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

DIVISION OF
CORPORATION FINANCE

February 6, 2018

Aaron J. Alter
Hawaiian Holdings, Inc.
aaron.alter@hawaiianair.com

Re: Hawaiian Holdings, Inc.
Incoming letter dated January 11, 2018

Dear Mr. Alter:

This letter is in response to your correspondence dated January 11, 2018 concerning the shareholder proposal (the "Proposal") submitted to Hawaiian Holdings, Inc. (the "Company") by Stewart Taggart (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Stewart Taggart
***

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

February 6, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Hawaiian Holdings, Inc.
Incoming letter dated January 11, 2018

The Proposal relates to a report.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(f). We note that the Proponent appears to have failed to supply, within 14 days of receipt of the Company's request, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

HAWAIIAN
AIRLINES

January 11, 2018

BY EMAIL (shareholderproposals@sec.gov)

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

Re: Shareholder Proposal of Stewart Taggart
Submitted to Hawaiian Holdings, Inc.

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended, Hawaiian Holdings, Inc., a Delaware corporation (the "Company"), is writing to request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with the Company's view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the "Proposal") submitted by Stewart Taggart (the "Proponent") from the proxy materials to be distributed by the Company in connection with its 2018 Annual Meeting of Shareholders (the "2018 Proxy Materials").

In accordance with Section C of Staff Legal Bulletin No. 14D (CF) (Nov. 7, 2008) ("SLB 14D"), the Company is emailing this letter to the Staff. Simultaneously, pursuant to Rule 14a-8(j), the Company is sending a copy of this letter to the Proponent as notice of the Company's intention to exclude the Proposal from the 2018 Proxy Materials. The Company will promptly forward to the Proponent any response from the Staff to this no-action request that the Staff transmits by email or fax to the Company. Also pursuant to Rule 14a-8(j), this letter is being filed no later than 80 calendar days before the Company files its 2018 Proxy Materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that they elect to submit to the Staff or the Commission. Accordingly, the Company is taking this opportunity to remind the Proponent that if he submits correspondence to the Staff or the Commission with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company.

1. The Proposal

The text of the resolution contained in the Proposal is set forth below:

> BE IT RESOLVED: Shareholders request Hawaiian issue a report (at reasonable cost, omitting proprietary information), assessing how it plans to respond to climate change and the resultant transition to a low carbon economy in order to minimize reputational risk.

A copy of the Proposal is attached as Exhibit A.

2. Bases for Exclusion

The Company requests that the Staff concur in its view that it may exclude the Proposal from the 2018 Proxy Materials pursuant to:

- Rule 14a-8(b) and Rule 14a-8(f)(1), because the Proponent failed to provide, within 14 days of receipt of the Company's request, the requisite proof of continuous stock ownership in response to the Company's proper request for that information;

- Rule 14a-8(i)(7), because the Proposal deals with matters relating to the Company's ordinary business operations; and

- Rule 14a-8(i)(3), because the Proposal is impermissibly vague and indefinite so as to be materially false and misleading.

3. Background

On November 14, 2017, the Company received the Proposal and associated cover letter from the Proponent. The Proponent's submission did not include any verification of his ownership of the required number of shares of the Company's common stock as required by Rule 14a-8(b). Following receipt of the Proposal, the Company reviewed its stock records and determined that the Proponent was not a registered holder of any shares of the Company's common stock.

As required by Rule 14a-8(f), on November 21, 2017, within 14 calendar days of the date that the Company received the Proposal, the Company notified the Proponent of the Proposal's procedural deficiencies (the "Deficiency Notice"). In the Deficiency Notice, which is attached as Exhibit B, the Company informed the Proponent of the requirements of Rule 14a-8 and how he could cure the procedural deficiency. As requested by the Proponent, the Company provided the Deficiency Notice by email, with an additional copy sent by FedEx.

The Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);

- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including "a written statement from the 'record'

holders of the [Proponent's] shares (usually a broker or bank) verifying that, at the time [the Proponent] submitted the proposal (November 9, 2017), [the Proponent] had continuously held at least $2,000 in market value, or 1%, of the Company's common stock for at least the one-year period prior to and including November 9, 2017"; and

- that any response to the Deficiency Notice had to be postmarked or transmitted electronically to the Company no later than 14 calendar days from the date that the Proponent received the Deficiency Notice.

The Deficiency Notice included a copy of Rule 14a-8, Staff Legal Bulletin No. 14F (Oct. 18, 2011) and Staff Legal Bulletin No. 14G (Oct. 16, 2012).

On November 22, 2017, the Proponent confirmed receipt of the Deficiency Notice (the "Confirmation") and stated that he would provide the required ownership information shortly. The Confirmation is attached as Exhibit C. As highlighted in the Confirmation, the Proponent's own records show that he received the Deficiency Notice at 1:38 p.m. on November 21, 2017.

On December 6, 2017, the Proponent responded to the Deficiency Notice (the "Untimely Response") and attempted to provide the required ownership information. The Untimely Response is attached as Exhibit D. The Untimely Response was received by the Company by email on December 6, 2017, which is 15 calendar days after the Proponent received the Deficiency Notice on November 21, 2017.

4. Analysis

(a) *The Proposal may be excluded pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide, within 14 days of receipt of the Company's request, the requisite proof of continuous stock ownership in response to the Company's proper request for that information*

Under Rule 14a-8(f)(1), a company may exclude a shareholder proposal if the proponent fails to submit evidence of his eligibility to make the proposal under Rule 14a-8 (including the stock ownership requirement of Rule 14a-8(b)) within 14 days from the date on which the proponent received timely notice of such deficiency from the company. Rule 14a-8(b)(1) provides, in part, that in "order to be eligible to submit a proposal, [a shareholder] must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the shareholder] submit[s] the proposal." Section C.1.c. of Staff Legal Bulletin No. 14 (July 13, 2001) specifies that when the shareholder is not the registered holder, the shareholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the shareholder may do by one of the two ways provided in Rule 14a-8(b)(2). Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), so long as the

company timely notifies the proponent of the deficiency and the proponent fails to correct the deficiency within the 14 calendar day period. The Company satisfied its obligation under Rule 14a-8 by timely transmitting the Deficiency Notice to the Proponent. The Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a registered holder of any shares of the Company's common stock;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b);
- that the Proponent's response had to be postmarked or transmitted electronically to the Company no later than 14 calendar days from the date that the Proponent received the Deficiency Notice; and
- that a copy of the shareholder proposal rules set forth in Rule 14a-8 was enclosed.

The Proponent did not provide proof of ownership to the Company within 14 calendar days of receiving his receipt of the Deficiency Notice on November 21, 2017.

The Staff has consistently concurred in the exclusion of proposals when, following a timely and proper request by a company to furnish evidence of continuous share ownership, the proponent failed to respond within 14 calendar days from the date on which the proponent received the deficiency notice. For example, in *Comcast Corp.* (avail. Mar. 5, 2014), the Staff concurred with the exclusion of a shareholder proposal under Rule 14a-8(f) where a timely and proper deficiency notice was sent to the proponent by email, in accordance with the proponent's instructions, and the proponent sent proof of stock ownership by fax one day after the expiration of the 14 calendar day period prescribed by Rule 14a-8(f)(1). *See also EMC Corp.* (avail. Feb. 26, 2010) (concurring in the exclusion of a co-proponent of a shareholder proposal under Rule 14a-8(f) where such co-proponent responded to a timely and proper deficiency notice on the 15th calendar day after such deficiency notice was sent to the co-proponent by email); *The Charles Schwab Corp.* (avail. Feb. 25, 2015) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(f) where the proponent submitted requisite proof of stock ownership 15 calendar days after receipt of a timely and proper deficiency notice by fax); *FedEx Corp.* (avail. July 5, 2016) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(f) where the proponent provided proof of stock ownership 18 calendar days after receipt of the deficiency notice by email).

After receiving no proof of stock ownership with the Proposal, the Company timely and properly notified the Proponent of the procedural deficiency under Rule 14a-8(b) on November 21, 2017. As instructed by the Proponent, the Company provided the Deficiency Notice by email. The Proponent acknowledged receipt of the Deficiency Notice, and that acknowledgement shows that the Deficiency Notice was received by the Proponent on November 21, 2017.

Pursuant to Rule 14a-8(f)(1), the Proponent's response to the Deficiency Notice was required to be postmarked or transmitted electronically to the Company by December 5, 2017, which is 14 calendar days from the date of the Proponent's receipt of the Deficiency Notice. The Untimely Response was not sent to, nor received by, the Company until after the 14 calendar day deadline. The Proponent's failure to provide proof of ownership within the time period specified under Rule 14a-8(b) permits the Company to exclude the Proposal under Rule 14a-8(f)(1).

(b) *The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations*

(i) *Overview of Rule 14a-8(i)(7)*

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the shareholder proposal "deals with a matter relating to the company's ordinary business operations." According to Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"), which accompanied the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." The 1998 Release identified two central considerations that underlie this policy. The first of these considerations is that certain tasks "are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second of these considerations "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

The 1998 Release does state that "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues ... generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." The Staff elaborated on this "significant policy" exception in Staff Legal Bulletin No. 14E (Oct. 27, 2009). There, the Staff noted that, in cases where the underlying subject matter of a proposal may transcend the day-to-day business matters of a company and raise significant policy issues, "the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company." However, the Staff confirmed that "in those cases in which a proposal's underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7)."

The significant policy exception is further limited because, even if a proposal involves a significant policy issue, the proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micro-manage the company by specifying in detail the manner in which the company should address the policy issue. For example, in *Marriott International Inc.* (avail. Mar. 17, 2010), the Staff concurred in the exclusion of a proposal to limit showerhead flow to no more than 1.6 gallons per minute and require the installation of mechanical switches to control the level of water flow. This was because, even though the proposal raised concerns with a significant policy issue (global warming), it sought to micro-manage the company to such a degree that exclusion was appropriate. In concurring with the exclusion of the proposal under Rule 14a-8(i)(7), the Staff noted "in particular, that the proposal would require the company to test specific technologies that may be used to reduce energy consumption." *See also Duke Energy Corp.* (avail. Feb. 16, 2001) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that requested an 80% reduction in nitrogen oxide emissions from the company's coal-fired power plants and a limit of 0.15 pounds of nitrogen oxide per million British Thermal Units of heat input for each boiler, despite the proposal's objective of addressing significant environmental policy issues).

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Staff has stated that a proposal requesting the dissemination of a special report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report involves a matter of ordinary business of the issuer. In Exchange Act Release No. 20091 (Aug. 16, 1983), the Staff provided that it "will consider whether the subject matter of the special report ... involves a matter of ordinary business; *where it does, the proposal will be excludable under Rule 14a-8(c)(7)*" (emphasis added). *See also Johnson Controls, Inc.* (avail. Oct. 26, 1999) (stating that where "the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business ... it may be excluded under rule 14a-8(i)(7))"; *Netflix, Inc.* (avail. Mar. 14, 2016) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that requested a report on, among other things, how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, noting that the proposal related to the company's ordinary operations, in particular the "nature, presentation and content of programming and film production"). Furthermore, even when the proposal addresses a significant policy issue, the Staff has recognized that a shareholder's casting of a proposal as a request for a report, rather than a request for a specific action, does not mean that the proposal does not seek to micro-manage the Company. For example, in *Ford Motor Co.* (avail. Mar. 2, 2004), the Staff concurred in the exclusion of a proposal under Rule 14a-8(i)(7) that requested the preparation and publication of a scientific report on global warming/cooling, stating that the proposal was excludable "as relating to ordinary business operations."

(ii) *The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's choice of technologies and seeks to micro-manage the Company*

The Staff has permitted the exclusion of proposals under Rule 14a-8(i)(7) where the proposal and the supporting statement, when read together, relate to the company's choice of technologies for use in its operations. For example, in *First Energy Corp.* (avail. Mar. 8, 2013), the proposal sought a report on actions that the company could take to reduce risk throughout its energy portfolio by diversifying its energy resources to include increased energy efficiency and renewable energy resources. In concurring with exclusion of the proposal under Rule 14a-8(i)(7), despite the fact that the proposal called only for a report and not for any specific actions, the Staff noted that proposals "that concern a company's choice of technologies for use in its operations are generally excludable under [R]ule 14a-8(i)(7)." *See also Dominion Resources, Inc.* (avail. Feb. 14, 2014) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that sought, among other things, a report on risks to the company's plan for developing solar generation and the benefits of increased solar generation, because the proposal concerned "the company's choice of technologies for use in its operations"); *AT&T Inc.* (avail. Feb. 13, 2012) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that sought, among other things, a report on the company's "efforts to accelerate the development and deployment of new energy efficient set-top boxes," noting that "the proposal relates to the technology used in AT&T's set-top boxes" and that proposals "that concern a company's choice of technologies for use in its operations are generally excludable under [R]ule 14a-8(i)(7)"); *CSX Corp.* (avail. Jan. 24, 2011) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that asked the company to develop a kit that would allow it to convert the majority of its locomotive fleet to a more efficient power conversion system, noting that "the proposal relates to the power conversion system used by CSX's locomotive fleet" and that proposals "that concern a company's choice of technologies for use in its operations are generally excludable under [R]ule 14a-8(i)(7)"); *WPS Resources Corp.* (avail. Feb. 16, 2001) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that requested that the company develop new co-generation facilities and improve energy efficiency because the proposal related to the company's choice of technologies); *Union Pacific Corp.* (avail. Dec. 16, 1996) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that requested a report on the status of research and development of a new safety system for railroads on the basis that the development and adaptation of new technology for the company's operations constituted ordinary business operations).

As with the no-action letters cited above, the Proposal concerns the Company's choice of technologies for use in its operations and therefore is excludable pursuant to Rule 14a-8(i)(7). Even though the resolution in the Proposal is styled as a request for a "report" from the Company "assessing how it plans to respond to climate change and the resultant transition to a low carbon economy," it is clear from reading the supporting statement of the Proposal that the Proposal's primary purpose is to encourage the Company to implement a biofuels program and to adopt the use of biofuels in its business operations. As a result, the report to be generated would concern the Company's choice of technologies and resources for use in its operations—that is, the type of fuel that the Company chooses for its aircraft. In the supporting statement, the Proponent claims that the Company "lags other domestic and international carriers serving Hawaii" in its use of biofuels, and that all such other carriers have active biofuels programs but the Company has not announced any biofuels initiatives. The supporting statement further discusses the current costs

of biofuels as compared to regular jet fuel and the expected future costs of biofuels, and states that "a corporate strategy of deferred entry into rising price biofuel or carbon markets to reduce future net emissions generates material unhedged risk" for the Company. Consequently, the Proposal, when read in its totality, seeks to influence the Company's choice of the technology used in its operations by specifically requesting that the Company use biofuels, rather than regular jet fuel.

In violation of Rule 14a-8(i)(7), the Proposal seeks to micro-manage the Company by urging the Company to adopt the use of biofuels. However, the type of fuel that the Company chooses to use to safely transport its customers and employees is at the very core of the technologies that it uses in its operations. Decisions regarding the Company's use of certain technologies—in this case, jet fuel—are fundamental to the Company's day-to-day operations and are matters involving the Company's business and operations. Moreover, these decisions are highly complex, and require robust research, detailed analyses and a thorough understanding of the risks and benefits of alternative technologies. As a result, shareholders, as a group, would not be in a position to make an informed judgment on these matters. In the 1998 Release, the Commission stated that a proposal is excludable under the ordinary business exclusion when the proposal probes "too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." By subjecting decisions regarding the Company's use of certain technologies—such as its choice of jet fuel—to direct shareholder oversight, the Proposal (i) fundamentally interferes with management's ability to run the Company and operate its business on a day-to-day basis, and (ii) invokes the type of micro-management of complex issues involving the ordinary course of a company's business that the 1998 Release was meant to address. As a result, the Proposal is excludable pursuant to Rule 14a-8(i)(7).

(iii) *The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because the Proposal relates to the evaluation of risk*

Although the 1998 Release stated that proposals that focus on significant social policy issues may not be excludable, the Staff took the position in Staff Legal Bulletin No. 14C (June 28, 2005) ("SLB 14C") that proposals that purportedly relate to environmental or health issues are nonetheless excludable under Rule 14a-8(i)(7) "as relating to an evaluation of risk" if the "proposal and supporting statement focus on the company engaging in an internal assessment of the risks or liabilities that the company faces as a result of its operations that may adversely affect the environment or the public's health." If a proposal focuses on this type of internal risk assessment, as opposed to focusing on minimizing or eliminating company operations that may adversely affect the environment or the public's health, the Staff has concurred with the exclusion of the proposal under Rule 14a-8(i)(7). For example, in *Home Depot, Inc.* (avail. Jan. 25, 2008), the Staff concurred in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that requested that the company publish a report on its policies on, among other things, product safety, where the supporting statement discussed "product brand reputation." In concurring with exclusion, the Staff stated that the proposal related to the company's "ordinary business operations (i.e., sale of particular products)." *See also Best Buy Co., Inc.* (avail. Mar. 21, 2008)

(concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that requested that the company prepare a report on sustainable paper purchasing policies, where the supporting statement referenced reducing brand and public perception risks, stating that the proposal related to the company's "ordinary business operations (i.e., decisions concerning the paper stock used by the company)"); *Pfizer Inc.* (avail. Dec. 21, 2007) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that requested that the company prepare a report on, among other things, the effects of long-term economic stability of the company and the risks of liability to legal claims that arise from certain company policies, stating that the proposal relates to the company's "ordinary business operations (i.e., evaluation of risk)"); ***The Mead Corp.*** (avail. Jan. 31, 2001) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(7) that requested a report on, among other things, the current status of certain issues as they affect the company and other major environmental risks, "such as those created by climate change," stating that the proposal related to the company's ordinary business operations and, in particular, "that the proposal appears to focus on Mead's liability methodology and evaluation of risk").

Similar to the no-action letters cited above, and even though the Proposal has been framed as a request for a report, the Proposal impacts the Company's ordinary business operations because the subject matter of the Proposal relates to the performance of an internal assessment of risk. The word "risk" appears in the resolution contained in the Proposal. In addition, the supporting statement focuses on the "reputational risk" to the Company of its environmental initiatives. Specifically, the Proposal states that "[e]qually important may be any reputational risk to *Hawaiian* of becoming perceived as an environmental laggard. *Hawaiian's* key product differentiator in its competitive commodity market (air travel) is *Hawaiian's* implicit association with Hawaii as an (as yet) unspoiled paradise compared to where visitors come from." The Proposal goes on to say that "perceived tardiness on sustainability may create reputational (brand), supply (biofuel) and/or financial (carbon price) uncertainties for Hawaiian that its competitors do not appear at present to face to the same extent." In addition to focusing on the purported competitive risks that the Company faces by not implementing a specific climate change strategy, the Proposal also focuses on financial risks to the Company related to biofuel and regular jet fuel; the Proposal states that a "corporate strategy of deferred entry into rising price biofuel or carbon markets to reduce future net emissions generates material unhedged risk for Hawaiian begging better disclosure to shareholders." Given the Proposal's singular focus on the purported risks to the Company—reputational, financial and otherwise—related to a failure to implement a biofuels program, it is clear that the Proposal relates primarily to the evaluation of the internal risks faced by the Company and not to the minimization or elimination of operations that may adversely affect the environment. Therefore, the Proposal relates to an "evaluation of risk" of the type contemplated by SLB 14C.

If the Proposal were approved by the Company's shareholders, the Company, in preparing the requested report, would be required to conduct an internal evaluation of the reputational, supply and financial risks discussed in the supporting statement. Consequently, the report prepared by the Company would be an evaluation of risk. As provided in SLB 14C, proposals that focus on a company engaging in an internal assessment of certain risks are

excludable under Rule 14a-8(i)(7) as relating to an evaluation of risk. Therefore, the Proposal is excludable under Rule 14a-8(i)(7).

(c) *The Proposal may be excluded pursuant to Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be materially false and misleading*

Pursuant to Rule 14a-8(i)(3), a shareholder proposal may be excluded 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 has consistently taken the position that vague and indefinite proposals are inherently misleading and therefore excludable pursuant to Rule 14a-8(i)(3) because "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." Section B.4. of Staff Legal Bulletin No. 14B (CF) (Sep. 15, 2004) ("SLB 14B"). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (in which the Staff stated 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").

One of the central tenants of the Staff's views on Rule 14a-8 is that shareholders are entitled to know with precision what actions or measures the proposal will require if it is adopted. *See* Section B.4. of SLB 14B. In connection with this, the Staff has on numerous occasions concurred in the exclusion of a shareholder proposal under Rule 14a-8(i)(3) where key terms used in the proposal were so inherently vague and indefinite that shareholders voting on the proposal would be unable to ascertain with reasonable certainty what actions or policies the company should undertake if the proposal were enacted. For example, in *Microsoft Corp.* (avail. Oct. 7, 2016), the Staff concurred in the exclusion of a shareholder proposal under Rule 14a-8(i)(3) where the proposal requested that the board make a determination that there is a "compelling justification" before taking any action preventing "the effectiveness of a shareholder vote" because "neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *See also Berkshire Hathaway Inc.* (avail. Jan. 31, 2012) (concurring in the exclusion of a proposal under Rule 14a-8(i)(3) that specified company personnel "sign off by means of an electronic key ... that they ... approve or disapprove of figures and policies that show a high risk condition for the company, caused by those policies," because the proposal did not "sufficiently explain the meaning of 'electronic key' or 'figures and policies' and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"); *The Boeing Co. (Recon.)* (avail. Mar. 2, 2011) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(3), noting "that the proposal does not sufficiently explain the meaning of 'executive pay rights' and that, as a result, neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"); *General Electric Co.* (avail. Feb. 10, 2011) (same); *The Allstate Corp.* (avail. Jan. 18, 2011) (same); *General Motors Corp.* (avail. Mar. 26,

2009) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(3) that proposed to eliminate "all incentives for the CEOS and the Board of Directors" where the proposal did not define "incentives" or "CEOS").

The Staff has also concurred in the exclusion of shareholder proposals under Rule 14a-8(i)(3) as vague and indefinite where a company and its shareholders might interpret the proposal differently, such that "any action ultimately taken by the [c]ompany upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (avail. Mar. 12, 1991). The Staff has also consistently allowed the exclusion of proposals, including proposals requesting reports on various topics, as vague and indefinite where the proposals request certain disclosures or actions but contain only general or uninformative references to the information to be included. *See Yahoo! Inc.* (avail. Mar. 26, 2008) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(3) where the proposal requested that the board of directors establish "a new policy doing business in China, with the help from China's democratic activists and human/civil rights movement"); *Puget Energy, Inc.* (avail. Mar. 7, 2002) (concurring in the exclusion of a shareholder proposal under Rule 14a-8(i)(3) where the proposal requested that the company's board of directors "take the necessary steps to implement a policy of improved corporate governance").

Similar to the no-action letters cited above, the Proposal includes vague terms that are not defined in addition to general and uninformative references. Shareholders voting on the Proposal would be unable to ascertain with reasonable certainty what actions or policies the Company should undertake if the Proposal were enacted. Similarly, if the Proposal were enacted, the Company would be unable to determine whether it had been responsive in implementing the Proposal. Specifically, the Proposal requests that the Company issue a report assessing how it plans to respond to climate change and "the resultant transition to a low carbon economy," yet fails to define "low carbon economy." Further, the supporting statement generally references "global goals of reducing carbon emissions" and "calls for international commercial aviation emissions to be held at 2020 levels out to 2050" and advocates the adoption of a strategy to "reduce future net emissions," but does not provide any detail about the meaning of these terms, how such goals were determined or how obtainment of these goals is to be measured.

"Low carbon economy" is one of only two matters on which the Company is being asked to prepare a report and, therefore, is a key term in the Proposal. However, by failing to define "low carbon economy," the Proposal leaves the meaning of this critical term subject to different interpretations by the Company and its shareholders. Moreover, the supporting statement fails to provide any clarity with respect to the meaning of "low carbon economy." Instead, the supporting statement creates confusion by referencing, among other things, "global goals" of reducing carbon emissions and "calls for international commercial aviation emissions to be held at 2020 levels," without providing any detail or specifics with respect to the "global goals" or "2020 levels" or how these goals relate to a "low carbon economy." The supporting statement also states that deferred entry into certain markets to "reduce future net emissions" generates risk for the Company, but does not specify any guidelines or thresholds against which any future reduction in net emissions should be compared in order to determine whether goals were met.

Given that the Proposal does not define "low carbon economy," and that the supporting statement contains vague goals and guidelines, the Company and its shareholders could reasonably interpret the meaning of "low carbon economy" differently. As a result, the Company and its shareholders would have different expectations as to the issues and objectives of the report that the Company is being requested to prepare.

Because the Proposal fails to define the critical term "low carbon economy," and because the supporting statement fails to explain the goals and guidelines referenced, the Proposal is similar to the no-action letters cited above in that it is so inherently vague and indefinite that, if adopted, shareholders voting on the Proposal would be unable to ascertain with reasonable certainty what actions or plans the Company should undertake in preparing the requested report. As noted in ***Fuqua Industries***, this may lead to actions taken by the Company or a report issued by the Company upon implementation of the Proposal (if adopted) that are significantly different from the actions or report envisioned by the shareholders who voted on the Proposal. Therefore, the Proposal is excludable under Rule 14a-8(i)(3) because it is so vague and indefinite as to be materially misleading.

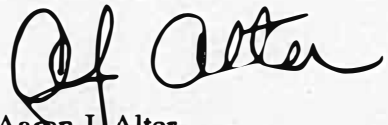
5. Conclusion

The Company requests that the Staff concur with its view that, for the reasons stated above, it may exclude the Proposal from the 2018 Proxy Materials.

* * *

Should the Staff require additional information in support of the Company's position, please contact me at (808) 835-3700 or by email at Aaron.Alter@HawaiianAir.com.

Very truly yours,



Aaron J. Alter
Executive Vice President, Chief Legal Officer
and Corporate Secretary

Enclosures

cc: Steven R. Wilson, Hawaiian Holdings, Inc.
Tony Jeffries, Wilson Sonsini Goodrich & Rosati
Stewart Taggart (by email: ***)

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

Exhibit A

[please see attached]

Stewart Taggart
***

USA
Email: ***

November 9, 2017

Corporate Secretary,
Hawaiian Airlines
3375 Koapaka Street, G-350
Honolulu, HI 96819

Dear Corporate Secretary:

Enclosed please find my 500-word shareholder proposal submitted for inclusion in the 2018 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

I submit this shareholder proposal now to protect my right to raise the issue in the proxy statement.

I intend to hold the required amount of stock through the date of the company's annual meeting in 2018. I will attend the stockholders' meeting to move the resolution as required.

Upon receiving confirmation of receipt of this letter by the post office, I will submit proof of my holding of sufficient company stock as of the resolution receipt date stock for a sufficient duration to entitle me to submit this proposal.

Unless otherwise advised, I will send that confirmation to the address above.

The best way to reach me given our different time zones is by email to *** .

Sincerely,

Stewart Taggart

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

SHAREHOLDER RESOLUTION

WHEREAS: In its 2017 publication *Tracking Clean Energy,* the *International Energy Agency* cites commercial aviation as 'showing a lack of sufficient progress' toward reaching global goals of reducing carbon emissions.

Beginning in 2020, the *International Civil Aviation Organization's Carbon Offsetting and Reduction Scheme for International Aviation* calls for international commercial aviation emissions to be held at 2020 levels out to 2050.

For its part, the *International Council on Clean Transportation* estimates carbon neutral airline industry growth can be achieved 15% through improved operational efficiency, 35% through improved aircraft technology and 50% through expanded biofuel use and use of market-based measures (like carbon pricing).

Between 2012 and 2014 (the most recent period surveyed), the *International Council on Clean Transportation's* ranking of US domestic airlines on fuel efficiency showed *Hawaiian Airlines* slipping from third to sixth place.

Hawaiian has since announced plans for improved efficiencies, but of what magnitude remains unclear. One indication has been the recent delivery to *Hawaiian of* new short haul planes presumably employing new, lower emission aircraft technology.

In biofuels, however, *Hawaiian* lags other domestic and international carriers serving Hawaii such as *Alaska Airlines, United Airlines* and *Japan Air Lines.* All have active biofuels programs.

Hawaiian has no announced biofuel initiatives and Hawaiian's top executive has questioned the safety of biofuel use on flights over oceans.

However, biofuels are routinely used by other carriers flying over water. The *International Air Transport Association* endorses their across-the-board use.

Aircraft biofuels cost up to 2-7 times that of regular jet fuel, according to the *International Air Transport Association.* Such premiums may linger or expand until biofuel technology is better developed. Meanwhile, carbon prices ranging from roughly $3-8 per tonne currently are forecast to rise as high as $50-100 per tonne as early as 2030.

A corporate strategy of deferred entry into rising price biofuel or carbon markets to reduce future net emissions generates material unhedged risk for *Hawaiian* begging better disclosure to shareholders.

Equally important may be any reputational risk to *Hawaiian* of becoming perceived as an environmental laggard. *Hawaiian's* key product differentiator in its competitive commodity market (air travel) is *Hawaiian's* implicit association with Hawaii as an (as yet) unspoiled paradise compared to where visitors come from.

Given this, perceived tardiness on sustainabillity may create reputational (brand), supply (biofuel) and/or financial (carbon price) uncertainties for Hawaiian that its competitors do not appear at present to face to the same extent.

BE IT RESOLVED: Shareholders request Hawaiian issue a report (at reasonable cost, omitting proprietary information), assessing how it plans to respond to climate change and the resultant transition to a low carbon economy in order to minimize reputational risk.

At a minimum, this should include how future aircraft design, biofuel and market measures each will contribute to Hawaiian's achievement of carbon neutral growth after 2020.

Exhibit B

[please see attached]

Stewart Taggart:
***

Email: ***

VIA: EMAIL AND FEDEX

November 21, 2017

Subject: Stockholder Proposal dated November 9, 2017

Dear Mr. Taggart:

Hawaiian Airlines received your cover letter dated November 9, 2017 and accompanying shareholder proposal which were mailed on November 9, 2017.

The proposal contains certain procedural deficiencies, which the Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Rule 14a-8(b)(l) of the Securities Exchange Act of 1934, as amended, requires that in order to be eligible to submit a proposal for inclusion in the Hawaiian Holding's (the "Company's) proxy statement, you must, among other things, have continuously held at least $2,000 in market value of the Company's common stock, or 1%, of the Company's securities entitled to vote on the proposal, at the meeting for at least one year by the date you submit the proposal. The Company's stock records indicate that you are not currently a registered holder on the Company's books and records of any shares of the Company's common stock and you have not provided proof of ownership.

Accordingly, you must submit to us a written statement from the "record" holders of the shares (usually a broker or bank) verifying that, at the time you submitted the proposal (November 9, 2017), you had continuously held at least $2,000 in market value, or 1%, of the Company's common stock for at least the one-year period prior to and including November 9, 2017. Rule 14a-8(b) requires that a proponent of a proposal must prove eligibility as a shareholder of the company by submitting either:

- a written statement from the "record "holder of the securities verifying that at the time you submitted the proposal, you had continuously held the requisite amount of securities for at least one year; or

- a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting your ownership of shares as of or before the date on which the one-year eligibility period begins, and your written statement that you continuously held the required number of shares for the one year period as of the date of the statement.

To help shareholders comply with the requirements when submitting proof of ownership to companies, the SEC's Division of Corporation Finance published Staff Legal Bulletin No. 14F ("SLB 14F"), dated October 18, 2011, and Staff Legal Bulletin No. 14G ("SLB 14G"), dated October 16, 2012, a copy of both of which are enclosed for your reference. SLB 14F and SLB I4G provide that for securities held through the Depository Trust Company ("DTC"), only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at: http://www.dtcc.com/client-center/dtc-directories.

If you hold shares through a bank or broker that is not a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds the shares. You should be able to find out the name of the DTC participant by asking your broker or bank. If the DTC participant that holds your shares knows your broker or bank's holdings, but does not know your holdings, you may satisfy the proof of ownership requirements by submitting two proof of ownership statements - one from your broker or bank confirming your ownership and the other from the DTC participant confirming the bank or broker's ownership. Please review SLB 14F carefully before submitting your proof of ownership to ensure that it is compliant.

In order to meet the eligibility requirements for submitting a shareholder proposal, the SEC rules require that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Please address any response to me as follows:

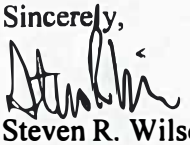
Steven R. Wilson, Assistant General Counsel – Corporate & Regulatory
Hawaiian Airlines
3375 Koapaka Street, Suite G-350
Honolulu, HI 96820-0008

Or, if by email, to: Steven.Wilson@HawaiianAir.com

A copy of Rule 14a-8, which applies to shareholder proposals submitted for inclusion in proxy statements, is enclosed for your reference.

If you have any questions, please call me.

Sincerely,



Steven R. Wilson
Assistant General Counsel – Corporate & Regulatory

Enclosures

Staff Legal Bulletin No. 14F

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another

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

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

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

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

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

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

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

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

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

one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

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

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

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

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

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

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the

term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

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

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

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

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

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

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

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

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

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

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

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that

case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

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

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

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

Staff Legal Bulletin No. 14G

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

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

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

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

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the

proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

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

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

D. Use of website addresses in proposals and supporting statements

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

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 14a-8

§240.14a-8 Shareholder proposals.

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

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

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period

begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

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

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

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

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

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

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

deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) *Director elections:* If the proposal:

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

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

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

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

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

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

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

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

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

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

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

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

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

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

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

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

Exhibit C

[please see attached]

From: Stewart Taggart ***
Sent: Wednesday, November 22, 2017 1:32 PM
To: Wilson, Steven <Steven.Wilson@hawaiianair.com>
Subject: Re: Hawaiian Airlines response to shareholder proposal

Dear Mr Wilson,
Thanks your message. I'll provide the share ownership proof early next week.

On Nov 21, 2017, at 1:38 PM, Wilson, Steven <Steven.Wilson@hawaiianair.com> wrote:

Dear Mr. Taggart:

Please find attached our initial response and accompanying materials to your cover letter and shareholder proposal dated as of November 9, 2017. As requested in your cover letter, I am sending it to you via email. We also sent a copy to your home address via FedEx. In short, we are requesting

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

proof of your compliance with the share ownership provisions of Rule 14a-8 of the Securities Exchange Act of 1934. Please feel free to contact me with any questions.

Best regards,
Steve

Steven R. Wilson – Assistant General Counsel, Legal Department
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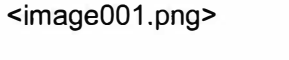
Steven.Wilson@Hawaiianair.com • HawaiianAirlines.com



<Letter to Mr. Taggart (signed).pdf><Attachments to Letter to Mr. Taggart.pdf>

Exhibit D

[please see attached]

From: Stewart Taggart ***
Sent: Wednesday, December 06, 2017 7:51 AM
To: Wilson, Steven <Steven.Wilson@hawaiianair.com>
Subject: Re: Hawaiian Airlines response to shareholder proposal

Mr. Wilson,
In response to your Nov 21 letter, please see the below attachment.
Apologies for the slow response. I've been out of town.
Email is best to reach me, for two reasons:
1. I'm a writer by background and have failing hearing.
2. I also like written records, since they can help to reduce future disagreement.
Many thanks!

On Nov 21, 2017, at 1:38 PM, Wilson, Steven <Steven.Wilson@hawaiianair.com> wrote:

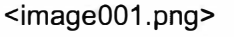
*** FISMA & OMB Memorandum M-07-16

Dear Mr. Taggart:

Please find attached our initial response and accompanying materials to your cover letter and shareholder proposal dated as of November 9, 2017. As requested in your cover letter, I am sending it to you via email. We also sent a copy to your home address via FedEx. In short, we are requesting proof of your compliance with the share ownership provisions of Rule 14a-8 of the Securities Exchange Act of 1934. Please feel free to contact me with any questions.

Best regards,
Steve

Steven R. Wilson – Assistant General Counsel, Legal Department
3375 Koapaka Street, Suite G350, Honolulu, HI 96820-0008 • P 808.275.5949
Steven.Wilson@Hawaiianair.com • HawaiianAirlines.com



<Letter to Mr. Taggart (signed).pdf><Attachments to Letter to Mr. Taggart.pdf>

BNY MELLON | PERSHING

One Pershing Plaza
Jersey City, NJ 07399
pershing.com

November 29, 2017

Steven R. Wilson
Assistant General Counsel- Corporate & Regulatory
Hawaiian Airlines
3375 Koapaka Street , Suite G-350
Honolulu, HI 96820-0008

RE: Stewart Waterworth Taggart & Rebecca White Taggart JT TEN:

Pershing LLC, a DTC participant, acts as the custodian for Stewart Waterworth Taggart and Rebecca White Taggart JT TEN. This letter confirms that as of November 9, 2017, Stewart Waterworth Taggart and Rebecca White Taggart JT TEN held for at least the one-year period prior to and including November 9, 2017, 150 shares of Hawaiian Holdings Inc. Common stock and continue to hold those shares as of the date of this letter.

Best Regards,

Joseph LaVara
Pershing LLC
Vice President