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

DIVISION OF
CORPORATION FINANCE

March 30, 2018

Martin P. Dunn
Morrison & Foerster LLP
mdunn@mofo.com

Re: JPMorgan Chase & Co.
Incoming letter dated January 12, 2018

Dear Mr. Dunn:

This letter is in response to your correspondence dated January 12, 2018 concerning the shareholder proposal (the "Proposal") submitted to JPMorgan Chase & Co. (the "Company") by William Steiner (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated January 18, 2018 and January 25, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: John Chevedden
***

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

March 30, 2018

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

Re: JPMorgan Chase & Co.
Incoming letter dated January 12, 2018

The Proposal relates to cumulative voting.

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

Sincerely,

Kasey L. Robinson
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE**
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

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

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

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

*** **JOHN CHEVEDDEN** ***

January 25, 2018

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

**#2 Rule 14a-8 Proposal**
**JPMorgan Chase & Co. (JPM)**
**Cumulative Voting**
**William Steiner**

Ladies and Gentlemen:

This is in regard to the January 12, 2018 no-action request.

The company did not give timely notice of any issue with Mr. William Steiner's signature in regard to the topic of the proposal. Mr. Steiner's signature in regard to the topic of the proposal was emailed to the company on December 6, 2017 per the attachment.

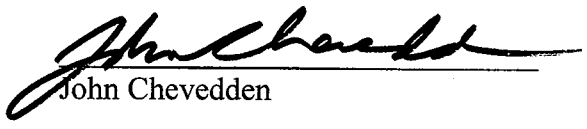
The company December 15, 2017 blanket letter did not say anything specific about the above December 6, 2017 proposal topic sign-off.

The company did not cite any Staff Legal Bulletin that would give a company a green flag to send a vague notification of a procedural issue that soon became an issue in a no action request.

The company did not state that a proposal submitted in December 2017 for the "next annual shareholder meeting" could reasonably be submitted for the 2019 annual meeting or that it had experience with rule 14a-8 proposals being submitted one-year in advance.

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

Sincerely,



John Chevedden

cc: William Steiner

Molly Carpenter <molly.carpenter@jpmchase.com>

**Subject: FW: Rule 14a-8 Proposal (JPM)``**
**Date:** Thursday, January 25, 2018 at 10:39 AM
**From:** ***

------ Forwarded Message
From: John Chevedden < *** >
Date: Wed, 06 Dec 2017 19:57:40 -0800
To: "Carpenter, Molly" <molly.carpenter@jpmchase.com>
Cc: "Scott, Linda E" <linda.e.scott@chase.com>
Conversation: Rule 14a-8 Proposal (JPM)``
Subject: Rule 14a-8 Proposal (JPM)``

Dear Ms. Carpenter,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.
Sincerely,
John Chevedden

------ End of Forwarded Message



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

4700 Sheridan St. Suite J
Hollywood, FL 33021

Mr. Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co. (JPM)
270 Park Ave.
38th Floor
New York NY 10017
PH: 212-270-6000

REVISED 6 DEC 2017

Dear Mr. Horan,

I purchased stock and hold stock in our company because I believed our company has greater potential. I submit my attached Rule 14a-8 proposal in support of the long-term performance of our company. I believe our company has unrealized potential that can be unlocked through low cost measures by making our corporate governance more competitive.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding all actions pertaining to this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting.

Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden
***

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to ***

Sincerely,

William Steiner

NOV 13, 2017
Date

cc: Irma Caracciolo <caracciolo_irma@jpmorgan.com>
FX: 212-270-4240
FX: 646-534-2396
FX: 212-270-1648
Linda E. Scott <linda.e.scott@chase.com>

Proposal [4] – Cumulative Voting

William Steiner DEC 4, 2017

4700 Sheridan St. Suite J
Hollywood, FL 33021

Mr. Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co. (JPM)
270 Park Ave.
38th Floor
New York NY 10017
PH: 212-270-6000

REVISED 6 DEC 2017

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Sincerely,

William Steiner

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cc: Irma Caracciolo <caracciolo_irma@jpmorgan.com>
FX: 212-270-4240
FX: 646-534-2396
FX: 212-270-1648
Linda E. Scott <linda.e.scott@chase.com>

**Proposal [4] – Cumulative Voting**

William Steiner DEC 4, 2017

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

JOHN CHEVEDDEN

*** ***

January 18, 2018

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

**# 1 Rule 14a-8 Proposal**
**JPMorgan Chase & Co. (JPM)**
**Cumulative Voting**
**William Steiner**

Ladies and Gentlemen:

This is in regard to the January 12, 2018 no-action request.

The December 4, 2017 signature came from Mr. Steiner.

The minor revision of the proposal text did not change the topic of the proposal.

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

Sincerely,

John Chevedden

cc: William Steiner

Molly Carpenter <molly.carpenter@jpmchase.com>

4700 Sheridan St. Suite J
Hollywood, FL 33021

Mr. Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co. (JPM)
270 Park Ave.
38th Floor
New York NY 10017
PH: 212-270-6000

REVISED 6 DEC 2017

Dear Mr. Horan,

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to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

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Sincerely,

William Steiner

NOV 12, 2017
Date

cc: Irma Caracciolo <caracciolo_irma@jpmorgan.com>
FX: 212-270-4240
FX: 646-534-2396
FX: 212-270-1648
Linda E. Scott <linda.e.scott@chase.com>

**Proposal [4] – Cumulative Voting**

William Steiner DEC 4, 2017

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

MORRISON | FOERSTER

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MORRISON FOERSTER LLP

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DENVER, HONG KONG, LONDON,
LOS ANGELES, NEW YORK,
NORTHERN VIRGINIA, PALO ALTO,
SAN DIEGO, SAN FRANCISCO, SHANGHAI,
SINGAPORE, TOKYO, WASHINGTON, D.C.

Writer's Direct Contact
+1 (202) 778.1611
MDunn@mofo.com

**1934 Act/Rule 14a-8**

January 12, 2018

***VIA E-MAIL (shareholderproposals@sec.gov)***

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

Re: JPMorgan Chase & Co.
Shareholder Proposal of William Steiner

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client JPMorgan Chase & Co., a Delaware corporation (the "***Company***"), requesting confirmation that the staff (the "***Staff***") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "***Commission***") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "***Exchange Act***"), the Company omits the enclosed shareholder proposal (the "***Proposal***") submitted by William Steiner (the "***Proponent***") from the Company's proxy materials for its 2018 Annual Meeting of Shareholders (the "***2018 Proxy Materials***").

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- submitted this letter to the Staff no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the proponent's representative, John Chevedden (the "***Proponent's Representative***").

Copies of the Proposal, the Proponent's cover letter submitting the Proposal, and other correspondence relating to the Proposal are attached hereto as Exhibit B.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("***SLB 14F***"), we ask that the Staff provide its response to this request to Martin Dunn, on behalf of the Company, via email at mdunn@mofo.com or via facsimile at (202) 887-0763, and to the Proponent's Representative via email at ***

## *I. PROCEDURAL HISTORY*

| | |
|---|---|
| December 4, 2017 | A proposal from the Proponent's Representative is received by the Company via email. *See* Exhibit A. |
| December 6, 2017 | The proposal received December 4, 2017 is re-submitted via email without change in a submission dated December 6, 2017 (referred to herein as the "***Proposal***"). The Proposal is accompanied by a letter from the Proponent to the Company which states "REVISED 6 DEC 2017" in the upper right hand corner. At the bottom of that letter is a photocopy of the Proponent's signature, the date December 4, 2017 written next to the signature, and a photocopy of the title of the Proposal itself above the signature (the "***Delegation of Authority***"). *See* Exhibit B. |
| December 15, 2017 | The Company notifies the Proponent's Representative via email of the requirements of Rule 14a-8(b) and Staff Legal Bulletin No. 14I ("***SLB 14I***"), its view that the Proponent's submission failed to meet the requirements of Rule 14a-8(b) and SLB 14I, and the requirement that those deficiencies be cured within 14 days of receipt of the Company's notice. *See* Exhibit C. |
| December 20, 2017 | An email is received by the Company from the Proponent's Representative. *See* Exhibit D. The subject and text of the email state "SLB 14(I)." Attached to that email is a copy of the Delegation of Authority, unchanged from the December 6, 2017 submission.[1] *See* Exhibit E. |
| January 3, 2018 | The 14-day deadline for responding to the Company's notice of the eligibility and procedural deficiencies passes without the Proponent submitting any revisions to the proposal. |

[1] The Company's correspondence also notified the Proponent's Representative that the Proponent had failed to satisfy Rule 14a-8's ownership requirements under Rule 14a-8(b) as of the date that the proposal was submitted to the Company. That deficiency was adequately addressed in correspondence from the Proponent's Representative dated December 20, 2017.

## *II. SUMMARY OF THE PROPOSAL*

On December 6, 2017,[2] the Company received a letter from the Proponent's Representative containing the Proposal for inclusion in the Company's 2018 Proxy Materials. The Proposal relates to cumulative voting.

## *III. EXCLUSION OF THE PROPOSAL*

### *A. Basis for Excluding the Proposal*

As discussed more fully below, the Company believes that it may properly omit the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(f), as the Proponent's Representative did not provide sufficient documentation demonstrating the Proponent's delegation of authority to the Proponent's Representative consistent with Rule 14a-8(b), despite the Company's timely notice of the Proposal's procedural deficiencies.

### *B. The Proposal May Be Omitted in Reliance on Rule 14a-8(f), as the Proponent's Representative Has Not Provided Sufficient Documentation Demonstrating the Proponent's Delegation of Authority Consistent with Rule 14a-8(b) and Did Not Provide Sufficient Documentation Demonstrating the Proponent's Delegation of Authority Upon Request After Receiving Proper Notice Under Rule 14a-8(f)(1)*

#### *1. Staff Guidance on Eligibility to Submit Proposals under Rule 14a-8*

Rule 14a-8(b) provides guidance as to "who is eligible to submit a proposal." On November 1, 2017, the Staff published SLB 14I, which announced an updated Staff policy regarding the application of Rule 14a-8(b) when a shareholder submits a proposal through a representative (*i.e.*, a "proposal by proxy"). The Staff stated in SLB 14I that a shareholder's submission by proxy is consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b) if the shareholder who submits a proposal by proxy provides documentation describing the shareholder's delegation of authority to the proxy. The Staff noted that sufficient documentation would do the following:

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

[2] The original proposal dated December 4, 2017 was re-submitted by the Proponent's Representative in a submission dated December 6, 2017. The December 6, 2017 submission is the Proposal to which we refer in this letter.

- be signed and dated by the shareholder.

Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company's proxy materials if a shareholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, provided that the company has timely notified the proponent of any eligibility or procedural deficiencies and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice; *see also* SLB 14I fn 12 ("Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder's failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. *See* Rule 14a-8(f)(1)."). The Company received the Proposal from the Proponent's Representative on December 6, 2017, via email, with insufficient delegation of authority from the Proponent. The Company gave notice to the Proponent's Representative within 14 days of the Company's receipt of the Proposal that the Proponent had not provided sufficient delegation of authority from the Proponent as of the date the Proposal was submitted to the Company. The Company's notice included:

- A description of the eligibility requirements of Rule 14a-8(b) and the guidance of SLB 14I – this description listed the five requirements set forth by the Staff, as described above;

- A statement explaining that sufficient delegation of authority had not been received by the Company – *i.e.*, "In SLB 14I, the SEC Staff stated that it will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder's delegation of authority to the proxy." The notice of deficiency then noted specifically the delegation of authority's failure to identify the annual meeting for which the Proposal is submitted;

- An explanation of what the Proponent should do to comply with the rule – *i.e.*, "[t]o remedy [this] defect[ ], you are requested to submit a sufficient delegation of authority by the Proponent to submit the proposal by proxy";

- A statement calling the Proponent's attention to the 14-day deadline for responding to the Company's notice – *i.e.*, "[f]or the Proposal to be eligible for inclusion in the Company's proxy materials for the 2018 Annual Meeting of Shareholders, the rules of the SEC require that a response to this letter, correcting all procedural deficiencies described in this letter, be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter"; and

- A copy of Rule 14a-8 and SLB 14I.

In response to the Company's notice, on December 20, 2017, the Proponent's Representative simply re-submitted via email the Delegation of Authority to the Company, unchanged from the correspondence attached to the submission dated December 6, 2017.

***2. The Proponent has Failed to Provide Sufficient Evidence of a Delegation of Authority to the Proponent's Representative***

We respectfully note that the Staff's guidance in SLB 14I sets forth specific requirements regarding the type of information that the Staff expects a proponent to provide to sufficiently evidence a delegation of authority to the proponent's representative. In this regard, the Staff further notes that it expects companies to apply reasonable judgment when the documentation may be technically deficient but otherwise provides reasonable support for such delegation. The Company has acted consistent with that expectation and has not submitted a no-action request with respect to other shareholder proposals where the delegation of authority had inconsistencies from the Staff guidance in SLB 14I but the Company could reasonably determine that the proponent appropriately provided a delegation of authority. With respect to the Delegation of Authority for the Proposal, however, the Company has determined that its deficiencies are of such significance that they undermine the guidance in SLB 14I. As such, those deficiencies should not be ignored and justify omission of the Proposal because those deficiencies are exactly of the type that SLB 14I attempted to address to "help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal's submission by proxy."

In this regard, the Proposal was submitted to the Company via email on December 6, 2017. The Proposal was accompanied by the Delegation of Authority, which stated that "[m]y proposal is for the next annual shareholder meeting." The Delegation of Authority did not otherwise identify the annual meeting to which the proposal is to be presented. *See* Exhibit B. Within 14 days of receipt of the Proposal, on December 15, 2017, the Company properly gave notice to the Proponent's Representative specifying the five requirements set forth in SLB 14I and that the Delegation of Authority "is inconsistent with the Staff's guidance set forth above because it fails to identify the annual meeting for which the Proposal is submitted." The Company's notice further advised the Proponent's Representative that it must satisfy the guidance of SLB 14I by "submit[ting] a sufficient delegation of authority by the Proponent to submit the proposal by proxy." *See* Exhibit C. However, notwithstanding the Company's timely notice of the requirements set forth in SLB 14I, and that notice's specific identification of the failure to specify the meeting to which the proposal relates, the Proponent's Representative made no changes to the delegation of authority; he merely re-submitted via email the original Delegation of Authority, unchanged from the submission dated December 6, 2017. *See* Exhibit E. To date, the Proponent has not provided the Company with any supplemental correspondence demonstrating that the delegation specified that the proposal is intended to be included in the Company's 2018 Proxy Materials or otherwise providing a delegation of authority consistent with the requirements of SLB 14I. Accordingly, the Company believes that it may properly omit the Proposal from its 2018 Proxy Materials in reliance on paragraphs (b) and (f) of Rule 14a-8.

The Delegation of Authority also continues to fail to satisfy other requirements set forth in SLB 14I. In this regard, as noted above, the Company originally received a proposal on December 4, 2017. This original submission included a purported delegation of authority dated

November 12, 2017. The Company then received the Proposal, which included a cover letter purporting to provide the Delegation of Authority. That cover letter had a notation in the top right corner that reads "REVISED 6 DEC 2017", a purported supplemental signature from William Steiner at the bottom and a notation next to such William Steiner signature noting a date of "DEC 4, 2017." The Company assumes that the William Steiner signature and "DEC 4, 2017" purport to authorize the resubmission of the Proposal on December 6, 2017.

The Company has compared the signature of William Steiner dated December 4, 2017 to the original signature dated November 12, 2017. It is clear even to a casual reader that such December 4, 2017 signature is simply a photocopy and pasting of the November 12, 2017 signature – they are literally identical and can be placed on top of one another with no deviation, which the Company has done. Further, the notation "REVISED 6 DEC 2017" would suggest some revision to the original submission. However, the body of the Proposal and delegation is identical to the December 4, 2017 submission. Accordingly, the only "revisions" were (1) to add a photocopy and pasting of the words "Proposal (4) – Cumulative Voting" – it is assumed that this was an effort to identify the subject matter of the Proposal, and (2) to add a photocopy of William Steiner's signature from the November 12, 2017 submission that did not reflect the subject matter of the proposal. The obvious copying and pasting of the subject matter and an earlier signature do not in any way evidence Mr. Steiner's revision or updating of the insufficient Delegation of Authority. Further, because William Steiner's signature in the December 6, 2017 submission is dated December 4, 2017, it is patently unclear what revision was intended to be represented by the notation "REVISED 6 DEC 2017."

As noted above, the Company respects the Staff's expectation that companies will not seek to exclude proposals by proxy based on "foot faults." The Company respectfully submits, however, that the evidentiary issues raised by the Proposal and inconsistencies with respect to the Delegation of Authority are not mere foot faults; rather, the submission raises exactly the issues that the Staff attempted to address with its guidance on proposals by proxy in SLB 14I. Acceptance of the purported Delegation of Authority would fundamentally undermine the Staff's guidance in SLB 14I and render that useful guidance moot.

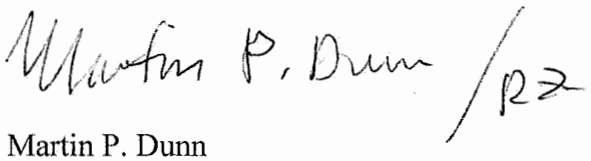
Consistent with Rule 14a-8(f)(1), the Company notified the Proponent's Representative of the eligibility deficiencies, including the deficiency related to the Delegation of Authority. That Delegation of Authority, however, was not revised to address the failure to specify the annual meeting to which the proposal relates or any of the other requirements of SLB 14I that were set forth in the notice of deficiency as discussed above. To date, the Proponent has not provided the Company with any supplemental correspondence demonstrating that the Proponent's Representative has the proper authority to represent the Proponent with respect to the Proposal. Accordingly, the Company believes that it may properly omit the Proposal from its 2018 Proxy Materials in reliance on paragraphs (b) and (f) of Rule 14a-8.

## *IV. CONCLUSION*

For the reasons discussed above, the Company believes that it may properly omit the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal from its 2018 Proxy Materials.

If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 778-1611.

Sincerely,



Martin P. Dunn
of Morrison & Foerster LLP

Attachments

cc: John Chevedden
Molly Carpenter, Corporate Secretary, JPMorgan Chase & Co.

# Exhibit A

| | |
|---|---|
| **From:** | *** |
| **To:** | Carpenter, Molly |
| **Cc:** | Scott, Linda E |
| **Subject:** | Rule 14a-8 Proposal (JPM)`` |
| **Date:** | Monday, December 04, 2017 8:55:23 PM |
| **Attachments:** | CCE04122017_6.pdf |

Dear Ms. Carpenter,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.
Sincerely,
John Chevedden

William Steiner
c/o Komlossy Law, PA
4700 Sheridan St. Suite J
Hollywood, FL 33021

Mr. Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co. (JPM)
270 Park Ave.
38th Floor
New York NY 10017
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William Steiner

William Steiner

NOV 12, 2017

Date

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FX: 212-270-4240
FX: 646-534-2396
FX: 212-270-1648
Linda E. Scott <linda.e.scott@chase.com>

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

[JPM – Rule 14a-8 Proposal, December 4, 2017]12-6
[This line and any line above it is not for publication.]

**Proposal [4] – Cumulative Voting**

Resolved: Cumulative Voting. Shareholders recommend that our Board take the steps necessary to adopt cumulative voting. Cumulative voting means that each shareholder may cast as many votes as equal to number of shares held, multiplied by the number of directors to be elected. A shareholder may cast all such cumulated votes for a single candidate or focus on a few candidates. Under cumulative voting shareholders can withhold votes from poor-performing directors in order to cast multiple votes for other director candidates. This is an important protection for shareholders.

Cumulative voting also allows a significant group of shareholders to elect a director of its choice – safeguarding minority shareholder interests and bringing independent perspectives to Board decisions. Cumulative voting won 54%-support at Aetna and 51%-support at Alaska Air. It also received 53%-support at General Motors in two annual elections. The Council of Institutional Investors and CalPERS recommended adoption of this proposal topic.

Cumulative voting is also useful so that shareholders can elect one director with a highly focused specialization in banking risk management. This is of utmost importance because shareholders of big banks have paid $10s of billions in fines since big bank managers failed to prevent misconduct related to Bernie Madoff's Ponzi scheme, mortgage securities sales, energy market manipulation, military lending, foreclosures, municipal securities, collateralized debt obligations, mortgage servicing and foreign exchange rigging.

Please vote for improved corporate governance and risk management:

**Cumulative Voting – Proposal [4]**

[The line above is for publication.]

Notes:
William Steiner, c/o Komlossy Law, PA, 4700 Sheridan St. Suite J, Hollywood, FL 33021 sponsored this proposal.

Please note that the title of the proposal is part of the proposal.
If the company thinks that any part of the above proposal, other than the first line in brackets, can be omitted from proxy publication based on its own discretion, please obtain a written agreement from the proponent.

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

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

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

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

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

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

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

# Exhibit B

**Scott, Linda E**

| | |
|---|---|
| **From:** | *** |
| **Sent:** | Wednesday, December 06, 2017 10:58 PM |
| **To:** | Carpenter, Molly |
| **Cc:** | Scott, Linda E |
| **Subject:** | Rule 14a-8 Proposal (JPM)`` |
| **Attachments:** | CCE06122017_12.pdf |
| **Categories:** | EXTERNAL |

Dear Ms. Carpenter,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.
Sincerely,
John Chevedden

4700 Sheridan St. Suite J
Hollywood, FL 33021

Mr. Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co. (JPM)
270 Park Ave.
38th Floor
New York NY 10017
PH: 212-270-6000

REVISED 6 DEC 2017

Dear Mr. Horan,

I purchased stock and hold stock in our company because I believed our company has greater potential. I submit my attached Rule 14a-8 proposal in support of the long-term performance of our company. I believe our company has unrealized potential that can be unlocked through low cost measures by making our corporate governance more competitive.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding all actions pertaining to this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting.

Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

***

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to ***

Sincerely,

William Steiner

NOV 12, 2017
Date

cc: Irma Caracciolo <caracciolo_irma@jpmorgan.com>
FX: 212-270-4240
FX: 646-534-2396
FX: 212-270-1648
Linda E. Scott <linda.e.scott@chase.com>

**Proposal [4] – Cumulative Voting**

William Steiner DEC 4, 2017

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

[JPM – Rule 14a-8 Proposal, December 4, 2017]12-6
[This line and any line above it is not for publication.]

**Proposal [4] – Cumulative Voting**

Resolved: Cumulative Voting. Shareholders recommend that our Board take the steps necessary to adopt cumulative voting. Cumulative voting means that each shareholder may cast as many votes as equal to number of shares held, multiplied by the number of directors to be elected. A shareholder may cast all such cumulated votes for a single candidate or focus on a few candidates. Under cumulative voting shareholders can withhold votes from poor-performing directors in order to cast multiple votes for other director candidates. This is an important protection for shareholders.

Cumulative voting also allows a significant group of shareholders to elect a director of its choice – to safeguard minority shareholder interests and to bring a greater independent risk management perspective to Board decisions. Cumulative voting won 54%-support at Aetna and 51%-support at Alaska Air. It also received 53%-support at General Motors in two annual elections. The Council of Institutional Investors and CalPERS recommended adoption of this proposal topic.

Cumulative voting can be used to elect one director with a highly focused specialization in banking risk management. This is of utmost importance because shareholders of big banks have paid $10s of billions in fines since big bank managers failed to prevent misconduct related to Bernie Madoff's Ponzi scheme, mortgage securities sales, energy market manipulation, military lending, foreclosures, municipal securities, collateralized debt obligations, mortgage servicing and foreign exchange rigging.

Please vote for improved risk management:
**Cumulative Voting – Proposal [4]**
[The line above is for publication.]

Notes:
William Steiner, c/o Komlossy Law, PA, 4700 Sheridan St. Suite J, Hollywood, FL 33021 sponsored this proposal.

Please note that the title of the proposal is part of the proposal.
If the company thinks that any part of the above proposal, other than the first line in brackets, can be omitted from proxy publication based on its own discretion, please obtain a written agreement from the proponent.

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

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

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

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

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

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

***

# Exhibit C

| | |
|---|---|
| **From:** | Corporate Secretary |
| **To:** | *** |
| **Cc:** | Carpenter, Molly; Scott, Linda E; Caracciolo, Irma R.; Corporate Secretary |
| **Subject:** | JPMC - Shareholder Proposal - Cumulative Voting |
| **Date:** | Friday, December 15, 2017 2:01:15 PM |
| **Attachments:** | SH Acknowledgement - Chevedden WSteiner - deficiency (signed)_(13722258)_(1).pdf<br>Rule 14a-8.pdf<br>SLB No. 14F.PDF<br>SLB No. 14I.PDF |

**- External Email -**

Dear Mr. Chevedden
Attached is a copy of our letter regarding the shareholder proposal submitted for inclusion in the proxy materials relating to JPMC's 2018 Annual Meeting of Shareholders.

Thank you
Irma Caracciolo

Corporate Secretary |270 Park Avenue, Mail Code: NY1-K721, New York, NY 10017 |W: 212-270-7122 |F: 212-270-4240 | F: 646-534-2396| corporate.secretary@jpmchase.com

**From:** ***
**Date:** Wednesday, Dec 06, 2017, 10:58 PM
**To:** Carpenter, Molly <molly.carpenter@jpmchase.com>
**Cc:** Scott, Linda E <linda.e.scott@chase.com>
**Subject:** Rule 14a-8 Proposal (JPM)``

Dear Ms. Carpenter,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.
Sincerely,
John Chevedden

JPMORGAN CHASE & CO.

**Molly Carpenter**
Corporate Secretary
Office of the Secretary

December 15, 2017

VIA EMAIL & OVERNIGHT DELIVERY

Mr. John Chevedden
***

Dear Mr. Chevedden:

I am writing on behalf of JPMorgan Chase & Co. ("JPMC"), which received from you, as agent for William Steiner (the "Proponent"), via email on December 4, 2017, and as revised on December 6, 2017, the shareholder proposal titled "Cumulative Voting" (the "Proposal") for consideration at JPMC's 2018 Annual Meeting of Shareholders.

The Proposal contains certain procedural deficiencies, as set forth below, which Securities and Exchange Commission ("SEC") regulations require us to bring to your attention.

**Ownership Verification**

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that each shareholder proponent must submit sufficient proof that it has continuously held at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. JPMC's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof from the Proponent that it has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to JPMC. In this regard, our records indicate that you submitted the Proposal on December 4, 2017, via email.

To remedy this defect, you must submit sufficient proof of ownership of JPMC shares. As explained in Rule 14a-8(b), sufficient proof may be in one of the following forms:

- A written statement from the "record" holder of the shares (usually a broker or a bank) verifying that, as of the date the Proposal was submitted (i.e., December 4, 2017), the Proponent continuously held the requisite number of JPMC shares for at least one year.
- If the Proponent has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting ownership of JPMC shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the required number of shares for the one-year period.

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

To help shareholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the shares, the SEC's Division of Corporation Finance (the "SEC Staff") published Staff Legal Bulletin No. 14F ("SLB 14F"). In SLB 14F, the SEC Staff stated that only brokers or banks that are Depository Trust Company ("DTC") participants will be viewed as "record" holders for purposes of Rule 14a-8. Thus, you will need to obtain the required written statement from the DTC participant through which your shares are held. If you are not certain whether your broker or bank is a DTC participant, you may check the DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. If your broker or bank is not on DTC's participant list, you will need to obtain proof of ownership from the DTC participant through which your securities are held. You should be able to determine the name of this DTC participant by asking your broker or bank. If the DTC participant knows the holdings of your broker or bank, but does not know your holdings, you may satisfy the proof of ownership requirement 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 by you for at least one year – with one statement from your broker or bank confirming your ownership, and the other statement from the DTC participant confirming the broker or bank's ownership. Please see the enclosed copy of SLB 14F for further information.

**Proposal by Proxy**

A shareholder's ability to submit a "proposal by proxy" must be consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b). The Staff of the SEC's Division of Corporation Finance (the "SEC Staff") provided guidance in Staff Legal Bulletin No. 14I ("SLB 14I") to assist the Staff and companies in their evaluation regarding whether the eligibility requirements of Rule 14a-8(b) have been satisfied. In SLB 14I, the SEC Staff stated that it will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder's delegation of authority to the proxy. The Staff expects the documentation to:

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

The delegation of authority included with the Proponent's submission of the Proposal is inconsistent with the Staff's guidance set forth above because it fails to identify the annual meeting for which the Proposal is submitted. As such, JPMC is of the view that the Proponent has failed to satisfy the eligibility requirements of Rule 14a-8(b).

To remedy those defects, you are requested to submit a sufficient delegation of authority by the Proponent to submit the proposal by proxy.

For your reference, please find enclosed a copy of SEC Rule 14a-8, SLB 14F and SLB 14I.

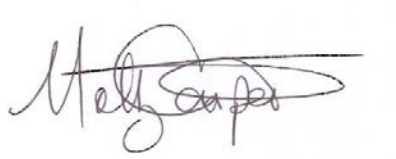
270 Park Avenue, New York, New York 10017-2070
Telephone 212 270 7122 Facsimile 212 270 4240 molly.carpenter@jpmchase.com

JPMorgan Chase & Co.

For the Proposal to be eligible for inclusion in the JPMC's proxy materials for the JPMC's 2018 Annual Meeting of Shareholders, the rules of the SEC require that a response to this letter, correcting all procedural deficiencies described in this letter, be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 270 Park Avenue, 38th Floor, New York NY 10017 or via email to corporate.secretary@jpmchase.com.

If you have any questions with respect to the foregoing, please contact me.

Sincerely,



cc William Steiner

Enclosures:
Rule 14a-8 of the Securities Exchange Act of 1934
Division of Corporation Finance Staff Bulletin No. 14F
Division of Corporation Finance Staff Bulletin No. 14I

## Rule 14a-8 — Proposals of Security Holders

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, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

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

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

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

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

Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

**(d) Question 4: How long can my proposal be?**

The proposal, including any accompanying supporting statement, may not exceed 500 words.

**(e) Question 5: What is the deadline for submitting a proposal?**

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q, or in shareholder reports of investment companies under Rule 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 Rule 14a-8 and provide you with a copy under Question 10 below, Rule 14a-8(j).

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

**(g) Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?**

Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

**(h) Question 8: Must I appear personally at the shareholders' meeting to present the proposal?**

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds it 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 could result in a violation of any state or federal law.

(3) *Violation of proxy rules*: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

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

(5) *Relevance*: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earning sand 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) *Relates to election*: 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 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 Rule 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 rule 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, Rule 14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(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 Rule 14a-6.

**Division of Corporation Finance**
**Securities and Exchange Commission**

# Shareholder Proposals

## Staff Legal Bulletin No. 14F (CF)

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

**Date:** October 18, 2011

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

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

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

### 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 deadline for receiving proposals. Must the company accept the revisions?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

U.S. Securities and Exchange Commission

**Division of Corporation Finance**
**Securities and Exchange Commission**

## Shareholder Proposals

**Staff Legal Bulletin No. 14I (CF)**

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

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

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

### A. The purpose of this bulletin

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

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

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

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

#### 1. Background

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

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

The Commission has stated that the policy underlying the "ordinary business" exception rests on two central considerations.[2] The first relates to the proposal's subject matter; the second, the degree to which the proposal "micromanages" the company. Under the first consideration, proposals that raise matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote.[3] Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations.[4]

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

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

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

**1. Background**

Rule 14a-8(i)(5), the "economic relevance" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business."

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

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal."[5] The

Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today.[6] In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting."[7]

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

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

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

That analysis simply considered whether a company conducted any amount of business related to the issue in the proposal and whether that issue was of broad social or ethical concern. We believe the Division's application of Rule 14a-8(i)(5) has unduly limited the exclusion's availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal "deals with a matter that is not significantly related to the issuer's business" and is therefore excludable. Accordingly, going forward, the Division's analysis will focus, as the rule directs, on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business.

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

Where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is "otherwise significantly related to the company's business."[8] For example, the proponent can provide information demonstrating that the proposal "may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities."[9] The proponent could continue to raise social or ethical issues in its arguments,

but it would need to tie those to a significant effect on the company's business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the "total mix" of information about the issuer.

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

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

We believe the approach going forward is more appropriately rooted in the intended purpose and language of Rule 14a-8(i)(5), and better helps companies, proponents and the staff determine whether a proposal is "otherwise significantly related to the company's business."

**D. Proposals submitted on behalf of shareholders**

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

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

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

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

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

**E. Rule 14a-8(d)**

**1. Background**

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

**2. The use of images in shareholder proposals**

Questions have recently arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.[13] In two recent no-action decisions,[14] the Division expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.[15] Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.[16]

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

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

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

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

[2] *Id.*

[3] *Id.*

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

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

[6] *Id.*

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

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

[9] Release No. 34-19135.

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

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

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

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

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

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

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

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

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

# Exhibit D

**From:** Carpenter, Molly
**To:** Caracciolo, Irma R.
**Subject:** FW: SLB 14(I) (JPM)
**Date:** Wednesday, December 20, 2017 10:19:41 AM
**Attachments:** CCE20122017_2.pdf

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-----Original Message-----
From: ***
Sent: Wednesday, December 20, 2017 9:07 AM
To: Carpenter, Molly <molly.carpenter@jpmchase.com>
Cc: Scott, Linda E <linda.e.scott@chase.com>
Subject: SLB 14(I) (JPM)

SLB 14(I) (JPM)

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

# Exhibit E

4700 Sheridan St. Suite J
Hollywood, FL 33021

Mr. Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co. (JPM)
270 Park Ave.
38th Floor
New York NY 10017
PH: 212-270-6000

REVISED 6 DEC 2017

Dear Mr. Horan,

I purchased stock and hold stock in our company because I believed our company has greater potential. I submit my attached Rule 14a-8 proposal in support of the long-term performance of o our company. I believe our company has unrealized potential that can be unlocked through low cost measures by making our corporate governance more competitive.o

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding all actions pertaining to this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting.

Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

***

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to

***

Sincerely,

William Steiner

NOV 12, 2017
Date

cc: Irma Caracciolo <caracciolo_irma@jpmorgan.com>
FX: 212-270-4240
FX: 646-534-2396
FX: 212-270-1648
Linda E. Scott <linda.e.scott@chase.com>

**Proposal [4] – Cumulative Voting**

William Steiner DEC 4, 2017

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