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

DIVISION OF
CORPORATION FINANCE

March 20, 2019

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

Re: Fitbit, Inc.
Incoming letter dated January 20, 2019

Dear Mr. Dunn:

This letter is in response to your correspondence dated January 20, 2019, February 11, 2019, February 21, 2019 and February 28, 2019 concerning the shareholder proposal (the "Proposal") submitted to Fitbit, Inc. (the "Company") by Kenneth 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 25, 2019, February 11, 2019, February 24, 2019 and February 28, 2019. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc: John Chevedden
***

March 20, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Fitbit, Inc.
Incoming letter dated January 20, 2019

The Proposal requests that the board take each step necessary so that each voting requirement in the Company's charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary, this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

We are unable to concur in your view that that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the Proposal and the portions of the supporting statement you reference are materially false and misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information that you have presented, it appears that the Company's practices and policies do not compare favorably with the guidelines of the Proposal and the Company has not, therefore, substantially implemented the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on 14a-8(i)(10).

Sincerely,

Courtney Haseley
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

JOHN CHEVEDDEN

***

***

February 28, 2019

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

 # 5 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Simple Majority Vote
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 20, 2019 no-action request.

The Company February 28, 2019 letter shows that the Company overlooked the attached message which applied to the 3rd letter in support of the rule 14a-8 proposal.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Andrew P. Missan <amissan@fitbit.com>

------ Forwarded Message
From: John Chevedden < *** >
Date: Sun, 24 Feb 2019 19:21:42 -0800
To: Office of Chief Counsel <shareholderproposals@sec.gov>
Cc: "Andrew P. Missan" <amissan@fitbit.com>
Conversation: Recall #3 Rule 14a-8 Proposal `(FIT)
Subject: Recall #3 Rule 14a-8 Proposal `(FIT)

Recall

Ladies and Gentlemen:
Please see the attached letter.
Sincerely,
John Chevedden
------ End of Forwarded Message

MORRISON | FOERSTER

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WASHINGTON, D.C.
20006-1888

TELEPHONE: 202.887.1500
FACSIMILE: 202.887.0763

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MORRISON FOERSTER LLP

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TOKYO, WASHINGTON, D.C.

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

1934 Act/Rule 14a-8

February 28, 2019

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: Fitbit, Inc.
Shareholder Proposal of John Chevedden on behalf of Kenneth Steiner

Dear Ladies and Gentlemen:

This letter concerns the request, dated January 20, 2019 (the "***Initial Request Letter***"), that we submitted on behalf of our client Fitbit, Inc., a Delaware corporation (the "***Company***"), seeking 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 shareholder proposal (the "***Proposal***") submitted by John Chevedden on behalf of Kenneth Steiner (collectively, the "***Proponent***") from the Company's proxy materials for its 2019 Annual Meeting of Shareholders (the "***2019 Proxy Materials***"). The Proponent submitted a letter to the Staff, dated January 25, 2019 (the "***First Proponent Letter***"), asserting his view that the Proposal is required to be included in the 2019 Proxy Materials. The Company replied to the First Proponent Letter on February 11, 2019 (the ***"First Supplemental Letter"***). The Proponent then submitted a letter to the Staff, dated February 11, 2019 (the ***"Second Proponent Letter***"), asserting again his view that the Proposal is required to be included in the 2019 Proxy Materials. The Company replied to the Second Proponent Letter on February 21, 2019 (the "***Second Supplemental Letter***"). The Proponent submitted two letters to the Staff, both dated February 24, 2019 (in order of submission, the "***Third Proponent Letter***" and the "***Fourth Proponent Letter***"), asserting yet

again his view that the Proposal is required to be included in the 2019 Proxy Materials.[1] The Third Proponent Letter is attached as Exhibit A to this letter, and the Fourth Proponent Letter is attached as Exhibit C to this letter.

We submit this letter on behalf of the Company to supplement the Initial Request Letter, the First Supplemental Letter, and the Second Supplemental Letter, as well as to respond to the assertions made in the Third Proponent Letter and the Fourth Proponent Letter. We also renew our request for confirmation that the Staff will not recommend enforcement action to the Commission if the Company omits the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8.

We have concurrently sent copies of this correspondence to the Proponent.

I. THE PROPOSAL

We provided the Proposal and other correspondence relating to the Proposal as attachments to the Initial Request Letter, the First Supplemental Letter and the Second Supplemental Letter. As discussed in the Initial Request Letter, the First Supplemental Letter and the Second Supplemental Letter, the Company believes that it may properly omit the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8(i)(10), as the Company has substantially implemented the Proposal, and Rule 14a-8(i)(3), as the Proposal is materially false and misleading.

The Third Proponent Letter states, in part, the following:

> "The company is in the awkward position of contradicting its bedrock claim by *forcing shareholders to reconsider this simple majority matter again* through its piecemeal simple majority action *that will not apply to the company's preferred shares*" (emphasis added); and
>
> "This is the first sentence of the proposal *which has no carve-out for the company's preferred shares*" (emphasis added).

As stated multiple times in the Company's prior correspondence with the Staff, the Company has no outstanding preferred stock. Further, the Proponent's statement that shareholders will be forced "to reconsider this simple majority matter again" implies that the Proponent believes that shareholders have already considered a simple majority

[1] Following the submission to the Staff of the Third Proponent Letter, the Proponent sent an email to the Staff and the Company that simply said "recall." This email is attached as Exhibit B to this letter. Given that the Proponent provided no further explanation regarding that email, the Company believes it is necessary to respond to the Third Proponent Letter, as the Third Proponent Letter again demonstrates the Proponent's misunderstanding of the Company's capital structure and voting requirements, as discussed herein.

shareholder proposal, which likewise is not the case. The Proponent's correspondence to date conveys a significant misunderstanding of the provisions of the Company's Certificate and Bylaws, its capital structure and the changes that the Proponent is seeking to implement with the Proposal. The Company reiterates its belief and concern that if the Proponent does not understand the changes he is seeking in the Proposal, it is highly unlikely that shareholders will understand what changes they are being asked to vote on in the Proposal.

The Fourth Proponent Letter states, in part, the following:

> "The Company claimed credit for already implementing this rule 14a-8 proposal by completely relying on 'its existing Certificate of Incorporation and Bylaws.' The Company has a 'two-thirds' voting power requirement in the Company's own words according to the attachment."

The Proponent is correct that the Company has acknowledged the very limited supermajority voting provisions that remain in its Certificate (but not in its Bylaws as the Proponent has asserted). The Proponent, however, implies that the standard under Rule 14a-8(i)(10) is "complete implementation" of a proposal. That is not the standard under Rule 14a-8(i)(10); the standard under Rule 14a-8(i)(10) is whether a proposal has been "substantially implemented." For the reasons set forth in our prior correspondence with the Staff, the Company is of the view that the Proposal has been substantially implemented by the Company through its existing Certificate and Bylaws.

II. CONCLUSION

For the reasons discussed in the Initial Request Letter, the First Supplemental Letter and the Second Supplemental Letter, and above, the Third Proponent Letter and the Fourth Proponent Letter do not impact the conclusion that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(10) and Rule 14a-8(i)(3), and the Company continues to be of the view that it may properly omit the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8. 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
Morrison & Foerster LLP

Attachments

cc: John Chevedden
Andy Missan, Executive Vice President, General Counsel and Corporate Secretary, Fitbit, Inc.
Juliana Chen, Vice President & Associate General Counsel, Corporate, Fitbit, Inc.

EXHIBIT A

From:	Andy Missan
To:	Juliana Chen
Subject:	Fwd: #3 Rule 14a-8 Proposal `(FIT)
Date:	Sunday, February 24, 2019 7:14:58 PM
Attachments:	CCE24022019_5.pdf ATT00001.htm

From: *** < *** >
Date: February 24, 2019 at 6:50:34 PM PST
To: Office of Chief Counsel <shareholderproposals@sec.gov>
Cc: "Andrew P. Missan" <amissan@fitbit.com>
Subject: #3 Rule 14a-8 Proposal `(FIT)

Ladies and Gentlemen:
Please see the attached letter.
Sincerely,
John Chevedden

JOHN CHEVEDDEN

***

***

February 24, 2019

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

 # 3 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Simple Majority Vote
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 20, 2019 no-action request.

The bedrock of the company claim is on the attachment:
"The purpose of the Rule 14a-8(i)(10) exclusion is to 'avoid the possibility of stockholders having to consider matters which have already been favorable acted upon by management.' Commission Release No. 34-12598 (July 7, 1976)."

The company is in the awkward position of contradicting its bedrock claim by forcing shareholders to reconsider this simple majority matter again through its piecemeal simple majority vote action that will not apply to the company's preferred shares.

This is the first sentence of the proposal which has no carve-out for the company's preferred shares:
"RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws."

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Andrew P. Missan <amissan@fitbit.com>

Rule 14a-8(i)(10) Analysis

The purpose of the Rule 14a-8(i)(10) exclusion is to "avoid the possibility of shareholders having to consider matters which have been favorably acted upon by management." Commission Release No. 34-12598 (July 7, 1976).

EXHIBIT B

From:	Andy Missan
To:	Juliana Chen
Subject:	FW: Recall #3 Rule 14a-8 Proposal `(FIT)
Date:	Sunday, February 24, 2019 9:07:24 PM
Attachments:	CCE24022019_5.pdf

From: *** [mailto: ***]
Sent: Sunday, February 24, 2019 7:22 PM
To: Office of Chief Counsel <shareholderproposals@sec.gov>
Cc: Andy Missan <amissan@fitbit.com>
Subject: Recall #3 Rule 14a-8 Proposal `(FIT)

Recall

Ladies and Gentlemen:
Please see the attached letter.
Sincerely,
John Chevedden

EXHIBIT C

From:	Andy Missan
To:	Juliana Chen
Subject:	FW: #4 Rule 14a-8 Proposal `(FIT)
Date:	Sunday, February 24, 2019 9:06:37 PM
Attachments:	CCE24022019_6.pdf

From: *** [mailto: ***]
Sent: Sunday, February 24, 2019 7:38 PM
To: Office of Chief Counsel <shareholderproposals@sec.gov>
Cc: Andy Missan <amissan@fitbit.com>
Subject: #4 Rule 14a-8 Proposal `(FIT)

Ladies and Gentlemen:
Please see the attached letter.
Sincerely,
John Chevedden

JOHN CHEVEDDEN

***

***

February 24, 2019

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

 # 4 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Simple Majority Vote
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 20, 2019 no-action request.

The Company claimed credit for already implementing this rule 14a-8 proposal by completely relying on "its existing Certificate of Incorporation and Bylaws."

The Company has a "two-thirds" voting power requirement in the Company's own words according to the attachment.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Andrew P. Missan <amissan@fitbit.com>

The supermajority voting provision applicable to the removal of directors is only in force after the outstanding shares of Class B Common Stock represent less than a majority of the total voting power of the then-outstanding shares of the capital stock of the Company then entitled to vote generally in the election of directors. After such date, which has not yet occurred, directors may be removed only by the affirmative vote of the holders of two-thirds of the voting power of the then-outstanding shares of capital stock of the Company.

JOHN CHEVEDDEN

***

***

February 24, 2019

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

 # 4 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Simple Majority Vote
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 20, 2019 no-action request.

The Company claimed credit for already implementing this rule 14a-8 proposal by completely relying on "its existing Certificate of Incorporation and Bylaws."

The Company has a "two-thirds" voting power requirement in the Company's own words according to the attachment.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Andrew P. Missan <amissan@fitbit.com>

The supermajority voting provision applicable to the removal of directors is only in force after the outstanding shares of Class B Common Stock represent less than a majority of the total voting power of the then-outstanding shares of the capital stock of the Company then entitled to vote generally in the election of directors. After such date, which has not yet occurred, directors may be removed only by the affirmative vote of the holders of two-thirds of the voting power of the then-outstanding shares of capital stock of the Company.

JOHN CHEVEDDEN

***

***

February 24, 2019

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

 # 3 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Simple Majority Vote
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 20, 2019 no-action request.

The bedrock of the company claim is on the attachment:
"The purpose of the Rule 14a-8(i)(10) exclusion is to 'avoid the possibility of stockholders having to consider matters which have already been favorable acted upon by management.' Commission Release No. 34-12598 (July 7, 1976)."

The company is in the awkward position of contradicting its bedrock claim by forcing shareholders to reconsider this simple majority matter again through its piecemeal simple majority vote action that will not apply to the company's preferred shares.

This is the first sentence of the proposal which has no carve-out for the company's preferred shares:
"RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws."

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Andrew P. Missan <amissan@fitbit.com>

Rule 14a-8(i)(10) Analysis

The purpose of the Rule 14a-8(i)(10) exclusion is to "avoid the possibility of shareholders having to consider matters which have been favorably acted upon by management." Commission Release No. 34-12598 (July 7, 1976).

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TOKYO, WASHINGTON, D.C.

Writer's Direct Contact
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MDunn@mofo.com

1934 Act/Rule 14a-8

February 21, 2019

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: Fitbit, Inc.
Shareholder Proposal of John Chevedden on behalf of Kenneth Steiner

Dear Ladies and Gentlemen:

This letter concerns the request, dated January 20, 2019 (the "***Initial Request Letter***"), that we submitted on behalf of our client Fitbit, Inc., a Delaware corporation (the "***Company***"), seeking 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 shareholder proposal (the "***Proposal***") submitted by John Chevedden on behalf of Kenneth Steiner (collectively, the "***Proponent***") from the Company's proxy materials for its 2019 Annual Meeting of Shareholders (the "***2019 Proxy Materials***"). The Proponent submitted a letter to the Staff, dated January 25, 2019 (the "***First Proponent Letter***"), asserting his view that the Proposal is required to be included in the 2019 Proxy Materials. The Company replied to the First Proponent Letter on February 11, 2019 (the ***"First Supplemental Letter"***). The Proponent then submitted a letter to the Staff, dated February 11, 2019 (the ***"Second Proponent Letter***"), asserting again his view that the Proposal is required to be included in the 2019 Proxy Materials. The Second Proponent Letter is attached as Exhibit A to this letter.

We submit this letter on behalf of the Company to supplement the Initial Request Letter and the First Supplemental Letter and respond to the assertions made in the Second Proponent Letter. We also renew our request for confirmation that the Staff will not recommend

enforcement action to the Commission if the Company omits the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8.

We have concurrently sent copies of this correspondence to the Proponent.

I. THE PROPOSAL

We provided the Proposal and other correspondence relating to the Proposal as attachments to the Initial Request Letter and the First Supplemental Letter. As discussed in the Initial Request Letter and the First Supplemental Letter, the Company believes that it may properly omit the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8(i)(10), as the Company has substantially implemented the Proposal, and Rule 14a-8(i)(3), as the Proposal is materially false and misleading.

The Second Proponent Letter states, in part, the following:

> "Fitbit claimed credit for implementing this rule 14a-8 proposal by completely relying on 'its existing Certificate of Incorporation and Bylaws.' The company still does not claim otherwise.
>
> State Street Corp. 'adopted amendments' after 'submission of the proposal' in State Street Corp. (March 5, 2018)
>
> The Company cited Goodyear Tire & Rubber Company (January 19, 2018) but failed to mention that Goodyear had no outstanding preferred stock according to the file under Goodyear Tire & Rubber (January 19, 2018) – in contrast to Fitbit. The third page of the attachment has the exact Goodyear text."

The Proponent Misstates the Rule 14a-8(i)(10) Analysis

As discussed in the Initial Request Letter, the Proposal may be properly omitted in reliance on Rule 14a-8(i)(10) because the action sought by the Proposal has been substantially implemented by the Company through its existing Restated Certificate of Incorporation and Restated Bylaws.

In the Second Proponent Letter, the Proponent states that in the *State Street Corp.* (Mar. 5, 2018) no-action letter cited in the Initial Request Letter, the company "adopted amendments" after "submission of the proposal." Again, this assertion is irrelevant and fundamentally misstates the Staff's analysis under Rule 14a-8(i)(10), as the Staff has consistently concurred with the exclusion of proposals under Rule 14a-8(i)(10) where companies had taken actions prior to the submission of the proposal and those actions "compare favorably" with the proposal. We respectfully refer the Staff to our discussion and the related prior Staff no-action responses on this topic set forth in the First Supplemental Letter.

The Proponent Makes Materially False and Misleading Statements

As discussed in the Initial Request Letter, the Proposal may be properly omitted in reliance on Rule 14a-8(i)(3) because the Proposal is materially false and misleading and contrary to Rule 14a-9.

In the Second Proponent Letter, the Proponent again makes the following false and misleading statement: "The Company cited Goodyear Tire & Rubber Company (January 19, 2018) but failed to mention that Goodyear had no outstanding preferred stock according to the file under Goodyear Tire & Rubber (January 19, 2018) – ***in contrast to Fitbit***. The third page of the attachment has the exact Goodyear text." (emphasis added). This statement is demonstrably false, because the Company has no outstanding preferred stock.

The Second Proponent Letter, rather than rebutting the Company's views regarding the application of Rule 14a-8(i)(3) to the Proposal, confirms the Company's views regarding Rule 14a-8(i)(3). The Company has no outstanding preferred stock. The Proponent's misstatement that the Company has outstanding preferred stock again demonstrates the Proponent's basic misunderstanding of the provisions of the Company's Certificate and Bylaws and the changes that the Proponent is seeking to implement with the Proposal. Put simply, if the Proponent does not understand the changes he is seeking in the Proposal, it is highly unlikely that shareholders will understand what changes they are being asked to vote on in the Proposal.

II. CONCLUSION

For the reasons discussed in the Initial Request Letter, the First Supplemental Letter, and above, the Second Proponent Letter does not impact the conclusion that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(10) and Rule 14a-8(i)(3), and the Company continues to be of the view that it may properly omit the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8. 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
Morrison & Foerster LLP

Attachments

cc: John Chevedden
Andy Missan, Executive Vice President, General Counsel and Corporate Secretary, Fitbit, Inc.
Juliana Chen, Vice President & Associate General Counsel, Corporate, Fitbit, Inc.

EXHIBIT A

JOHN CHEVEDDEN

***

***

February 11, 2019

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

 # 2 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Simple Majority Vote
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 20, 2019 no-action request.

Fitbit claimed credit for implementing this rule 14a-8 proposal by completely relying on "its existing Certificate of Incorporation and Bylaws." The company still does not claim otherwise.

State Street Corp. "adopted amendments" after "submission of the proposal" in *State Street Corp.* (March 5, 2018)

The company cited *Goodyear Tire & Rubber Company* (January 19, 2018) but failed to mention that Goodyear had no outstanding preferred stock according to the file under *Goodyear Tire & Rubber Company* (January 19, 2018) – in contrast to Fitbit. The third page of the attachment has the exact Goodyear text.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Andrew P. Missan <amissan@fitbit.com>

Please see page 3

The Goodyear Tire & Rubber Company

Akron, Ohio 44316-0001

LAW DEPARTMENT

TEL: (330) 796-4141
DAN_YOUNG@GOODYEAR.COM

December 11, 2014

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: The Goodyear Tire & Rubber Company
Shareholder Proposal of John Chevedden pursuant to
Rule 14a-8 under the Securities Exchange Act of 1934

Ladies and Gentlemen:

This letter is to inform you that The Goodyear Tire & Rubber Company, an Ohio corporation ("we," "us," "our" or the "Company"), intends to omit from our proxy statement and form of proxy for our 2015 Annual Meeting of Shareholders (collectively, the "2015 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from John Chevedden (the "Proponent") on October 7, 2014.

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before we intend to file our definitive 2015 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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

THE PROPOSAL

The Proposal states:

> Shareholders request that our board take the steps necessary so that each voting requirement in our charter and bylaws that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

A copy of the full text of the Proposal, including the Proponent's supporting statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION – RULE 14a-8(i)(9)

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2015 Proxy Materials pursuant to Rule 14a-8(i)(9).

On December 9, 2014, the Board of Directors (the "Board") of the Company approved the submission at the 2015 Annual Meeting of Shareholders of a proposal recommending that the Company's shareholders approve amendments to the Company's Code of Regulations, as amended (the "Regulations"),[1] to replace the provisions in the Regulations calling for a greater than majority vote as described below (the "Company Proposal"). The Board of Directors has determined to recommend that our shareholders vote "For" the Company Proposal. The Proposal directly conflicts with the Company Proposal.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(9) Because it Directly Conflicts with the Company Proposal.

The Regulations currently contain only one provision that requires the affirmative vote of more than a majority of the voting power of the Company (the "Regulations Supermajority Provision"). Article II, Section 3 of the Regulations provides, in pertinent part, that: "All the directors, or any individual director, may be removed from office by the vote of the holders of shares entitling them to exercise two-thirds of the voting power of the Company entitled to vote to elect directors in place of the director or directors to be removed, provided that unless all the directors are removed, no individual director shall be removed if the votes of a sufficient number of shares are cast against such director's removal which, if cumulatively voted at an election of all the directors would be sufficient to elect at least one director; provided further, that, if shareholders do not have the right to vote cumulatively under the laws of the State of Ohio or the Articles of Incorporation, such directors or individual director may be removed from office by

[1] Regulations are equivalent, under Ohio law, to bylaws.

the vote of the holders of shares entitling them to exercise two-thirds of the voting power of the Company entitled to vote to elect directors in place of the director or directors to be removed." Section 3 further provides that this provision may only be amended by the affirmative vote of two-thirds of the voting power of the Company.

The Company's Amended Articles of Incorporation, as amended (the "Articles"), do not contain any express provisions that require the affirmative vote of more than a majority of the voting power of the Company's common stock. The Articles do, however, contain provisions that require the affirmative vote of more than a majority of the voting power of certain classes of preferred stock (the "Articles Supermajority Provisions").[2]

The Proposal does not appear to be focused on the Articles Supermajority Provisions, which are currently not operative and are solely for the protection of the holders of any future series of Preferred Stock. In any event, the existence of such provisions does not in any way change the fact that the Company Proposal conflicts with the Proposal in a manner that provides a basis for exclusion under Rule 14a-8(i)(9).

As noted above, the Board has approved the Company Proposal, which would ask the Company's shareholders to approve amendments to the Regulations to reduce the voting standard required in the Regulations Supermajority Provision from a vote of two-thirds of the voting power of the Company to a vote of 60% of the voting power of the Company and, in order to meaningfully effectuate this change, to opt out of cumulative voting. Opting out of cumulative voting is directly and integrally related to reducing the threshold to remove a director since under current Ohio law with respect to the impact of cumulative voting on the removal of directors (as reflected in the Regulations), removal of less than all of our directors would require the approval of approximately 92% of our outstanding shares of common stock. A copy of the text of the amendments to the Regulations under the Company Proposal is attached to this letter as Exhibit B.

Pursuant to Rule 14a-8(i)(9), a company may exclude a shareholder proposal from its proxy materials "if the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." The Commission has stated that, in order for this exclusion to be available, the proposals need not be "identical in scope or focus for the

[2] Article Fourth, Part B, Section 1-A, paragraph 7 and Article Fourth, Part B, Section 1-B, paragraph 7 (governing the terms of our Series A $10.00 Preferred Stock and Series B Preferred Stock, respectively) prohibit further amendments to the Articles that provide for the issuance of any other series of Preferred Stock without the affirmative vote of two-thirds of the outstanding shares of the Series A $10.00 Preferred Stock and Series B Preferred Stock, each voting as a separate class. Article Fourth, Part B, Section 5 (governing the voting rights of our Preferred Stock generally) requires a two-thirds vote of the outstanding shares of our Preferred Stock with respect to (a) amendments to the Articles or Regulations which adversely affect the preferences or voting or other rights of the holders of the Preferred Stock, (b) the purchase or redemption of less than all of the Preferred Stock then outstanding if dividends or sinking fund payments with respect to the Preferred Stock have not been declared or paid when due, and (c) the authorization, creation or increase in the authorized amount of any shares of any class of stock ranking prior to the Preferred Stock. These provisions are currently not operative since there are no shares of Preferred Stock, including Series A $10.00 Preferred Stock or Series B Preferred Stock, currently outstanding.

JOHN CHEVEDDEN

***

***

February 11, 2019

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

 # 2 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Simple Majority Vote
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 20, 2019 no-action request.

Fitbit claimed credit for implementing this rule 14a-8 proposal by completely relying on "its existing Certificate of Incorporation and Bylaws." The company still does not claim otherwise.

State Street Corp. "adopted amendments" after "submission of the proposal" in *State Street Corp.* (March 5, 2018)

The company cited *Goodyear Tire & Rubber Company* (January 19, 2018) but failed to mention that Goodyear had no outstanding preferred stock according to the file under *Goodyear Tire & Rubber Company* (January 19, 2018) – in contrast to Fitbit. The third page of the attachment has the exact Goodyear text.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Andrew P. Missan <amissan@fitbit.com>

Please see page 3

The Goodyear Tire & Rubber Company

Akron, Ohio 44316-0001

LAW DEPARTMENT

TEL: (330) 796-4141
DAN_YOUNG@GOODYEAR.COM

December 11, 2014

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: The Goodyear Tire & Rubber Company
Shareholder Proposal of John Chevedden pursuant to
Rule 14a-8 under the Securities Exchange Act of 1934

Ladies and Gentlemen:

This letter is to inform you that The Goodyear Tire & Rubber Company, an Ohio corporation ("we," "us," "our" or the "Company"), intends to omit from our proxy statement and form of proxy for our 2015 Annual Meeting of Shareholders (collectively, the "2015 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from John Chevedden (the "Proponent") on October 7, 2014.

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before we intend to file our definitive 2015 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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

THE PROPOSAL

The Proposal states:

> Shareholders request that our board take the steps necessary so that each voting requirement in our charter and bylaws that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

A copy of the full text of the Proposal, including the Proponent's supporting statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION – RULE 14a-8(i)(9)

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2015 Proxy Materials pursuant to Rule 14a-8(i)(9).

On December 9, 2014, the Board of Directors (the "Board") of the Company approved the submission at the 2015 Annual Meeting of Shareholders of a proposal recommending that the Company's shareholders approve amendments to the Company's Code of Regulations, as amended (the "Regulations"),[1] to replace the provisions in the Regulations calling for a greater than majority vote as described below (the "Company Proposal"). The Board of Directors has determined to recommend that our shareholders vote "For" the Company Proposal. The Proposal directly conflicts with the Company Proposal.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(9) Because it Directly Conflicts with the Company Proposal.

The Regulations currently contain only one provision that requires the affirmative vote of more than a majority of the voting power of the Company (the "Regulations Supermajority Provision"). Article II, Section 3 of the Regulations provides, in pertinent part, that: "All the directors, or any individual director, may be removed from office by the vote of the holders of shares entitling them to exercise two-thirds of the voting power of the Company entitled to vote to elect directors in place of the director or directors to be removed, provided that unless all the directors are removed, no individual director shall be removed if the votes of a sufficient number of shares are cast against such director's removal which, if cumulatively voted at an election of all the directors would be sufficient to elect at least one director; provided further, that, if shareholders do not have the right to vote cumulatively under the laws of the State of Ohio or the Articles of Incorporation, such directors or individual director may be removed from office by

[1] Regulations are equivalent, under Ohio law, to bylaws.

the vote of the holders of shares entitling them to exercise two-thirds of the voting power of the Company entitled to vote to elect directors in place of the director or directors to be removed." Section 3 further provides that this provision may only be amended by the affirmative vote of two-thirds of the voting power of the Company.

The Company's Amended Articles of Incorporation, as amended (the "Articles"), do not contain any express provisions that require the affirmative vote of more than a majority of the voting power of the Company's common stock. The Articles do, however, contain provisions that require the affirmative vote of more than a majority of the voting power of certain classes of preferred stock (the "Articles Supermajority Provisions").[2]

The Proposal does not appear to be focused on the Articles Supermajority Provisions, which are currently not operative and are solely for the protection of the holders of any future series of Preferred Stock. In any event, the existence of such provisions does not in any way change the fact that the Company Proposal conflicts with the Proposal in a manner that provides a basis for exclusion under Rule 14a-8(i)(9).

As noted above, the Board has approved the Company Proposal, which would ask the Company's shareholders to approve amendments to the Regulations to reduce the voting standard required in the Regulations Supermajority Provision from a vote of two-thirds of the voting power of the Company to a vote of 60% of the voting power of the Company and, in order to meaningfully effectuate this change, to opt out of cumulative voting. Opting out of cumulative voting is directly and integrally related to reducing the threshold to remove a director since under current Ohio law with respect to the impact of cumulative voting on the removal of directors (as reflected in the Regulations), removal of less than all of our directors would require the approval of approximately 92% of our outstanding shares of common stock. A copy of the text of the amendments to the Regulations under the Company Proposal is attached to this letter as Exhibit B.

Pursuant to Rule 14a-8(i)(9), a company may exclude a shareholder proposal from its proxy materials "if the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." The Commission has stated that, in order for this exclusion to be available, the proposals need not be "identical in scope or focus for the

[2] Article Fourth, Part B, Section 1-A, paragraph 7 and Article Fourth, Part B, Section 1-B, paragraph 7 (governing the terms of our Series A $10.00 Preferred Stock and Series B Preferred Stock, respectively) prohibit further amendments to the Articles that provide for the issuance of any other series of Preferred Stock without the affirmative vote of two-thirds of the outstanding shares of the Series A $10.00 Preferred Stock and Series B Preferred Stock, each voting as a separate class. Article Fourth, Part B, Section 5 (governing the voting rights of our Preferred Stock generally) requires a two-thirds vote of the outstanding shares of our Preferred Stock with respect to (a) amendments to the Articles or Regulations which adversely affect the preferences or voting or other rights of the holders of the Preferred Stock, (b) the purchase or redemption of less than all of the Preferred Stock then outstanding if dividends or sinking fund payments with respect to the Preferred Stock have not been declared or paid when due, and (c) the authorization, creation or increase in the authorized amount of any shares of any class of stock ranking prior to the Preferred Stock. These provisions are currently not operative since there are no shares of Preferred Stock, including Series A $10.00 Preferred Stock or Series B Preferred Stock, currently outstanding.

MORRISON | FOERSTER

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SAN FRANCISCO, SHANGHAI, SINGAPORE,
TOKYO, WASHINGTON, D.C.

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

1934 Act/Rule 14a-8

February 11, 2019

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: Fitbit, Inc.
Shareholder Proposal of John Chevedden on behalf of Kenneth Steiner

Dear Ladies and Gentlemen:

This letter concerns the request, dated January 20, 2019 (the "***Initial Request Letter***"), that we submitted on behalf of our client Fitbit, Inc., a Delaware corporation (the "***Company***"), seeking 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 shareholder proposal (the "***Proposal***") submitted by John Chevedden on behalf of Kenneth Steiner (collectively, the "***Proponent***") from the Company's proxy materials for its 2019 Annual Meeting of Shareholders (the "***2019 Proxy Materials***"). The Proponent submitted a letter to the Staff, dated January 25, 2019 (the "***Proponent Letter***"), asserting his view that the Proposal is required to be included in the 2019 Proxy Materials. The Proponent Letter is attached as Exhibit A to this letter.

We submit this letter on behalf of the Company to supplement the Initial Request Letter and respond to the assertions made in the Proponent Letter. We also renew our request for confirmation that the Staff will not recommend enforcement action to the Commission if the Company omits the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8.

We have concurrently sent copies of this correspondence to the Proponent.

I. THE PROPOSAL

We provided the Proposal and other correspondence relating to the Proposal as attachments to the Initial Request Letter. As discussed in the Initial Request Letter, the Company believes that it may properly omit the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8(i)(10), as the Company has substantially implemented the Proposal, and Rule 14a-8(i)(3), as the Proposal is materially false and misleading.

II. EXCLUSION OF THE PROPOSAL

A. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(10) , as the Company has Substantially Implemented the Proposal through its Existing Certificate of Incorporation and Bylaws

As discussed in the Initial Request Letter, the Proposal may be properly omitted in reliance on Rule 14a-8(i)(10) because the action sought by the Proposal has been substantially implemented by the Company through its existing Restated Certificate of Incorporation (the "***Certificate***") and Restated Bylaws (the "***Bylaws***").

In the Proponent Letter, the Proponent notes that the *State Street Corp.* (Mar. 5, 2018) no-action letter cited in the Initial Request Letter is a "false comparison" because the company adopted amendments to its governance documents after the proponent submitted the proposal. That assertion misstates the Staff's analysis under Rule 14a-8(i)(10) as the Staff has consistently concurred with the exclusion of proposals under Rule 14a-8(i)(10) where companies had taken actions that "compare favorably" with the proposal[s] well before the proponents submitted the proposals. *See, e.g.*, the Staff responses in *Brocade Communications Systems, Inc.* (Dec. 19, 2016) (concurring in the exclusion under Rule l4a-8(i)(10) of a proposal similar to the Proposal where the company's shareholders had approved amendments to the company's certificate of incorporation to eliminate all supermajority voting standards in 2010); and *CVS Caremark Corp.* (Feb. 27, 2014) (concurring in the exclusion under Rule 14a-8(i)(l0) of a proposal similar to the Proposal where the company's shareholders had approved amendments to the company's certificate of incorporation to eliminate all supermajority voting standards in 2013). *See also* the following Staff responses cited in the Initial Request Letter: *The Boeing Co.* (Feb. 17, 2011); *Walgreens Boots Alliance, Inc.* (Nov. 13, 2018); *Entergy Corp.* (Feb. 14, 2014); and *MGM Resorts International* (Feb. 28, 2012). Accordingly, the fact that the Company substantially implemented the Proposal prior to its receipt of the Proposal has no bearing on whether the Proposal may be omitted under Rule 14a-8(i)(10).

The Proponent further asserts in the Proponent Letter that *The Goodyear Tire & Rubber Company* (Jan. 19, 2018) is not a relevant comparison because "Goodyear had no outstanding preferred stock in contrast to Fitbit." That statement is false, given that the Company has no outstanding preferred stock, while Goodyear did in fact have outstanding preferred stock at the time of the no-action letter. Nonetheless, the Proponent appears to be asserting that because the

facts in the instant situation and *Goodyear* are somewhat different, the Staff's response in *Goodyear* is irrelevant. The Company strongly disagrees, as it is commonplace in Rule 14a-8 practice to draw appropriate analogies to prior Staff responses in support of arguments as to why a proposal may be excluded, notwithstanding that certain differences exist between the proposal or the particular circumstances of the company submitting the no-action request and the proposals or circumstances considered by the Staff in the prior no-action letters. As discussed in the Initial Request Letter, *Goodyear* is quite relevant to the Company's conclusion that the proposal may be omitted under Rule 14a-8(i)(10), because *Goodyear* also involved a situation where the company maintained limited supermajority voting provisions, yet the Staff concurred that the proposal had been substantially implemented for purposes of Rule 14a-8(i)(10). Accordingly, and consistent with the *Goodyear* and other precedent noted in the Initial Request Letter, the Company continues to be of the view that it may omit the Proposal from its 2019 Proxy Materials pursuant to Rule 14a-8(i)(10).

Lastly, the Proponent states in the Proponent Letter that, in the Initial Request Letter, the Company did not address the following statement from the Proposal: "implicit due to default to state law." The Company is a Delaware corporation; as such, no default supermajority provisions apply to the Company.

For the reasons set forth above and in the Initial Request Letter, the Company remains of the view that it may exclude the Proposal pursuant to Rule 14a-8(i)(10) as the Company has substantially implemented the Proposal through its existing Certificate and Bylaws.

B. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(3) because it is Materially False and Misleading and Contrary to Rule 14a-9

The Proponent Letter did not address the Company's arguments in the Initial Request Letter relating to the application of Rule 14a-8(i)(3) to the Proposal. The Company reiterates its view that, for the reasons discussed in the Initial Request Letter, it may properly omit the Proposal in reliance on Rule 14a-8(i)(3) because the Proposal is materially false and misleading and contrary to Rule 14a-9.

III. CONCLUSION

For the reasons discussed in the Initial Request Letter and discussed further above, the Proponent Letter does not impact the application of Rule 14a-8(i)(10) and Rule 14a-8(i)(3) to the Proposal and the Company continues to be of the view that it may properly omit the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8. 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
Morrison & Foerster LLP

Attachments

cc: John Chevedden
Andy Missan, Executive Vice President, General Counsel and Corporate Secretary, Fitbit, Inc.
Juliana Chen, Vice President & Associate General Counsel, Corporate, Fitbit, Inc.

EXHIBIT A

JOHN CHEVEDDEN

***

***

January 25, 2019

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

 # 1 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Simple Majority Vote
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 20, 2019 no-action request.

State Street Corp. (March 5, 2018) is a false comparison. State Street Corp. "adopted amendments" after "submission of the proposal." However Fitbit claims credit for implementing this rule 14a-8 proposal by completely relying on "its existing Certificate of Incorporation and Bylaws."

The company cited *Goodyear Tire & Rubber Company* (January 19, 2018) but failed to mention that Goodyear had no outstanding preferred stock in contrast to Fitbit.

The company does not address the resolved statement text – "implicit due to default to state law."

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Andrew P. Missan <amissan@fitbit.com>

[FIT: Rule 14a-8 Proposal, December 2, 2018]
[This line and any line above it – *Not* for publication.]

Proposal [4] – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner.

Currently a 1%-minority can frustrate the will of our 66%-shareholder majority in an election with 67% of shares casting ballots. In other words a 1%-minority could have the power to prevent shareholders from improving the governing rules of our company. This can be particularly important during periods of management underperformance and/or an economic downturn. Currently the role of shareholders is downsized because management can simply push the snooze button in response to a 66%-vote of shareholders on certain issues.

Important

Please vote yes:

Simple Majority Vote – Proposal [4]

[The above line – *Is* for publication.]

JOHN CHEVEDDEN

***

***

January 25, 2019

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

 # 1 Rule 14a-8 Proposal
Fitbit Inc (FIT)
Simple Majority Vote
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 20, 2019 no-action request.

State Street Corp. (March 5, 2018) is a false comparison. State Street Corp. "adopted amendments" after "submission of the proposal." However Fitbit claims credit for implementing this rule 14a-8 proposal by completely relying on "its existing Certificate of Incorporation and Bylaws."

The company cited *Goodyear Tire & Rubber Company* (January 19, 2018) but failed to mention that Goodyear had no outstanding preferred stock in contrast to Fitbit.

The company does not address the resolved statement text – "implicit due to default to state law."

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Andrew P. Missan <amissan@fitbit.com>

[FIT: Rule 14a-8 Proposal, December 2, 2018]
[This line and any line above it – *Not* for publication.]

Proposal [4] – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner.

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Important

Please vote yes:

Simple Majority Vote – Proposal [4]

[The above line – *Is* for publication.]

MORRISON | FOERSTER

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MORRISON FOERSTER LLP

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SINGAPORE, TOKYO, WASHINGTON, D.C.

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MDunn@mofo.com

Exchange Act/Rule 14a-8

January 20, 2019

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: Fitbit, Inc.
Shareholder Proposal of John Chevedden on behalf of Kenneth Steiner

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client Fitbit, Inc., a Delaware corporation (the "***Company***"), which requests 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 John Chevedden on behalf of Kenneth Steiner (collectively, the "***Proponent***") from the Company's proxy materials for its 2019 Annual Meeting of Shareholders (the "***2019 Proxy Materials***").

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

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent, Mr. Chevedden.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (Oct. 18, 2011), 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, and to Mr. Chevedden, the Proponent, via email at ***

I. THE PROPOSAL

The Proposal reads as follows:

"Proposal [4] - Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner.

Currently a 1%-minority can frustrate the will of our 66%-shareholder majority in an election with 67% of shares casting ballots. In other words a 1%-minority could have the power to prevent shareholders from improving the governing rules of our company. This can be particularly important during periods of management underperformance and/or an economic downturn. Currently the role of shareholders is downsized because management can simply push the snooze button in response to a 66%-vote of shareholders on certain issues.

Please vote yes:

Simple Majority Vote - Proposal [4]"

On December 14, 2018, the Company sent a deficiency notice to Mr. Chevedden, via email and FedEx, requesting that he provide sufficient evidence of Mr. Steiner's delegation of authority to submit the Proposal consistent with the requirements of Staff Legal Bulletin No. 14I. On December 17, 2018, the Company received sufficient evidence of the delegation of authority. Copies of the Proposal, the Proponent's cover letter submitting the Proposal, and other correspondence relating to the Proposal are attached hereto as Exhibit A.

II. EXCLUSION OF THE PROPOSAL

A. Bases for Excluding the Proposal

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2019 Proxy Materials in reliance on:

- Rule 14a-8(i)(10), as the Company has substantially implemented the Proposal; and
- Rule 14a-8(i)(3), as the Proposal is materially false and misleading.

B. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(10), as the Company has Substantially Implemented the Proposal through its Existing Certificate of Incorporation and Bylaws

Rule 14a-8(i)(10) permits a company to exclude a proposal from its proxy materials if the company has substantially implemented the proposal. The Commission stated in 1976 that the exclusion is "designed to avoid the possibility of stockholders having to consider matters which already have been favorably acted upon by the management." *Exchange Act Release No. 12598* (Jul. 7, 1976) (discussing Rule 14a-8(c)(10), the predecessor to Rule 14a-8(i)(10)). As the Commission provided in 1998, a proposal need not be "fully effected" by the company to be substantially implemented for purposes of Rule 14a-8(i)(10). *Exchange Act Release No. 40018, Amendments to Rules on Shareholder Proposals*, [1998 Transfer Binder] Fed Sec. L. Rep. (CCH) 86,018, at 80,539 (May 21, 1998) (the "***1998 Release***").

In *Masco Corporation* (Mar. 29, 1999), the Staff noted that under the "substantially implemented" standard, a company may exclude a shareholder proposal when the company's actions address the shareholder proposal's underlying concerns, even if the company does not

implement every aspect of the shareholder proposal. Differences between a company's actions and a stockholder proposal are permitted if the company's actions satisfactorily address the proposal's essential objectives. For example, in *The Boeing Co.* (Feb. 17, 2011), in which the company had already adopted human rights policies and provided an annual report on corporate citizenship, the Staff concurred with exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company "review its policies related to human rights" and report its findings. *See also Walgreens Boots Alliance, Inc.* (Nov. 13, 2018) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting a report describing the company's implementation plans with respect to Sustainable Development Goals when the company's public disclosures compared favorably with the guidelines of the proposal); *The Dow Chemical Co.* (Mar. 18, 2014), *reconsid. denied* (Mar. 25, 2014) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's evaluation of a particular issue, where the proponents disputed statements made in the company's report); *Entergy Corp.* (Feb. 14, 2014) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal calling for a report "on policies the company could adopt to take additional near-term actions to reduce its greenhouse gas emissions" when the company had already provided environmental sustainability disclosures on its website and in a separate report); *MGM Resorts International* (Feb. 28, 2012) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's sustainability policies and performance when the company had already published an annual sustainability report); *Wal-Mart Stores, Inc.* (Mar. 30, 2010) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company adopt six principles for action to stop global warming when the company had already published an annual sustainability report); *Exelon Corp.* (Feb. 26, 2010) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on different aspects of the company's political contributions when the company had already adopted corporate political contribution guidelines and issued a political contributions report that, together, provided "an up-to-date view of the [c]ompany's policies and procedures with regard to political contributions"); and *The Dow Chemical Co.* (Mar. 5, 2008) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting a "global warming report" discussing how the company's efforts to ameliorate climate change may have affected the global climate when the company had already made statements about its efforts related to climate change in various corporate documents and disclosures).

The Proposal requests that the Company "take each step necessary so that each voting requirement in [the Company's] charter and bylaws . . . that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals . . ." The Company has substantially implemented the Proposal because it already utilizes a simple majority voting standard for all items of business, other than the limited situations noted below.

It is well established in prior Staff no-action responses that where a proposal calls for a simple majority vote to be adopted by a company which has a charter and bylaws that do not contain voting requirements for common stock requiring supermajority votes, such a proposal is excludable under Rule 14a-8(i)(10). *See, e.g., Hewlett-Packard Co.* (Dec. 19, 2013) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal asking that supermajority vote requirements be eliminated where the company had adopted bylaw amendments which replaced each supermajority vote requirement with a majority of the outstanding votes requirement, in which the Staff noted that the company's "policies, practices, and procedures compare[d] favorably with the guidelines of the proposal"). In addition, where a company has demonstrated that it already has taken actions to address the essential objective of a shareholder proposal, the Staff has agreed that the proposal may be excluded as having been "substantially implemented," even if the company's actions do not exactly conform to the proposal's explicit directions. *See, e.g., Oshkosh Corp.* (Nov. 4, 2016) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting six changes to the company's proxy access bylaw when the company amended its proxy access bylaw to implement three of the six requested changes); and *American Tower Corp.* (Mar. 5, 2015) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company "undertake such steps . . . to permit written consent by shareholders" on "any topic for written consent consistent with applicable law," when the applicable state corporate law allowed, and the company's charter did not disallow, the ability of shareholders to act by written consent).

The Company's Restated Bylaws (the "***Bylaws***") and Restated Certificate of Incorporation (the "***Certificate***") currently implement the Proposal's essential objectives. We note that the Company's Bylaws currently contain no supermajority voting provisions. The Company's Certificate utilizes a simple majority voting standard for the substantial majority of items upon which shareholders are entitled to vote, and directors are elected by a plurality of the votes cast. The Certificate does include a supermajority vote requirement for amendments to the Company's Certificate and Bylaws, as well as a supermajority vote requirement for a currently inoperable director removal provision. The supermajority voting provision applicable to the removal of directors is only in force after the outstanding shares of Class B Common Stock represent less than a majority of the total voting power of the then-outstanding shares of the capital stock of the Company then entitled to vote generally in the election of directors. After such date, which has not yet occurred, directors may be removed only by the affirmative vote of the holders of two-thirds of the voting power of the then-outstanding shares of capital stock of the Company. Prior to such time, the director removal provision operates with a simple majority voting standard, consistent with the Proposal's request.

The Company's conclusion that it has substantially implemented the Proposal is supported by recent Staff decisions. In *State Street Corp.* (Mar. 5, 2018), the Staff concurred with the exclusion under Rule 14a-8(i)(10) of a substantially similar proposal requesting that the

company eliminate all supermajority vote requirements in the charter and bylaws. After submission of the proposal, the company's board of directors adopted amendments to the company's restated articles of organization to replace all supermajority voting provisions, which shareholders approved at the next annual meeting. The company, however, retained its supermajority voting provisions applicable to votes of preferred stock. The Staff also has concurred in exclusion under Rule 14a-8(i)(10) of similar proposals in situations in which the company has removed supermajority voting provisions applicable to votes of the companies' common shares, but has retained supermajority voting provisions related to holders of the company's preferred shares. *See, e.g., Goodyear Tire & Rubber Co.* (Jan. 19, 2018) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company eliminate all supermajority vote requirements in the charter and bylaws when the company had previously eliminated the supermajority vote requirements applicable to the company's common shares, while retaining supermajority voting provisions for the company's preferred shares); *Exxon Mobil Corp.* (Mar. 21, 2011) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting that "each shareholder voting requirement impacting [the] company, that calls for a greater than simple majority vote, be changed to a majority of the votes cast for and against" standard where the company's charter and bylaws contained no supermajority voting requirement, except for a two-thirds voting requirement for preferred shares to amend the company's charter). Similarly, the Company's Certificate only contains supermajority provisions related to Certificate and Bylaw amendments, and a provision regarding removal of directors that is not currently operable. The Company's Bylaws contain no supermajority requirements.

Consistent with the foregoing Staff no-action determinations, the Company has substantially implemented the Proposal because it already utilizes a simple majority voting standard for all items of business, other than the limited situations noted above. As such, the Company has substantially implemented the Proposal's objectives for simple majority vote requirements. Accordingly, the Company is of the view that it may properly omit the Proposal and Supporting Statement from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(10).

C. The Proposal may be Omitted in Reliance on Rule 14a-8(i)(3) because it is Materially False and Misleading and Contrary to Rule 14a-9

As discussed more fully below, the Company believes it may properly omit the Proposal or portions thereof from its 2019 Proxy Materials in reliance on Rule 14a-8(i)(3) because the Proposal is materially false and misleading and contrary to Rule 14a-9.

Rule 14a-8(i)(3) permits a company to omit a proposal or supporting statement, or portions thereof, that are contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false and misleading statements in proxy materials. Pursuant to Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("***SLB 14B***"), reliance on Rule 14a-8(i)(3) to exclude a

proposal or portions of a supporting statement may be appropriate in only a few limited instances, one of which is when the company demonstrates objectively that a factual statement is materially false or misleading. In evaluating whether a proposal may be excluded under Rule 14a-8(i)(3), the Staff has stated that it "consider[s] only the information contained in the proposal and supporting statement and determine[s] whether, based on that information, shareholders and the company can determine what actions the proposal seeks." *Staff Legal Bulletin No. 14G* (Oct. 16, 2012).

The Staff has consistently been of the view that a company may exclude shareholder proposals under Rule 14a-8(i)(3) where the company has "demonstrated objectively that certain factual statements in the supporting statement are materially false and misleading such that the proposal as a whole is materially false and misleading." *See, e.g., Ferro Corporation* (Mar. 17, 2015) (concurring in the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which improperly suggested that the shareholders would have increased rights if the Delaware law governed the company instead of Ohio law); *Johnson & Johnson* (Jan. 31, 2007) (concurring in the exclusion under Rule 14a-8(i)(3) of a proposal to provide shareholders a "vote on an advisory management resolution . . . to approve the Compensation Committee [R]eport" because the proposal would create the false implication that shareholders would receive a vote on executive compensation); *State Street Corp.* (Mar. 1, 2005) (concurring in the exclusion under Rule 14a-8(i)(3) of a proposal requesting shareholder action pursuant to a section of state law that had been recodified and was thus no longer applicable); *General Magic, Inc.* (May 1, 2000) (concurring in the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company make "no more false statements" to its shareholders because the proposal created the false impression that the company tolerated dishonest behavior by its employees when in fact the company had corporate policies to the contrary). Further, the Staff stated in Staff Legal Bulletin No. 14 ("***SLB 14***") (July 13, 2001) that "when a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading."

The Company is of the view that the Proposal is demonstrably materially false and misleading, such that the Proposal may be omitted in its entirety. The Proposal's resolved clause states that "[s]hareholders request that [the] board take each step necessary so that each voting requirement in [the Company's] charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws." First, the Proposal is demonstrably false in its assertion that the Company's charter *and* bylaws currently include supermajority vote requirements (emphasis added). As described above, the Bylaws have no supermajority voting requirements. Further, while the Certificate requires supermajority voting to amend the

Company's Certificate and Bylaws and potentially to remove a director in the future upon the occurrence of a specified event described above, it is misleading to suggest, as the Proposal does, that there are various provisions requiring supermajority voting such that they could be "replaced" by simple majority vote requirements, where the Certificate and Bylaws already utilize a simple majority voting standard for the substantial majority of items upon which shareholders are entitled to vote.

The Proposal includes another objective falsehood: "[c]urrently a 1%-minority can frustrate the will of [the Company's] 66%-shareholder majority in an election with 67% of shares casting ballots." In fact, the Company's directors are each elected by a plurality of the votes cast, which means that the individuals nominated for election to the board of directors at each of the Company's annual meetings receiving the highest number of "for" votes will be elected. Accordingly, it is untrue that the Company requires a supermajority vote in director elections or that a 1% minority could subvert the votes of 66% of shareholders in a director election, and the Proposal's suggestions in this regard are materially false and misleading.

The Proposal's false representation of the Company's voting standards is similar to that in *JPMorgan Chase & Co.* (Mar. 11, 2014) *reconsid. denied* (Mar. 28, 2014), in which the Staff concurred in exclusion Rule 14a-8(i)(3) of a proposal requesting that the board "amend the Company's governing documents to provide that all matters presented to shareholders shall be decided by a simple majority of the shares voted FOR and AGAINST an item (or, 'withheld' in the case of board elections)." The Staff concurred with exclusion of the proposal as the proposal misrepresented the company's voting standard in suggesting that the company used a plurality voting standard for uncontested elections by referencing "withheld" votes. *See also Duke Energy Co.* (Feb. 8, 2002) (concurring in exclusion under Rule 14a-8(i)(3) of a proposal asking the company's board of directors to adopt a policy to "transition to a nominating committee composed entirely of independent directors," yet the company had no nominating committee); and *General Electric Co.* (Jan. 6, 2009) (concurring in the exclusion under Rule 14a-8(i)(3) of a proposal under which any director who received more than 25% in "withheld" votes would not be permitted to serve on any key board committee for two years because the company did not typically allow shareholders to withhold votes in director elections).

The materiality under Rule 14a-8(i)(3) of the Proposal's false and misleading assertions regarding corporate governance matters is demonstrated by the court's holding in *Express Scripts Holding Co. v. Chevedden*, 2014 WL 631538, at *4 (E.D. Mo. Feb. 18, 2014). There, in the context of a proposal that sought to separate the positions of chief executive officer and chairman, the court held that, "when viewed in the context of soliciting votes in favor of a proposed corporate governance measure, statements in the proxy materials regarding the company's existing corporate governance practices are important to the shareholder's decision whether to vote in favor of the proposed measure," and therefore are material. Applying *Express Scripts* to the Proposal demonstrates that the false and misleading statements in the Proposal

would be material to shareholders' voting decisions regarding the Proposal. Just as in *Express Scripts*, the statements within the Proposal discussed above are misleading because they mischaracterize the Company's existing governance practices, which are fundamental to a shareholder's determination of whether the actions requested in the Proposal are necessary.

Pursuant to the standard as set forth in SLB 14B, for the foregoing reasons the Proposal contains statements that are materially false and misleading. These statements are integral to the meaning of the Proposal such that a reasonable shareholder could be confused as to whether this Proposal asks shareholders to consider a change to the Company's dual-class structure, a change to the voting requirements in director elections, or a change to the voting requirements of other provisions. The Company, therefore, is of the view that it may properly omit the Proposal in reliance on Rule 14a-8(i)(3) because it is materially false and misleading and contrary to Rule 14a-9.

III. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal from its 2019 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 2019 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
Morrison & Foerster LLP

Attachments

cc: John Chevedden
Andy Missan, Executive Vice President, General Counsel and Corporate Secretary, Fitbit, Inc.

EXHIBIT A

Kenneth Steiner
***

Mr. Andrew P. Missan
Secretary
Fitbit Inc (FIT)
199 Fremont Street, 14th Floor
San Francisco, CA 94105

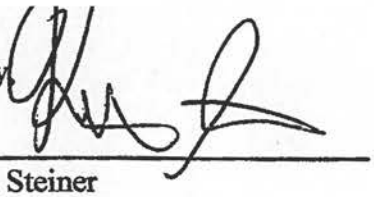
Dear Mr. Missan,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

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 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
***) at:
***
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,



Kenneth Steiner

11[redacted]-21-18

Date

[FIT: Rule 14a-8 Proposal, December 2, 2018]
[This line and any line above it – *Not* for publication.]

Proposal [4] – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner.

Currently a 1%-minority can frustrate the will of our 66%-shareholder majority in an election with 67% of shares casting ballots. In other words a 1%-minority could have the power to prevent shareholders from improving the governing rules of our company. This can be particularly important during periods of management underperformance and/or an economic downturn. Currently the role of shareholders is downsized because management can simply push the snooze button in response to a 66%-vote of shareholders on certain issues.

Please vote yes:
Simple Majority Vote – Proposal [4]
[The above line – *Is* for publication.]

Kenneth Steiner, *** sponsors this proposal.

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

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

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

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

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

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

199 Fremont Street, 14th Floor
San Francisco, CA 94105

info@fitbit.com
www.fitbit.com

December 14, 2018

VIA EMAIL & OVERNIGHT DELIVERY

Mr. John Chevedden
***

Dear Mr. Chevedden:

I am writing on behalf of Fitbit, Inc. ("Fitbit") with respect to the shareholder proposal regarding supermajority voting (the "Proposal") received from you for consideration at Fitbit's 2019 Annual Meeting of Shareholders. The proposal was submitted by you on behalf of Kenneth Steiner (the "Proponent").

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

Proposal by Proxy

A shareholder's ability to submit a "proposal by proxy" must be consistent with Securities Exchange Act of 1934 Rule 14a-8 and the eligibility requirements of Rule 14a-8(b). The SEC Staff provided guidance in Staff Legal Bulletin No. 14I ("SLB 14I") to assist the SEC 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 authority to the proxy. The SEC Staff stated in SLB 14I that it expects that 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.

199 Fremont Street, 14th Floor
San Francisco, CA 94105

info@fitbit.com
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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 specific proposal to be submitted and because it fails to identify the annual meeting for which the Proposal is submitted. As such, Fitbit 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 and SLB 14I. For the Proposal to be eligible for inclusion in Fitbit's proxy materials for Fitbit's 2019 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 199 Fremont Street, 14th Floor, San Francisco, CA 94105, or via email to amissan@fitbit.com.

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

Sincerely,

Andy Missan
Executive Vice President, General Counsel and Corporate Secretary

cc: Kenneth Steiner
Juliana Chen, Fitbit, Inc.
David Lynn, Morrison & Foerster LLP
Marty Dunn, Morrison & Foerster LLP

Enclosures:

Rule 14a-8 of the Securities Exchange Act of 1934
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.

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14I (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 1, 2017

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

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

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

A. The purpose of this bulletin

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

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

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

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

1. Background

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

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

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

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

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

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

1. Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Proposals submitted on behalf of shareholders

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

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

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

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

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

E. Rule 14a-8(d)

1. Background

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

2. The use of images in shareholder proposals

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

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

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

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

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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

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Ameritrade

12/11/2018

Kenneth Steiner
***

Re: Your TD Ameritrade Account Ending in *** in TD Ameritrade Clearing Inc DTC #0188

Dear Kenneth Steiner,

Thank you for allowing me to assist you today. As you requested, this letter confirms that, as of close of business on December 10, 2018, you have continuously held no less than 500 shares of each of the following stocks in the above referenced account since October 1, 2017.

AMC Networks, Inc. (AMCX)
CTS Corporation (CTS)
Exxon Mobil Corporation (XOM)
Fitbit, Inc. (FIT)
International Paper Company (IP)
JP Morgan Chase & Co. (JPM)

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

Sincerely,

Matt Beckman
Resource Specialist
TD Ameritrade

-Kenneth Steiner
***

Mr. Andrew P. Missan
Secretary
Fitbit Inc (FIT)
199 Fremont Street, 14th Floor
San Francisco, CA 94105

Dear Mr. Missan,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

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 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
*** at:
***
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,

Kenneth Steiner

11-21-18
Date

Proposal [4] – Simple Majority Vote

12/18/17