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

DIVISION OF
CORPORATION FINANCE

February 1, 2019

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: Pinnacle West Capital Corporation

Dear Ms. Ising:

This letter is in regard to your correspondence dated January 23, 2019 concerning the shareholder proposal (the "Proposal") submitted to Pinnacle West Capital Corporation (the "Company") by Corning 5A Trust (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 4, 2019 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter 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,

Kasey L. Robinson
Special Counsel

cc: Danielle R. Fugere
As You Sow
dfugere@asyousow.org

GIBSON DUNN

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January 23, 2019

VIA E-MAIL

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

Re: *Pinnacle West Capital Corporation*
Shareholder Proposal of Corning 5A Trust
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

In a letter dated January 4, 2019, we requested that the staff of the Division of Corporation Finance concur that our client, Pinnacle West Capital Corporation (the "Company"), could exclude from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders a shareholder proposal (the "Proposal") and statements in support thereof received from As You Sow purportedly on behalf of Corning 5A Trust (the "Proponent").

Enclosed as Exhibit A is a letter from the Proponent verifying that the Proponent has withdrawn the Proposal. In reliance on this communication, we hereby withdraw the January 4, 2019 no-action request.

Please do not hesitate to call me at (202) 955-8287 or Diane Wood, the Company's Assistant Vice President, Associate General Counsel and Corporate Secretary, at (602) 250-3544 if you have any questions.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Diane Wood, Assistant Vice President, Associate General Counsel and Corporate Secretary, Pinnacle West Capital Corporation
Danielle Fugere and Lila Holzman, As You Sow

EXHIBIT A

AS YOU SOW
1611 Telegraph Ave, Suite 1450
Oakland, CA 94612
www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

January 14, 2019

Diane Wood
Corporate Secretary
Pinnacle West Capital Corporation
400 North Fifth Street, Mail Station 8602
Phoenix, Arizona 85004

Re: Withdrawal of 2019 Proposal on Linking GHG Emissions to Executive Compensation

Dear Ms. Wood,

As You Sow appreciates the constructive dialogue we have had with Pinnacle West Capital Corporation ("Pinnacle West") regarding: climate change risks, our 2019 shareholder proposal on linking greenhouse gas emissions reductions to executive compensation ("the Proposal"), and the report published by Pinnacle West in response. The Proposal outlines shareholders' goal that the company transition its business model to align with the global goal of limiting temperature rise to well below 2 degrees Celsius. In order to make informed investment decisions, investors require specific, quantitative disclosures about the governance mechanisms in place and the actions the company is taking to achieve the needed emissions reductions.

Following *As You Sow's* submission of the Proposal, the subsequent release of Pinnacle West's report, and additional discussions with the company, *As You Sow* and Pinnacle West Capital Corporation have agreed to the following:

1. ***As You Sow* Action.** In exchange for Pinnacle West's actions described below, *As You Sow* agrees to withdraw its shareholder proposal filed on behalf of shareholder Corning 5A Trust, and agrees that such proposal need not appear in the Company's definitive proxy statement for Pinnacle West's 2019 annual meeting.

2. **Pinnacle West Capital Corporation Action.** Pinnacle West has published a report discussing linking of executive compensation to achievement of greenhouse gas reductions. Pinnacle West agrees to continue to engage with *As You Sow* regarding climate change risks and long-term pathways to address them, including the evaluation of setting GHG emission reduction targets that take into consideration the global greenhouse gas needs set forth in the Paris Climate Agreement, such as an absolute target.

This agreement will become effective on the date the last party below executes this agreement.

AS YOU SOW

AS YOU SOW:

Danielle R. Fugere
President and General Counsel
As You Sow

1/21/19
Date

Pinnacle West Capital Corporation:

Diane Wood
Corporate Secretary
Pinnacle West Capital Corporation

1/18/2019
Date

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January 4, 2019

VIA E-MAIL

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

Re: *Pinnacle West Capital Corporation*
Shareholder Proposal of Corning 5A Trust
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Pinnacle West Capital Corporation (the "Company"), intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders (collectively, the "2019 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof (the "Supporting Statement") received from As You Sow purportedly on behalf of Corning 5A Trust (the "Proponent").

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 the Company intends to file its definitive 2019 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 (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect 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 the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> **Resolved:** Shareholders request that Pinnacle West Capital's Human Resources Committee prepare a report assessing the feasibility of linking executive compensation metrics to the accomplishment of Paris-aligned greenhouse gas emission reduction objectives. The report should be prepared at reasonable cost and omit proprietary information.

A copy of the Proposal, the Supporting Statement and related correspondence with the Proponent is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2019 Proxy Materials pursuant to:

- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide appropriate authorization to the Proponent's representative to submit the Proposal; and
- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(a)(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish The Requisite Eligibility To Submit The Proposal.

A. Background

On November 27, 2018, As You Sow submitted the Proposal to the Company via email, which the Company received on the same day. *See* Exhibit A. In its letter dated November 27, 2018, As You Sow indicated that it was submitting the Proposal on behalf of the Proponent and included a letter dated November 7, 2018, purporting to authorize As You Sow to submit a proposal on behalf of the Proponent. *See* Exhibit A. The authorization letter did not identify the Proposal as the specific proposal authorized to be submitted but instead stated that "[t]he resolution at issue relates to Report on Carbon

Asset Transition" and was signed by Daria Victorov. In addition, neither the authorization letter nor As You Sow's November 27 letter provided evidence of Daria Victorov's authority to sign the authorization letter on behalf of the Proponent. *See* Exhibit A.

As You Sow's November 27, 2018 submission was not accompanied by any proof of the Proponent's ownership of Company securities. *See* Exhibit A. The Company reviewed its stock records, which did not indicate that the Proponent was the record owner of any shares of Company securities.

Accordingly, on December 6, 2018, which was within 14 days of the date that the Company received the Proposal, the Company sent As You Sow a letter notifying As You Sow of the Proposal's procedural deficiencies as required by Rule 14a-8(f) (the "Deficiency Notice"). In the Deficiency Notice, attached hereto as Exhibit B, the Company informed As You Sow of the requirements of Rule 14a-8 and how the Proponent could cure the procedural deficiencies.

Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b);
- the eligibility requirements of Rule 14a-8(b) and the guidance of Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB 14I"), including the list of requirements that the Staff indicated sufficient documentation should include;
- that the documentation from the Proponent purporting to authorize As You Sow to act on its behalf was insufficient because the documentation did not identify the Proposal as the specific proposal to be submitted and did not evidence the signatory's authority to sign the documentation on behalf of the shareholder;
- that in order to comply with the requirements of Rule 14a-8(b) and SLB 14I the Proponent should provide documentation that confirms that as of November 27, 2018, the Proponent had instructed or authorized As You Sow to submit the Proposal to the Company on the Proponent's behalf and that such documentation should identify the specific proposal authorized to be submitted and should be signed by the shareholder or should indicate the signatory's authority to sign the documentation on behalf of the shareholder; and

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

The Deficiency Notice also included a copy of Rule 14a-8 and SEC Staff Legal Bulletin No. 14F (Oct. 18, 2011). The Deficiency Notice was sent to As You Sow on December 6, 2018 via email. *See* Exhibit B. Accordingly, the Proponent's response to the Deficiency Notice was required to be postmarked or transmitted electronically on or before December 20, 2018 (*i.e.*, 14 calendar days from the Proponent's receipt of the Deficiency Notice).

At 6:56 p.m. on December 20, 2018, As You Sow responded to the Deficiency Notice (the "Response Letter"). *See* Exhibit C. With the Response Letter, As You Sow submitted a revised authorization letter from the Proponent, signed by a beneficiary of the Corning 5A Trust (the "Revised Authorization Letter"). *See* Exhibit D. However, neither the Response Letter nor the Revised Authorization Letter demonstrated that the Proponent authorized As You Sow to submit the Proposal on its behalf.

In the Response Letter, As You Sow provided no evidence that the Proponent authorized the Proposal to be submitted and instead claimed the description of a proposal as "relat[ing] to 'Report on Carbon Asset Transition' . . . encapsulates the objective of the Proposal to transition the company's operations and assets in line with the Paris Agreement's goal of substantially reducing greenhouse gas emissions." As You Sow claimed further that "[a] detailed description identifying the Proposal as [sic]'report on how the company plans to align its business model or portfolio with a Paris compliant low carbon economy' was transmitted to the [Proponent's] legal representative prior to their signing of the authorization letter." *See* Exhibit C.

Moreover, instead of identifying the Proposal as the specific proposal authorized by the Proponent to be submitted by As You Sow on its behalf, in the Revised Authorization Letter the Proponent stated: "The resolution at issue relates to a report on Carbon Asset Transition which I understood to mean as asking the company to address how it would transition away from high carbon assets. The description provided to me further explained that the proposal is intended to address how the company plans to align its business model or portfolio with a Paris compliant low carbon economy, i.e., move away from higher carbon energy assets." *See* Exhibit D.

B. Analysis

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent did not substantiate its eligibility to submit the Proposal under Rule 14a-8(b), as requested by, and described in, the Company's timely Deficiency Notice. Specifically, the Proponent has not provided the Company with sufficient documentation describing the Proponent's delegation of authority to As You Sow to submit the Proposal to the Company.

i. The Proponent Did Not Provide Sufficient Documentation Describing Its Sufficient Delegation Of Authority To As You Sow To Submit The Proposal.

Rule 14a-8(b) provides guidance regarding what information must be provided to demonstrate that a person is eligible to submit a shareholder proposal. Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company's proxy materials if a shareholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, provided that the company has timely notified the proponent of any eligibility or procedural deficiencies, and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice.

In SLB 14I, the Staff provided additional guidance as to what information must be provided under Rule 14a-8(b) where, as is the case with the Proposal, a shareholder submits a proposal through a representative (*i.e.*, a "proposal by proxy"). In SLB 14I, the Staff indicated that such submission by proxy is consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b) if the shareholder who submits a proposal by proxy provides sufficient documentation describing the shareholder's delegation of authority to the proxy. The Staff stated that where such sufficient documentation has not been provided, there "may be a basis to exclude the proposal under Rule 14a-8(b)." *See* Section D, SLB 14I. The Staff indicated it "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" (emphasis added).

The Staff indicated that such documentation is intended to address concerns about proposals by proxy, including "whether [shareholders] may not know that proposals are being submitted on their behalf." *Id.* In addition, the Staff instructed companies seeking exclusion of a proposal under Rule 14a-8(b) based on a shareholder's failure to provide some or all of the information described above that the company "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." *Id.* n.12.

Here, the documentation submitted by As You Sow with the Proposal on November 27, 2018 was insufficient to demonstrate the Proponent's proper delegation of authority to As You Sow to submit the Proposal on behalf of the Proponent. The Deficiency Notice clearly explained that the documentation submitted was not sufficient because the documentation "does not identify the Proposal as the specific proposal to be submitted" on behalf of the Proponent. The Deficiency Notice explained that the documentation provided "describes the proposal that you are authorized to submit as 'Report on Carbon Asset Transition'" whereas "the subject matter of the Proposal addresses a report on the feasibility of linking executive compensation metrics to the accomplishment of certain greenhouse gas emission reduction objectives." The Deficiency Notice further explained that in order to cure these deficiencies, "the Proponent should provide documentation that confirms that as of the date [As You Sow] submitted the Proposal, the Proponent had instructed or authorized [As You Sow] to submit the Proposal to the Company on the Proponent's behalf" and that such documentation "should identify the specific proposal authorized to be submitted." *See* Exhibit B.

Despite the Deficiency Notice's clear identification of the specific defects in the materials submitted by As You Sow and provision of clear instructions that to cure such defects As You Sow should provide documentation for the Proponent "that confirms that as of the date [As You Sow] submitted the Proposal, the Proponent had instructed or authorized [As You Sow] to submit the Proposal to the Company on the Proponent's behalf," the Response Letter failed to provide such documentation. Instead, As You Sow claimed that "[a] detailed description identifying the Proposal as [sic]'report on how the company plans to align its business model or portfolio with a Paris compliant low carbon economy' was transmitted to the [Proponent's] legal representative prior to their signing of the authorization letter." *See* Exhibit C.

However, the "detailed description" that the Response Letter states was provided does not relate to the Proposal. As noted above, the description that As You Sow claimed was transmitted refers to the Proposal as a "report on how the company plans to align its business model or portfolio with a Paris compliant low carbon economy," which description, as explained in the Revised Authorization Letter, the Proponent understood as meaning to show

how the Company is "mov[ing] away from higher carbon energy assets." *See* Exhibit C and Exhibit D. This description does not specifically identify or sufficiently describe a proposal that addresses the *feasibility of linking executive compensation metrics to the reduction of greenhouse gas emissions*. In particular, the phrase "business model or portfolio" covers a wide variety of corporate practices beyond "executive compensation," such as capital investment and operations strategy. Thus, even relying on As You Sow's statement as to the information provided to the Proponent, As You Sow has not demonstrated that the Proponent knows the specific proposal submitted purportedly on its behalf. Moreover, as noted above, the Revised Authorization Letter merely repeats the same description set forth in the Response Letter, which neither specifically identifies nor sufficiently describes the Proposal.

In addition, we note that on its website As You Sow maintains a dedicated webpage to track the shareholder proposals it submits.[1] On the webpage, shareholder proposals can be sorted by company, program, initiative, year and status. "Carbon Asset Transition" and "Climate Change" are presented as two separate and distinct initiatives on the webpage. Notably, As You Sow lists the Proposal under "Climate Change," and thus on its own website is presenting the Proposal as addressing a topic different from "Carbon Asset Transition." Thus, if, as stated by As You Sow, the Proposal were presented to the Proponent or to the Proponent's legal representative as related to "Carbon Asset Transition," there is no basis for concluding that the Proponent would have authorized submitting a proposal that As You Sow publicly characterizes as part of its "Climate Change" initiative.

Thus, neither As You Sow's representation in the Response Letter nor the Revised Authorization Letter is sufficient to cure the deficiencies with the documentation submitted by As You Sow on behalf of the Proponent.

As discussed above, when evaluating a proposal by proxy, the Staff will evaluate whether the proponent provides sufficient documentation "describing the [shareholder]'s delegation of authority to the proxy," including whether the documentation "identif[ies] the *specific* proposal to be submitted (*e.g.*, proposal to lower the threshold for calling a special meeting from 25% to 10%)" (emphasis added). *See* Section D, SLB 14I. Requiring such information is intended to "alleviate concerns about proposals by proxy," including whether shareholders know what proposals are being submitted on their behalf. *Id.* The Company submits that the documentation issues raised by the materials and explanations provided by As You Sow, including how As You Sow itself categorizes the Proposal on its website, and the inconsistencies with respect to the documentation provided by As You Sow are exactly the types of issues that the Staff described in SLB 14I. Despite the Deficiency Notice's clear

[1] *See* As You Sow, *Current Resolutions*, *available at* https://www.asyousow.org/resolutions-tracker/ (as of January 3, 2019). Screenshots of the As You Sow website are attached to this letter as Exhibit F.

instructions, the Proponent did not provide sufficient documentation that confirmed that as of the date the Proposal was submitted, the Proponent had authorized As You Sow to submit the Proposal to the Company on its behalf.

Accordingly, consistent with the precedent cited above, the Proposal is excludable because, despite receiving a timely and proper Deficiency Notice pursuant to Rule 14a-8(f)(1), the Proponent has not established the requisite eligibility to submit the Proposal as required by Rule 14a-8(b).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because The Company Has Substantially Implemented The Proposal.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976) (the "1976 Release"). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when proposals were "'fully' effected" by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the "previous formalistic application of [the Rule] defeated its purpose" because proponents were successfully convincing the Staff to deny no-action relief by submitting proposals that differed from existing company policy by only a few words. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the "1983 Release"). Therefore, in 1983, the Commission adopted a revision to the rule to permit the omission of proposals that had been "substantially implemented." 1983 Release. The 1998 amendments to the proxy rules reaffirmed this position. *See* Exchange Act Release No. 40018 at n.30 and accompanying text (May 21, 1998).

Applying this standard, the Staff has noted that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (avail. Mar. 28, 1991). In other words, substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed both the proposal's underlying concerns and its essential objective. *See, e.g.*, *Anheuser-Busch Cos., Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots Inc.* (avail. Apr. 5, 2002); *Masco Corp.* (avail. Mar. 29, 1999).

The Board of Directors (the "Board"), acting through its Human Resources Committee (the "Committee") (to which the Board has delegated authority to oversee the Company's

incentive compensation risk management program and compensation practices for senior executives),[2] assessed "the feasibility of linking executive compensation metrics to the accomplishment of Paris-aligned greenhouse gas emission reduction objectives" (the "Paris Objectives)" and issued a report containing its assessment. The Company has made the report available to shareholders on its website[3] (the "Report"). A copy of the Report is attached hereto as Exhibit E.

The Report substantially implements the Proposal for purposes of Rule 14a-8(i)(10) because it implements the Proposal's essential objective of having a board-level assessment and report to shareholders on whether linking executive compensation metrics to the accomplishment of Paris-aligned greenhouse gas emission reduction objectives is feasible. In the Report, the Committee explained that "while inclusion [of metrics tied to the Paris Objectives as part of the Company's executive compensation] may be technically feasible, the Committee has determined that to do so is neither necessary nor appropriate for Pinnacle West." *See* Exhibit E.

In considering the feasibility of linking executive compensation metrics to the accomplishment of the Paris Objectives, the Committee assessed the necessity and appropriateness of such action. The Report explains how the Committee assessed various policy implications of linking executive compensation metrics to the accomplishment of the Paris Objectives. Specifically, the Committee first analyzed such action within the framework of the Company's established compensation principles,[4] under which "key aspects of executive compensation [are already linked] to business unit and operational performance [that the Committee has determined] most appropriately foster alignment between [the Company's] executives and the long-term interests of [the Company's] shareholders." Next, the Committee analyzed whether metrics linked with the Paris Objectives were necessary in light of the Company's "long history of transitioning to clean energy resources that reduce greenhouse gas ('GHG') emissions." For example, 50% of the energy the Company currently delivers is from clean energy sources, and the Company has

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[2] *See* Pinnacle West Capital Corporation Human Resources Committee Charter, *available at* http://www.pinnaclewest.com/about-us/corporate-governance/committee-summary/human-resources-committee/default.aspx.

[3] *See* Report of the Human Resources Committee on the Feasibility of Linking Executive Compensation Metrics to the Accomplishment of Paris-Aligned Greenhouse Emission Reduction Objectives, *available at* http://www.pinnaclewest.com/about-us/corporate-governance/documents-and-charters/default.aspx.

[4] As discussed in more detail in the Report, the Committee "annually reviews the metrics utilized under [the Company's] annual cash incentive plans and, as needed, under the performance share awards to maintain their relevance, with target performance goals set at levels that are intended to be challenging without incentivizing inappropriate risk taking."

invested over $1 billion in clean solar energy. In addition, since 2005, as a result of the Company's efforts, the Company's GHG emissions have decreased by 35%. As noted by the Committee, the Company surpassed the GHG reduction goal established by the United States under the Paris Objectives nine years ahead of schedule.[5] Based on its review of the performance metrics already used by the Company under its executive compensation framework and in light of the Company's demonstrated success in reducing GHG emissions, the Committee determined that it is not necessary to link execute compensation metrics to accomplishment of the Paris Objectives.

The Committee also analyzed the feasibility of linking executive compensation metrics to the accomplishment of the Paris Objectives in light of the rapid technological, environmental, and economic changes in the modern world. For example, the Committee considered that the Company has a dedicated committee of senior executives focused on "important developments associated with energy generation and technology" to move the Company "toward a sustainable future while remaining strategically positioned to meet future challenges." The Report concluded that the Company's existing sustainability practices and metrics "encourage alignment with implementing renewable energy and energy efficiency and have led to decreases in GHG emissions." Additionally, the Company's existing practices and metrics provide the flexibility needed to continue to make progress on a clean energy future in Arizona while maintaining the affordability and reliability that are important to customers. In light of those considerations, imposing specific and rigid executive compensation standards could restrict the Company's ability to continue to evolve its practices in response to technological, environmental and economic changes. The Committee then concluded, as disclosed in the Report, that linking execute compensation metrics to accomplishment of the Paris Objectives is not suitable for the Company because it "is neither necessary nor appropriate" for the Company.

The Committee's assessment, as detailed in the Report that is posted on the Company's website, implements the matters requested in the Proposal. The Committee's actions implementing the Proposal thus present precisely the scenario contemplated by the Commission when it adopted the predecessor to Rule 14a-8(i)(10) "to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." 1976 Release. The Proposal asks the Board to issue a report "assessing the feasibility of linking executive compensation metrics to the accomplishment of Paris-aligned greenhouse gas emission reduction objectives." The Board, acting through the Committee, conducted and reported on that assessment, which is detailed in the Report that is posted on the Company's website. When a company has already acted favorably on an issue

[5] As explained in the Report, at the onset of the Paris Agreement, the United States established a target of a 28% reduction from 2005 GHG emissions levels by 2025.

addressed in a shareholder proposal, Rule 14a-8(i)(10) does not require the company and its shareholders to reconsider the issue. In this regard, the Staff has on numerous occasions concurred with the exclusion of proposals under Rule 14a-8(i)(10) that pertained to executive compensation where the company addressed each element requested in the proposal. For example, in *Wal-Mart Stores, Inc.* (avail. Mar. 25, 2015), the Staff concurred that the company could exclude under Rule 14a-8(i)(10) a shareholder proposal requesting inclusion of "employee engagement" as a metric in determining senior executives' incentive compensation where, as disclosed in the proxy statement, the company already provided that each executive officer's compensation under its annual incentive plan could be reduced by up to 15% based on the extent to which he or she contributed to diversity and inclusion. *See also General Electric Co.* (avail. Jan. 23, 2010) (concurring with the exclusion of a proposal requesting that the board explore with certain executive officers the renunciation of stock option grants where the board had conducted discussions with the executive officers on that topic); *AutoNation Inc.* (avail. Feb. 16, 2005) (concurring with the exclusion of a proposal requesting that the board seek shareholder approval for future "golden parachutes" with senior executives where, after receiving the proposal, the company adopted a policy to submit any such arrangements to shareholder vote); *Intel Corp.* (avail. Mar. 11, 2003) (concurring that a proposal requesting Intel's board submit to a shareholder vote all equity compensation plans and amendments to add shares to those plans that would result in material potential dilution was substantially implemented by a board policy requiring a shareholder vote on most, but not all, forms of company stock plans). *See also General Electric Co.* (avail. Dec. 24, 2009) (concurring with the exclusion of a proposal requesting that the company reevaluate its policy of, and prepare a report regarding, designing and selling nuclear reactors for the production of electrical power, in light of safety and environmental risks, where, in response to the proposal, the company made available on its website a report regarding its participation in the nuclear power business and its conclusion that nuclear power remained an important part of its energy business). Similarly, the Proposal has been substantially implemented by the Report by the Committee regarding its assessment of the feasibility of linking executive compensation metrics to the accomplishment of the Paris Objectives. Accordingly, the Proposal may be excluded under Rule 14a-8(i)(10) as substantially implemented.

We also note that the Proposal only requests an assessment of "the feasibility of linking executive compensation metrics to the accomplishment of Paris-aligned greenhouse gas emission reduction objectives." The Proposal does not specify what factors should be considered as part of this feasibility assessment. Moreover, the Staff consistently has concurred with the exclusion of similar proposals where companies published reports like the Report detailing various factors and matters that were considered. For example, in *The Dow Chemical Co.* (avail. Mar. 18, 2014, *recon. denied* Mar. 25, 2014), the Staff concurred with

the exclusion of a proposal requesting that the company prepare a report "assessing the short and long term financial, reputational and operational impacts" of an environmental incident in Bhopal, India. The company argued that statements in a document included on its website providing "Q and A" with respect to the Bhopal incident substantially implemented the proposal. In making its determination, the Staff noted that "it appears that [the company's] public disclosures compare favorably with the guidelines of the proposal and that [the company] has, therefore, substantially implemented the proposal." *See also Wells Fargo & Co.* (avail. Jan. 23, 2018) (concurring with the exclusion of a proposal asking the board to assess and report on the feasibility of requiring senior executives to enter a covenant to reimburse the company for a portion of certain fines or penalties imposed on the company where the company had issued a report assessing the feasibility of implementing no personal fault senior executive reimbursement covenants); *Target Corp. (Johnson and Thompson)* (avail. Mar. 26, 2013) (concurring with the exclusion of a proposal asking the board to study the feasibility of adopting a policy prohibiting the use of treasury funds for direct and indirect political contributions where the company had addressed company reviews of use of company funds for political purposes in a statement in opposition set forth in a previous proxy statement and five pages excerpted from a company report); *TECO Energy, Inc.* (avail. Feb. 21, 2013) (concurring with the exclusion of a proposal requesting a report on the environmental and public health effects of mountaintop removal operations, and the feasibility of mitigating measures, where the company had supplemented its sustainability report with a two-page report and four-page table on the topic).

Further, the Staff has consistently granted exclusion when a proposal requests that the board take action and the board substantially implements the proposal through one of its committees. *See, e.g., AT&T Inc.* (avail. Jan. 22, 2014) (concurring with the exclusion of a proposal that the board adopt a policy that in the event of a change of control, there shall be no acceleration of vesting of any equity award granted to any senior executive when the human resources committee amended the relevant incentive plan); *Hewlett-Packard Co.* (avail. Dec. 18, 2013) (concurring with the exclusion of a proposal requesting that the board review and amend the company's human rights policies when the nominating and governance committee reviewed the human rights policies).

Accordingly, for the reasons set forth above, the Proposal may be excluded from the Company's 2019 Proxy Materials under Rule 14a-8(i)(10).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2019 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Diane Wood, the Company's Assistant Vice President, Associate General Counsel and Corporate Secretary, at (602) 250-3544.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Diane Wood, Pinnacle West Capital Corporation
Danielle Fugere and Lila Holzman, As You Sow

EXHIBIT A

From: Lila Holzman [mailto:lholzman@asyousow.org]
Sent: Tuesday, November 27, 2018 12:23 PM
To: Wood, Diane
Cc: Kwan Hong Teoh
Subject: PNW - Executive Compensation, ATTN: CORP. SEC.

Dear Diane,

Please find enclosed the filing letter for a shareholder proposal, submitted for inclusion in Pinnacle West Capital's 2019 proxy statement. A paper copy was also mailed via Fedex. Confirmation receipt of this email would be appreciated.

Best Regards,
Lila

Lila Holzman
Energy Program Manager

As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612
(510) 735-8153 (direct line) | (415) 483-9533 (
Skype: Lila.Holzman
lholzman@asyousow.org | www.asyousow.org

AS YOU SOW

1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

November 27, 2018

Diane Wood
Corporate Secretary
Pinnacle West Capital Corporation
400 North Fifth Street, Mail Station 8602
Phoenix, Arizona 85004

Dear Ms. Wood:

As You Sow is filing a shareholder proposal on behalf of Corning 5A Trust ("Proponent"), a shareholder of Pinnacle West Capital Corporation, for action at the next annual meeting of Pinnacle West Capital. Proponent submits the enclosed shareholder proposal for inclusion in Pinnacle West Capital's 2019 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholders' meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such discussion could result in resolution of the Proponent's concerns. To schedule a dialogue, please contact Lila Holzman, Energy Program Manager at lholzman@asyousow.org.

Sincerely,

Lila Holzman
Energy Program Manager

Enclosures

- Shareholder Proposal
- Shareholder Authorization

Link GHG Emissions to Executive Compensation

Resolved: Shareholders request that Pinnacle West Capital's Human Resources Committee prepare a report assessing the feasibility of linking executive compensation metrics to the accomplishment of Paris-aligned greenhouse gas emission reduction objectives. The report should be prepared at reasonable cost and omit proprietary information.

Whereas: The 2015 Paris Climate Agreement states a goal to limit the increase in global temperatures to substantially below 2 degrees Celsius. Successfully mitigating the devastating impacts of climate change on humanity, ecosystems, and the global economy requires every corporation to reduce climate emissions related to its actions. Investors are concerned not only about climate risk to the individual companies they hold, but also the economy-wide risk of climate impacts and the associated harm to investors' portfolios.

The Intergovernmental Panel on Climate Change "Special Report on Global Warming of 1.5 C" details that to avoid the worst impacts of climate change, we must limit warming to 1.5 degrees Celsius. To achieve this goal, 70-85 percent of electricity demand must be met by renewables by mid-century, with net zero carbon emissions achieved globally.[1]

The long-term interests of Pinnacle West shareholders are best served by encouraging a focus on greenhouse gas emissions reductions. The power sector has an urgent role to play in decarbonization. Companies unprepared for technological disruptions from the energy transition are at risk of losing their largest customers, their social license, lagging peers as renewable energy and storage costs drop, and increasing the risk of stranded assets.[2,3]

Pinnacle West has issued a carbon intensity target, but this target does not prevent absolute growth in the Company's greenhouse gas emissions. Pinnacle West's available disclosures demonstrate conflicting action and policies including a concerning proclivity for fossil fuel natural gas infrastructure development,[4] artificial caps on renewables in its Request for Proposals,[5] and continued spending to block renewable energy policy in Arizona.[6] These discrepancies leave investors unable to assess whether Pinnacle West is sufficiently mitigating climate risk.

Executive compensation is an effective way to incentivize achievement of performance targets. Pinnacle West should set relevant metrics in its executive compensation policy to assure investors that management is effectively setting and implementing policies aligned with achieving Paris Goals. While determining specific metrics for executive compensation rests within the discretion of the Board and its compensation committee, a senior executive

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[1] http://www.ipcc.ch/report/sr15/
[2] https://www.vox.com/energy-and-environment/2018/7/13/17551878/natural-gas-markets-renewable-energy
[3] https://rmi.org/insight/the-economics-of-clean-energy-portfolios/
[4] https://www.aps.com/library/resource%20alt/2017IntegratedResourcePlan.pdf
[5] https://www.scribd.com/document/379181377/2018-Peaking-Capacity-RFP
[6] https://www.energyandpolicy.org/aps-spending-30-million-to-defeat-prop-127/

compensation policy incorporating consistent progress on carbon emission reductions will align and position the company to thrive in a future impacted by climate change. Utility company peers such as NiSource have adopted similar policies in which a portion of long-term equity incentives are tied to progress on publicly disclosed emission reduction targets for the CEO, executive officers, and approximately 70 individuals.[7] Xcel Energy has also demonstrated progress through instituting a link between carbon reduction and compensation.[8] Investors believe that a similar policy would provide assurance that our company is adequately addressing climate change business risks.

[7] https://www.nisource.com/docs/librariesprovider2/sustainability-archives/2017/2017-cdp-climate-change-response.pdf?sfvrsn=4

[8] http://investors.xcelenergy.com/Interactive/NewLookAndFeel/4025308/Xcel_Energy_Inc-Hosting_Page_2018_ClientDL/proxy/HTML1/xcel_energy-proxy2018_0046.htm

November 7, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: <u>Authorization to File Shareholder Resolution</u>

Dear Mr. Behar,

The undersigned (the "Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with Pinnacle West Capital (the "Company) for inclusion in the Company's 2019 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to Report on Carbon Asset Transition.

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019.

The Stockholder gives As You Sow the authority to address on Stockholder's behalf any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution and that the media may mention the Stockholder's name in relation to the resolution.

The shareholder further authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf concerning the resolution.

Sincerely,

DocuSigned by:
Daria Victorov
BB69CD193E4A406...

11/9/2018 | 11:59 AM PST

Daria Victorov
Financial Advisor
Corning 5A Trust

EXHIBIT B

From: Wood, Diane
Sent: Thursday, December 06, 2018 4:25 PM
To: 'Lila Holzman'
Cc: Kwan Hong Teoh
Subject: RE: PNW - Executive Compensation, ATTN: CORP. SEC.

Lila –
Please find attached our letter and our letter's attachments. The originals are in route to you by overnight mail. Please let me know if you have any questions.

Thanks.

From: Lila Holzman [mailto:lholzman@asyousow.org]
Sent: Tuesday, November 27, 2018 12:23 PM
To: Wood, Diane
Cc: Kwan Hong Teoh
Subject: PNW - Executive Compensation, ATTN: CORP. SEC.

Dear Diane,

Please find enclosed the filing letter for a shareholder proposal, submitted for inclusion in Pinnacle West Capital's 2019 proxy statement. A paper copy was also mailed via Fedex. Confirmation receipt of this email would be appreciated.

Best Regards,
Lila

_____
Lila Holzman
Energy Program Manager
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612
(510) 735-8153 (direct line) | (415) 483-9533 (cell)
Skype: Lila.Holzman
lholzman@asyousow.org | www.asyousow.org

PINNACLE WEST
CAPITAL CORPORATION

OFFICE OF THE CORPORATE SECRETARY

Diane Wood
Assistant Vice President, Associate General Counsel and
Corporate Secretary
Direct Line: (602) 250-3544

December 6, 2018

VIA OVERNIGHT MAIL AND EMAIL
Lila Holzman
As You Sow
1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

Dear Ms. Holzman:

I am writing on behalf of Pinnacle West Capital Corporation (the "Company"), which received on November 27, 2018, the shareholder proposal you submitted on behalf of Corning 5A Trust (the "Proponent") entitled "Link GHG Emissions to Executive Compensation" pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2019 Annual Meeting of Shareholders (the "Proposal").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention.

Your correspondence did not include sufficient documentation demonstrating that you had the legal authority to submit the Proposal on behalf of the Proponent as of the date the Proposal was submitted (November 27, 2018). In Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB 14I"), the SEC's Division of Corporation Finance ("Division") noted that proposals submitted by proxy, such as the Proposal, may present challenges and concerns, including "that shareholders may not know that proposals are being submitted on their behalf." Accordingly, in evaluating whether there is a basis to exclude a proposal under the eligibility requirements of Rule 14a-8(b), as addressed below, SLB 14I states that in general the Division would expect any shareholder who submits a proposal by proxy to provide documentation to (i) identify the shareholder-proponent and the person or entity selected as proxy; (ii) identify the company to which the proposal is directed; (iii) identify the annual or special meeting for which the proposal is submitted; (iv) identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and (v) be signed and dated by the shareholder.

The documentation that you provided with the Proposal raises the concerns referred to in SLB 14I. Specifically, the documentation from the Proponent purporting to authorize you to act on the

Proponent's behalf does not identify the Proposal as the specific proposal to be submitted. The documentation provided by the Proponent describes the proposal that you are authorized to submit as

"Report on Carbon Asset Transition." In contrast, the subject matter of the Proposal addresses a report on the feasibility of linking executive compensation metrics to the accomplishment of certain greenhouse gas emission reduction objectives. In addition, the documentation purporting to authorize you to act on behalf of the Proponent does not evidence the signatory's authority to sign the documentation on behalf of the shareholder. To remedy these defects, the Proponent should provide documentation that confirms that as of the date you submitted the Proposal, the Proponent had instructed or authorized you to submit the Proposal to the Company on the Proponent's behalf. The documentation should identify the specific proposal authorized to be submitted and should be signed by the shareholder or should indicate the signatory's authority to sign the documentation on behalf of the shareholder.

To the extent that the Proponent authorized you to submit the Proposal to the Company, please note the following. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this defect, the Proponent must submit sufficient proof of the Proponent's continuous ownership of the required number or amount of Company shares for the one-year period preceding and including November 27, 2018, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

(1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 27, 2018; or

(2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the required number or amount of Company shares for the one-year period.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 27, 2018.

(2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 27, 2018. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including November 27, 2018, the required number or amount of Company shares were continuously held: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any response to 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 400 North 5th Street, MS 8602, Phoenix, AZ 85004. Alternatively, you may transmit any response by email to me at Diane.Wood@pinnaclewest.com.

If you have any questions with respect to the foregoing, please contact me at 602-250-3544. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

Diane Wood
Assistant Vice President, Associate General Counsel and Corporate Secretary

Enclosures

Rule 14a-8 – Shareholder Proposals

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

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

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

> (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.
>
> (2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
>
> > (i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or
> >
> > (ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d–101), Schedule 13G (§240.13d–102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:
> >
> > > (A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

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

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

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

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

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

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

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

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

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

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

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

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

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

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

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

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

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal?

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

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

(i) The proposal;

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

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

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments? Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

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

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

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

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

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

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

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

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

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

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of

Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals.

Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the

company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

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

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

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

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

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

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

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

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

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

EXHIBIT C

From: Danielle Fugere [mailto:DFugere@asyousow.org]
Sent: Thursday, December 20, 2018 6:56 PM
To: Wood, Diane
Subject: As You Sow Response to Pinnacle West deficiency notice

Dear Ms. Wood,

We are in receipt of the deficiency notice you sent on December 6th. Attached please find a response to the deficiencies cited in that notice.

SEC Rule 14a-8(f) requires a company to provide notice of specific deficiencies in a shareholder's proof of eligibility to submit a Proposal. We therefore request that you notify us if you identify any deficiencies in the enclosed documentation.

Please confirm receipt of this correspondence.

Best,

Danielle

_____

Danielle Fugere
President
As You Sow
(510) 735-8141 (direct line) | (415) 577-5594 (cell)
dfugere@asyousow.org | www.asyousow.org

AS YOU SOW

1611 Telegraph Ave, Suite 1450
Oakland, CA 94612

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

December 20, 2018

VIA E-MAIL

Diane Wood
Assistant Vice President, Associate General Counsel and Corporate Secretary
Pinnacle West Capital Corporation
400 North 5th Street, MS 8602
Phoenix, AZ 85004
Diane.Wood@pinnaclewest.com

Re: Response to Notice of Deficiency Letter

Dear Ms. Wood,

We are writing in response to your letter issued December 6, 2018 alleging deficiencies in our November 27, 2018 letter submitting a shareholder proposal (the Proposal) on behalf of Corning 5A Trust (the Proponent) for inclusion in Pinnacle West Capital Corporation's (the Company) 2019 proxy statement.

The Proposal asks the Company to prepare a report assessing the feasibility of linking executive compensation to the accomplishment of Paris aligned greenhouse gas emission reduction objectives. Both the authorization letter and our prior transmittal to the Proponent about the Proposal make clear that the Proponent had sufficient information about the focus of the Proposal prior to authorizing the filing.

The authorization letter states that the resolution at issue "relates to Report on Carbon Asset Transition," a description which encapsulates the objective of the Proposal to transition the company's operations and assets in line with the Paris Agreement's goal of substantially reducing greenhouse gas emissions. One means of effectively assuring this transition away from high carbon assets is to link executive pay to greenhouse gas emission reductions.

A detailed description identifying the Proposal as "report on how the company plans to align its business model or portfolio with a Paris compliant low carbon economy" was transmitted to the shareholder's legal representative prior to their signing of the authorization letter, again appropriately transmitting the focus of the Proposal prior to authorizing the filing.

Based on the above, the Proponent's authorization letter sufficiently identifies the objective of the Proposal, satisfying the purpose of the Securities and Exchange Commission (SEC)'s guidance in Staff Legal Bulletin No. 14I.D (Nov. 1, 2017) (SLB 14I) of ensuring that shareholders know that proposals are being submitted on their behalf.

AS YOU SOW

Alternatively, we enclose a reauthorization letter (Exhibit A), signed by the Proponent, which makes clear that the shareholder approves of the Proposal as filed, knew it was being submitted on its behalf, and understood the focus of the resolution prior to providing authorization to *As You Sow*.

In response to the alleged deficiency concerning proof of the Proponent's continuous ownership of the Company's shares, we also enclose a proof of ownership letter (Exhibit B) establishing the Proponent's ownership of the Company's common stock in the requisite amount and in the timeframe necessary to meet eligibility requirements.

Finally, the first line of the reauthorization letter clarifies that the shareholder had given legal authority to the asset manager (Daria Victorov) to sign the November 7th authorization letter on the trust's behalf.

SEC Rule 14a-8(f) requires a company to provide notice of specific deficiencies in a shareholder's proof of eligibility to submit a proposal. We therefore request that you notify us if you believe any deficiencies remain.

Please confirm receipt of this correspondence.

Sincerely,

Danielle Fugere
President, Chief Counsel
As You Sow Foundation

EXHIBIT B

Key Private Bank

investments | trust | banking

Mailcode: OH-01-16-0166
166 Crocker Park Blvd.
Westlake, OH 44145

December 11, 2018

Daria Victorov:

Key Private Bank, a DTC participant, acts as the custodian for Corning 5A Trust. As of the date of this letter, Corning 5A Trust held, and has held continuously for at least 395 days, 136 shares of Pinnacle West Capital common stock.

Best Regards,

Christopher A. Naso, SVP
Senior Relationship Manager
Family Wealth Group
166 Crocker Park Boulevard, Westlake, OH 44145
Office: 440-788-4481
christopher_naso@keybank.com

EXHIBIT D

EXHIBIT A

December 17th, 2018

Andrew Behar
CEO
As You Sow
1611 Telegraph Ave., Ste. 1450
Oakland, CA 94612

Re: Pinnacle West Shareholder Proposal

Dear Mr. Behar,

In a letter dated November 7, 2018 the undersigned (the "Stockholder") authorized, through our asset manager, *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with Pinnacle West Capital (the "Company) for inclusion in the Company's 2019 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to a report on Carbon Asset Transition which I understood to mean as asking the company to address how it would transition away from high carbon assets. The description provided to me further explained that the proposal is intended to address how the company plans to align its business model or portfolio with a Paris compliant low carbon economy, i.e., move away from higher carbon energy assets.

As previously stated, the Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the company's annual meeting in 2019.

The Stockholder gives *As You Sow* the authority to address, on Stockholder's behalf, any and all aspects of the shareholder resolution, including how it will be worded to achieve the stated goals. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution and that the media may mention the Stockholder's name in relation to the resolution.

The shareholder further authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf concerning the resolution.

Sincerely,

DocuSigned by:
0A1C08C712A9410...

12/17/2018 | 12:51 PM PST

Alison Mulliken
Beneficiary
Corning 5A Trust

EXHIBIT E

PINNACLE WEST
CAPITAL CORPORATION

REPORT OF THE HUMAN RESOURCES COMMITTEE ON THE FEASIBILITY OF LINKING EXECUTIVE COMPENSATION METRICS TO THE ACCOMPLISHMENT OF PARIS-ALIGNED GREENHOUSE EMISSION REDUCTION OBJECTIVES

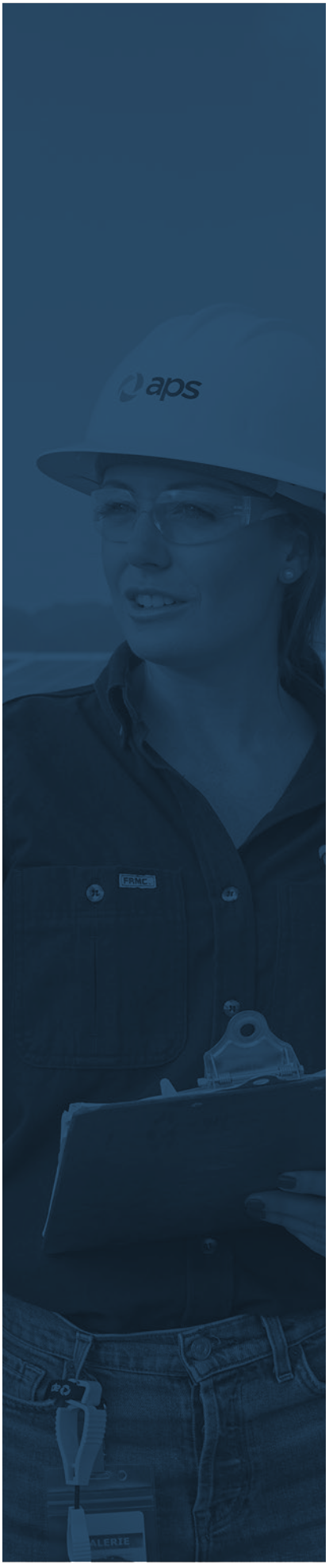
DECEMBER 2018

REPORT OF THE HUMAN RESOURCES COMMITTEE ON THE FEASIBILITY OF LINKING EXECUTIVE COMPENSATION METRICS TO THE ACCOMPLISHMENT OF PARIS-ALIGNED GREENHOUSE EMISSION REDUCTION OBJECTIVES

In 2018, Pinnacle West Capital Corporation ("Pinnacle West or the "Company") received a shareholder proposal asking the Human Resources Committee (the "Committee") of the Company's Board of Directors (the "Board") to prepare a report assessing the feasibility of linking executive compensation metrics to the accomplishment of Paris-aligned greenhouse gas emission reduction objectives (the "Paris Objectives").

The Committee makes, or recommends to the Board, decisions with respect to the Company's executive compensation programs and policies, including reviewing the performance of executive officers. Our compensation program currently consists of base salary, annual cash incentives, long-term incentives and benefits consisting primarily of pension programs and deferred compensation programs. The Committee annually reviews the metrics utilized under our annual cash incentive plans and, as needed, under the performance share awards to maintain their relevance, with target performance goals set at levels that are intended to be challenging without incentivizing inappropriate risk taking. Awards under our annual cash incentive plans are based on the achievement of relevant and objective earnings and business unit goals, which tie payouts directly to core measures of business performance and key operational business unit results and ultimately serve to enhance shareholder value. Our use of business unit metrics in our executive incentive plans promotes our continued success as a safe, sustainable, and overall well-run vertically-integrated and regulated electric utility. In addition, our performance share awards, which for 2018 comprise 70 percent of the long term-incentive awards granted to our CEO and Executive Vice Presidents, are tied to financial and operational performance metrics. The Committee has determined that linking these key aspects of executive compensation to business unit and operational performance most appropriately foster alignment between our executives and the long-term interests of our shareholders.

As requested by the shareholder proposal, the Committee has assessed the feasibility of including metrics tied to the Paris Objectives as part of our executive compensation and while inclusion may be technically feasible, the Committee has determined that to do so is neither necessary nor appropriate for Pinnacle West as discussed below.



Implementation of the proposal is not necessary because Pinnacle West has a long history of transitioning to clean energy resources that reduce greenhouse gas ("GHG") emissions. This is demonstrated by the fact that 50 percent of the current energy delivered by the Company is from clean energy sources and growing. Since the 2005 baseline year GHG emissions have been reduced by more than six million tons per year, which represents a 35 percent reduction in GHG emissions. At the onset of the Paris Agreement the United States set a target of a 28 percent reduction from 2005 GHG emissions levels by 2025. Pinnacle West surpassed this GHG reduction goal nine years ahead of schedule. Pinnacle West achieved this reduction in GHG emissions through extensive investments in renewable energy, including solar energy, and through the closure of coal-fired generation units.

THE COMPANY HAS INVESTED OVER $1 BILLION IN CLEAN SOLAR ENERGY AND HAS MORE THAN 1,400 MEGAWATTS ("MW") OF SOLAR ENERGY ON ITS SYSTEM.

Total renewable resources are now the second largest component on the Company's system from an installed capacity perspective. As of 2017, Pinnacle West was ranked second in the country among large utilities outside of California for the most cumulative solar installed per customer and first for the most cumulative residential solar.

Exiting from coal-fired generation requires a glide path to ensure the continued delivery of reliable and affordable energy. Pinnacle West already has retired 849 MW of coal-fired generation and will cease operations of another 315 MW at the end of 2019. The glide path commitment is expected to retire an additional 387 MW by early 2025 and ultimately remove the remaining two coal fired units in the APS portfolio by no later than 2038.

Pinnacle West recognizes the rapid emergence of new energy generation and storage technologies and is exploring an "all of the above" approach to a sustainable Arizona energy future. To foster Company awareness of sector trends, an Energy Planning Committee ("EPC") comprised of senior executive officers meets on a regular basis to assess the potential risks and opportunities associated with such trends, emerging technologies and social perceptions. The result is a strategic and inclusive approach for presentations to the Board. This management practice assures that the Company continues to focus on important developments associated with energy generation and technology, including energy storage, and moves toward a sustainable future while remaining strategically positioned to meet future challenges.

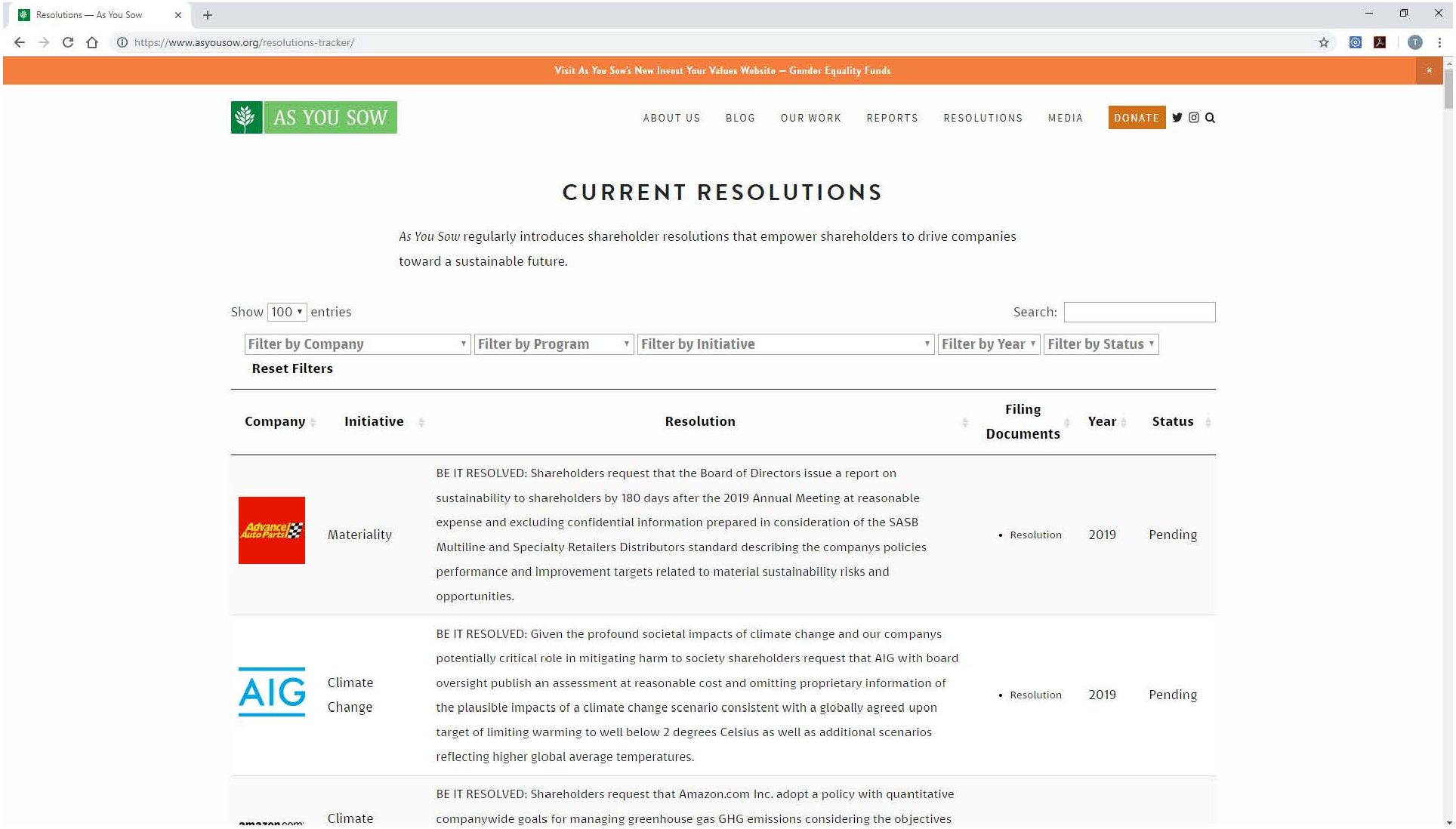
Moreover, because of rapid changes in technology, implementation of the proposal is not appropriate because it is crucial that the Company maintain the flexibility to take advantages of these changes in order to adequately respond to changing environmental and economic conditions and energy generation. The Company's sustainability practices and metrics encourage alignment with implementing renewable energy and energy efficiency and have led to continued decrease in GHG emissions. Importantly, our sustainability practices provide the Company the flexibility needed to continue to make progress on a clean energy future in Arizona while maintaining affordability and reliability that is so important to our customers. In light of these considerations, the Committee believes it is not appropriate to impose the prescriptive Paris Objectives on the Company's sustainability practices and metrics. Imposing such specific and rigid standards could cause the Company to act prematurely in what in hindsight is determined to be the wrong action and could restrict the Company's ability to continue to evolve its practices in response to technological, environmental and economic changes.

IN CONCLUSION, ALTHOUGH LINKING EXECUTIVE COMPENSATION METRICS TO THE ACCOMPLISHMENT OF PARIS OBJECTIVES MAY BE TECHNICALLY FEASIBLE, THE COMMITTEE HAS DETERMINED THAT SUCH ACTION IS NEITHER NECESSARY NOR APPROPRIATE IN LIGHT OF OUR PROGRAMS AND POLICIES.

The way in which we operate our business has resulted in significantly reduced GHG emissions and appropriately positioned the Company to take advantage of opportunities in the future in a decarbonized environment.

PINNACLE WEST
CAPITAL CORPORATION

EXHIBIT F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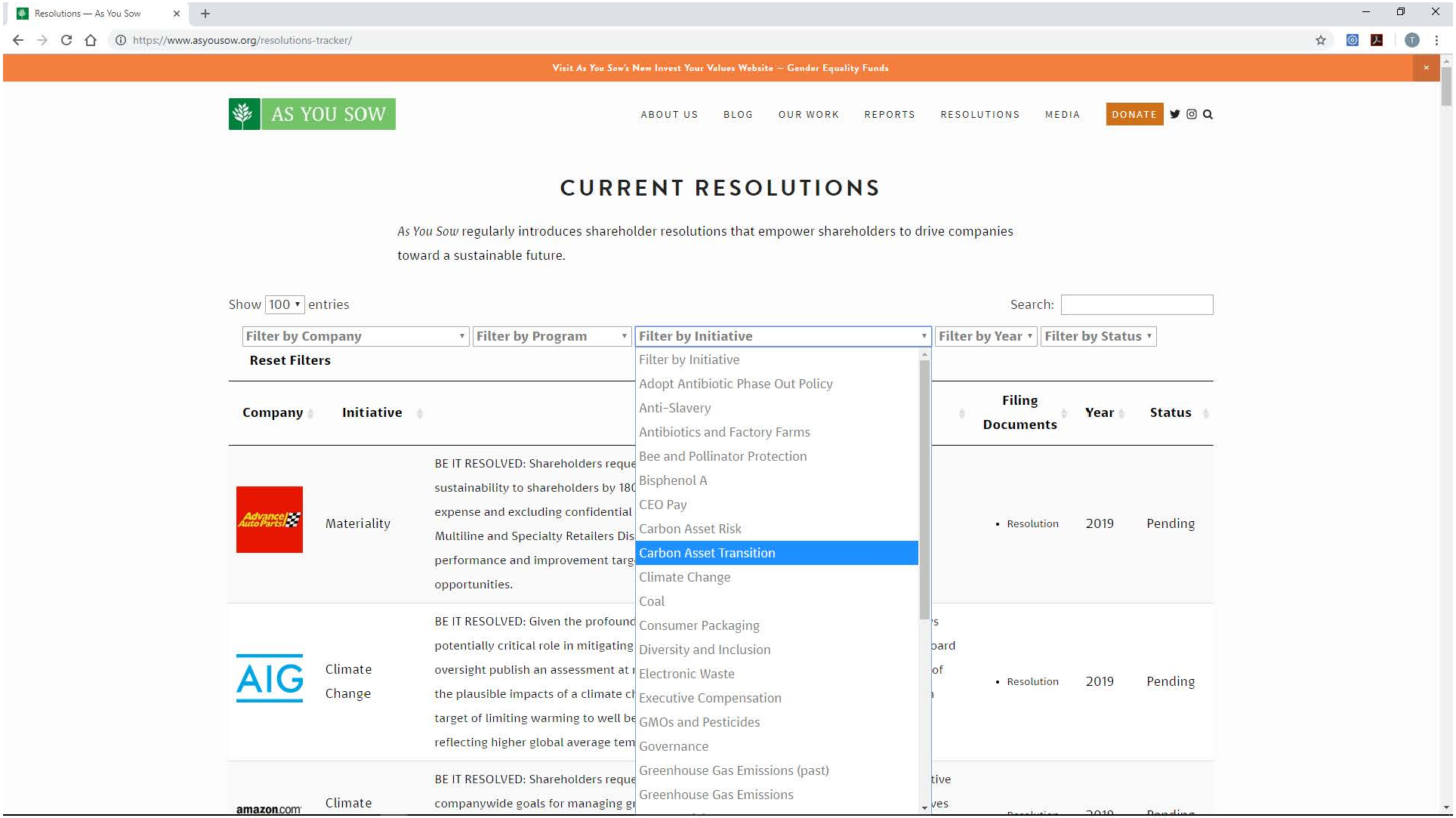
BE IT RESOLVED: Shareholders request that the Board of Directors issue a report on sustainability to shareholders by 180 days after the 2019 Annual Meeting at reasonable expense and excluding confidential information prepared in consideration of the SASB Multiline and Specialty Retailers Distributors standard describing the companys policies performance and improvement targets related to material sustainability risks and opportunities.
Resolution
2019
Pending
Climate Change
BE IT RESOLVED: Given the profound societal impacts of climate change and our companys potentially critical role in mitigating harm to society shareholders request that AIG with board oversight publish an assessment at reasonable cost and omitting proprietary information of the plausible impacts of a climate change scenario consistent with a globally agreed upon target of limiting warming to well below 2 degrees Celsius as well as additional scenarios reflecting higher global average temperatures.
Resolution
2019
Pending
Climate
BE IT RESOLVED: Shareholders request that Amazon.com Inc. adopt a policy with quantitative companywide goals for managing greenhouse gas GHG emissions considering the objectives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Adopt Antibiotic Phase Out Policy
Anti-Slavery
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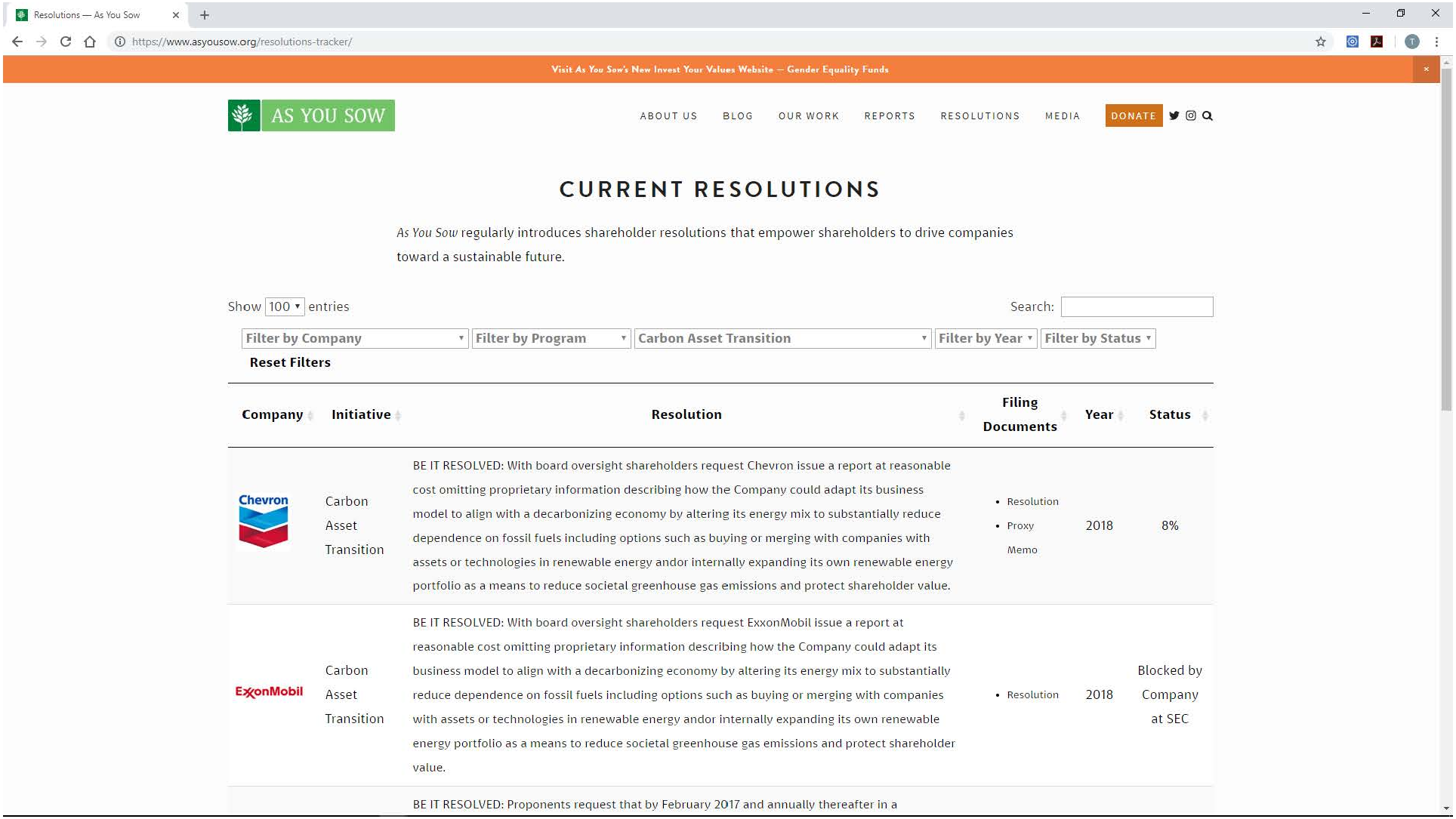
Bee and Pollinator Protection
Bisphenol A
CEO Pay
Carbon Asset Risk
Carbon Asset Transition
Climate Change
Coal
Consumer Packaging
Diversity and Inclusion
Electronic Waste
Executive Compensation
GMOs and Pesticides
Governance
Greenhouse Gas Emissions (past)
Greenhouse Gas Emissions
Company
Initiative
Filing Documents
Year
Status
Materiality
BE IT RESOLVED: Shareholders reque
sustainability to shareholders by 180
expense and excluding confidential
Multiline and Specialty Retailers Dis
performance and improvement targ
opportunities.
Resolution
2019
Pending
Climate Change
BE IT RESOLVED: Given the profound
potentially critical role in mitigating
oversight publish an assessment at
the plausible impacts of a climate ch
target of limiting warming to well be
reflecting higher global average tem
Resolution
2019
Pending
Climate
BE IT RESOLVED: Shareholders reque
companywide goals for managing gr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Carbon Asset Transition
Filter by Year
Filter by Status
Reset Filters
Company
Initiative
Resolution
Filing Documents
Year
Status
Chevron
Carbon Asset Transition
BE IT RESOLVED: With board oversight shareholders request Chevron issue a report at reasonable cost omitting proprietary information describing how the Company could adapt its business model to align with a decarbonizing economy by altering its energy mix to substantially reduce dependence on fossil fuels including options such as buying or merging with companies with assets or technologies in renewable energy andor internally expanding its own renewable energy portfolio as a means to reduce societal greenhouse gas emissions and protect shareholder value.
Resolution
Proxy Memo
2018
8%
ExxonMobil
Carbon Asset Transition
BE IT RESOLVED: With board oversight shareholders request ExxonMobil issue a report at reasonable cost omitting proprietary information describing how the Company could adapt its business model to align with a decarbonizing economy by altering its energy mix to substantially reduce dependence on fossil fuels including options such as buying or merging with companies with assets or technologies in renewable energy andor internally expanding its own renewable energy portfolio as a means to reduce societal greenhouse gas emissions and protect shareholder value.
Resolution
2018
Blocked by Company at SEC
BE IT RESOLVED: Proponents request that by February 2017 and annually thereafter in a

	Climate Change	companys climate change related criteria for ensuring that investments in fossil fuel projects in emerging markets are consistent with the Paris Agreements goal of limiting global temperature increase to well below 2 degrees Celsius.	• Resolution	2019	Pending
Goldman Sachs	Climate Change	BE IT RESOLVED: Shareholders request that Goldman Sachs adopt a policy to reduce the carbon footprint of its loan and investment portfolios in alignment with the 2015 Paris goal of maintaining global warming well below 2 degrees and issue annual reports at reasonable cost omitting proprietary information describing targets plans and progress under this policy.	• Resolution	2019	Pending
JPMorgan Chase & Co.	Climate Change	BE IT RESOLVED: Shareholders request that JPMorgan Chase adopt a policy to reduce the carbon footprint of its loan and investment portfolios in alignment with the 2015 Paris goal of maintaining global warming well below 2 degrees and issue annual reports at reasonable cost omitting proprietary information describing targets plans and progress under this policy.	• Resolution	2019	Pending
Pinnacle West Capital Corporation	Climate Change	BE IT RESOLVED: Shareholders request that Pinnacle West Capitals Human Resources Committee prepare a report assessing the feasibility of linking executive compensation metrics to the accomplishment of Parisaligned greenhouse gas emission reduction objectives. The report should be prepared at reasonable cost and omit proprietary information.	• Resolution	2019	Pending
The Cooper Companies	Climate Change	BE IT RESOLVED: Shareholders ask the Cooper Company to prepare a report evaluating the feasibility of the Company achieving greenhouse gas emissions reductions in line with Paris climate change goals for those parts of the business directly owned and operated by the Company. The report should be prepared at reasonable expense and may exclude confidential information.	• Resolution	2019	Pending
UGI Corporation	Climate Change	BE IT RESOLVED: As You Sow requests the company report to shareholders at reasonable cost omitting proprietary information the companys actions beyond regulatory requirements to reduce its greenhouse gas emissions and associated climate risk by monitoring and minimizing its methane emissions.	• Resolution • Withdrawal Letter	2019	Withdrawn; Company will address
verizon	Climate Change	BE IT RESOLVED: Shareholders request that Verizon Communications Inc. senior management with oversight from the Board of Directors issue a report assessing the feasibility of increasing the scale rigor and pace of Verizons utilization of renewable energy and other measures deemed prudent by company management to substantially reduce the Companys greenhouse gas emissions and	• Resolution	2019	Pending