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

DIVISION OF
CORPORATION FINANCE

March 19, 2019

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

Re: JPMorgan Chase & Co.
Incoming letter dated January 15, 2019

Dear Mr. Dunn:

This letter is in response to your correspondence dated January 15, 2019 concerning the shareholder proposal (the "Proposal") submitted to JPMorgan Chase & Co. (the "Company") by Martin Harangozo (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates
Special Counsel

Enclosure

cc: Martin Harangozo
***

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

March 19, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: JPMorgan Chase & Co.
Incoming letter dated January 15, 2019

The Proposal recommends that the Company prepare a report examining the politics, economics and engineering for the construction of a sea-based canal through the Tehuantepec isthmus of Mexico.

There appears to be some basis for your view that the Company may exclude the proposal under rule 14a-8(i)(7), as relating to Company's ordinary business operations. In this regard, we note that the Proposal relates to the products and services offered for sale by the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Jacqueline Kaufman
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

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

1934 Act/Rule 14a-8

January 15, 2019

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

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

Re: JPMorgan Chase & Co.
Shareholder Proposal of Martin Harangozo

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client JPMorgan Chase & Co., a Delaware corporation (the "***Company***"), which requests confirmation that the staff (the "***Staff***") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "***Commission***") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "***Exchange Act***"), the Company omits the enclosed shareholder proposal (the "***Proposal***") submitted by Martin Harangozo (the "***Proponent***") from the Company's proxy materials for its 2019 Annual Meeting of Shareholders (the "***2019 Proxy Materials***").

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

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

- concurrently sent a copy of this correspondence to the Proponent.

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

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to Martin Dunn, on behalf of the Company, via email at mdunn@mofo.com, and to the Proponent via email at
***

I. THE PROPOSAL

On November 26, 2018, the Company received from the Proponent the Proposal for inclusion in the Company's 2019 Proxy Materials. On December 15, 2018, the Company received from the Proponent a revised Proposal, in response to a deficiency notice regarding word count. The Proposal, as revised, reads as follows:

> *"This proposal recommends that the company prepare at reasonable expense, following all applicable laws, a report examining the politics, economics, and engineering for the construction of a sea based canal through the Tehauntepec isthmus of Mexico.*
>
> *Numerous alternatives to the Panama Canal have been considered. A sea based canal through Mexico is the best of all options according to some thinkers https://digital.library.unt.edu/ark:/67531/metadc682754/. A sea based canal without locks as the Suez-canal is less restrictive when adjusting for increasingly larger sea vessels. It is less time consuming and less expensive to operate. It is geographically more favorable for those vessels traveling south for the sole purpose of crossing oceans (see image).*
>
> *JPMorgan served important roles in the Panama Canal. Mexico is home to many foreign companies; many as in the case of JP Morgan Chase, United States based publically owned companies. These global companies have hundreds of billions invested in Mexico. Few would argue that these companies and Mexico have mutually beneficial relationships.*
>
> *It stands to reason that a canal in Mexico with the same financial protocol foreign investors currently follow, should prevail for foreign investment towards a Mexico canal.*
>
> *It appears that broadly speaking, foreign investors can purchase land and erect businesses in geographic zones permitting such enterprises. Real estate near the Mexico border or on the coastline requires the involvement of a Mexico bank that permits such purchases and renews them according to law. JPMorgan Chase has operated in Mexico for more than a hundred years and may serve as such a bank or facilitate such relationships with qualified Mexico banks.*
>
> *The United Nations and foreign nations could be harnessed for mutually successful implementation and enforcement of a prosperous canal. As it is*

difficult to envision a world where trade ceases, this project may pay dividends for a thousand years.

If revenues contain premiums for the improved route to Panama, and or size permitting vessels prohibited in Panama, one could envision revenues many times that of Panama. At three percent growth eventual revenues of twenty billion (United States) may be feasible, justifying investments of hundred billion.

A hundred fifty-mile canal, three hundred feet wide, seventy-five feet deep displaces 660 million yards at sea level, about that excavated by the excavator Big Muskie. Four times this volume for above sea level material would bring the total volume under three billion yards. Equipment today makes this project viable both financially and technically.

This report may be among the most impactful activities in the history of JPMorgan Chase. Please vote yes for this proposal."

The Proposal also included an image that we have not reproduced in this letter, but is available in Exhibit A.

II. EXCLUSION OF THE PROPOSAL

A. Basis for Excluding the Proposal

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8(i)(7), as the Proposal deals with matters related to the Company's ordinary business operations.

B. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(7), as It Deals With Matters Relating to the Company's Ordinary Business Operations

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." According to the Commission, the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *Exchange Act Release No. 40018, Amendments to Rules on Shareholder Proposals*, [1998 Transfer Binder] Fed Sec. L. Rep. (CCH) 86,018, at 80,539 (May 21, 1998) (the "***1998 Release***"). In the 1998 Release, the Commission described the two "central considerations" for the ordinary business exclusion. One consideration of the 1998 Release relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* at 86,017-18 (footnote omitted). The other consideration is that certain tasks are "so fundamental to management's ability to run a company on a day-to-day basis that

they could not, as a practical matter, be subject to direct shareholder oversight" and, as such, may be excluded, unless the proposal raises policy issues that are sufficiently significant to transcend day-to-day business matters.

1. The Proposal May be Omitted Because it Seeks to Micromanage the Company

It is the Company's view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Staff has repeatedly concurred that a proposal that seeks to micromanage the determinations of a company's management regarding day-to-day decisions is excludable under Rule 14a-8(i)(7) as a component of "ordinary business."

In the 1998 Release, the Commission explained that the micromanagement consideration "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." The Commission has long held that proposals requesting a report are evaluated by the Staff by considering the underlying subject matter of the proposal when applying Rule 14a-8(i)(7). *See* Commission Release No. 34-20091 (Aug. 16, 1983) (the "***1983 Release***"). In Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("***SLB 14J***"), the Staff further stated that the micromanagement framework "also applies to proposals that call for a study or report. . . [f]or example, a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds." SLB 14J also provides that proposals "seek[ing] to impose specific time-frames or methods for implementing complex policies" are excludable under Rule 14a-8(i)(7) as seeking to micromanage a company. The Proposal seeks a policy that the Company advocate for the construction of a new sea based canal in a specific location and requests a necessarily complex analysis of the "politics, economics, and engineering" of the construction of such a project. As such, the Proposal seeks to micromanage management's decisions relating to its financing and the use of its other resources.

The Proposal requests that the Company "prepare ... a report examining the politics, economics, and engineering for the construction of a sea based canal through the [Isthmus of Tehuantepec] of Mexico." Such a report would involve precisely the kind of intricate detail that the Commission identified in the 1998 Release, and the Staff confirmed in SLB 14J, as micromanagement. The Proposal states that "[t]he United Nations and foreign nations could be harnessed for mutually successful implementation and enforcement of a prosperous canal." With respect to economic considerations, the Proposal notes, among other things, that "[i]f revenues contain premiums for the improved route to Panama, and or size permitting vessels prohibited in Panama, one could envision revenues many times that of Panama. At three percent growth eventual revenues of twenty billion (United States) may be feasible, justifying investments of hundred billion." As to engineering, the Proposal provides that "[a] hundred fifty-mile canal, three hundred feet wide, seventy-five feet deep displaces 660 million yards at sea level, about that excavated by the excavator Big Muskie. Four times this volume for above sea level material would bring the total volume under three billion yards." As such, the Proposal seeks an analysis of the (1) political considerations of the United Nations, foreign nations and Mexico itself, (2)

economic considerations of a project that the Proponent estimates could cost $100 billion, and (3) engineering considerations of building a 150 mile, 300 feet wide, 75 feet deep canal. Examining such considerations would be an enormously complex undertaking, likely take years to complete, necessitate the involvement of dozens, if not hundreds, of experts and cost tens of millions of dollars. Accordingly, the Proposal seeks a report necessitating intricate detail about exceedingly complex matters, which would probe too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

The Proposal further would require the Company to report on specific considerations (politics, economics, and engineering) relating to the Proponent's specific, preferred construction project. The Company's management invests a significant amount of time, energy and effort on a regular basis in determining how the Company will offer its products and services while generating an attractive return to the Company's shareholders. The Company's decisions regarding the appropriate policies and practices to implement with respect to financing decisions, and decisions with respect to financing based on those policies and procedures, requires a complete understanding of the Company's complex business and operations – information to which the Company's shareholders do not have access. Determining the appropriate policies and practices for financing decisions requires a complex analysis of numerous factors, including the features of a particular product or service, the attendant risk to the Company, legal and regulatory compliance and competitive factors, among others. Company personnel similarly must consider those and other factors in making specific decisions regarding whether to provide financing to a particular project. The Proposal, however, seeks to require the Company to undertake an enormously complex analysis (an examination of "the politics, economics, and engineering" of the project) with respect to a highly specific project (the construction of a sea based canal in a specific location), and one that would involve myriad complex financial, legal and political issues, among others. As such, the Proposal seeks to "impose specific ... methods for implementing complex policies" of the kind that the Commission in the 1998 Release, as well as the Staff in SLB 14J, have deemed to be micromanagement.

Other elements of the Proposal further demonstrate that the Proponent is seeking a specific outcome. Although the Proponent does not explicitly ask for the Company's direct involvement in the construction of a new sea based canal through the Isthmus of Tehuantepec, the Proposal's focus on such an engagement by the Company is made evident by the Proposal's references to specific logistics to this end which the Company should undertake. For example, the Proposal states that the Company "may serve" as the bank in Mexico to facilitate the purchase of "[r]eal estate near the Mexico border or on the coastline" by foreign investors. Further, the Proposal would require the Company to undertake a specific, complex analysis of "the politics, economics, and engineering for the construction of a sea based canal." In that way, it would dictate the Company's practices to be undertaken in connection with a specific potential project. Moreover, the Company is unaware of any project proposed to the Company by a potential client relating to the construction of the canal noted in the Proposal. Accordingly, the Proponent appears to attempt to dictate that the Company take particular actions to enable this project, a project with respect to which the Company has no current involvement. These

requests within the Proposal directly impact the Company's policies and procedures with respect to how the Company evaluates potential investments and the ongoing financing decisions the Company makes. Those Company decisions involve complex, day-to-day operational determinations of management that are dependent on management's underlying expertise.

The Company's conclusion that the Proposal seeks to micromanage the Company is supported by recent Staff decisions. In *JPMorgan Chase & Co. (The Christensen Fund)* (Mar. 30, 2018), the Staff concurred in the exclusion of a proposal which asked for a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing for tar sands production and transportation. While the proposal did not explicitly dictate an alteration of Company policy, the Staff found that it micromanaged in that it sought to "impose specific methods for implementing complex policies." Similarly, in *JPMorgan Chase & Co. (Harrington)* (Mar. 30, 2018), the Staff concurred in the exclusion of a proposal which asked the Company to establish a human and indigenous peoples' rights committee that, among other things, would adopt policies and procedures to require consideration of human and indigenous peoples' rights in connection with certain financing decisions. The Staff found that the Proposal would micromanage the Company for purposes of Rule 14a-8(i)(7) as the Proposal sought to "impose specific methods for implementing complex policies." As was the case with the above proposals, the Proposal requests that the Company undertake a specific analysis regarding complex policies relating to the Company's financing and investment decisions.

The Company is a global financial services firm and is a leader in investment banking, financial services for consumers and small businesses, commercial banking, financial transaction processing and asset management. As such, the Company's decisions with respect to whom and on what terms it will provide financing are central to its ability to run the business on a day-to-day basis. Discussions regarding the Company's policies and procedures for making financing decisions are a regular agenda item at routine management meetings, and management periodically updates the Board of Directors on key factors underlying the Company's investment guidelines. Management focuses extensively on establishing appropriate standards for making decisions regarding the financing products and services the Company will offer, which are then considered on a day-to-day basis by management and employees who are making financing decisions with respect to particular projects and other matters.

As the Proposal seeks to impose the Company's involvement in a specific investment that would impact day-to-day management decisions, the Company is of the view that the Proposal seeks to micromanage the Company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As a result, the Company is of the view that the Proposal may be omitted pursuant to Rule 14a-8(i)(7) as it seeks to micromanage the Company.

2. *The Proposal May be Omitted because it Relates to Ordinary Business Matters*

a. *The Company's Determinations Regarding the Offering of Particular Products and Services Are Ordinary Business Matters*

It is the Company's view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Staff has recognized that a proposal relating to the sale of a particular product or service is excludable under Rule 14a-8(i)(7) as a component of "ordinary business." A company's financing and investment criteria implicates precisely the kind of fundamental, day-to-day operational matters meant to be covered by the ordinary business operations exception under Rule 14a-8(i)(7).

It is well established in prior Staff no-action responses that a company's decisions as to whether to offer particular products and services to its clients and the manner in which a company offers those products and services, including related investment policies and loan underwriting and customer relations practices, are precisely the kind of fundamental, day-to-day operational matters meant to be covered by the ordinary business operations exception under Rule 14a-8(i)(7). In *Wells Fargo & Co.* (Jan. 28, 2013) (recon. denied Mar. 4, 2013), the Proposal sought a report "discussing the adequacy of the company's policies in addressing the social and financial impacts of direct deposit advance lending. . ." The Staff concurred that the proposal could be omitted, noting in particular that "the proposal relates to the products and services offered for sale by the company" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"). *See also Fifth Third Bancorp* (Jan. 28, 2013) (recon. denied Mar. 4, 2013) (same).

The Proposal requests that the Company prepare a report examining the construction of a sea based canal through the Isthmus of Tehuantepec. The Commission has long held that proposals requesting a report are evaluated by the Staff by considering the underlying subject matter of the proposal when applying Rule 14a-8(i)(7). *See* the 1983 Release. That approach also is reflected in Staff no-action responses. For example, in *Delta Air Lines, Inc.* (Mar. 28, 2018), the Staff concurred with exclusion of a proposal requesting a report on the discriminatory effects of smaller cabin seat sizes on overweight and obese passengers because the proposal related to the company's ordinary business operations. As was the case in *Delta Air*, the Proposal asks for a report on an ordinary business matter – assessing a particular project in which the Company may participate.

More specifically, the Staff has consistently allowed exclusion of proposals under Rule 14a-8(i)(7) requesting that the board of directors prepare a report advocating that a company provide, or decline to provide, a particular type of financing. In *JPMorgan Chase & Co.* (Mar. 12, 2010) the Staff concurred in the exclusion of a proposal requesting a report assessing, among other things, the adoption of a policy barring financing of companies engaged in mountain top removal coal mining because it related to "decisions to extend credit or provide other financial services to particular types of customers," where the staff noted that "proposals concerning

customer relations or the sale of particular services are generally excludable under Rule 14a-8(i)(7)." *See also Bank of America Corp.* (Feb. 24, 2010) (Trillium) (concurring in relief under Rule 14a-8(i)(7) for a proposal requesting a report on the implementation of the company's policy regarding funding of companies engaged predominantly in mountain top removal, in addition to an assessment of the related impact on greenhouse gas emissions in Appalachia). As discussed above, the Company is a global financial services firm and is a leader in investment banking, financial services for consumers and small business, commercial banking, financial transaction processing and asset management. Accordingly, the Company's criteria for making particular financing and investment decisions is fundamental to its day-to-day business operations and, as such, is a matter of its ordinary business.

Omission of the Proposal is also supported by a long line of Staff no-action responses recognizing that proposals focusing on a financial institution's business decisions relate to ordinary business matters and may be omitted under Rule 14a-8(i)(7). For example, in *Bank of America Corp.* (Feb. 27, 2008) the Staff concurred in the omission of a proposal requesting a report disclosing the company's policies and practices regarding the issuance of credit cards. As the Staff stated in its response, the proposal related to "credit policies, loan underwriting and customer relations" and, as such, omission of the proposal in reliance on Rule 14a-8(i)(7) was appropriate. In *JPMorgan Chase & Co.* (Mar. 7, 2013), the Staff concurred in the omission of a proposal requesting that the board "adopt public policy principles for national and international reforms to prevent illicit financial flows ..." based upon principles specified in the proposal, expressly noting that "the proposal relates to principles regarding the products and services that the company offers." In *JPMorgan Chase & Co.* (March 16, 2010), the Staff concurred in the omission of a proposal that related to JPMorgan's business decision to issue refund anticipation loans, in which the Staff noted that "proposals concerning the sale of particular services are generally excludable under Rule 14a-8(i)(7)." *See also JPMorgan Chase & Co.* (Mar. 12, 2010) in which the Staff concurred in the exclusion of a proposal requesting a report assessing, among other things, the adoption of a policy barring financing of companies engaged in mountain top removal coal mining as it related to "decisions to extend credit or provide other financial services to particular types of customers" and that "proposals concerning customer relations or the sale of particular services are generally excludable under Rule 14a-8(i)(7)."

The Proposal requests that the Company prepare a report assessing the (i) politics, (ii) economics, and (iii) engineering for the identified construction project of a sea based canal through the Isthmus of Tehuantepec. The Proposal details the proposed canal as having a volume of less than 3 billion yards and one that, in consideration of the Proponent's estimated potential revenues, justifies an investment of "100 billion or more." In the Proponent's judgment, this project is "the best of all options" considered as alternatives to the Panama Canal and the Company is especially suited to engage in the project because of its past role in the construction of the Panama Canal and the fact that the Company has been doing business in Mexico for many years and thus has an existing presence and network that may be useful to the project's financing. The Company need not opine on the Proponent's assertions regarding the economic viability of such a project or on the Company's suitability for pursuing such a project.

Rather, similar to the Staff's concurrences discussed above, the decisions as to the entities, projects, and individuals to whom a financial firm, such as the Company, extends its financial services are plainly matters of ordinary business. As the Proposal directly relates to the Company's financing decisions, the Proposal may be excluded under Rule 14a-8(i)(7).

b. The Proposal Does Not Focus on a Significant Policy Issue

It is the Company's view that the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Proposal is focused on the "ordinary business" of determining what products and services the Company offers to its customers.

The Company is further of the view that the Proposal does not implicate a significant policy issue as such an issue is not self-evident on the face of the Proposal, nor does the Proponent assert a significant policy issue in the Supporting Statement. Nonetheless, even if the Proposal touches upon a policy issue that may be of such significance that the matter transcends ordinary business and would be appropriate for a shareholder vote, if the Proposal does not focus on such significant policy issue, the Staff has consistently concurred with the exclusion of the proposal. For example, in *McKesson Corp.* (June 1, 2017), the Staff concurred with the company's exclusion of a shareholder proposal that requested a report on the company's processes to "safeguard against failure" in its distribution system for restricted medicines despite the fact that the proponent argued that the proposal touched upon a significant policy issue (the impermissible use of medicines to carry out execution by lethal injection). In granting relief under Rule 14a-8(i)(7), the Staff concurred with the company that the proposal related to the sale or distribution of the company's products. Similarly, in *Amazon.com, Inc.* (Feb. 3, 2015), the Staff concurred that the company could exclude a proposal requesting that the company provide disclosure regarding reputational and financial risks relating to the sale of certain products. The Staff concluded that the proposal related to "the products and services offered for sale by the company," despite the proponent's assertion that the sale of those products raised a significant policy issue. *See also Hewlett-Packard Co.* (Jan. 23, 2015), in which the Staff concurred with the exclusion of a proposal requesting that the board provide a report on the company's sales of products and services to certain foreign entities, with the Staff noting that the proposal related to ordinary business and "does not *focus* on a significant policy issue" (emphasis added). The Staff similarly concurred with the exclusion of a proposal under Rule 14a-8(i)(7) in a response to *Capital One Financial Corp.* (Feb. 3, 2005), where a proposal asked the company to disclose information about the ordinary business matter of how it managed its workforce. The Staff concurred in excluding the proposal even though the proposal also related to the significant policy issue of outsourcing.

Further, even if a proposal itself focuses on a significant policy issue, language accompanying a proposal may be used to demonstrate that the proposal relates to ordinary business matters. The Staff stated in SLB 14C that "[i]n determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole." For example, in *JPMorgan Chase & Co.* (Feb. 28, 2018), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal with a whereas clause and

resolution concerning the general charitable contribution activities of the Company where the supporting statement demonstrated that the thrust and focus of the proposal was on specific Company charitable contributions, which are ordinary business matters. Similarly, in *Johnson & Johnson* (*Northstar*) (Feb. 10, 2014), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal with a resolution concerning the general political activities of the company where the preamble paragraphs to the proposal demonstrated that the thrust and focus of the proposal was on specific company political expenditures, which are ordinary business matters. The Company is of the view that the Proposal's request, on its face, does not pertain to a significant policy. The discussion in the Proposal thereafter makes clear that the focus of the Proposal is ordinary business.

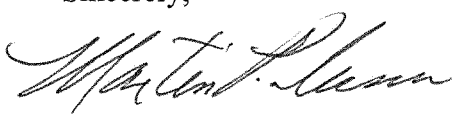
If the Staff were to conclude that the Proposal, even in part, relates to a policy issue that transcends ordinary business and would be appropriate for a shareholder vote, as was the case in the letters discussed above, the Proposal may nonetheless be excluded pursuant to Rule 14a-8(i)(7) because it is not focused on such policy issue and clearly addresses matters related to the Company's ordinary business operations. The Company is of the view that the Proposal relates to the ordinary business matter of the Company's financing criteria and is not focused on a significant policy issue. The Company's view is supported by the language of the Proposal in which the Proponent discusses potential premiums on revenues for an improved route via the proposed canal and the Company's potential role in financing the canal, which are considerations that relate to the ordinary business of financing decisions. Furthermore, the Company believes that the Proposal is not significant to its business affairs in any respect as it does not have current or planned investments related to the construction project contemplated by the Proposal, and is unaware of any customer approaching the Company seeking potential financing or other support for the project.

The criteria the Company chooses to utilize in its myriad financing and investment decisions is a day-to-day operational determination of management. As the Proposal relates to the Company's ordinary business operations of its investment criteria, and is not focused on a significant policy issue, the Company is of the view that it may properly omit the Proposal pursuant to Rule 14a-8(i)(7).

III. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal from its 2019 Proxy Materials. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 778-1611.

Sincerely,



Martin P. Dunn
Morrison & Foerster LLP

Attachments

cc: Martin Harangozo
Molly Carpenter, Corporate Secretary, JPMorgan Chase & Co.

EXHIBIT A

Ashton, Deb

From: john martin ***
Sent: Monday, November 26, 2018 2:25 PM
To: Corporate Secretary; john martin
Subject: JPMorgan Chase Harangozo Shareowner Proposal 2019
Attachments: JPMorganHarangozoProposal 11-26-2018 (1).docx; JPMorganHarangozoProposalImage11-26-2018.pptx

Categories: EXTERNAL

Ladies and Gentlemen,

Please include my attached proposal and image in the J P Morgan Chase 2019 Proxy.

I intend to continue holding the required number or amount of Company shares through the date of the Company's 2019 Annual Meeting of Shareowners.

Kindest regards

Martin Harangozo
***

This proposal recommends that the company prepare at reasonable expense, following all applicable laws, a report examining the politics, economics, and engineering for the construction of a sea based canal through the Tehauntepec isthmus of Mexico.

Numerous alternatives to the existing Panama Canal have been considered. A sea based canal through Mexico is the best of all options according to some thinkers https://digital.library.unt.edu/ark:/67531/metadc682754/. A sea based canal without locks as the Suez-canal is less restrictive when adjusting for increasingly larger sea vessels. It is less time consuming and less expensive to operate. It is geographically more favorable for those vessels traveling south for the sole purpose of crossing oceans.

JPMorgan served important roles in the construction of the Panama Canal. Mexico is home to many foreign companies; many as in the case of JP Morgan Chase, United States based publically owned companies. These companies and other global companies have hundreds of billions invested in Mexico. Most would agree that these companies and Mexico have mutually beneficial relationships.

A canal constructed in Mexico with the same financial protocol foreign investors currently follow, should prevail for foreign investment towards a Mexico canal.

It appears that broadly speaking, foreign investors can purchase land and erect businesses in geographic zones not restricted for such enterprises. Real estate near the Mexico border or on the coastline requires the involvement of a Mexico bank that permits such purchases and renews them according to law. JPMorgan Chase has operated in Mexico for more than a hundred years and may serve as such a bank or facilitate such a relationship with a qualified Mexico bank.

The United Nations and foreign nations could be harnessed for mutually successful implementation and enforcement of a prosperous canal. As it is difficult to envision a world where trade ceases, this project may pay a dividend for the next thousand years.

If eventual revenues contain premiums for the improved route compared to Panama, and or size that permits vessels prohibited in Panama, one could envision revenues many times that of Panama. At 3% growth eventual revenues of 20 billion (US) may be feasible, justifying an investment of 100 billion or more.

A hundred fifty-mile canal, three hundred feet wide, seventy-five feet deep displaces 660 million yards at sea level, about that excavated by the excavator Big Muskie. Four times this volume to account for above sea level material would bring the total volume under 3 billion yards. Equipment today makes this project viable both financially and technically.

The details for such a project are too expansive for a 500-word shareowner proposal but, requesting the report mentioned above may be among the most impactful activities in the history of JPMorgan Chase. Please vote yes for this proposal.


Cuba
Mérida
Cancún
Playa del Carmen
Tulum
YUCATAN
Campeche
Xalapao
Heroica Veracruz
City
Ciudad del Carmen
CAMPECHE
QUINTANA ROO
Cayman Islands
Chetumal
VERACRUZ
Coatzacoalcos
TABASCO
Villahermosa
Montego Bay
Jamaica
1,000+ mile round trip savings from Panama
7,800 mile round trip around South America savings
Belmopan
Belize
CHIAPAS
OAXACA
Tuxtla Gutiérrez
La Ceiba
Guatemala
San Pedro Sula
Tapachula
Guatemala
Honduras
Antigua Guatemala
Tegucigalpa
El Salvador
Nicaragua
Managua
Liberia
Costa Rica
San José
Panama City
Panama
Apartado

Ashton, Deb

From: Corporate Secretary
Sent: Monday, December 10, 2018 2:29 PM
To: 'john martin'
Cc: Corporate Secretary; Carpenter, Molly; Scott, Linda E
Subject: RE: JPMorgan Chase Harangozo Shareowner Proposal 2019
Attachments: Signed SH Acknowledgement - MHarangozo_(22560971)_(1).pdf; Rule 14a-8_Attachment.pdf; SEC SLB 14I_(22315427)_(1).pdf; SLB 14F_(12790357)_(1).pdf

Dear Mr. Harangozo

Attached is a copy of our letter regarding the shareholder proposal submitted for inclusion in the proxy materials relating to JPMC's 2019 Annual Meeting of Shareholders.

Regards
Irma

Irma R. Caracciolo | JPMorgan Chase |Vice President and Assistant Corporate Secretary |270 Park Avenue, Mail Code: NY1-K721, New York, NY 10017 |W: 212-270-2451 |F: 212-270-4240 | F: 646-534-2396| caracciolo_irma@jpmorgan.com

From: john martin ***
Sent: Monday, November 26, 2018 2:25 PM
To: Corporate Secretary ; john martin
Subject: JPMorgan Chase Harangozo Shareowner Proposal 2019

Ladies and Gentlemen,

Please include my attached proposal and image in the J P Morgan Chase 2019 Proxy.

I intend to continue holding the required number or amount of Company shares through the date of the Company's 2019 Annual Meeting of Shareowners.

Kindest regards

Martin Harangozo
***

JPMORGAN CHASE & CO.

Molly Carpenter
Corporate Secretary
Office of the Secretary

December 10, 2018

VIA EMAIL & OVERNIGHT DELIVERY

***

Mr. Martin Harangozo
***

Dear Mr. Harangozo:

I am writing on behalf of JPMorgan Chase & Co. ("JPMC") regarding the shareholder proposal requesting a report examining the construction of a sea based canal through the Tehauntepec Isthmus of Mexico (the "Proposal) received from you for consideration at JPMC's 2019 Annual Meeting of Shareholders. The proposal was submitted by you on (the "Proponent") on November 26, 2018 via email and received by JPMC on November 26, 2018.

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

Proposal Exceeds 500 Words

Rule 14a-8(d) limits a proposal and any supporting statement to a maximum length of 500 words. In this regard, Staff Legal Bulletin No. 14I ("SLB 14I") states that exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphics, exceeds 500. Your Proposal, including the supporting statement, appears to exceed this 500-word limitation. As such, your submission is required by Rule 14a-8 to be reduced to 500 words or less to be considered for inclusion in JPMC's proxy materials.

Ownership Verification

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that each shareholder proponent must submit sufficient proof that it has continuously held at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. JPMC's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof from the Proponent that it has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to JPMC. In this regard, our records indicate that you submitted the Proposal on November 26, 2018.

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

- A written statement from the "record" holder of the shares (usually a broker or a bank) verifying that, as of the date the Proposal was submitted (i.e., November 26,

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

2018), the Proponent continuously held the requisite number of JPMC shares for at least one year.

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

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

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

For the Proposal to be eligible for inclusion in the JPMC's proxy materials for the JPMC's 2019 Annual Meeting of Shareholders, the rules of the SEC require that a response to this letter, correcting all procedural deficiencies described in this letter, be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 270 Park Avenue, 38th Floor, New York NY 10017 or via email to corporate.secretary@jpmchase.com.

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

Sincerely,

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

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

Rule 14a-8 — Proposals of Security Holders

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

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

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

(1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) *Relates to election*: If the proposal:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, Rule 14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

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

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

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under Rule 14a-6.

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

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

Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

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

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

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

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

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

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

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

other from the DTC participant confirming the broker or bank's ownership.

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

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

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

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

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

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

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

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14I (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 1, 2017

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

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

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

A. The purpose of this bulletin

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

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

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

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

1. Background

Rule 14a-8(i)(7), the "ordinary business" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations." The purpose of the

exception is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."[1]

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

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

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

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

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

1. Background

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

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

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal."[5] The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today.[6] In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting."[7]

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

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

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

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

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

Where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is "otherwise significantly related to the company's business."[8] For example, the proponent can provide information demonstrating that the proposal "may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities."[9] The proponent could continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company's business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the "total mix" of information about the issuer.

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

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

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

D. Proposals submitted on behalf of shareholders

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

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

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

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

E. Rule 14a-8(d)

1. Background

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

2. The use of images in shareholder proposals

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

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

- make the proposal materially false or misleading;

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

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

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

[2] *Id.*

[3] *Id.*

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

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

[6] *Id.*

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

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

[9] Release No. 34-19135.

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

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

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

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

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

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

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

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

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

Home | Previous Page Modified: 11/01/2017

Ashton, Deb

From: john martin ***
Sent: Saturday, December 15, 2018 10:33 AM
To: Corporate Secretary
Cc: Carpenter, Molly; Scott, Linda E; john martin
Subject: Re: JPMorgan Chase Harangozo Shareowner Proposal 2019
Attachments: JPMorganChaseMartinHarangozoProofOfOwnership12-15-2018.pdf; JPMorganHarangozoProposal 12-15-2018.docx; JPMorganHarangozoProposal 12-15-2018 Image.docx

Categories: EXTERNAL

Ladies and Gentlemen,

Please find attached my revised proposal and image. The words contained in the combined proposal and image produce a total of less than 500 words.
Also attached is my proof of ownership. I believe all the requirements mentioned in your message have been satisfied. For questions, kindly contact me at this e-mail

***

or by mobile

***

On Monday, December 10, 2018, 2:29:41 p.m. EST, Corporate Secretary <corporate.secretary@jpmchase.com> wrote:

Dear Mr. Harangozo

Attached is a copy of our letter regarding the shareholder proposal submitted for inclusion in the proxy materials relating to JPMC's 2019 Annual Meeting of Shareholders.

Regards

Irma

Irma R. Caracciolo | JPMorgan Chase |Vice President and Assistant Corporate Secretary |270 Park Avenue, Mail Code: NY1-K721, New York, NY 10017 |W: 212-270-2451 |F: 212-270-4240 | F: 646-534-2396| caracciolo_irma@jpmorgan.com

From: john martin ***
Sent: Monday, November 26, 2018 2:25 PM

To: Corporate Secretary <corporate.secretary@jpmchase.com>; john martin ***
Subject: JPMorgan Chase Harangozo Shareowner Proposal 2019

Ladies and Gentlemen,

Please include my attached proposal and image in the J P Morgan Chase 2019 Proxy.

I intend to continue holding the required number or amount of Company shares through the date of the Company's 2019 Annual Meeting of Shareowners.

Kindest regards

Martin Harangozo

***

This proposal recommends that the company prepare at reasonable expense, following all applicable laws, a report examining the politics, economics, and engineering for the construction of a sea based canal through the Tehauntepec isthmus of Mexico.

Numerous alternatives to the Panama Canal have been considered. A sea based canal through Mexico is the best of all options according to some thinkers https://digital.library.unt.edu/ark:/67531/metadc682754/. A sea based canal without locks as the Suez-canal is less restrictive when adjusting for increasingly larger sea vessels. It is less time consuming and less expensive to operate. It is geographically more favorable for those vessels traveling south for the sole purpose of crossing oceans (see image).

JPMorgan served important roles in the Panama Canal. Mexico is home to many foreign companies; many as in the case of JP Morgan Chase, United States based publically owned companies. These global companies have hundreds of billions invested in Mexico. Few would argue that these companies and Mexico have mutually beneficial relationships.

It stands to reason that a canal in Mexico with the same financial protocol foreign investors currently follow, should prevail for foreign investment towards a Mexico canal.

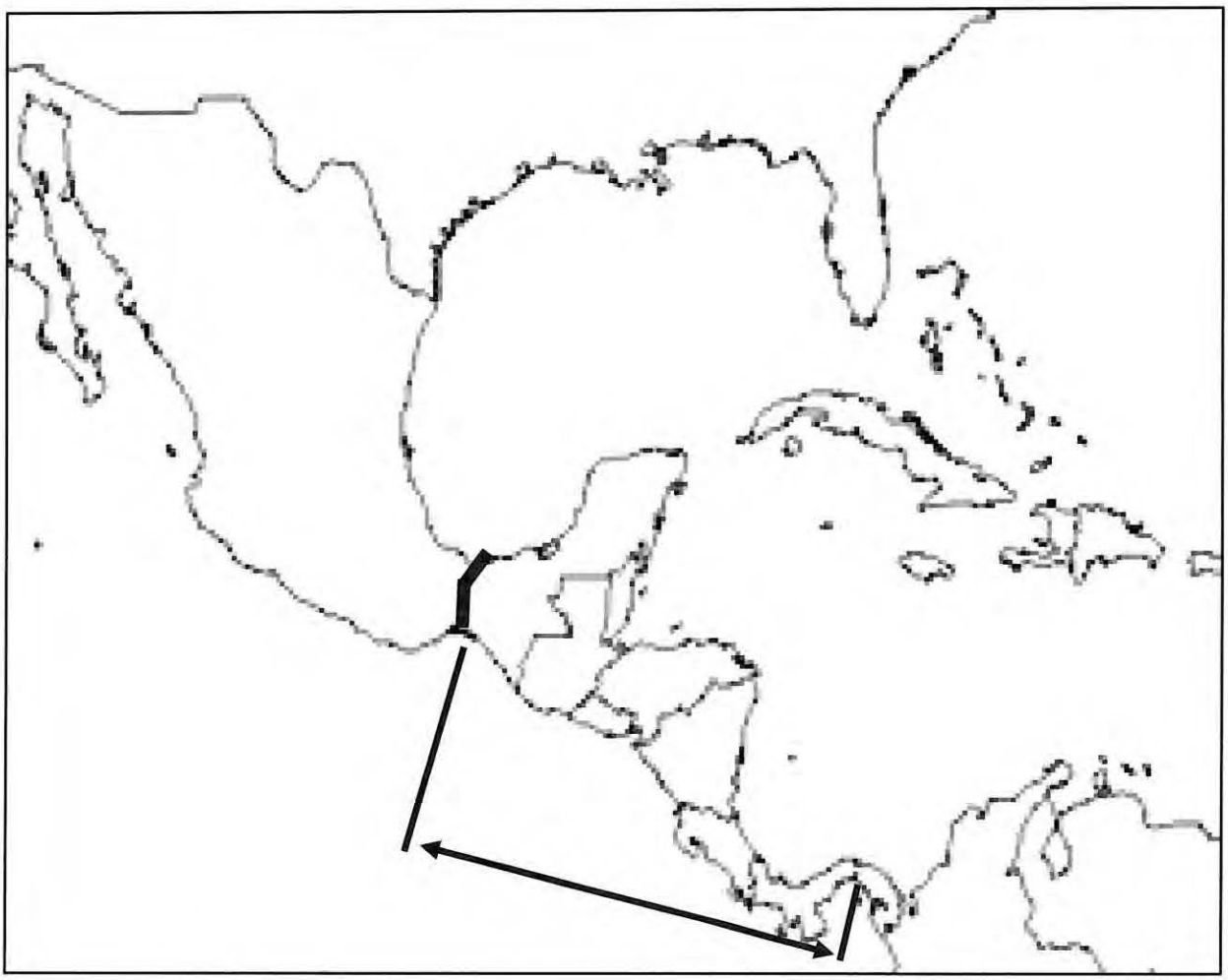
It appears that broadly speaking, foreign investors can purchase land and erect businesses in geographic zones permitting such enterprises. Real estate near the Mexico border or on the coastline requires the involvement of a Mexico bank that permits such purchases and renews them according to law. JPMorgan Chase has operated in Mexico for more than a hundred years and may serve as such a bank or facilitate such relationships with qualified Mexico banks.

The United Nations and foreign nations could be harnessed for mutually successful implementation and enforcement of a prosperous canal. As it is difficult to envision a world where trade ceases, this project may pay dividends for a thousand years.

If revenues contain premiums for the improved route to Panama, and or size permitting vessels prohibited in Panama, one could envision revenues many times that of Panama. At three percent growth eventual revenues of twenty billion (United States) may be feasible, justifying investments of hundred billion.

A hundred fifty-mile canal, three hundred feet wide, seventy-five feet deep displaces 660 million yards at sea level, about that excavated by the excavator Big Muskie. Four times this volume for above sea level material would bring the total volume under three billion yards. Equipment today makes this project viable both financially and technically.

This report may be among the most impactful activities in the history of JPMorgan Chase. Please vote yes for this proposal.



TD Ameritrade

12/14/2018

Martin Harangozo
***

Re: Your TD Ameritrade Account Ending in ***

Dear Martin Harangozo,

Thank you for allowing me to assist you today. As of November 26th, 2018, you have held, and have continuously held 453 shares of JP Morgan Chase & Co (JPM) for at least one year between your account ending in *** (previously ending in *** with Scottrade) and account ending in *** (previously *** with Scottrade).

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

Sincerely,

Adam Newkirk
Resource Specialist
TD Ameritrade