securities as of or before the date on which the one-year eligibility period begins. For your further information, SEC Staff Legal Bulletin Nos. 14F (October 18, 2011) ("SLB 14F") and 14G (October 16, 2012) ("SLB 14G") provide that only Depository Trust Company ("DTC") participants (and their affiliated entities) are viewed as "record" holders of securities that are deposited at DTC for Rule 14a-8(b)(2)(i) purposes. Copies of SLB 14F and SLB 14G are included with this letter. Please refer to them for how to determine whether your broker or bank is a DTC participant (or an affiliated entity) and what documentation to provide if your broker or bank is not a DTC participant (or an affiliated entity).

Identification of Agent

SEC Staff Legal Bulletin No. 14I (November 1, 2017) ("SLB 14I") sets forth five requirements that the proponent of a shareholder proposal who submits the shareholder proposal by an agent, or proxy, must satisfy. Namely, documentation provided by the proponent must:

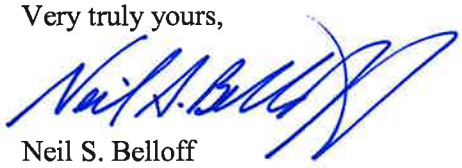
- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

The letter accompanying the submitted shareholder proposal does not satisfy the fourth condition above, in that it does not identify the specific proposal to be submitted by you as agent, or proxy, for the Proponents. In this regard, we note that the letter states that the Proponents are "delegating John Chevedden to act as our agent regarding *this Rule 14a-8 proposal*" (emphasis added). However, the letter signed by the Proponents does not identify the submitted proposal regarding an amendment to Celgene's proxy access bylaw as the specific proposal for which they are delegating you to act as their agent, or proxy, as required by SLB 14I. If you wish to act as agent, or proxy, for the Proponents on the submitted shareholder proposal, please have the Proponents send a revised letter that meets the conditions of SLB 14I, including identifying the specific proposal for which you are authorized to submit for the Proponents as agent, or proxy. A copy of SLB 14I is included with this letter.

This letter constitutes Celgene's notification to the Proponents and to you of the deficiencies in the proposal purported to be submitted by you on behalf of the Proponents pursuant to the requirements of Rule 14a-8(f). Due to the deficiencies outlined above, Celgene will exclude the proposal from its 2018 proxy statement unless the deficiencies are cured and you follow the procedures set forth in Rule 14a-8(f)(1). Your response must be postmarked, or transmitted electronically, no later than 14 calendar days from the date you receive this letter. Accordingly, if no response curing the deficiencies is postmarked or transmitted electronically within such 14 calendar days or the response does not actually cure the deficiencies, we will seek to exclude the submitted shareholder proposal from Celgene's 2018 proxy materials. A copy of Rule 14a-8 is included with this letter for further clarification.

Additionally, even if the procedural defects are cured, we reserve the right to exclude the submitted shareholder proposal or portions thereof on other grounds specified in Rule 14a-8. We appreciate your interest in Celgene and welcome the opportunity to engage in constructive communications with our shareholders.

Very truly yours,



Neil S. Belloff

Enclosures

cc: Gerald Masoudi, Esq.

§240.14a-8 Shareholder proposals.

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

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

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) 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 in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has

been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

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

(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

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

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

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

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

(i) Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

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

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

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

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

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

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

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

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

(8) Director elections: If the proposal:

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

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

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

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

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

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

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

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

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

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

(12) Resubmissions: If the proposal 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; 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, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

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

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

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

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

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://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

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

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

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

B. The types of brokers and banks that constitute "record"

holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain

custody of customer funds and securities. Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

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

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

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

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

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

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC

participant is by asking the shareholder's broker or bank.[9]

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

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

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

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

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

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

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

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of

the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

this correspondence at the same time that we post our staff no-action response.

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

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

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

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

As discussed in Section C of SLB No. 14F, a common error in proof of

ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

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

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

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

D. Use of website addresses in proposals and supporting statements

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

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that

the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

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

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

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

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

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

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

that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy materials.

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

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

---

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

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

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

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

http://www.sec.gov/interps/legal/cfslb14g.htm

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14I (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 1, 2017

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 submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

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

- the scope and application of Rule 14a-8(i)(7);
- the scope and application of Rule 14a-8(i)(5);
- proposals submitted on behalf of shareholders; and
- the use of graphs and images consistent with Rule 14a-8(d).

You can find additional guidance about 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, SLB No. 14F, SLB No. 14G and SLB No. 14H.

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

1. Background

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

2. The Division's application of Rule 14a-8(i)(7)

The Commission has stated that the policy underlying the "ordinary business" exception rests on two central considerations.[2] The first relates to the proposal's subject matter; the second, the degree to which the proposal "micromanages" the company. Under the first consideration, proposals that raise matters that 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" may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote.[3] Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations.[4]

At issue in many Rule 14a-8(i)(7) no-action requests is whether a proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant. These determinations often raise difficult judgment calls that the Division believes are in the first instance matters that the board of directors is generally in a better position to determine. A board of directors, acting as steward with fiduciary duties to a company's shareholders, generally has significant duties of loyalty and care in overseeing management and the strategic direction of the company. A board acting in this capacity and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.

Accordingly, going forward, we would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned. We believe that a well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7).

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

1. Background

Rule 14a-8(i)(5), the "economic relevance" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a

company to exclude a proposal that "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."

2. History of Rule 14a-8(i)(5)

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal."[5] The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today.[6] In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting."[7]

Shortly after the 1983 amendments, however, the District Court for the District of Columbia in *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985) preliminarily enjoined a company from excluding a proposal regarding sales of a product line that represented only 0.05% of assets, $79,000 in sales and a net loss of ($3,121), compared to the company's total assets of $78 million, annual revenues of $141 million and net earnings of $6 million. The court based its decision to grant the injunction "in light of the ethical and social significance" of the proposal and on "the fact that it implicates significant levels of sales." Since that time, the Division has interpreted *Lovenheim* in a manner that has significantly narrowed the scope of Rule 14a-8(i)(5).

3. The Division's application of Rule 14a-8(i)(5)

Over the years, the Division has only infrequently agreed with exclusion under the "economic relevance" exception. Under its historical application, the Division has not agreed with exclusion under Rule 14a-8(i)(5), even where a proposal has related to operations that accounted for less than 5% of total assets, net earnings and gross sales, where the company conducted business, no matter how small, related to the issue raised in the proposal. The Division's analysis has not focused on a proposal's significance to the company's business. As a result, the Division's analysis has been similar to its analysis prior to 1983, with which the Commission expressed concern.

That analysis simply considered whether a company conducted any amount of business related to the issue in the proposal and whether that issue was of broad social or ethical concern. We believe the Division's application of Rule 14a-8(i)(5) has unduly limited the exclusion's availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal "deals with a matter that is not significantly related to the

issuer's business" and is therefore excludable. Accordingly, going forward, the Division's analysis will focus, as the rule directs, on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business.

Because the test only allows exclusion when the matter is not "otherwise significantly related to the company," we view the analysis as dependent upon the particular circumstances of the company to which the proposal is submitted. That is, a matter significant to one company may not be significant to another. On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.

Where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is "otherwise significantly related to the company's business."[8] For example, the proponent can provide information demonstrating that the proposal "may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities."[9] The proponent could continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company's business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the "total mix" of information about the issuer.

As with the "ordinary business" exception in Rule 14a-8(i)(7), determining whether a proposal is "otherwise significantly related to the company's business" can raise difficult judgment calls. Similarly, we believe that the board of directors is generally in a better position to determine these matters in the first instance. A board acting with the knowledge of the company's business and the implications for a particular proposal on that company's business is better situated than the staff to determine whether a particular proposal is "otherwise significantly related to the company's business." Accordingly, we would expect a company's Rule 14a-8(i)(5) no-action request to include a discussion that reflects the board's analysis of the proposal's significance to the company. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.

In addition, the Division's analysis of whether a proposal is "otherwise significantly related" under Rule 14a-8(i)(5) has historically been informed by its analysis under the "ordinary business" exception, Rule 14a-8(i)(7). As a result, the availability or unavailability of Rule 14a-8(i)(7) has been largely determinative of the availability or unavailability of Rule 14a-8(i)(5). Going forward, the Division will no longer look to its analysis under Rule 14a-8(i)(7) when evaluating arguments under Rule 14a-8(i)(5). In our view, applying separate analytical frameworks will ensure that each basis for exclusion serves its intended purpose.

We believe the approach going forward is more appropriately rooted in the intended purpose and language of Rule 14a-8(i)(5), and better helps companies,

proponents and the staff determine whether a proposal is "otherwise significantly related to the company's business."

D. Proposals submitted on behalf of shareholders

While Rule 14a-8 does not address shareholders' ability to submit proposals through a representative, shareholders frequently elect to do so, a practice commonly referred to as "proposal by proxy." The Division has been, and continues to be, of the view that a shareholder's submission by proxy is consistent with Rule 14a-8.[10]

The Division is nevertheless mindful of challenges and concerns that proposals by proxy may present. For example, there may be questions about whether the eligibility requirements of Rule 14a-8(b) have been satisfied. There have also been concerns raised that shareholders may not know that proposals are being submitted on their behalf. In light of these challenges and concerns, and to help the staff and companies better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied, going forward, the staff will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder's delegation of authority to the proxy.[11] In general, we would expect this documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

We believe this documentation will help alleviate concerns about proposals by proxy, and will also help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal's submission by proxy. Where this information is not provided, there may be a basis to exclude the proposal under Rule 14a-8(b).[12]

E. Rule 14a-8(d)

1. Background

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

2. The use of images in shareholder proposals

Questions have recently arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.[13] In two recent no-action decisions,[14] the Division expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.[15] Just as

companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.[16]

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

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

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

---

[1] Release No. 34-40018 (May 21, 1998).

[2] *Id.*

[3] *Id.*

[4] *See* Staff Legal Bulletin No. 14H (Oct. 22, 2015), *citing* Staff Legal Bulletin No. 14E (Oct. 27, 2009) (stating that a proposal generally will not be excludable "as long as a sufficient nexus exists between the nature of the proposal and the company").

[5] Release No. 34-19135 (Oct. 14, 1982).

[6] *Id.*

[7] Release No. 34-20091 (Aug. 16, 1983).

[8] Proponents bear the burden of demonstrating that a proposal is "otherwise significantly related to the company's business." *See* Release No. 34-39093 (Sep. 18, 1997), *citing* Release No. 34-19135.

[9] Release No. 34-19135.

[10] We view a shareholder's ability to submit a proposal by proxy as largely a function of state agency law provided it is consistent with Rule 14a-8.

[11] This guidance applies only to proposals submitted by proxy after the date on which this staff legal bulletin is published.

[12] Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder's failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. *See* Rule 14a-8(f)(1).

[13] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. *See* Release No. 34-12999 (Nov. 22, 1976).

[14] *General Electric Co.* (Feb. 3, 2017, *recon. granted* Feb. 23, 2017); *General Electric Co.* (Feb. 23, 2016).

[15] These decisions were consistent with a longstanding Division position. *See Ferrofluidics Corp.* (Sep. 18, 1992).

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

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

http://www.sec.gov/interps/legal/cfslb14i.htm

Home | Previous Page

Modified: 11/01/2017

Exhibit C

Proponents' Response Letter

Ameritrade

CELG

Post-it® Fax Note 7671	Date 12-29-17	# of pages ▶ 2
To Neil Bellaff	From John Cheyne***	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # 908-673-2162	Fax #	

12/20/2017

James Mcritchie
***

Re: Your TD Ameritrade Account Ending in ***

Dear James Mcritchie,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie and Myra K. Young held, and had held continuously for at least thirteen months, 25 shares of Celgene Corp (CELG) common stock in their account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Jonathan Hayes

Jonathan Hayes
Resource Specialist
TD Ameritrade

***

December 8, 2017

Gerald F. Masoudi, EVP
Corporate Secretary
Celgene Corporation
86 Morris Avenue
Summit, New Jersey 07901
Attention: Corporate Secretary
GMasoudi@celgene.com

Dear Corporate Secretary:

We are pleased to be shareholders in Celgene Corporation (CELG) and appreciate the company's leadership. However, we also believe our company has further unrealized potential that can be unlocked through low or no cost measures by making our corporate governance more competitive.

We are submitting a shareholder proposal for a vote at the next annual shareholder meeting to amend proxy access requirements. The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year. We pledge to continue to hold stock until after the date of the next shareholder meeting. Our submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that we are delegating John Chevedden to act as our agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding our rule 14a-8 proposal to John Chevedden *** to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. Please acknowledge receipt of my proposal promptly by email to ***

Sincerely,

J. McRitchie — December 8, 2017

James McRitchie — Date

Myra K. Young — December 8, 2017

Myra K. Young — Date

Proposal [4*] – Stockholder Proxy Access Amendments

cc: investors@celgene.com
ir@celgene.com

Myra K. Young J. McRitchie
12/29/17

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