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

DIVISION OF
CORPORATION FINANCE

May 2, 2019

Kimberly C. Petillo-Décossard
Cahill Gordon & Reindel LLP
kpetillo-decossard@cahill.com

Re: Trans World Entertainment Corporation
Incoming letter dated March 8, 2019

Dear Ms. Petillo-Décossard:

This letter is in response to your correspondence dated March 8, 2019 concerning the shareholder proposal (the "Proposal") submitted to Trans World Entertainment Corporation (the "Company") by the Robert J. Higgins TWMC Trust (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: W. Michael Reickert
Robert J. Higgins TWMC Trust
P.O. Box 10879
Albany, NY 12201

May 2, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Trans World Entertainment Corporation
Incoming letter dated March 8, 2019

The Proposal recommends that shareholders of the Company approve the amendment of Section 1.4 of the Company's By-Laws to provide that the holders of 60% of the outstanding shares of the Company that are entitled to vote thereat shall be present in person or represented by proxy in order to constitute a quorum for the transaction of any business at all meetings of shareholders.

There appears to be some basis for your view that the Company may exclude the Proposal under rules 14a-8(i)(2) and 14a-8(i)(6). We note that in the opinion of your counsel, implementation of the Proposal would cause the Company to violate state law. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rules 14a-8(i)(2) and 14a-8(i)(6). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Frank Pigott
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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*ADMITTED IN DC ONLY

March 8, 2019

Re: Trans World Entertainment Corporation
Shareholder Proposal of Robert J. Higgins TWMC Trust
Securities Exchange Act of 1934 - Rule 14a-8

Dear Ladies and Gentlemen:

We are writing on behalf of our client, Trans World Entertainment Corporation, a New York corporation ("**TWEC**"), which respectfully requests that the staff (the "**Staff**") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "**Commission**") take a no-action position if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), TWEC omits the enclosed shareholder proposal and supporting statement (the "**RJH Trust Materials**") submitted by the Trustees of the Robert J. Higgins TWMC Trust (the "**Proponent**") on its behalf from TWEC's proxy materials for its 2019 Annual Meeting of Shareholders (the "**2019 Proxy Materials**"). The RJH Trust Materials propose to amend TWEC's By-Laws "to provide that the holders of 60% of the outstanding shares of the Company that are entitled to vote thereat shall be present in person or represented by proxy in order to constitute a quorum for the transaction of any business at all meetings of shareholders" (the "**Proposal**"). A copy of the RJH Trust Materials is attached hereto as Exhibit A.

Pursuant to Staff Legal Bulletin No. 14D, we have submitted this letter and its exhibits via electronic submission with the Commission and as such, we are not enclosing the additional six copies required by Rule 14a-8(j). However, in accordance with Rule 14a-8(j), a copy of this letter and its exhibits are being sent via email and overnight courier to the Proponent to notify the Proponent of TWEC's intention to omit the Proposal from its 2019 Proxy Materials.

Rule 14a-8(k) provides that proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional

correspondence to the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to Edwin J. Sapienza, Secretary, on behalf of TWEC, pursuant to Rule 14a-8(k).

We respectfully request that the Staff concur with our view that the Proposal may be properly excluded from TWEC's 2019 Proxy Materials pursuant to (1) Rule 14a-8(i)(1) and (2), on the ground that the Proposal is not a proper subject for shareholder action under the laws of TWEC's state of incorporation, and, if implemented, the Proposal would cause TWEC to violate state law, (2) Rule 14a-8(i)(4), on the ground that the Proposal is designed to result in a benefit to the Proponent, or to further a personal interest, which is not shared by the other shareholders at large, and (3) Rule 14a-8(i)(6) on the ground that TWEC lacks the power or authority to implement the Proposal.

1. The Proposal is Not a Proper Subject for Action by Shareholders under New York's Business Corporation Law, and the Proposal Would, if Implemented, Cause TWEC to Violate New York's Business Corporation Law.

Rule 14a-8(i)(1) allows a company to exclude a proposal if the subject matter of the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization. Similarly, Rule 14a-8(i)(2) allows a company to exclude a proposal if implementation of the proposal would cause the company to violate any state, federal or foreign law to which the company is subject. TWEC is incorporated under the laws of the State of New York and is subject to New York's Business Corporation Law (the "**NY BCL**"). For the reasons set forth below, TWEC believes the Proposal is not a proper subject for shareholder action under New York law and that implementation of the Proposal would cause TWEC to violate New York law. These conclusions and the discussion of New York law below are supported by the legal opinion of Cahill Gordon & Reindel LLP ("**Cahill**"), a copy of which is attached to this letter as Exhibit B.

The Proposal seeks to amend TWEC's By-Laws to provide that the holders of 60% of the outstanding shares of TWEC constitute a quorum for the transaction of any business at all meetings of shareholders. TWEC's By-Laws currently provide that the holders of a majority of the outstanding shares of TWEC constitute a quorum for the transaction of any business at all meetings of shareholders. This amendment, if implemented, would violate the NY BCL.

Under Section 608(a) of the NY BCL, "The holders of a majority of the votes of shares entitled to vote thereat shall constitute a quorum at a meeting of shareholders for the transaction of any business ...." (emphasis added). Section 608(b) of the NY BCL further states, "The certificate of incorporation or by-laws may provide for any lesser quorum not less than one-third of the votes of shares entitled to vote, and the certificate of incorporation may, under Section 616 (Greater requirements as to quorum and vote of shareholders), provide for a greater quorum" (emphasis added). Section 616(a)(1) of the NY BCL states "The certificate of incorporation may contain provisions specifying ... (1) That the proportion of votes of shares, or

the proportion of votes of shares of any class or series thereof, the holders of which shall be present in person or by proxy at any meeting of shareholders, including a special meeting for election of directors under section 603 (Special meeting for election of directors), in order to constitute a quorum for the transaction of any business or of any specified item of business, including amendments to the certificate of incorporation, shall be greater than the proportion prescribed by this chapter in the absence of such provision" (emphasis added).

Consistent with Section 608(a) of the NY BCL, TWEC's By-Laws state that the holders of a majority of the outstanding shares of TWEC constitute a quorum for the transaction of any business at all meetings of shareholders. As clearly stated in Section 608(b) and Section 616(a)(1), a greater quorum may only be provided in TWEC's certificate of incorporation, and may not be established in, or modified by, an amendment to TWEC's By-Laws.

In addition, the procedures for amending the certificate of incorporation of a New York corporation are set forth in Section 803 of the NY BCL, which requires a "vote of the board, followed by vote of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders ...." As discussed in Cahill's legal opinion, increasing the quorum requirement as set forth in the Proposal would require compliance with these board and shareholder approval requirements, and cannot lawfully be achieved by amending TWEC's By-Laws or solely by action of the shareholders, as the Proponent requests.

2. The Proposal is Designed to Result in a Benefit to the Proponent, or to Further a Personal Interest, which is not Shared by the Other Shareholders at Large.

Rule 14a-8(i)(4) permits the exclusion of a shareholder proposal if the proposal is designed to result in a benefit to the proponent, or furthers a personal interest of the proponent, that is not shared by the other shareholders at large. The Commission has stated that proposals phrased in broad terms that "might relate to matters which may be of general interest to all security holders" may be omitted from proxy materials "if it is clear from the facts . . . that the proponent is using the proposal as a tactic designed to . . . further a personal interest." See SEC Release No. 34-19135 (October 14, 1982). In addition, the Staff has agreed to the exclusion of proposals that are presented in broad terms in a purported effort to advance the general interest of all shareholders when such proposals are clearly designed to further a personal interest. See Caterpillar Inc. (December 13, 1999) and Phillips Petroleum Co. (February 22, 1996).

As evidenced by the documents attached hereto as Exhibit C, the Proponent beneficially owns 14,279,715 shares of TWEC common stock, which represents 39.4% of TWEC's outstanding shares of common stock. If the Proposal were implemented, the Proponent would effectively be able to determine whether or not a quorum for the transaction of any business at all meetings of shareholders exists and, therefore, whether or not any items of business put forth by TWEC or any of its other shareholders at a meeting of shareholders may be voted upon.

For example, if the Proponent was not supportive of an item of business put to a vote of shareholders at TWEC's annual meeting, and the Proponent wanted to prevent TWEC's other shareholders from voting on such item of business for fear that such item would be approved by TWEC's other shareholders, the Proposal would have the effect of requiring nearly 100% of TWEC's other shareholders to be present in person or represented by proxy in order to constitute a quorum for the transaction of such business at TWEC's annual meeting. As a result, the Proposal would make it extremely difficult for TWEC and its other shareholders to hold a meeting of shareholders and vote on items of business if the Proponent is not supportive. In this respect, the Proponent's ability to marginalize and silence TWEC's other shareholders is clearly in furtherance of the Proponent's personal interest and demonstrates that the Proponent's interest in the Proposal is significantly different than the interest of the shareholders at large.

We note that one of the beneficiaries of the Proponent, Mr. Mark R. Higgins, has also submitted a shareholder proposal for inclusion in TWEC's 2019 Proxy Materials requesting the nomination of four candidates for TWEC's Board of Directors (attached hereto as Exhibit D). Although TWEC does not know if the Proposal and Mr. Higgins' proposal are coordinated, when considering the two proposals together, it does appear on its face to be a two-front attack by the Higgins family to effectively take control of TWEC. If their efforts are coordinated, the obvious conclusion is that rather than pay a control premium, which would benefit TWEC's other shareholders, the Higgins family is instead attempting to control TWEC through improper proposals at the expense of TWEC's other shareholders. If their efforts are not coordinated, the inequality of permitting one shareholder - the Proponent - to prevent all shareholders from convening a meeting is both obvious and obviously being done to further a personal interest.

To use the Commission's own words from its 1982 release, "it is clear from the facts . . . that the [P]roponent is using the [P]roposal as a tactic designed to . . . further a personal interest" and exercise an inappropriate amount of control over the ability to hold a shareholders meeting to the detriment of TWEC's other shareholders.

3. TWEC Lacks the Power and Authority to Implement the Proposal.

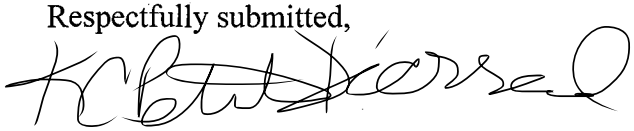
Rule 14a-8(i)(6) allows exclusion of a proposal if the company lacks the power or authority to implement it. As discussed in Section 1 above, if TWEC were to amend its By-Laws in the manner described in the Proposal, the amended provision would be invalid under New York law. TWEC is therefore without power or authority to implement the Proposal.

The Proponent's apparent objective could be achieved only through amendment of TWEC's certificate of incorporation. As noted in Section 1 above, amending the certificate of incorporation would require the approval of both TWEC's Board of Directors and TWEC's shareholders. As a result, TWEC is without power or authority to achieve the Proponent's apparent objective. See PG&E Corporation (January 22, 2001).

Conclusion

For the reasons stated above and in accordance with Rule 14a-8, we respectfully request confirmation that the Staff will not recommend any enforcement action if, in reliance on the foregoing, TWEC excludes the Proposal from its 2019 Proxy Materials. If the Staff disagrees with TWEC's decision to omit the Proposal, we request the opportunity to confer with the Staff prior to the final determination of the Staff's position. If you have any questions or desire additional information, please call or email the undersigned at (212) 701-3265 or kpetillo-decossard@cahill.com, or Edwin J. Sapienza of TWEC at (518) 452-1242 ext. 7496 or esapienza@twec.com.

Respectfully submitted,



Kimberly C. Petillo-Décossard

VIA E-MAIL SHAREHOLDERPROPOSALS@SEC.GOV

United States Securities and Exchange Commission
Division of Corporate Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Enclosures

cc: Edwin J. Sapienza, Secretary, Trans World Entertainment Corporation

Mr. W. Michael Reickert, Trustee, Robert J. Higgins TWMC Trust

Ms. Anne L. Higgins, Trustee, Robert J. Higgins TWMC Trust

Mr. James J. Barba, Trustee, Robert J. Higgins TWMC Trust

Exhibit A

February 1, 2019

Via Email and Overnight Mail

Mr. Edwin J. Sapienza
Secretary
Trans World Entertainment Corporation
38 Corporate Circle
Albany, NY 12203

Re: Shareholder Proposal

Dear Mr. Sapienza:

In conjunction with the Shareholder Proposal enclosed, the Trustees of the Robert J. Higgins TWMC Trust (the "Trust"), hereby declare as follows, as required pursuant to Rule 14a-8 of the Exchange Act:

- the Trust is the record holder of at least 1% of the shares of common stock of Trans World Entertainment Corporation, a New York corporation (the "Company") and has held such shares for the 1 year period as of the date of the enclosed proposal; and

- the Trust intends to hold at least 1% of its shares in the Company through the date of the next annual or special meeting of the shareholders of the Company.

Please provide written confirmation of receipt of this letter and the enclosed proposal.

Sincerely,

Robert J. Higgins TWMC Trust

W. Michael Reickert, Trustee

Anne L. Higgins, Trustee

James J. Barba, Trustee

SHAREHOLDER PROPOSAL AND SUPPORTING STATEMENT TO INCREASE THE QUORUM REQUIREMENT FOR THE SHAREHOLDERS

TRANS WORLD ENTERTAINMENT CORPORATION
DATED: FEBRUARY 1, 2019

Shareholder Proposal

The Robert J. Higgins TWMC Trust, c/o P.O. Box 10879 Albany, NY 12201, which beneficially owns 14,279,715 shares of the issued and outstanding shares of common stock of Trans World Entertainment Corporation, a New York corporation (the "Company"), submits the following proposal to be included in the Company's 2019 Proxy Statement:

> RESOLVED: That the shareholders of the Company, assembled at the annual meeting in person and by proxy, hereby approve the amendment of Section 1.4 of the Company's By-Laws to provide that the holders of 60% of the outstanding shares of the Company that are entitled to vote thereat shall be present in person or represented by proxy in order to constitute a quorum for the transaction of any business at all meetings of shareholders.

Supporting Statement:

You are urged to vote "Yes" for this proposal for the following reasons:

Although the Board controls the operations and decision-making of the Company, fundamental decisions are voted upon by the shareholders. A quorum is the minimum number of shareholders that must be present at any of its meetings to make the proceedings of the meeting valid.

Currently the shareholder quorum requires a majority of the shareholders be present, such that 51% of the shareholders are required to vote on and implement any action. Increasing the quorum required for shareholder decision making will provide for more well-rounded and balanced governance because it will require that more shareholders be present and involved in decision making at Company meetings. This will increase shareholder participation in the Company.

Moreover, increasing this quorum will ensure that more shareholders are present to agree on fundamental decisions, which will provide Board oversight and ensure good governance. It may also allow for minority shareholders to have more influence in the management of the Company because obtaining their presence at meetings may be essential for certain actions, particularly where shareholders disagree.

Exhibit B

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*ADMITTED IN DC ONLY

March 8, 2019

Re: Trans World Entertainment Corporation
Shareholder Proposal of Robert J. Higgins TWMC Trust
Securities Exchange Act of 1934 - Rule 14a-8

Dear Ladies and Gentlemen:

This letter is submitted solely for the purpose of the requirements of Rule 14a-8(j)(2)(iii) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), as may apply to the correspondence, dated of even date herewith, submitted on behalf of Trans World Entertainment Corporation, a New York corporation ("**TWEC**") to exclude, under Rule 14a-8(i)(1) and Rule 14a-8(i)(2), the proposal and supporting statement (the "**RJH Trust Materials**") submitted to TWEC by the Trustees of the Robert J. Higgins TWMC Trust (the "**Proponent**") for inclusion in TWEC's proxy materials for its 2019 Annual Meeting of Shareholders (the "**2019 Proxy Materials**").

We have reviewed (i) the RJH Trust Materials, which propose to amend TWEC's By-Laws "to provide that the holders of 60% of the outstanding shares of the Company that are entitled to vote thereat shall be present in person or represented by proxy in order to constitute a quorum for the transaction of any business at all meetings of shareholders" (the "**Proposal**"), (ii) TWEC's By-Laws and (iii) the relevant provisions of New York's Business Corporation Law (the "**NY BCL**").

Under Section 608(a) of the NY BCL, "The holders of a majority of the votes of shares entitled to vote thereat shall constitute a quorum at a meeting of shareholders for the transaction of any business ...." (emphasis added). Section 608(b) of the NY BCL further states, "The certificate of incorporation or by-laws may provide for any lesser quorum not less than one-third of the votes of shares entitled to vote, and the certificate of incorporation may, under Section 616 (Greater requirements as to quorum and vote of shareholders), provide for a greater quorum" (emphasis added). Section 616(a)(1) of the NY BCL states "The certificate of

incorporation may contain provisions specifying ... (1) That the proportion of votes of shares, or the proportion of votes of shares of any class or series thereof, the holders of which shall be present in person or by proxy at any meeting of shareholders, including a special meeting for election of directors under section 603 (Special meeting for election of directors), in order to constitute a quorum for the transaction of any business or of any specified item of business, including amendments to the certificate of incorporation, shall be greater than the proportion prescribed by this chapter in the absence of such provision" (emphasis added).

Consistent with Section 608(a) of the NY BCL, TWEC's By-Laws state that the holders of a majority of the outstanding shares of TWEC constitute a quorum for the transaction of any business at all meetings of shareholders. As stated in Section 608(b) and Section 616(a)(1) of the NY BCL, a greater quorum may only be provided in TWEC's certificate of incorporation, and may not be established in, or modified by, an amendment to TWEC's By-Laws.

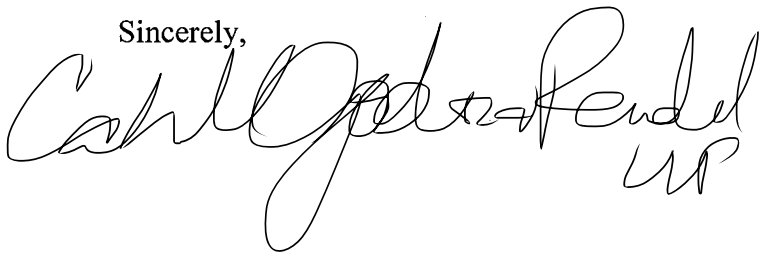
In addition, the procedures for amending the certificate of incorporation of a New York corporation are set forth in Section 803 of the NY BCL, which requires a "vote of the board, followed by vote of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders ...." Increasing the quorum requirement as set forth in the Proposal would require compliance with these board and shareholder approval requirements, and cannot lawfully be achieved by amending TWEC's By-Laws or solely by action of the shareholders, as the Proponent requests.

Based on the foregoing, we are of the opinion that the Proposal is not a proper subject for shareholder action under the NY BCL and that implementation of the Proposal would cause TWEC to violate the NY BCL.

We are admitted to practice law in the State of New York. The foregoing opinion is limited to the laws of the State of New York.

Except for the submission of a copy of this letter to the Securities and Exchange Commission, including its staff, in connection with its consideration of inclusion or exclusion of the Proposal in TWEC's 2019 Proxy Materials, this letter is not to be quoted or otherwise referred to in any document or filed with any entity or person (including, without limitation, any governmental entity), or relied upon by any such entity or persons other than the addressee without the prior written consent of this firm.

Sincerely,



Trans World Entertainment Corporation
38 Corporate Circle
Albany, New York 12203

Exhibit C

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED NOVEMBER 3, 2018

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT FOR THE TRANSITION PERIOD FROM _____ TO _____

COMMISSION FILE NUMBER: 0-14818

TRANS WORLD ENTERTAINMENT CORPORATION
(Exact name of registrant as specified in its charter)

New York	14-1541629
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

38 Corporate Circle
Albany, New York 12203
(Address of principal executive offices, including zip code)

(518) 452-1242
(Registrant's telephone number, including area code)

Indicate by a check mark whether the Registrant (1) has filed all reports required to be filed by Sections 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definition of "large accelerated filer", "accelerated filer", "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.
Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☐
Smaller reporting company ☒ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common Stock, $.01 par value,
36,258,839 shares outstanding as of November 3, 2018

Form 5 for Trustee, W. Michael Reickert, shows the Common Stock owned by Proponent as 14,279,715 shares.

Total shares of Common Stock outstanding shows above is 36,258,839.

Percentage of Common Stock owned by Proponent is:

14,279,715 / 36,258,839 = 39.4%

FORM 5

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).
☐ Form 3 Holdings Reported
☐ Form 4 Transactions Reported

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

ANNUAL STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL	
OMB Number:	3235-0362
Expires:	January 31, 2014
Estimated average burden hours per response...	1.0

1. Name and Address of Reporting Person *	2. Issuer Name **and** Ticker or Trading Symbol	5. Relationship of Reporting Person(s) to Issuer (Check all applicable)
Reickert W Michael	TRANS WORLD ENTERTAINMENT CORP [TWMC]	__X__ Director ____ 10% Owner ____ Officer (give title below) ____ Other (specify below)
(Last) (First) (Middle) 38 CORPORATE CIRCLE	3. Statement for Issuer's Fiscal Year Ended (Month/Day/Year) 02/02/2019	
(Street) ALBANY, NY 12203	4. If Amendment, Date Original Filed(Month/Day/Year)	6. Individual or Joint/Group Reporting (check applicable line) _X_ Form Filed by One Reporting Person ___ Form Filed by More than One Reporting Person
(City) (State) (Zip)		

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1.Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned at end of Issuer's Fiscal Year (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
				Amount	(A) or (D)	Price			
Common Stock par value $.01 per share							64,000	D	
Common Stock par value $.01 per share							14,279,715	I	By Trust (3)

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 2270 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(*e.g.*, puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of Derivative Securities Beneficially Owned at End of Issuer's Fiscal Year (Instr. 4)	10. Ownership Form of Derivative Security: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
					(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
Stock Option (Right to Buy) (1)	$ 3.67						(2)	07/06/2026	Common Stock, par value $0.01 per share	15,000		15,000	D	

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
Reickert W Michael 38 CORPORATE CIRCLE ALBANY, NY 12203	X			

Signatures

/s/ W. Michael Reickert 02/26/2019

**Signature of Reporting Person Date

Explanation of Responses:

***** If the form is filed by more than one reporting person, see Instruction 4(b)(v).

****** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) All of the equity transactions listed above are pursuant to equity plans qualified under Rule 16b-3 and exempt from Section 16(b) of the Securities Exchange Act.

(2) Stock option grants vest ratably over 4 years.

(3) These shares are owned directly by the Robert J. Higgins TWMC Trust, a ten percent owner of the issuer, and indirectly by W. Michael Reickert as a trustee of the Trust.

Note: File three copies of this Form, one of which must be manually signed. If space provided is insufficient, *see* Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.

Exhibit D

CAHILL GORDON & REINDEL LLP

EIGHTY PINE STREET
NEW YORK, NY 10005-1702

TELEPHONE: (212) 701-3000
WWW.CAHILL.COM

1990 K STREET, N.W.
WASHINGTON, DC 20006-1181
(202) 862-8900

CAHILL GORDON & REINDEL (UK) LLP
24 MONUMENT STREET
LONDON EC3R 8AJ
+44 (0)20 7920 9800

WRITER'S DIRECT NUMBER
(212) 701-3265

March 8, 2019

Re: Trans World Entertainment Corporation
Shareholder Proposal of Mr. Mark R. Higgins
Securities Exchange Act of 1934 - Rule 14a-8

Dear Ladies and Gentlemen:

We are writing on behalf of our client, Trans World Entertainment Corporation, a New York corporation ("**TWEC**"), which respectfully requests that the staff (the "**Staff**") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "**Commission**") take a no-action position if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), TWEC omits the enclosed shareholder proposal and supporting statement (the "**Higgins Materials**") submitted by Mr. Mark R. Higgins ("**Proponent**") on his behalf from TWEC's proxy materials for its 2019 Annual Meeting of Shareholders (the "**2019 Proxy Materials**"). The Higgins Materials propose to nominate four individuals to TWEC's board of directors to run for election at TWEC's 2019 Annual Meeting (the "**Proposal**").

Pursuant to Staff Legal Bulletin No. 14D, we have submitted this letter and its exhibits via electronic submission with the Commission and as such, we are not enclosing the additional six copies required by Rule 14a-8(j). However, in accordance with Rule 14a-8(j), a copy of this letter and its exhibit are being sent via email and overnight courier to the Proponent to notify the Proponent of TWEC's intention to omit the Proposal from its 2019 Proxy Materials. A copy of the following materials is attached to this letter as Exhibit A: (1) the original proposal submitted by the Proponent on February 1, 2019 (the "**Original Proposal**"), (2) TWEC's February 15, 2019 letter to the Proponent notifying him that the Original Proposal failed to follow certain of the eligibility or procedural requirements contained in Rule 14a-8(b) and (d) (the "**TWEC Procedural Deficiency Letter**"), and (3) the revised proposal submitted by the Proponent on February 28, 2019, which such proposal cured the eligibility and procedural defects in the Original Proposal (the "**Revised Proposal**").

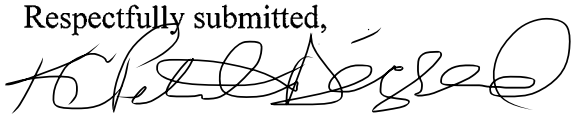
Rule 14a-8(k) provides that proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to Edwin J. Sapienza, Secretary, on behalf of TWEC, pursuant to Rule 14a-8(k).

Notwithstanding that the Proponent cured the eligibility and procedural defects set forth in the Original Proposal upon timely submission of the Revised Proposal, we respectfully request that the Staff concur with our view that the Proposal may be properly excluded from TWEC's 2019 Proxy Materials pursuant to Rule 14a-8(i)(8)(iv) and (v), which permits a company to exclude the proposal if the proposal "(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." When a shareholder's proposal clearly relates to the nomination of specific individuals for election to a company's board of directors, including the proponent himself, the Staff has consistently indicated that the proposal may be excluded. See, Avalon Holdings Corporation, SEC No-Action Letter (January 16, 2018), First Trust Dividend and Income Fund, SEC No-Action Letter (January 30, 2014) and Vicon Industries, Inc., SEC No-Action Letter (February 14, 2012).

The Proposal seeks to include four individuals, including the Proponent, in TWEC's 2019 Proxy Materials for election to TWEC's board of directors and otherwise seeks to affect the outcome of TWEC's upcoming election of directors, as prohibited by Rule 14a-8(i)(8)(iv) and (v). Therefore, the Proposal is specifically permitted to be excluded from TWEC's 2019 Proxy Materials.

For the reasons stated above and in accordance with Rule 14a-8, we respectfully request confirmation that the Staff will not recommend any enforcement action if, in reliance on the foregoing, TWEC excludes the Proposal from its 2019 Proxy Materials. If the Staff disagrees with TWEC's decision to omit the Proposal, we request the opportunity to confer with the Staff prior to the final determination of the Staff's position. If you have any questions or desire additional information, please call or email the undersigned at (212) 701-3265 or kpetillo-decossard@cahill.com, or Edwin J. Sapienza of TWEC at (518) 452-1242 ext. 7496 or esapienza@twec.com.

Respectfully submitted,



Kimberly C. Petillo-Décossard

VIA E-MAIL SHAREHOLDERPROPOSALS@SEC.GOV

United States Securities and Exchange Commission
Division of Corporate Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Enclosures

cc: Edwin J. Sapienza, Secretary, Trans World Entertainment Corporation

Mr. Mark R. Higgins

Exhibit A(1) - Higgins Original Proposal

Mark Higgins
PO Box 928
Guilderland, NY 12084
2/1/2019

VIA Hand Delivery, VIA Email Delivery, VIA Overnight Delivery

Chairman of the Nominating and Corporate Governance Committee
c/o Edwin J. Sapienza, Secretary
Trans World Entertainment Corp.
38 Corporate Circle
Albany, NY 12203

RE: Director Candidate(s) Nominations to the Board of Trans World Entertainment Corp. (Nasdaq;TWMC)

Dear Sir:

I am deeply concerned with TransWorld Entertainments (Nasdaq; TWMC) operating performance, financial results and direction of the company. As a result, I am formally writing to nominate the following four Director(s) candidate(s) to the Trans World Entertainment Corporation, (Nasdaq; TWMC), board of directors for a one-year term, beginning at the 2019 Annual Meeting.

The four candidates are: Mark Higgins, Philip Knowles, Mark Freiman, Jeff Hastings (Summary Biography and sign off of each included) Other info available upon request.

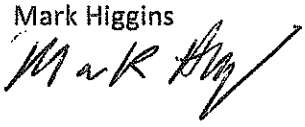
The board nominations I propose for each nominee(s) meet(s) the criteria to hold office and fulfill the duties and responsibilities, and if elected, in whole, could provide the company with diverse business and professional capabilities.

Under the guidelines for submission of shareholder proposals and in accordance with SEC rule 14a-8, Mark R. Higgins, as a beneficial owner of TWMC;(Nasdaq) common stock of the company, holds 433,570 shares of TWMC common stock, which represents 1.2% of the 36,212,570 outstanding shares of TWMC common stock. Additionally, Mark R Higgins has held these shares for more than 1 year timeframe, fully meeting the requirements to propose these director nominations. These director nominations are to be included in the annual proxy statement and on the annual ballot proxy card, including but not limited to, all electronic, telephone and/or other methods of shareholder voting.

Please let me know when you have the proxy card/statement with background info available to review for correctness, I want to ensure the voting process is fair and equitable. I reserve the right to take appropriate steps to secure this right. Furthermore, you could be subject to reimbursement of any and all expenses, legal or otherwise, related to enforcing my shareholder rights.

Thank you for your time and consideration.

Mark Higgins



Mark R. Higgins is formerly a Chief Merchandising Officer at Trans World Entertainment.
Mark Higgins, 53, began his career at Trans World in 1981. Mr Higgins held various positions of increasing responsibility until his retirement in November 2014. Mr Higgins held positions in distribution, retail management, store operations, store planning and merchandising/purchasing. Under Mr Higgins leadership he was responsible for developing and growing the movie entertainment business from 1999 to 2012, beginning as a buyer to become the company's largest sales and profit driver, at which time he was promoted to CMO. Mr Higgins also served on the board of IEMA from 1999-2006 and the board of EMA from 2006 -2014 to further the interest of the company and entertainment industry until his retirement. Since his semi-retirement Mr Higgins has been managing investments and real estate.

I agree to have my name nominated as a candidate for election as director to hold office (subject to the company's by-laws) and placed on the proxy ballot for Trans World Entertainment, (TWMC; Nasdaq), and if elected, agree to serve the one year term expiring at the 2020 annual meeting of shareholders and/or until their successors have been elected and qualified.

Name: **Mark R Higgins**

Signature: DocuSigned by: Mark Higgins ABF7D12FEF66498...

Address: ***

Please sign promptly and return via email to Mark Higgins

Philip T. Knowles is the CEO and founder of Topaz Distribution, LLC. (62)
Topaz was founded in 2006 by Mr. Knowles who has a background as an entrepreneur, having started and sold multiple entertainment companies. Topaz's primary business is providing entertainment products to a wide variety of US retailers. Mr. Knowles will be able to provide the board with extensive insight into retail sales, distribution and inventory management. For the past 5 years Mr. Knowles has been CEO of Topaz Entertainment.

I agree to have my name nominated as a candidate for election as director to hold office (subject to the company's by-laws) and placed on the proxy ballot for Trans World Entertainment, (TWMC; Nasdaq), and if elected, agree to serve the one year term expiring at the 2020 annual meeting of shareholders and/or until their successors have been elected and qualified.

Name: **Philip T. Knowles**

Signature: DocuSigned by:
C99BC79FAF1E46C...

Address: ***

Please sign promptly and return via email to Mark Higgins

Mark J. Freiman is Founder and CEO of Freiman Capital Group
Mark is a accomplished Senior Executive with unique successful combination of entrepreneurial and corporate leadership background in managing and developing high growth retail organizations. Profit oriented leader with excellent visionary, analytic, creative and decision-making skills. Mark has served as consultants to CEO's and public traded companies with a crisis management and turn around focus. Mark was also the former CEO of Harold's, who operated Hallmark stores in regional shopping malls. Mark also served as board chairman of Body Accents, a regional Women's Athleisure chain. For the past 5 years Mark has been working in real estate acquisitions as well as various executive consulting roles.

I agree to have my name nominated as a candidate for election as director to hold office (subject to the company's by-laws) and placed on the proxy ballot for Trans World Entertainment, (TWMC; Nasdaq), and if elected, agree to serve the one year term expiring at the 2020 annual meeting of shareholders and/or until their successors have been elected and qualified.

Name: **Mark J Freiman**

Signature: DocuSigned by:
Mark Freiman
F3DAEF9360944B4...

Address: ***

Please sign promptly and return via email to Mark Higgins

Jeff Hastings is the Senior Vice President of Domestic Sales at Paramount Pictures
Jeff Hastings is a seasoned executive with over 18 years in the home media entertainment industry. Jeff has been a key driver in the development of meaningful and cost-effective retail solutions to drive customer engagement in the Home Entertainment category in both the physical and digital space at all major U.S. and Canadian retailers in all classes of trade. Jeff is currently overseeing Paramount Pictures' Domestic Home Media Sales Team for physical DVD and Blu-Ray sell through and rental transactions across 75 direct and indirect customers in the U.S. and Canada. Jeff was also with Warner Home media as a director in category management for high volume retailers. Jeff has a strong analytical background, he is able to anticipate changing consumer demand at store level for emerging formats to refine forecasts and placement and profit. Since 2011 Jeff is responsible for managing the domestic sales for this major entertainment supplier who has a uniquely integrated focus on digital and physical media. Jeff is visionary leader specializing in sales, sales planning and executing strategic initiatives to capitalize on emerging opportunities in the entertainment marketplace.

I agree to have my name nominated as a candidate for election as director to hold office (subject to the company's by-laws) and placed on the proxy ballot for Trans World Entertainment, (TWMC; Nasdaq), and if elected, agree to serve the one year term expiring at the 2020 annual meeting of shareholders and/or until their successors have been elected and qualified.

Name: **Jeff Hastings**

Signature: DocuSigned by: Jeff Hastings 57F8883D3AC245D...

Address: ***

TRANS WORLD ENTERTAINMENT

February 15, 2019

VIA EMAIL AND OVERNIGHT MAIL

Mark Higgins
PO Box 928
Guilderland, NY 12084
***

Dear Mr. Higgins:

I am writing on behalf of Trans World Entertainment Corporation ("***Trans World***"), which received the shareholder proposal submitted on February 1, 2019 by you pursuant to Rule 14a-8 adopted under Section 14(a) of the Securities Exchange Act of 1934, as amended ("***Rule 14a-8***") for inclusion in the proxy statement for Trans World's 2019 annual meeting of shareholders (the "***Proposal***").

The Proposal contains certain eligibility and procedural deficiencies, which Rule 14a-8(f) requires us to bring to your attention.

Defect 1

Rule 14a-8(b) provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. According to Trans World's stock records, you are not currently the registered holder of a sufficient number of shares to satisfy this requirement. In addition, to date we have not received proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to Trans World. Furthermore, we have not received a written statement that you intend to continue to hold the required number or amount of shares through the date of Trans World's 2019 annual meeting of shareholders.

To remedy Defect 1, you must submit (i) sufficient proof of your continuous ownership of the required number or amount of Trans World shares for the one-year period preceding and including February 1, 2019 (the date the Proposal was submitted to Trans World) and (ii) a written statement that you intend to continue to hold the required number or amount shares through the date of Trans World's 2019 annual meeting of shareholders. As explained in Rule 14a-8(b) and in Securities and Exchange Commission ("***SEC***") staff guidance, sufficient proof must be in the form of:

- a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that you continuously held the required number or amount of Trans World shares for the one-year period preceding and including February 1, 2019; or

- if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the required number or amount of Trans World 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.

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

If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number or amount of Trans World shares for the one-year period preceding and including February 1, 2019.

If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number or amount of Trans World shares for the one-year period preceding and including February 1, 2019. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including February 1, 2019, the required number or amount of Trans World shares were continuously held: (i) one statement from your broker or bank confirming your ownership; and (ii) one statement from the DTC participant confirming the broker or bank's ownership. Please review SLB 14F and SLB 14G carefully before submitting proof of ownership to ensure that it is compliant.

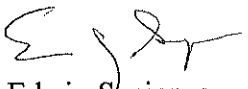
Defect 2

Rule 14a-8(d) provides that the Proposal, including any accompanying supporting statement, may not exceed 500 words. Your Proposal exceeds 500 words.

To remedy Defect 2, you must submit a revised version of the Proposal that, together with any accompanying supporting statement, does not exceed 500 words.

Rule 14a-8(f) requires that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 38 Corporate Circle, Albany, New York 12203. Alternatively, you may transmit any response by email to me at esapienza@twec.com. A copy of Rule 14a-8, which applies to shareholder proposals submitted for inclusion in proxy statements, is enclosed for your reference.

Sincerely,



Edwin Sapienza
Secretary

Enclosures

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

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

accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

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

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

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

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

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

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

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

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

participant?

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

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

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

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

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

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

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

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

D. The submission of revised proposals

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

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's 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.

http://www.sec.gov/interps/legal/cfslb14f.htm

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Use of website addresses in proposals and supporting statements

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

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

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

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

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the

exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

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

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

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

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

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

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

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

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

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

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

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17 CFR 240.14a-8 Shareholder proposals.

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

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

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

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

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

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

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

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

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

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

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

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form

10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

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

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

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80

calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]

Exhibit A(3) - Higgins Revised Proposal

2/28/2019

VIA EMAIL & CERTIFIEDMAIL

Edwin Sapienza
Secretary
TransWorld Entertainment Corporation
38 Corporate Circle
Albany, NY 12203

Re: Shareholder Proposal

Mr. Sapienza:

In conjunction with the Shareholder Proposal enclosed, I hereby declare as required pursuant to Rule 14a-8 of the Exchange Act:

I am the beneficial holder of shares of Trans World Entertainment Corporation, a New York corporation (the "Company") through a securities intermediary. Such shares total $212,400.30 as of the date of this letter (433,470 shares x .49 trading price), and I have held such shares for the 1 year period as of the date of the enclosed proposal; and I intend to hold shares of the Company with a fair market value of at least $2,000 through the date of the next meeting of the shareholders of the Company.

This letter serves as a correction to my prior proposal, however, the consent and signatures of the nominated directors in the prior proposal should stand.

Sincerely,

Mark Higgins

SHAREHOLDER PROPOSAL & SUPPORTING STATEMENT TO
THE NOMINATING AND CORPORATE GOVERNANCE COMMITTEE
TRANSWORLD ENTERTAINMENT CORPORATION
February 28, 2019

Shareholder Proposal

Mark Higgins, who beneficially owns 433,470 shares of the issued and outstanding common stock of TransWorld Entertainment Corporation, a New York corporation (the "Company"), submits the following directors for consideration by the Nominating and Corporate Governance Committee:

- **Philip Knowles (***): CEO, founder (2006) - Topaz Distribution, LLC.** Knowles, an entrepreneur, started and successfully sold multiple entertainment companies. Topaz's business is providing entertainment products to a wide variety of retailers. Knowles will provide extensive insight into retail, distribution and inventory management.
- **Mark Higgins (***): former Chief Merchandising Officer of Company, 1981-2014.** Higgins held positions in distribution, retail management, operations, planning, merchandising/purchasing at the Company. Higgins became the Company's largest sales & profit driver. Higgins served on the board of IEMA (1999-2006) and the board of EMA (2006 -2014).
- **Mark Freiman (*** 117): CEO, founder - Freiman Capital Group.** Freiman, has unique entrepreneurial and corporate leadership experience managing and developing high growth retail organizations. Freiman a profit-oriented leader with visionary, analytic, creative, and decision-making skills. Freiman has consulted publicly traded companies with a crisis management and turn-around focus.
- **Jeff Hastings (***), Senior VP Sales – Paramount Pictures (2011-Present).** Hastings is a key driver in meaningful and cost-effective retail and digital solutions to drive customer engagement. Hastings has a strong analytical background and is able to anticipate changing consumer demand.

Supporting Statement:

You are urged to vote for one or more of above candidates for the following reasons:

- The Company has not been successful in delivering positive returns for shareholders, as reflected in the decreasing price of shares. In December 2015 the stock price was $3.58; the current stock price is $0.49.

The nominations proposed meet the criteria to hold office, fulfill the duties and responsibilities, and if elected, in whole, could provide the Company with diverse business and professional capabilities.

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

February 20, 2019

Mark R Higgins
PO Box 928
Guilderland, NY 12084-0928

Dear Mr. Higgins:

Thank you for contacting Fidelity Investments. This letter is in response to your request for Fidelity to verify the total shares of Trans World Entertainment Corporation (TWMC) in your Fidelity Brokerage Accounts ending in *** and ***. The time period for the transactions in question took place between February 1, 2018 and February 1, 2019. I appreciate the opportunity to assist you with this matter.

Please see the following tables for the information requested in account ending in *** :

***

***

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

Please see the following tables for the information requested in account ending in *** :

***

Additionally, these tables contain information as of February 19, 2019 and may be subject to change, pending any new and subsequent transactions in the same securities. They may not reflect impact from any previous corporate actions. This information is unaudited and is not intended to replace your monthly statement or official tax documents.

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

I hope you find this information helpful. If you have any questions regarding this issue or general inquiries regarding your account, please contact Fidelity Active Trader Services at 877-907-4429 for assistance.

Sincerely,

Chad R. Dunaway
Personal Investing Operations

Our File: W783703-19FEB19

E*TRADE FINANCIAL

E*TRADE Securities LLC
PO Box 484
Jersey City, NJ 07303

www.etrade.com
Member FINRA/SIPC

February 19, 2019

Mark R. Higgins
P.O. Box 928
Guilderland, NY 12084

Re: E*TRADE Securities Account *** ; Individual

Dear Mark R. Higgins,

This letter is regarding the confirmation of ownership for shares of Trans World Entertainment Corp. (symbol: TWMC) held in E*TRADE Securities account ***.

Allow us to confirm, Mark R. Higgins was the beneficial owner of 69,581 shares of TWMC during the period of February 1, 2018 through February 1, 2019. The shares have remained in the account since the initial purchase and during the above referenced timeframe.

We hope that this information satisfies your request. Should you have any further questions, please feel free to contact a Financial Services Representative at 800-ETRADE-1 (800-387-2331, or +1 678 624 6210 internationally), 24 hours a day, seven days a week

Sincerely,

Correspondence Department 26536

PLEASE READ THE IMPORTANT DISCLOSURES BELOW.

The E*TRADE Financial family of companies provides financial services, including trading, investing, and banking products and services, to retail customers.

Securities products and services offered by E*TRADE Securities LLC, Member FINRA/SIPC, are not insured by the FDIC, are not deposits or obligations of, or guaranteed by, E*TRADE Bank, and are subject to investment risk, including possible loss of the principal amount invested.

Banking products and services are offered by E*TRADE Bank, a Federal savings bank, Member FDIC, or its subsidiaries.

E*TRADE Securities LLC and E*TRADE Bank are separate but affiliated companies.