



DIVISION OF  
CORPORATION FINANCE

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

March 28, 2018

David C. Roos  
Moye White LLP  
david.roos@moyewhite.com

Re: Bimini Capital Management, Inc.  
Incoming letter dated January 23, 2018

Dear Mr. Roos:

This letter is in response to your correspondence dated January 23, 2018 concerning the shareholder proposal (the "Proposal") submitted to Bimini Capital Management, Inc. (the "Company") by Daniel L. Hoffman (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 25, 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/corpfina/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: Daniel L. Hoffman  
\*\*\*

March 28, 2018

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Bimini Capital Management, Inc.  
Incoming letter dated January 23, 2018

The Proposal would have the board take what it deems to be the requisite measures to close the gap between the book value of the Company's common shares and their market price.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Caleb French  
Attorney-Adviser

**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.

January 25, 2018

VIA EMAIL: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov), and by UPS

Office of the Chief Counsel

Division of Corporate Finance

Securities and Exchange Commission

100 F Street NE

Washington, DC 20549

Re: Bimini Capital Management, Inc. Shareholder Proposal submitted by Daniel L Hoffmann,

Securities and Exchange Act of 1934-SEC RULE 14a-8(c)

Ladies and Gentlemen:

This letter is meant to inform the SEC Division of Corporate Finance that the “proponent”, Daniel L. Hoffmann, is seeking support for his proposal and further, wants clarification from the SEC Staff that his proposal is compliant with Rule 14a-8; its procedural and exclusionary rules. The proponent asks that the SEC Staff refrain from granting Bimini’s request for a no-action letter and refrain from issuing a no-action letter on this proposal. The proponent wants his proposal to be included on Bimini’s proxy statement and form of proxy for Bimini’s 2018 Annual Meeting of Stockholders. The Proposal and several related communications are attached to this letter as Exhibits and are presented as Exhibits in chronological order.

Moye White LLP, as Bimini’s retained representative, has submitted a request to your office asking for a no-action letter, which will allow Bimini to exclude the proponent’s proposal from the 2018 Proxy Materials. Bimini bears the burden of providing sufficient reasons for exclusion under Rule 14a-8(g). I will contend that Bimini has not cleared the hurdle for exclusion that the SEC has constructed, and that Bimini’s arguments have stumbled in their attempts to create reasonable bases for exclusion.

#### **SUMMARY OF BIMINI’S BASES AND PROPONENT’S COUNTERARGUMENTS**

**I maintain that Bimini has failed to demonstrate that the proposal lacks a “single, well defined unifying concept”, and Bimini has failed to prove that the proposal is not singular in nature. I believe the proposal is compliant with both the procedural rules and the exclusionary rules, as set forth in SEC RULE 14a-8.**

If the SEC Staff determines that the proposal is singular in nature, and does not contain multiple proposals, Bimini argues that the proposal should be excluded pursuant to Rule 14a-8(i)(3), because it is impermissibly vague and indefinite. I deny that the proposal is vague, indefinite or misleading, and assert that the proposal is so specific as to be an arithmetic equation.

Finally, Bimini argues that if the proposal is deemed to be singular in nature, and not excludable under Rule 14a-8(i)(3), then it should be excluded under Rule 14a-8(i)(7), because it deals with a matter relating to the company's ordinary business operations. I will argue that the proposal has absolutely nothing to do with Bimini's ordinary business operations, but actually limits itself to the more superficial valuation characteristics of the company's common equity.

### THE PROPOSAL

The following paragraph contains the proposal that was submitted to Bimini Capital Management, for inclusion onto the 2018 Annual Proxy, for consideration by the shareholders. It was printed in bold type to separate it from the attached supporting statement, which was set off in italics.

"For the following course of action and the steps which may be taken by the board of directors of Bimini Capital Management Inc., in their sole discretion and within the legal powers that they hold under Maryland General Corporation Law. **The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share's substantially lower market price.**"

The following paragraph contains the supporting statement that followed the proposal. While the proposal was set in bold type, the supporting statement was set in italicized type, in order to indicate its separate, extraneous, but supporting nature.

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"That differential is over 50% as of the date of this proposal. The steps the board may take include, but are not limited to, and may exclude any or all of the following:

- 1) Doing a 1 for 2 reverse stock-split to make Bimini eligible for institutional ownership and for listing on the NYSE or NASDAQ.*
- 2) Appointing a new independent director to serve on the board and to sit with the lead director on the Audit Committee, thus satisfying the minimum requirement for listing Bimini on a major exchange.*
- 3) Taking any other steps the board considers to be necessary to make Bimini eligible for listing on a major exchange like the NYSE-MKT. Bimini's listing on a major exchange would increase its investor profile, make it eligible for institutional ownership, improve daily volume, aid liquidity and make BMNM eligible for margin accounts. All of which should make Bimini a more attractive long-term holding for investors.*

4) Further aligning management and shareholder interests by setting out specific and quantifiable share price metrics and awarding management executives and directors with Bimini shares, or derivatives thereof, upon the achievement of those goals.

5) Creating a new web portal or updating the old one; the current Bimini website is significantly out of date and contains erroneous information that would tend to dissuade potential investors from buying Bimini shares.

6) Changing Bimini's corporate name to reflect its new status as an asset manager and leaving behind any negative associations investors may attach to Bimini's past share price history.

7) And by communicating with shareholders in a more proactive fashion: by publicizing earnings webcasts, doing presentations and appearing at broker conferences."

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### SINGULAR OR MULTIPLE PROPOSALS?

Bimini's first argument for exclusion hinges on procedural Rule 17 CFR 240.14a-8(c), that "each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting." I would maintain that my proposal is singular in nature and encompasses a "single, well-defined unifying concept."

Initially, the SEC Division of Corporate Finance can make one of two possible determinations.

1. The proposal is singular in nature.
2. The whole proposal, as submitted, contains multiple proposals.

If you determine that the second applies, then we need go no further. Bimini makes numerous arguments regarding the enumerated items in the supporting statement and the exclusionary rules that they violate. If the seven enumerated items are deemed to be seven separate proposals by the SEC Staff and not part of a supporting statement, then it is a waste of time to consider which exclusionary rules to apply to each of the seven items. If the seven enumerated items are deemed to be part of the supporting statement, then there can be no bases for exclusion made, because they are not proposals. Unfortunately, neither I nor the SEC are billing by the hour, so let's not waste anybody's time.

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In Bimini's first deficiency response letter (see Exhibit B), as regards Rule 14a-8(c), Mr. Cauley, (Bimini's Chairman and CEO), succinctly restated my one line proposal by writing:

**"On an ongoing basis we consider opportunities and strategies for building shareholder value."**

Mr. Cauley understood and restated my proposal's "single, well-defined unifying concept." He read the proposal, understood the "single, well-defined unifying concept" and regurgitated it back to me in his letter. He didn't mention any of the enumerated supporting statements. He didn't have to, because they were not necessary, but accessory.

His response didn't need to address any of the points in my enumerated supporting statement, because they were extraneous to, but in support of the central theme. Yet, in an attached correspondence, he stated that "your proposal consists of seven separate proposals." But he understood by his first statement "on opportunities and strategies" that they were not part of, but in support of the "single, well-defined unifying concept" of my proposal—the chronic undervaluation of Bimini common shares.

In my supporting statement, I was compelled to set forward several examples of possible courses of action, because, after scouring every SEC document filed by Bimini and after listening to every conference call, I have not found any references to the "opportunities and strategies for building shareholder value" that Mr. Cauley mentioned in his deficiency notification letter. I had to conclude that Bimini has failed to mention their strategies, because they didn't have any. So I thought it would be helpful to provide some possible examples in my supporting statement. Please note that no attempt was made by Bimini to exclude the proponent's proposal under exclusionary rule 14a-8(i)(10); "**Substantially implemented:** If the company has substantially implemented the proposal;" That omission concedes that the proposal addresses an issue that is virgin territory for the Board and that the Board has not substantially implemented the steps necessary to close the "**GAP**"; it follows that examples were necessary.

That being said, the placement of a number before the beginning of a sentence does not make a sentence a proposal. The body of the "supporting statement", in enumerated form, that follows the core of the proposal, sets out examples of actions that the board has not yet taken, and the wording strongly suggests that the board needn't select any of the examples that were enumerated there. In fact, the wording states clearly that the board "may exclude any or all of the following". The numbered items are simply provided as evidence that the board has viable options, which it has chosen not to follow. The numbered items are presented as evidence that the one line proposal, in bold type at the beginning of this letter, is valid. That there is a substantial "**gap**" between Bimini's market price and Bimini's book value, and there is a menu of viable steps available to the Board, should it choose to attempt to close that gap.

In other words, if the supporting statement was unable to provide examples of the "requisite measures", **not yet taken**, in the period up to and including the current date, then the proposal should be rejected on the basis of Rule 14a-8(i)(3), that it is a materially false proposal. But if that were true, Bimini would have put forward Rule 14a-8(i)(10); **substantially implemented**. Lacking that, could I leave it up to the shareholder's imagination, or suppose that the Board has considered and rejected every one of the numbered items. Bimini is trading at half of its book value, two percent of its IPO price, and the absence of a supporting statement would indicate a trust in their vision, when all the evidence indicates that there is no plan.

Doesn't the proposal have a single well-defined unifying theme? Isn't the one line proposal laser focused on the same "single, well-defined unifying concept" of Bimini's common stock and its chronic undervaluation? Doesn't the supporting statement speak to the causes of the "undervaluation" of Bimini common shares; a lack of Board action? The whole document is focused on the "undervaluation"

of the shareholder's stake. And no proposal could be more central to American capitalism and shareholder rights.

The board's representative, Robert E. Cauley, received my shareholder proposal on December 8th, 2017. On December 20th, 2017, I received a notification that the board deemed my proposal to be procedurally deficient under Rule 14a-8(c). I deny that the proposal is defective on any procedural grounds or under any of the SEC's thirteen exclusionary rules. I would posit that the seven numbered items are not proposals, but rather, that they are part of the supporting statement that follows the one sentence, 37 word proposal, and its "single, well-defined unifying concept" of "Bimini's common share's chronic undervaluation".

In 17 CFR 240.14a-8(a) the SEC defines a proposal in the following way: "A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action..."

The key words here are "recommendation" and "requirement". Mr. Cauley characterized the seven supporting examples as being multiple proposals in his deficiency letter. My one line proposal is contained in the first paragraph of my submission. It is clearly a recommendation and not a requirement, as you can plainly see here:

**"The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share's substantially lower market price."**

The seven examples set forth in the following paragraph of the overall proposal are certainly not requirements, as is nothing else that was presented in the proposal to the board. The first sentence of the overall proposal states:

"For the following course of action and the steps which may be taken by the board of directors of Bimini Capital Management Inc., in their sole discretion and within the legal powers that they hold under Maryland General Corporation Law."

"In their sole discretion" could not be construed as being a requirement. The supporting statement makes these comments about the seven examples set forth, that the board "may exclude any or all of the following". Merriam-Webster defines "requirement" as "something needed: a necessity". The proposal is clear that the board should determine what is required, in its sole discretion. Therefore nothing contained in the overall proposal fits the definition of a "requirement".

Are any of the seven enumerated examples contained in the supporting statement a "recommendation"? The Merriam-Webster dictionary defines "**recommendation**" as "the act of putting forth a course of action." The supporting statement uses the phrase, "The steps the board may take...and may exclude any or all of the following". Merriam-Webster dictionary defines "may" as "expressing possibility". "May take" falls far short of suggesting an "act". Therefore, the statement introducing the seven enumerated examples says "the board may take", which falls far short of a recommendation, being merely a possibility for the board to consider. Therefore, the seven



enumerated items are neither requirements nor recommendations, and fall outside of the SEC’s definition of a proposal.

The SEC Staff should consider the seven enumerated options to be “menu” items. At a restaurant, the diner is presented with a menu of dishes from which he may select his meal. None of the items on the menu is a recommendation. The items on the menu are “options”, from which the diner can make selections or reject them all—requesting that a special dish be prepared. Even the “specials” that the waiter presents to the diner fall short of being recommendations. That is why diners often ask the waiter, “What would you recommend?” They ask the question because nothing on the menu or in the specials is a recommendation. They are options and all fall short of being recommendations. The same holds true for the seven menu items in my supporting statement.

The only recommendation made to the Board was contained in the first paragraph of the overall submission.

**“The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share’s substantially lower market price.”**

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Again, the SEC Division of Corporate Finance can make one of two possible determinations.

1. The proposal is singular in nature.
2. The proposal, as submitted, contains multiple proposals.

#### **ARGUMENTS AGAINST EXCLUSION UNDER RULE 14a-8(i)(3)**

If the SEC Staff rejects the second argument and decides for the first; that the proposal is singular in nature and procedurally acceptable, then Bimini sets forth several bases for excluding the “proposal” from the 2018 Proxy Materials. Let’s assess the first basis.

1. “then the proposal may be excluded (i) pursuant to Rule 14a-8(i)(3)”, which is interpreted by the SEC staff to mean the following: “Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that a shareholder proposal is excludable under Rule 14a-8(i)(3) when it is vague and indefinite so 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.’ Staff Legal Bulletin No. 14B (Sept. 15, 2004) (“SLB 14B”)”

The SEC Staff has added a further level of clarification in the following: "evaluating whether a proposal may be excluded on this basis, the [staff] consider[s] only the information contained in the proposal and supporting statement and determine[s] whether, based on that information, shareholders and the

company can determine what actions the proposal seeks." I have added the underline under "supporting statement" for emphasis, and it did not appear in the original text.

Let me restate the proposal; **"The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share's substantially lower market price."**

The core of the proposal is a mathematical equation,

**(BMNM Market Price) – (BMNM Book Value) = GAP**

, which is inherently exact and has been a negative gap for years. The equation generates an exact numerical answer at all times. Therefore, it is not vague in any sense of the word, nor is it misleading. The proposal also asks the Board to take the "requisite measures" in order to ensure that the following number is as small as possible.

**GAP=0, or that the Gap is pushed towards zero.**

Examples of possible "requisite measures" are set forth in the supporting statement. The seven enumerated possible "requisite measures" are optional but specific in nature. I think that the shareholder can vote on the proposal with a certainty of what the proposal entails and can envision what sort of steps the Board might elect to take if the proposal passes.

To return to the restaurant analogy, the menu at a restaurant is very specific, but the diner's choice of menu items is voluntary. The diner at the restaurant does not find the menu to be vague or misleading or indefinite. He may even ask that the kitchen prepare a food item which is not on the menu and most often the restaurant will cater to the diner's wishes.

Consider the seven items in the supporting statement to be a menu of options, from which a few may be selected, or all rejected, or the Board could choose to create a better recipe.

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#### **ARGUMENTS AGAINST EXCLUSION UNDER RULE 14a-8(i)(7)**

2. Bimini goes on to argue that the singular and "single, well defined unifying concept" of the proposal violates Rule 14a-8(i)(7), that "the proposal deals with a matter relating to the company's ordinary business operations."

Bimini describes its business operations on its Investor Relations website, [www.biminicapital.com](http://www.biminicapital.com), as the following: "Bimini Capital Management, Inc. (OTCBB: BMNM) is an asset manager that invests primarily in residential mortgage-related securities." I would like to point out that the web page was revised immediately after the receipt of my shareholder proposal. The line above was added to the description of the company's ordinary business operations on the corporate website, because the web page was several years out-of-date. So, the Board took the first baby step towards recognizing the validity of the proposal.

The proposal concerns itself solely with the proper valuation of Bimini's stock price, and there is nothing in the proposal, or in the supporting statement, that relates to Bimini's mortgage operations. Nothing in the proposal relates to "day-to-day" management activities or management's fundamental tasks. I am at a loss, here, in understanding how Rule 14a-8(i)(7) applies to this proposal, other than that it is a strand of spaghetti in the strategy, "throw it against the wall and see what sticks." The proposal is so far removed from the operations of Bimini that the "proposal" could be applied to any company, whose market price has strayed far from its book value. The proposal could be applied to companies whose operations are related to healthcare, technology, mining, retail, transportation or any business operation that the SEC Staff might imagine. The proposal recommends that the Board "tweak" a few of the characteristics of the common stock or its listed exchange or the web page or investor relations; or anything else of the Board's choosing that would tend to heighten Bimini's profile and image among the investing public.

In fact, enacting and implementing the proposal wouldn't require the involvement of Bimini management in any respect. Even the examples in the supporting statement could all be implemented by consultants and advisers, and their implementation supervised by the Board.

Even the seven examples, of possible steps the Board might take, are all related to the superficial "nonoperational" aspects of Bimini's enterprise, such as "stock price valuation", "stock listing", "incentive compensation", "social media", and "Bimini's interface" with its investors. The proposal, as a whole, lacks a single example of any word or phrase that concerns itself with "investment management" or "mortgages." In fact, the proposal is so far removed from the operations of the company that the reader of the proposal would be unable to deduce what line of business Bimini is actually engaged in.

### **CONCLUSION**

Based upon my arguments and the lack of substantive evidence to the contrary, I would maintain that the proposal clears the procedural and exclusionary hurdles of Rule 14a-8, and that the proposal should be included on Bimini's 2018 Proxy Materials. I request that the SEC Staff refrain from issuing a no-action letter to Bimini.

I am certainly available to speak to any member of your staff regarding this issue. While I live by Pacific hours; I work on an Eastern-time schedule. My number is \*\*\* and my email is \*\*. Again, my name is Daniel Hoffmann and I am a shareholder of Bimini Capital Management, Inc.

Concurrent with the submission of these remarks to the SEC Staff, a copy will be sent to Mr. David C. Roos, at Moye White LLP, who is representing Bimini in this matter. My submission to the SEC will be made via email, and by UPS: with six hard copies enclosed.

### **CLOSING REMARKS**

In closing, let me remind the SEC Staff that it is extremely difficult to craft a shareholder proposal that will clear the procedural rules and the thirteen exclusionary rules as set forth in Rule 14a-8. A

shareholder proposal must be singular in nature; is not allowed to “bind” a Board to a specific course of action; should not be vague or misleading; and may not deal with a matter relating to the company’s ordinary business operations.

I took great care in attempting to follow the SEC’s well-thought-out “Rules & Procedures”, as I crafted this proposal. While I am well versed in business and investments; I am not an expert at writing proposals; this is a first. Isn’t this the scenario that the SEC envisioned; that an average shareholder could approach a great corporation, and that the shareholder’s voice could be heard by corporate management? I trust that it works that way.

I also lean on your vast experience and your able judgement in this matter. I appreciate that I have been allowed to take part in this process. I will receive the SEC Staff’s decision with equanimity. I thank you for your time, which is such a precious commodity.

Sincerely,

Daniel L. Hoffmann

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January 25, 2017

**EXHIBIT A**

**PROPOSAL**

**Bimini Shareholder Proposal**

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“For the following course of action and the steps which may be taken by the board of directors of Bimini Capital Management Inc., in their sole discretion and within the legal powers that they hold under Maryland General Corporation Law. **The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share’s substantially lower market price.** That differential is over 50% as of the date of this proposal. The steps the board may take include, but are not limited to, and may exclude any or all of the following:

*1) Doing a 1 for 2 reverse stock-split to make Bimini eligible for institutional ownership and for listing on the NYSE or NASDAQ.*

*2) Appointing a new independent director to serve on the board and to sit with the lead director on the Audit Committee, thus satisfying the minimum requirement for listing Bimini on a major exchange.*

*3) Taking any other steps the board considers to be necessary to make Bimini eligible for listing on a major exchange like the NYSE-MKT. Bimini’s listing on a major exchange would increase its investor profile, make it eligible for institutional ownership, improve daily volume, aid liquidity and make BMNM eligible for margin accounts. All of which should make Bimini a more attractive long-term holding for investors.*

*4) Further aligning management and shareholder interests by setting out specific and quantifiable share price metrics and awarding management executives and directors with Bimini shares, or derivatives thereof, upon the achievement of those goals.*

*5) Creating a new web portal or updating the old one; the current Bimini website is significantly out of date and contains erroneous information that would tend to dissuade potential investors from buying Bimini shares.*

*6) Changing Bimini’s corporate name to reflect its new status as an asset manager and leaving behind any negative associations investors may attach to Bimini’s past share price history.*

*7) And by communicating with shareholders in a more proactive fashion: by publicizing earnings webcasts, doing presentations and appearing at broker conferences.”*

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Submitted by Daniel L. Hoffmann, in accordance with SEC CFR 240, 14a-8, on November 30th, 2017, and delivered to Bimini Capital Management, Inc., Attn. Robert Cauley, Corporate Secretary, at 3305 Flamingo Drive, suite 100, Vero Beach, FL 32963.

ITEM #1



8050 SW 10th Street  
Suite 2000  
Plantation, FL 33324

T 954.652.7000 | 800.556.2022  
TradeStation.com

December 4, 2017

Daniel L. Hoffmann

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Dear Daniel L. Hoffmann,

The purpose of this document is to provide written verification that as of November 30<sup>th</sup>, 2017 account \*\*\* , in the name of Daniel L. Hoffmann IRA, has continuously held for at least one year a minimum of 229,500 common shares of Bimini Capital Management, Inc. of record by TradeStation Securities, Inc.

Best Regards,

A handwritten signature in black ink, appearing to read 'Adam Gock'.

Adam Gock  
Client Services Team Lead  
8050 SW 10 Street, Plantation, FL 33324  
Phone: 800-822-0512 (US toll-free) | Phone: 954-652-7920 | Fax: 954-652-7599  
Email: [clientservices@tradestation.com](mailto:clientservices@tradestation.com)  
Web: [www.tradestation.com](http://www.tradestation.com)

*Equities, equities options and futures products and services are offered by TradeStation Securities, Inc. (Member NYSE, FINRA, CME and SIPC).*

November 30, 2017

EXHIBIT A

Mr. Robert Cauley, Corporate Secretary

Bimini Capital Management, Inc.

3305 Flamingo Dr.

Suite 100

Vero Beach, FL 32963

Re: Shareholder proposal for the 2018 Annual Meeting of Bimini Capital Management, Inc.

Dear Members of the Board of Directors:

The purpose of this document is to provide written confirmation that on November 30th, 2017, Daniel L. Hoffmann formally submitted a shareholder proposal to be included in the Proxy Statement for Bimini Capital Management, Inc. to be distributed to shareholders prior to the 2018 annual meeting.

Please find the following items, 1 and 3 are enclosed and item 2 is contained in the body of this letter;

1) A written statement from the "record" holder of a portion of my Bimini holdings (Tradestation Securities, Inc.), verifying that at the time of the submission of this proposal, I, Daniel L. Hoffmann had held continuously 229,500 shares of Bimini Management, Inc. common shares for at least one year in TS \*\*\* . That holding exceeded \$2000.00 in value. "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)."

2) A statement from me, Daniel L. Hoffmann, concerning my intentions with regard to those securities, that conforms with SEC 240.14a-8(b)(2i).

3) A shareholder proposal –see enclosed- submitted in accordance with SEC CFR 240. 14a-8 and its focus on Bimini Capital Management, Inc.'s share price and its long term divergence from fair value.

2) As attested to by a written statement from the "record" holder (Tradestation Securities, Inc.) -see enclosed- I have held continuously for at least one year as of November 30th, 2017, 229,500 shares of BMNM common. **I intend to continue to hold the securities just mentioned from November 30th, 2017 up to and through the date of the 2018 Annual Meeting, which has yet to be scheduled.**

These items were received at your offices at suite 100, 3305 Flamingo Drive, Vero Beach FL 32963, prior to the deadline for the submission of shareholder proposals of December 17th, 2017.

I plan on personally attending the 2018 Annual Meeting. I would sincerely appreciate the opportunity to discuss this matter beforehand.

Please let me know if any additional information or clarification is required.



Sincerely,

Daniel L Hoffmann

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January 25, 2017

**EXHIBIT B**  
**DEFICIENCY NOTICE**



December 20, 2017

Daniel L. Hoffman  
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**Via Federal Express and Email**

Re: Rule 14a-8 Proposal

Dear Mr. Hoffman:

This is in response to your recent communications concerning Bimini Capital Management, Inc. (the "Company").

We appreciate your investment in the Company and your support of our Board of Directors and management team. On an ongoing basis we consider opportunities and strategies for building shareholder value. \*

I would be glad to meet with you at a mutually convenient location to discuss the issues you raised. I suggest sometime after the first of the year. Please let me know when and where might be convenient for you.

Meanwhile, under the Federal securities laws, we are required to provide a formal response to the shareholder proposal that you have submitted. Our attorneys have prepared the response and it is enclosed.

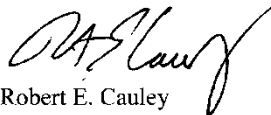
I look forward to sitting down with you to discuss these issues, and thank you again for your support of the Company.

3305 Flamingo Drive Vero Beach, Florida 32963 772-231-1400

Error! Unknown document property name.

Yours truly,

BIMINI CAPITAL MANAGEMENT, INC.

A handwritten signature in black ink, appearing to read "R. E. Cauley". The signature is written in a cursive style with a large, sweeping initial "R".

Robert E. Cauley  
Chairman and Chief Executive Officer

Enclosure: Deficiency Notice under Rule 14a-8

Error! Unknown document property name.



December 20, 2017

Daniel L. Hoffman  
\*\*\*

**Via Federal Express and Email**

Re: Rule 14a-8 Proposal

Dear Mr. Hoffman:

We received your proposal dated November 30, 2017, for inclusion in the proxy materials for the 2018 annual meeting of stockholders. on December 8, 2017.

Rule 14a-8 under the Securities Exchange Act of 1934, as amended, sets forth certain eligibility and procedural requirements that must be satisfied for a stockholder to submit a proposal for inclusion in a company's proxy materials. In accordance with Rule 14a-8(f), I have to notify you that your proposal did not comply with Rule 14a-8(c). Rule 14a-8(c) prohibits any one stockholder from submitting more than one proposal to a company for a particular stockholder's meeting. Your proposal consists of seven separate proposals. It is therefore deficient under Rule 14a-8 and not eligible for inclusion in the Company's proxy materials:

Rule 14a8(f) states that you may provide the Company with a response to this letter that corrects the eligibility and procedural deficiency described above. Your response must be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. The address for electronic transmission is:  
[rcauley@biminicapital.com](mailto:rcauley@biminicapital.com)

The deficiency described in this letter is without prejudice to any other rights that the Company may have pursuant to Rule 14a-8 to exclude your proposal from its proxy materials.

3305 Flamingo Drive Vero Beach, Florida 32963 772-231-1400

For your reference, please find enclosed a copy of Rule 14a-8.

Yours truly,

BIMINI CAPITAL MANAGEMENT, INC.

A handwritten signature in black ink, appearing to read "R. E. Cauley", written in a cursive style.

Robert E. Cauley  
Chairman and Chief Executive Officer

Enclosure:  
Rule 14a-8 under the Securities and Exchange Act of 1934

Error! Unknown document property name.

January 25, 2017

**EXHIBIT C**  
**DEFICIENCY RESPONSE**

December 21, 2017

Mr. Robert Cauley, Corporate Secretary

Via UPS and Email

Bimini Capital Management, Inc.

3305 Flamingo Dr.

Suite 100

Vero Beach, FL 32963

Re: Bimini Capital Management, Inc. Shareholder Proposal submitted by Daniel L Hoffmann, SEC RULE 14a-8(c)

Dear Members of the Board of Directors:

**Because Bimini has failed to demonstrate that the proposal lacks a “single, well defined unifying concept” and that the proposal is not singular in nature, the proposal may not be excluded under Rule 14a-8(c). Further, the company’s notice of deficiency fails to cite a single case in which a no-action letter was granted to other companies under similar circumstances. I believe that failure stems from the fact that there are no similar circumstances, where the supporting statement is construed to be part of the core proposal.**

Further, it is a sad day when an American corporate board attempts to exclude from its Annual Proxy a proposal recommending the following:

**“The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share’s substantially lower market price.”**

And for the board to do so, based not on the merit of the proposal, but based on a procedural rule. Your excuse for exclusion hinges on Rule 17 CFR 240.14a-8(c), that “each shareholder may submit no more than one proposal to a company for a particular shareholders’ meeting”. I would maintain that my proposal is singular in nature and encompasses a “single, well-defined unifying concept.”

Putting your procedural gambit aside for a moment, the very attempt to squash a proposal that recommends that the board adopt a plan of its own choosing, in order to correct the chronic **undervaluation** of their own common shares, hits at the very basis of the proposal and suggests that there has been little if any attempt, to date, to reward the long suffering shareholders of Bimini Capital Management, Inc. Need I point out that Bimini’s shares are trading at 2% of their IPO price.



In Bimini's response letter, as regards Rule 14a-8, Mr. Cauley succinctly restated my one line proposal by writing:

**"On an ongoing basis we consider opportunities and strategies for building shareholder value."**

Mr. Cauley understood and restated my proposal's **"single, well-defined unifying concept."** He read the proposal, understood the "single, well-defined unifying concept" and regurgitated it. He didn't mention any of the enumerated supporting statements. He didn't have to, because they were not necessary, but accessory.

His response didn't need to address any of the points in my enumerated supporting statement, because they were extraneous to, but in support of the central theme. Yet in an attached correspondence, he stated that "your proposal consists of seven separate proposals." But he understood by his first statement "on opportunities and strategies" that they were not part of, but in support of, the "single, well-defined unifying concept" of my proposal-the chronic undervaluation of Bimini common shares.

I was forced to enumerate examples of some possible courses of action, because after scouring every SEC document filed by Bimini and listening to every conference call, I have not found any references to the "opportunities and strategies for building shareholder value" that Mr. Cauley mentioned in his deficiency notification letter. I had to conclude that management failed to mention their strategies, because they didn't have any. So I provided some possible examples in my supporting statement.

That being said, the placement of a number before the beginning of a sentence does not make the sentence a proposal. The body of the "supporting statement", in enumerated form, that follows the core of the proposal, sets out examples of actions that the board has not yet taken, and the wording strongly suggests that the board needn't select any of the examples enumerated there. In fact, the wording states clearly that the board **"may exclude any or all of the following"**. The numbered items are simply provided as evidence that the board has viable options, which it has chosen not to follow. The numbered items are presented as evidence that the one line proposal, in bold type at the beginning of this letter, is valid.

In other words, if the supporting statement were to contain no examples of the "requisite measures" not taken in the period up to and including the current date, then the proposal should be rejected on the basis of Rule 14a-8(i)(3), that it is a materially false proposal. Could I leave it up to the board's imagination or suppose that they have considered and rejected every one of the numbered items. Bimini is trading at half of its book value, two percent of its IPO price and the absence of a supporting statement would indicate a trust in their vision, which all the evidence indicates is not justified.

Doesn't the proposal have a single well defined unifying theme? Isn't the one line proposal laser focused on the same "single, well-defined unifying concept" of Bimini's chronic undervaluation? Doesn't the supporting statement speak to the causes of the "undervaluation" of Bimini common shares and the lack of board action that is the central theme of the proposal? The whole document is focused on the

“undervaluation” of the shareholder’s stake. And no proposal could be more central to American capitalism and shareholder rights.

The board’s representative, Robert E. Cauley, received my shareholder proposal on December 8th, 2017. On December 20th, 2017 I received a notification that the board deemed my proposal to be procedurally deficient under Rule 14a-8(c). **I deny that the proposal is defective on any procedural grounds or under any of the SEC’s thirteen exclusionary rules.** I would posit that the seven numbered items are not proposals, but rather, that they are part of the supporting statement that follows the one sentence, 37 word proposal and its “single, well-defined unifying concept” of “Bimini’s common share’s chronic undervaluation”.

**In 17 CFR 240.14a-8(a) the SEC defines a proposal in the following way: “A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action...”**

The key words here are “recommendation” and “requirement”. Mr. Cauley has characterized the seven supporting examples as being proposals. My one line proposal is contained in the first paragraph of my submission. It is clearly a recommendation and not a requirement, as you can plainly see here:

**“The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share’s substantially lower market price.”**

The seven examples set forth in the following paragraph of the overall proposal are certainly not requirements, as is nothing else that was presented in the proposal to the board. The first sentence of the overall proposal states:

“For the following course of action and the steps which may be taken by the board of directors of Bimini Capital Management Inc., in their sole discretion and within the legal powers that they hold under Maryland General Corporation Law.”

“In their sole discretion” could not be construed as being a requirement. The supporting statement makes these comments about the seven examples set forth, that the board “may exclude any or all of the following”. Merriam- Webster defines “requirement as “something needed: a necessity”. The proposal is clear that the board should determine what is required, in its sole discretion. Therefore nothing contained in the overall proposal fits the definition of a “requirement”.

Are any of the seven enumerated examples contained in the supporting statement a “recommendation”? The supporting statement uses the phrase, “The steps the board may take...and may exclude any or all of the following”. Merriam-Webster dictionary defines “may” as “expressing possibility”. The statement introducing the seven enumerated examples says “the board may take”, which falls far short of a recommendation, being merely a possibility for the board to consider.

If the board intends to attempt to exclude my proposal from the Annual Proxy then it will have to submit its no-action request to the Securities and Exchange Commission no later than 80 calendar days

before it files its definitive proxy statement for the 2018 Annual Meeting. **It also must simultaneously transmit to me a copy of the identical no-action request submitted to the Commission.**

Let's proceed, gentlemen.

Sincerely,

Daniel L. Hoffmann

\*\*\*

January 25, 2017

**EXHIBIT D**

**BIMINI REQUEST: NO-ACTION LETTER**





January 23, 2018

**VIA E-MAIL: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

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

Re: Bimini Capital Management, Inc.  
Stockholder Proposal of Daniel L. Hoffmann  
Securities Exchange Act of 1934 - Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Bimini Capital Management, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the "2018 Proxy Materials") a stockholder proposal and related statement (collectively, the "Proposal") received from Daniel L. Hoffmann (the "Proponent"). The Proposal and certain related communications are described below and are attached as Exhibits to this letter.

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D") provide that a stockholder proponent is required to send the company a copy of any correspondence that the proponent elects to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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## THE PROPOSAL

The Proposal is dated November 30, 2017. It was delivered to the Company on December 8, 2017. A copy of the Proposal is attached as Exhibit A.

The Proposal states:

“For the following course of action and the steps which may be taken by the board of directors of Bimini Capital Management Inc., in their sole discretion and within the legal powers that they hold under Maryland General Corporation Law. **The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share’s substantially lower market price.** That differential is over 50% as of the date of this proposal. The steps the board may take include, but are not limited to, and may exclude any or all of the following:

- 1) Doing a 1 for 2 reverse stock-split to make Bimini eligible for institutional ownership and for listing on the NYSE or NASDAQ.
- 2) Appointing a new independent director to serve on the board and to sit with the lead director on the Audit Committee, thus satisfying the minimum requirement for listing Bimini on a major exchange.
- 3) Taking any other steps the board considers to be necessary to make Bimini eligible for listing on a major exchange like the NYSE-MKT. Bimini’s listing on a major exchange would increase its investor profile, make it eligible for institutional ownership, improve daily volume, aid liquidity and make BMNM eligible for margin accounts. All of which should make Bimini a more attractive long-term holding for investors.
- 4) Further aligning management and shareholder interests by setting out specific and quantifiable share price metrics and awarding management executives and directors with Bimini shares, or derivatives thereof, upon the achievement of those goals.
- 5) Creating a new web portal or updating the old one; the current Bimini website is significantly out of date and contains erroneous information that would tend to dissuade potential investors from buying Bimini shares.

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6) Changing Bimini's corporate name to reflect its new status as an asset manager and leaving behind any negative associations investors may attach to Bimini's past share price history.

7) And by communicating with shareholders in a more proactive fashion: by publicizing earnings webcasts, doing presentations and appearing at broker conferences."

Pursuant to Rule 14a-8(f), on December 21, 2017, the Company delivered to the Proponent a notice of procedural deficiency with respect to the Proposal (the "Deficiency Notice"). In the Deficiency Notice, the Company advised the Proponent that the Proposal is procedurally deficient under Rule 14a-8(c) because it is comprised of seven separate proposals rather than a single proposal. A copy of the Deficiency Notice is attached as Exhibit B.

On December 21, 2017, the Proponent delivered to the Company a response to the Deficiency Notice (the "Deficiency Response"). The Deficiency Response states that the shareholder proposal actually consists of this single recommendation: "The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share's substantially lower market price." The Deficiency Response explains that the seven numbered recommendations (referred to herein as the "Seven Board Actions") are merely examples of the actions that the Board of Directors may consider in order to implement the proposal. Specifically, the Proponent states that the "steps the board may take include, but are not limited to, and they may exclude, any or all of the following [Seven Board Actions]."

A copy of the Deficiency Response is attached as Exhibit C.

### **BASES FOR EXCLUSION**

Regardless of how the Proposal is interpreted, there are several bases for excluding it from the 2018 Proxy Materials. Specifically:

- If the Proposal is viewed as a single proposal with the Seven Board Actions provided only as examples of potential Board actions, all of which is consistent with the position set forth in the Deficiency Response, then the Proposal may be excluded (i) pursuant to Rule 14a-8(i)(3) because it is impermissibly vague and



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indefinite and therefore inherently misleading and (ii) pursuant to Rule 14a-8(i)(7) because it deals with a matter relating to the Company's ordinary business operations.

- If the Seven Board Actions are viewed as multiple shareholder proposals, then the Proposal may be excluded pursuant to Rule 14a-8(c) because it is comprised of more than one proposal and is therefore procedurally deficient.
- If (for discussion purposes only) each of the Seven Board Actions is viewed on a stand-alone basis, then each such proposal could be excluded pursuant to (i) Rule 14a-8(i)(3) because it is impermissibly vague and indefinite and therefore inherently misleading, (ii) Rule 14a-8(i)(7) because it deals with a matter relating to the Company's ordinary business operations or (iii) Rule 14a-8(i)(13) because it relates to specific amounts of stock dividends.

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2018 Proxy Materials for one or more of the reasons set forth above and discussed in greater detail below.

## ANALYSIS

### **I. Evaluating the Proponent's Submission as a Single Proposal in Accordance with the Deficiency Response**

The following analysis applies if the Proposal is interpreted in accordance with the Deficiency Response to consist of the following single action:

"The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share's substantially lower market price."

Under this interpretation, the Seven Board Actions constitute a non-exclusive list of possible actions the Board may, or may not, choose to implement.

***Exclusion under Rule 14a-8(i)(3) as vague and indefinite.*** Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal "[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."

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The Staff has consistently taken the position that a stockholder proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite, and therefore misleading, if "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." Staff Legal Bulletin No. 14B (September 15, 2004) ("SLB 14B"); see also *Dyer v. SEC*, 287 F.2d 773, 781 (8<sup>th</sup> Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail"); *Fuqua Industries, Inc.* (March, 12, 1991) (the Staff concurred with exclusion under Rule 14a-8(i)(3) where a 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"); *Chevron Corporation* (March 15, 2013) (the Staff concurred with exclusion under Rule 14a-8(i)(3) where "shareholders would not be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.")

In Staff Legal Bulletin No. 14G (October 16, 2012) ("SLB 14G"), the Staff further explained that "[i]n 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."

Consistent with these standards and long-standing Staff precedent, the Proposal is excludable as impermissibly vague and indefinite under Rule 14a-8(i)(3). In particular, the Proposal calls on the Board of Directors to "**take what it deems to be the requisite measures**" to close the gap between the intrinsic value and market price of the Company's common stock. Similarly, the sentence immediately preceding the Proposal states that any steps to be taken shall be determined by the Board of Directors "**in their sole discretion.**" The Proposal defers entirely to the Board of Directors to determine what actions, if any, should be taken, thereby causing the Proposal to be vague, indefinite and lacking in specific details. It is impossible for either stockholders who would be asked to vote on the Proposal, or the Company in implementing the Proposal, to determine what specific actions are to be taken.

The Seven Board Actions might be viewed as providing guidance for actions that are to be taken by the Board of Directors, thereby adding certainty to the Proposal. However, the Proposal and the Deficiency Response make it clear that the Board may take some, all or none of the Seven Board Actions. (The Proposal states that "[t]he steps the board may take **include, but are not limited to, and may exclude** any or all of the following." See also the discretionary language cited above with respect to actions the

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Board may take: “*take what it deems to be the requisite measures*” and “*in their sole discretion.*”) In addition (and as discussed below), the Seven Board Actions are themselves vague and indefinite in many respects. The Seven Board Actions therefore fail to provide any certainty as to the actions or measures that are required by the Proposal. Instead, they only serve to confirm the confusion and lack of certainty inherent in the Proposal and the fact that neither shareholders nor the Company would be able to determine what actions or measures the Proposal requires.

For these reasons, the Proposal may be excluded pursuant to Rule 14a-8(i)(3) because it is impermissibly vague and indefinite and therefore inherently misleading.

***Exclusion under Rule 14a-8(i)(7) as part of ordinary business operations.*** Rule 14a-8(i)(7) permits the exclusion of a stockholder proposal “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.”

When adopting amendments to Rule 14a-8 in 1998, the Commission explained that the general policy underlying the “ordinary business” exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” Exchange Act Release No. 34-4018 (May 21, 1998) (the “1998 Release”). As explained in the 1998 Release, this general policy reflects two central considerations: (i) “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight;” and (ii) the “degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position make an informed judgment.”

The Proposal calls for the development of a business strategy to address a complex corporate goal: closing the gap between book value and market price of the Company’s common stock. The development of such a strategy is clearly the responsibility of management and the Board of Directors as they manage the Company’s ordinary business operations; it is not a matter that can reasonably be considered and acted upon by shareholders. The Proposal therefore raises the same concerns that were cited by the Staff in the 1998 Release: it would require that shareholders attempt to (i) take action on 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” and (ii) “micro-manage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position make an informed judgment.”

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Consistent with the standard established in the 1998 Release, the Proposal is excludable pursuant to Rule 14a-8(i)(7) as being related to the Company's ordinary business operations.

## **II. Evaluating the Seven Board Actions as Multiple Proposals**

The Deficiency Response states that the Seven Board Actions do not constitute shareholder proposals and that they are provided only as examples of actions the Board of Directors might consider. However, the following analysis would apply if the Seven Board Actions are viewed as multiple shareholder proposals.

***Exclusion under Rule 14a-8(c).*** Rule 14a-8(c) states that “[e]ach shareholder may submit no more than one proposal to a company for a particular shareholders’ meeting.” A submission that consists of more than one shareholder proposal is deficient under Rule 14a-8(c) and it may be excluded in accordance with Rule 14a-8(f).

Upon receipt of the Proposal, the Company believed that the Seven Board Actions constituted separate proposals. In accordance with Rule 14a-8(f), the Company delivered the Deficiency Notice to the Proponent within 14 days of the Company's receipt of the Proposal. The Deficiency Notice advised the Proponent that the Proposal is deficient because it consists of more than one proposal. The Company, having complied with the requirements of Rule 14a-8(f)(1), may exclude the Proposal if it is viewed as consisting of multiple shareholder proposals.

## **III. Evaluating the Seven Board Actions on an Individual Basis**

The Deficiency Response states that the Seven Board Actions are not shareholder proposals and that they are provided only as examples of actions the Board of Directors might consider. It should therefore not be necessary to consider whether any of the Seven Board Actions, if presented as a single shareholder proposal, could be excluded under Rule 14a-8. However, we believe that each of the Seven Board Actions, if it had been presented individually, would be excludable pursuant to either (i) Rule 14a-8(i)(3) because it is impermissibly vague and indefinite and therefore inherently misleading, (ii) Rule 14a-8(i)(13) because it relates to specific amounts of stock dividends and/or (iii) Rule 14a-8(i)(7) because it deals with a matter relating to the Company's ordinary business operations.

Each of the Seven Board Actions, and the basis on which it could be excluded had it been presented as a single proposal, is set forth below.

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**1. “Doing a 1 for 2 reverse stock-split to make Bimini eligible for institutional ownership and for listing on the NYSE or NASDAQ.” (“Stock Split Recommendation”)**

***Excludable Under Rule 14a-8(i)(13).*** Rule 14a-8(i)(13) provides that a company may exclude a shareholder proposal if it “relates to the specific amounts of cash or stock dividends.”

The Staff has consistently taken the position that a proposal that would establish a specific ratio for a stock split relates to a specific amount of stock dividends and is therefore excludable under Rule 14a-8(i)(13). *NVR, Inc.* (January 1, 2011) (three-for-one stock split); *Hecla Mining Company* (March 9, 2009) (two-for-one reverse stock split); *Fleet Financial Group, Inc.*, (December 2, 1998) (one-for-twenty-reverse stock split); *The Quaker Oats Company* (August 20, 1998) (two-for-one stock split); *Atlantic Richfield Co.* (December 28, 2015) (three-for-one stock split); *RJR Nabisco Holdings Corp.* (December 8, 1995) (five-for-one stock split); *Merck and Company, Incorporated* (February 25, 1992) (three-for-one stock split); *NYNEX Corp.* (February 28, 1992) (two-for-one stock split); *The Boeing Company* (January 11, 1990) (three-for-two stock split); *TRW Incorporated* (January 11, 1988) (three-for-one stock split); *La-Z-Boy Chair Company* (May 5, 1987) (two-for-one stock split); *Pan American World Airways, Inc.* (February 17, 1983).

Consistent with these cases, the Stock Split Recommendation, if it had been presented individually as a shareholder proposal, would be excludable under Rule 14a-8(i)(13).

***Excludable Under Rule 14a-8(i)(3).*** As discussed above, a proposal is excludable under Rule 14a-8(i)(3) if the proposal is “contrary to any of the Commission’s proxy rules, including [Rule] 14a-9, which prohibits materially false or misleading statements in the proxy soliciting materials.”

The Stock Split Recommendation states the stock split would “make Bimini eligible for institutional ownership and for listing on the NYSE or NASDAQ.” The recommendation is false and misleading in several respects.

First, the Stock Split Recommendation suggests that the stock split, standing alone, would “make Bimini eligible for institutional ownership and for listing on the NYSE or NASDAQ.” However, a reverse stock split would reduce the number of shares in the public float. That may lead to a reduction in trading volume and liquidity in the Company’s stock, making it less attractive to “institutional ownership.” Likewise, certain listing requirements applied by the New York Stock Exchange and Nasdaq include a minimum public float requirement. The recommended stock split might compromise the Company’s

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ability to meet exchange listing requirements that are based on public float. The Stock Split Recommendation is therefore false and misleading because it overstates the potential benefits, and fails to disclose the potential disadvantages, of the stock split.

Second, the Stock Split Recommendation contains no explanation or definition of “institutional ownership;” no reference to a single, specific securities exchange or market; and no description of the listing requirements that are applicable to a specific market. These concepts are critical to a shareholder’s ability to understand and evaluate a proposal. The failure to define these concepts causes the recommendation to be misleading and confusing to shareholders.

The Stock Split Recommendation, if presented individually as a shareholder proposal, would therefore be excludable under Rule 14a-8(i)(3) because it is impermissibly vague and indefinite and therefore inherently misleading.

- 2. “Appointing a new independent director to serve on the board and to sit with the lead director on the Audit Committee, thus satisfying the minimum requirement for listing Bimini on a major exchange.”** (“Independent Director Recommendation”)

***Excludable Under Rule 14a-8(i)(3).*** As discussed above, a proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite, and therefore misleading, if “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.”

Historically, the Staff has concurred with the exclusion of a shareholder proposal pursuant Rule 14a-8(i)(3) if the proposal seeks to impose a standard by reference to a particular set of external guidelines without sufficiently describing or explaining the external guidelines in the proposal or supporting statement. In particular, a proposal that seeks to impose an “independent director” requirement may not rely on a reference to New York Stock Exchange rules for the definition of that term; rather, the proposal itself must contain a definition and explanation of “independent director.” See *Chevron Corporation* (March 15, 2013) (proposal excluded for failure to include the New York Stock Exchange’s definition of “independent director”); *Boeing Co.* (February 10, 2004) (proposal excluded for failure to include the 2003 Council of Institutional Investors’ definition of “independent director”); *Wellpoint Inc.* (February 24, 2012) (proposal excluded for failure to include the New York Stock Exchange’s definition of independent chairman).

The Independent Director Recommendation states that the appointment of an “independent director” would allow the Company to satisfy “the minimum requirement for

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listing Bimini on a major exchange.” This recommendation does not define “independent director;” does not define “major exchange;” and does not include any demonstration that the appointment of an independent director would result in a listing on any particular exchange. Furthermore, this recommendation fails to even refer to an external set of guidelines in an attempt to define “independent director.” Although such a reference would add clarity to the recommendation, it would still not save the recommendation from being excludable pursuant to the standard established in the cases discussed above.

Consistent with the cases described above, the independent director recommendation, if it had been presented individually as a shareholder proposal, would be excludable under Rule 14a-8(i)(3) because it is impermissibly vague and indefinite and therefore inherently misleading.

- 3. “Taking any other steps the board considers to be necessary to make Bimini eligible for listing on a major exchange like the NYSE-MKT. Bimini’s listing on a major exchange would increase its investor profile, make it eligible for institutional ownership, improve daily volume, aid liquidity and make BMNM eligible for margin accounts. All of which should make Bimini a more attractive long-term holding for investors.” (“Other Steps Recommendation”)**

*Excludable Under Rule 14a-8(i)(3).* As discussed above, a proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite, and therefore misleading, if “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 Other Steps recommendation states that the Board of Directors should take “*any other steps the board considers to be necessary* to make Bimini eligible for listing on a major exchange....” This language is vague, indefinite and lacking in specific details. It would defer entirely to the Board of Directors to determine what, if any, actions should be taken. As a result, neither stockholders nor the Company would be able to determine what specific actions are to be taken. This recommendation, if it had been presented individually as a shareholder proposal, would therefore be excludable under Rule 14a-8(i)(3) because it is impermissibly vague and indefinite and therefore inherently misleading

- 4. “Further aligning management and shareholder interests by setting out specific and quantifiable share price metrics and awarding management executives and directors with Bimini shares, or derivatives thereof, upon the achievement of those goals.” (“Compensation Recommendation”)**

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***Excludable Under Rule 14a-8(i)(3).*** As discussed above, a proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite, and therefore misleading, if neither the stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.

The Compensation Recommendation states that the Board of Directors should align “management and shareholder interests” by setting “share price metrics and awarding management executives and directors with Bimini shares, or derivatives thereof, upon the achievement of those goals.” This language is vague, indefinite and lacking in specific details. It would defer entirely to the Board of Directors to determine what, if any, actions should be taken. As a result, neither stockholders nor the Company would be able to determine what specific actions are to be taken. The Compensation Recommendation, if it had been presented individually as a shareholder proposal, would be excludable under Rule 14a-8(i)(3) because it is impermissibly vague and indefinite and therefore inherently misleading

5. **“Creating a new web portal or updating the old one; the current Bimini website is significantly out of date and contains erroneous information that would tend to dissuade potential investors from buying Bimini shares.”** (“Website Recommendation”)

***Excludable Under Rule 14a-8(i)(7).*** The creation and maintenance of a website clearly relates to the ordinary business of the Company. It is not appropriate for shareholder consideration and action at an annual meeting. Consistent with the standard established in the 1998 Release, as discussed above, the Website Recommendation, if it had been presented individually as a shareholder proposal, would be excludable under Rule 14a-8(i)(7) as being related to the Company’s ordinary business operations.

6. **“Changing Bimini’s corporate name to reflect its new status as an asset manager and leaving behind any negative associations investors may attach to Bimini’s past share price history.”** (“Name Change Recommendation”)

***Excludable Under Rule 14a-8(i)(3).*** The Staff has concluded that a proposal to change a corporate name is a matter relating to a company’s ordinary business and may be excluded under Rule 14a-8(i)(7). *Luby’s Inc.* (October 2, 2017) (name change proposal excluded as related to ordinary business). The Name Change Recommendation, if presented individually as a shareholder proposal, would therefore be excludable under Rule 14a-8(i)(7) because it deals with a matter related to the Company’s ordinary business operations.



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7. **“And by communicating with shareholders in a more proactive fashion: by publicizing earnings webcasts, doing presentations and appearing at broker conferences.”** (“Shareholder Communication Recommendation”)

*Excludable Under Rule 14a-8(i)(3).* The manner in which a company conducts webcasts, makes investor presentations and participates in broker conferences clearly relates to the ordinary business of the Company. None of these matters are appropriate for shareholder consideration and action at an annual meeting. Consistent with the standard established in the 1998 Release, as discussed above, the Shareholder Communication Recommendation, had it been presented individually as a shareholder proposal, would be excludable under Rule 14a-8(i)(7) as being related to the Company’s ordinary business operations.

As discussed above, the Deficiency Response states that the Seven Board Actions are not shareholder proposals. It should therefore not be necessary to consider whether any one of the Seven Board Actions, if presented as a single shareholder proposal, could be excluded under Rule 14a-8. The analysis above is therefore provided for discussion purposes only.

## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(c), Rule 14a-8(i)(3), Rule 14a-8(i)(7) and/or Rule 14a-8(i)(13).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [david.roos@moyewhite.com](mailto:david.roos@moyewhite.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (303) 292-7959.

Very truly yours,

Moye White LLP



David C. Roos

ATL

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**EXHIBIT A  
PROPOSAL**

November 30, 2017

Mr. Robert Cauley, Corporate Secretary

Bimini Capital Management, Inc.

3305 Flamingo Dr.

Suite 100

Vero Beach, FL 32963

Re: Shareholder proposal for the 2018 Annual Meeting of Bimini Capital Management, Inc.

Dear Members of the Board of Directors:

The purpose of this document is to provide written confirmation that on November 30<sup>th</sup>, 2017, Daniel L. Hoffmann formally submitted a shareholder proposal to be included in the Proxy Statement for Bimini Capital Management, Inc. to be distributed to shareholders prior to the 2018 annual meeting.

Please find the following items, 1 and 3 are enclosed and item 2 is contained in the body of this letter;

- 1) A written statement from the "record" holder of a portion of my Bimini holdings (Tradestation Securities, Inc.), verifying that at the time of the submission of this proposal, I, Daniel L. Hoffmann had held continuously 229,500 shares of Bimini Management, Inc. common shares for at least one year in TS # \*\*\* . That holding exceeded \$2000.00 in value. "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)."
- 2) A statement from me, Daniel L. Hoffmann, concerning my intentions with regard to those securities, that conforms with SEC 240.14a-8(b)(2i).
- 3) A shareholder proposal -see enclosed- submitted in accordance with SEC CFR 240. 14a-8 and its focus on Bimini Capital Management, Inc.'s share price and its long term divergence from fair value.


*2) As attested to by a written statement from the "record" holder (Tradestation Securities, Inc.) - see enclosed- I have held continuously for at least one year as of November 30<sup>th</sup>, 2017, 229,500 shares of BMNM common. I intend to continue to hold the securities just mentioned from November 30<sup>th</sup>, 2017 up to and through the date of the 2018 Annual Meeting, which has yet to be scheduled.*

These items were received at your offices at suite 100, 3305 Flamingo Drive, Vero Beach FL 32963, prior to the deadline for the submission of shareholder proposals of December 17<sup>th</sup>, 2017.

I plan on personally attending the 2018 Annual Meeting. I would sincerely appreciate the opportunity to discuss this matter beforehand.

Please let me know if any additional information or clarification is required.

Sincerely,



Daniel L Hoffmann

\*\*\*

ITEM # 1



8050 SW 10th Street  
Suite 2000  
Plantation, FL 33324

T 954.652.7000 | 800.556.2022  
TradeStation.com

December 4, 2017

Daniel L. Hoffmann  
\*\*\*

Dear Daniel L. Hoffmann,

The purpose of this document is to provide written verification that as of November 30<sup>th</sup>, 2017 account \*\*\*\*, in the name of Daniel L. Hoffmann IRA, has continuously held for at least one year a minimum of 229,500 common shares of Bimini Capital Management, Inc. of record by TradeStation Securities, Inc.

Best Regards,

Adam Gock

Client Services Team Lead

8050 SW 10 Street, Plantation, FL 33324

Phone: 800-822-0512 (US toll-free) | Phone: 954-652-7920 | Fax: 954-652-7599

Email: [clientservices@tradestation.com](mailto:clientservices@tradestation.com)

Web: [www.tradestation.com](http://www.tradestation.com)

*Equities, equities options and futures products and services are offered by TradeStation Securities, Inc. (Member NYSE, FINRA, CME and SIPC).*

November 30, 2017

### Bimini Shareholder Proposal

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"For the following course of action and the steps which may be taken by the board of directors of Bimini Capital Management Inc., in their sole discretion and within the legal powers that they hold under Maryland General Corporation Law. **The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share's substantially lower market price.** That differential is over 50% as of the date of this proposal. The steps the board may take include, but are not limited to, and may exclude any or all of the following:

- 1) *Doing a 1 for 2 reverse stock-split to make Bimini eligible for institutional ownership and for listing on the NYSE or NASDAQ.*
  - 2) *Appointing a new independent director to serve on the board and to sit with the lead director on the Audit Committee, thus satisfying the minimum requirement for listing Bimini on a major exchange.*
  - 3) *Taking any other steps the board considers to be necessary to make Bimini eligible for listing on a major exchange like the NYSE-MKT. Bimini's listing on a major exchange would increase its investor profile, make it eligible for institutional ownership, improve daily volume, aid liquidity and make BMNM eligible for margin accounts. All of which should make Bimini a more attractive long-term holding for investors.*
  - 4) *Further aligning management and shareholder interests by setting out specific and quantifiable share price metrics and awarding management executives and directors with Bimini shares, or derivatives thereof, upon the achievement of those goals.*
  - 5) *Creating a new web portal or updating the old one; the current Bimini website is significantly out of date and contains erroneous information that would tend to dissuade potential investors from buying Bimini shares.*
  - 6) *Changing Bimini's corporate name to reflect its new status as an asset manager and leaving behind any negative associations investors may attach to Bimini's past share price history.*
  - 7) *And by communicating with shareholders in a more proactive fashion: by publicizing earnings webcasts, doing presentations and appearing at broker conferences."*
- 

Submitted by Daniel L. Hoffmann, in accordance with SEC CFR 240. 14a-8, on November 30<sup>th</sup>, 2017, and delivered to Bimini Capital Management, Inc., Attn. Robert Cauley, Corporate Secretary, at 3305 Flamingo Drive, suite 100, Vero Beach, FL 32963.

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**EXHIBIT B  
DEFICIENCY NOTICE**



December 20, 2017

Daniel L. Hoffman  
\*\*\*

**Via Federal Express and Email**

Re: Rule 14a-8 Proposal

Dear Mr. Hoffman:

We received your proposal dated November 30, 2017, for inclusion in the proxy materials for the 2018 annual meeting of stockholders. on December 8, 2017.

Rule 14a-8 under the Securities Exchange Act of 1934, as amended, sets forth certain eligibility and procedural requirements that must be satisfied for a stockholder to submit a proposal for inclusion in a company's proxy materials. In accordance with Rule 14a-8(f), I have to notify you that your proposal did not comply with Rule 14a-8(c). Rule 14a-8(c) prohibits any one stockholder from submitting more than one proposal to a company for a particular stockholder's meeting. Your proposal consists of seven separate proposals. It is therefore deficient under Rule 14a-8 and not eligible for inclusion in the Company's proxy materials:

Rule 14a8(f) states that you may provide the Company with a response to this letter that corrects the eligibility and procedural deficiency described above. Your response must be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. The address for electronic transmission is:  
[rcauley@biminicapital.com](mailto:rcauley@biminicapital.com)

The deficiency described in this letter is without prejudice to any other rights that the Company may have pursuant to Rule 14a-8 to exclude your proposal from its proxy materials.



For your reference, please find enclosed a copy of Rule 14a-8.

Yours truly,

BIMINI CAPITAL MANAGEMENT, INC.

A handwritten signature in black ink, appearing to read "R. E. Cauley", written in a cursive style.

Robert E. Cauley  
Chairman and Chief Executive Officer

Enclosure:

Rule 14a-8 under the Securities and Exchange Act of 1934

**§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 (2) 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]

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**EXHIBIT C**  
**DEFICIENCY RESPONSE**

December 21, 2017

Mr. Robert Cauley, Corporate Secretary

Via UPS and Email

Bimini Capital Management, Inc.

3305 Flamingo Dr.

Suite 100

Vero Beach, FL 32963

Re: Bimini Capital Management, Inc. Shareholder Proposal submitted by Daniel L Hoffmann, SEC RULE 14a-8(c)

Dear Members of the Board of Directors:

**Because Bimini has failed to demonstrate that the proposal lacks a “single, well defined unifying concept” and that the proposal is not singular in nature, the proposal may not be excluded under Rule 14a-8(c). Further, the company’s notice of deficiency fails to cite a single case in which a no-action letter was granted to other companies under similar circumstances. I believe that failure stems from the fact that there are no similar circumstances, where the supporting statement is construed to be part of the core proposal.**

Further, it is a sad day when an American corporate board attempts to exclude from its Annual Proxy a proposal recommending the following:

**“The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share’s substantially lower market price.”**

And for the board to do so, based not on the merit of the proposal, but based on a procedural rule. Your excuse for exclusion hinges on Rule 17 CFR 240.14a-8(c), that “each shareholder may submit no more than one proposal to a company for a particular shareholders’ meeting”. I would maintain that my proposal is singular in nature and encompasses a “single, well-defined unifying concept.”

Putting your procedural gambit aside for a moment, the very attempt to squash a proposal that recommends that the board adopt a plan of its own choosing, in order to correct the chronic **undervaluation** of their own common shares, hits at the very basis of the proposal and suggests that there has been little if any attempt, to date, to reward the long suffering shareholders of Bimini Capital Management, Inc. Need I point out that Bimini’s shares are trading at 2% of their IPO price.

In Bimini's response letter, as regards Rule 14a-8, Mr. Cauley succinctly restated my one line proposal by writing:

**"On an ongoing basis we consider opportunities and strategies for building shareholder value."**

Mr. Cauley understood and restated my proposal's **"single, well-defined unifying concept."** He read the proposal, understood the "single, well-defined unifying concept" and regurgitated it. He didn't mention any of the enumerated supporting statements. He didn't have to, because they were not necessary, but accessory.

His response didn't need to address any of the points in my enumerated supporting statement, because they were extraneous to, but in support of the central theme. Yet in an attached correspondence, he stated that "your proposal consists of seven separate proposals." But he understood by his first statement "on opportunities and strategies" that they were not part of, but in support of, the "single, well-defined unifying concept" of my proposal—the **chronic undervaluation of Bimini common shares.**

I was forced to enumerate examples of some possible courses of action, because after scouring every SEC document filed by Bimini and listening to every conference call, I have not found any references to the "opportunities and strategies for building shareholder value" that Mr. Cauley mentioned in his deficiency notification letter. I had to conclude that management failed to mention their strategies, because they didn't have any. So I provided some possible examples in my supporting statement.

That being said, the placement of a number before the beginning of a sentence does not make the sentence a proposal. The body of the "supporting statement", in enumerated form, that follows the core of the proposal, sets out examples of actions that the board has not yet taken, and the wording strongly suggests that the board needn't select any of the examples enumerated there. In fact, the wording states clearly that the board **"may exclude any or all of the following"**. The numbered items are simply provided as evidence that the board has viable options, which it has chosen not to follow. The numbered items are presented as evidence that the one line proposal, in bold type at the beginning of this letter, is valid.

In other words, if the supporting statement were to contain no examples of the "requisite measures" not taken in the period up to and including the current date, then the proposal should be rejected on the basis of Rule 14a-8(i)(3), that it is a materially false proposal. Could I leave it up to the board's imagination or suppose that they have considered and rejected every one of the numbered items. Bimini is trading at half of its book value, two percent of its IPO price and the absence of a supporting statement would indicate a trust in their vision, which all the evidence indicates is not justified.

Doesn't the proposal have a single well defined unifying theme? Isn't the one line proposal laser focused on the same "single, well-defined unifying concept" of Bimini's **chronic undervaluation**? Doesn't the supporting statement speak to the causes of the "undervaluation" of Bimini common shares and the lack of board action that is the central theme of the proposal? The whole document is focused on the "undervaluation" of the shareholder's stake. And no proposal could be more central to American capitalism and shareholder rights.



The board's representative, Robert E. Cauley, received my shareholder proposal on December 8th, 2017. On December 20<sup>th</sup>, 2017 I received a notification that the board deemed my proposal to be procedurally deficient under Rule 14a-8(c). **I deny that the proposal is defective on any procedural grounds or under any of the SEC's thirteen exclusionary rules.** I would posit that the seven numbered items are not proposals, but rather, that they are part of the supporting statement that follows the one sentence, 37 word proposal and its "single, well-defined unifying concept" of "**Bimini's common share's chronic undervaluation**".

**In 17 CFR 240.14a-8(a) the SEC defines a proposal in the following way: "A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action..."**

The key words here are "recommendation" and "requirement". Mr. Cauley has characterized the seven supporting examples as being proposals. My one line proposal is contained in the first paragraph of my submission. It is clearly a recommendation and not a requirement, as you can plainly see here:

**"The board should take what it deems to be the requisite measures in order to close the chronic, long-term gap between the intrinsic value (book value) of Bimini common shares and the share's substantially lower market price."**

The seven examples set forth in the following paragraph of the overall proposal are certainly not requirements, as is nothing else that was presented in the proposal to the board. The first sentence of the overall proposal states:

"For the following course of action and the steps which may be taken by the board of directors of Bimini Capital Management Inc., in their sole discretion and within the legal powers that they hold under Maryland General Corporation Law."

"In their sole discretion" could not be construed as being a requirement. The supporting statement makes these comments about the seven examples set forth, that the board "may exclude any or all of the following". Merriam-Webster defines "requirement" as "something needed: a necessity". The proposal is clear that the board should determine what is required, in its sole discretion. Therefore nothing contained in the overall proposal fits the definition of a "requirement".

Are any of the seven enumerated examples contained in the supporting statement a "recommendation"? The supporting statement uses the phrase, "The steps the board may take...and may exclude any or all of the following". Merriam-Webster dictionary defines "may" as "expressing possibility". The statement introducing the seven enumerated examples says "the board may take", which falls far short of a recommendation, being merely a possibility for the board to consider.

If the board intends to attempt to exclude my proposal from the Annual Proxy then it will have to submit its no-action request to the Securities and Exchange Commission no later than 80 calendar days before it files its definitive proxy statement for the 2018 Annual Meeting. **It also must simultaneously transmit to me a copy of the identical no-action request submitted to the Commission.**

Let's proceed, gentlemen.

Sincerely,

Daniel L. Hoffmann

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