



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

DIVISION OF  
CORPORATION FINANCE

February 15, 2019

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
shareholderproposals@gibsondunn.com

Re: General Electric Company

Dear Mr. Mueller:

This letter is in regard to your correspondence dated February 15, 2019 concerning the shareholder proposal (the "Proposal") submitted to General Electric Company by the Jim and Patty Rouse Charitable Foundation et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponents have withdrawn the Proposal and that the Company therefore withdraws its December 24, 2018 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Kasey L. Robinson  
Special Counsel

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

February 15, 2019

VIA E-MAIL

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

Re: *General Electric Company*  
*Shareowner Proposal of the Jim and Patty Rouse Charitable*  
*Foundation et al.*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

In a letter dated December 24, 2018, we requested that the staff of the Division of Corporation Finance concur that our client, General Electric Company (the “Company”), could exclude from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareowners a shareowner proposal (the “Proposal”) and statements in support thereof from As You Sow on behalf of: the Jim and Patty Rouse Charitable Foundation; Bartlett Naylor; the Mulliken Family Trust; The Amy Wendel Revocable Trust; The Gun Denhart Living Trust; Schwab Charitable Foundation FBO The Resiliency Fund; and The Nicola Miner Revocable Trust (collectively, the “Proponents”).

Enclosed as Exhibit A is confirmation from Danielle Fugere, dated February 11, 2019, withdrawing the Proposal on behalf of the Proponents. In reliance thereon, we hereby withdraw the December 24, 2018 no-action request relating to the Company’s ability to exclude the Proposal pursuant to Rule 14a-8 under the Securities Exchange Act of 1934.

Please do not hesitate to call me at (202) 955-8671, or Brian Sandstrom, the Company’s Executive Counsel, Corporate, Securities and Finance, at (617) 443-2920 with any questions regarding this matter.

Sincerely,



Ronald O. Mueller

Enclosure

cc: Brian Sandstrom, General Electric Company  
Danielle Fugere, As You Sow



February 7, 2019

Ann R. Klee  
Vice President, EHS  
General Electric Company  
41 Farnsworth Street  
Boston, MA 02210

*Re: Withdrawal of 2019 Report on Climate Risk Management in Emerging Markets*

Dear Ms. Klee,

*As You Sow* appreciates the constructive dialogue we have had with General Electric regarding climate change risks and our 2019 shareholder proposal on fossil fuel investments in emerging markets. Following *As You Sow's* submission of the Proposal and additional discussions with the company, *As You Sow* and General Electric agree:

- 1) GE is committed to the goals and the science of the Paris Agreement. GE is uniquely positioned to deliver technology that can help the world meet the greenhouse gas emissions reduction targets called for by the 2015 Paris Agreement and the long term goal of sustainable development. GE takes seriously the potential negative environmental impact, displacement of people, political disruption, and human rights concerns that may exist where it does business.

Accordingly GE agrees to meet with *As You Sow* in March 2019 to discuss *As You Sow's* perspective and recommendations, gained from its experience across companies and industries, on topics, best practices, and suggestions related to GE's climate change assessment and disclosures concerning fossil-fuel related projects in developing countries. GE agrees to work in good faith with *As You Sow* and to update *As You Sow* by the end of June 2019 as to topics where GE agrees with elements of *As You Sow's* recommendations, including with respect to enhancements to GE's disclosures, and where GE will need additional time to consider such topics. GE will consider *As You Sow's* input in good faith, but would not be compelled to respond to each topic identified by *As You Sow*.

- 2) The parties agree that the above would be the initial stage of their discussions, and that the sharing of information is likely to continue to be beneficial to both parties moving forward. GE intends to maintain a good faith dialogue beyond the specific framework above.



AS YOU SOW

- 3) In exchange for General Electric's actions described above, *As You Sow* agrees to withdraw its shareholder proposal and agrees that such proposal need not appear in the Company's definitive proxy statement for General Electric's 2019 annual meeting.

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

**AS YOU SOW:**

2/11/2019

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Danielle R. Fugere  
President and General Counsel  
As You Sow

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Date

**GENERAL ELECTRIC COMPANY:**

2.8.19

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Ann R. Klee  
Vice President, EHS  
General Electric Company

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Date

December 24, 2018

VIA E-MAIL

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

Re: *General Electric Company*  
*Shareowner Proposal of the Jim and Patty Rouse Charitable*  
*Foundation et al.*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, General Electric Company (the “Company”), intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Shareowners (collectively, the “2019 Proxy Materials”) a shareowner proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from As You Sow purportedly on behalf of: the Jim and Patty Rouse Charitable Foundation; Bartlett Naylor; the Mulliken Family Trust; The Amy Wendel Revocable Trust; The Gun Denhart Living Trust; Schwab Charitable Foundation FBO The Resiliency Fund; and The Nicola Miner Revocable Trust (each a “Proponent” and collectively, the “Proponents”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

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

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concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proposal states:

**RESOLVED:** Shareholders request that General Electric, with board oversight, publish a report, omitting proprietary information and prepared at reasonable cost, assessing the adequacy of the company's climate change related criteria for ensuring that investments in fossil fuel projects in emerging markets are consistent with the Paris Agreement's goal of limiting global temperature increase to "well below 2 degrees Celsius."

The Supporting Statement states:

In creating the report, investors request the company consider:

- Whether its criteria adequately manage the reputational, financial, and climate risks to GE associated with proposed fossil fuel projects
- Whether its criteria avoid investments in fossil fuel projects in developing markets that run counter to a country's ability to meet its Nationally Determined Contribution to the Paris Agreement, especially in countries with inadequate mechanisms to enforce climate policies

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

## BASES FOR EXCLUSION

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

- Rule 14a-8(b) and Rule 14a-8(f)(1) because each of the Proponents either failed to establish the requisite eligibility to submit the Proposal or failed to provide appropriate authorization to the Proponent's representative to submit the Proposal; and
- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations.

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ANALYSIS

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

*A. Overview*

A summary of the deficiencies with the materials submitted by As You Sow, as described below and reflected in the Exhibits to this letter, is set forth in the following table:

<b>Proponent</b>	<b>Proof of Beneficial Ownership</b>	<b>Delegation of Authority Documentation</b>
Bartlett Naylor	Proof of ownership failed to (i) indicate the market value or number of shares the Proponent held as of November 14, 2018 or (ii) prove continuous ownership of the required number or amount of shares for one year as of November 14, 2018.	Documentation failed to specify the Proposal as the proposal authorized to be submitted by As You Sow.  No revised documentation provided.
The Gun Denhart Living Trust	No proof of ownership provided.	<b>Revised documentation specified the Proposal as the proposal authorized to be submitted by As You Sow.</b>
Mulliken Family Trust	Proof of ownership failed to prove continuous ownership for one year as of November 14, 2018.	Documentation failed to specify the Proposal as the proposal authorized to be submitted by As You Sow.  No revised documentation provided.
The Amy Wendel Revocable Trust	<b>Proof of ownership verified continuous ownership of the required number or amount of shares for the one-year period preceding and including November 14, 2018.</b>	Documentation failed to specify the Proposal as the proposal authorized to be submitted by As You Sow.  No revised documentation provided.
The Nicola Miner Revocable Trust	<b>Proof of ownership verified continuous ownership of the required number or amount of shares for the one-year period preceding and including November 14, 2018.</b>	Documentation failed to specify the Proposal as the proposal authorized to be submitted by As You Sow.  No revised documentation provided.

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Schwab Charitable Foundation FBO The Resiliency Fund	No proof of ownership provided.	Documentation failed to specify the Proposal as the proposal authorized to be submitted by As You Sow.  No revised documentation provided.
Jim and Patty Rouse Charitable Foundation	No proof of ownership provided.	Documentation failed to specify the Proposal and did not indicate the signatory's authority to sign the documentation on behalf of the Proponent.  No revised documentation provided.

## *B. Background*

On November 14, 2018, As You Sow submitted the Proposal to the Company via email, which the Company received on the same day. *See Exhibit A.* In its letter dated November 14, 2018, As You Sow indicated that it was submitting the Proposal on behalf of lead filer the Jim and Patty Rouse Charitable Foundation and included a letter dated October 19, 2018 purporting to authorize As You Sow to submit a proposal on behalf of the Jim and Patty Rouse Charitable Foundation. *See Exhibit A.* The authorization letter did not identify the Proposal but instead identified the proposal authorized to be submitted as “Coal” and was signed by James Norton. Neither the authorization letter nor As You Sow’s November 14, 2018 letter provided evidence of Mr. Norton’s authority to sign the authorization letter on behalf of the Jim and Patty Rouse Charitable Foundation. *See Exhibit A.*

Via the same email sent to the Company on November 14, 2018, As You Sow purported to submit the Proposal on behalf of six co-filers: Bartlett Naylor; the Mulliken Family Trust; the Schwab Charitable Foundation FBO The Resiliency Fund; The Amy Wendel Revocable Trust; The Gun Denhart Living Trust; and The Nicola Miner Revocable Trust. *See Exhibit B.* As with the documentation submitted on behalf of the Jim and Patty Rouse Charitable Foundation, the documentation submitted on behalf of the co-filing Proponents did not identify the Proposal but instead identified the proposal authorized to be submitted either as “Coal,” “Coal Risk” or “relating to coal risk.” *See Exhibit B.*

Neither of As You Sow’s November 14, 2018 submissions was accompanied by any proof of any Proponent’s ownership of Company securities. *See Exhibit A* and *Exhibit B.* The Company reviewed its stock records, which did not indicate that any Proponent was the record owner of any shares of Company securities.



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*C. The Company Provided A Detailed And Timely Deficiency Notice*

Accordingly, on November 21, 2018, which was within 14 days of the date that the Company received the Proposal, the Company sent As You Sow<sup>1</sup> a letter notifying As You Sow of the Proposal's procedural deficiencies as required by Rule 14a-8(f) (the "Deficiency Notice"). In the Deficiency Notice, attached hereto as Exhibit C, the Company informed As You Sow of the requirements of Rule 14a-8 and how the Proponents could cure the procedural deficiencies.

Specifically, the Deficiency Notice stated:

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

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<sup>1</sup> As You Sow did not provide contact information for the Proponents.

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

The Deficiency Notice also included a copy of Rule 14a-8 and SEC Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F"). The Deficiency Notice was sent to As You Sow on November 19, 2018 via email. *See Exhibit C.* Accordingly, the Proponents' responses to the Deficiency Notice were required to be postmarked or transmitted electronically on or before December 5, 2018 (*i.e.*, 14 calendar days from the Proponent's receipt of the Deficiency Notice).

*D. As You Sow's Response Failed to Cure The Deficiencies*

At 7:52 pm on December 5, 2018, the 14<sup>th</sup> calendar day after its receipt of the Deficiency Notice, As You Sow responded to the Deficiency Notice via email (the "Response Letter"). *See Exhibit D.*

- i. As You Sow's Response Failed To Demonstrate Authority To Submit The Proposal On Behalf Of All Proponents Except One.

With the Response Letter, As You Sow submitted a revised authorization letter from The Gun Denhart Living Trust, in which The Gun Denhart Living Trust identified the Proposal as the proposal that As You Sow was authorized to submit on its behalf. *See Exhibit E*, in which The Gun Denhart Living Trust stated, "The resolution at issue relates to Address GE's climate change related criteria for ensuring investments in coal and other fossil fuel projects are consistent with Paris Agreement goals."

However, no other Proponent submitted new documentation authorizing As You Sow to submit the Proposal on its behalf. Instead, in its letter, As You Sow claimed "[w]hile the authorization letters inadvertently included the topic 'coal' instead of the description of the Proposal, a detailed description identifying the Proposal was transmitted to Proponents, either directly or through their asset managers prior to authorization." The Response Letter continued with the following explanation:

Specifically, prior to shareholders' authorization of the proposal, information identifying the purpose of the proposal as: "Assess risks of expanding coal infrastructure abroad and the feasibility of substituting clean energy alternatives" was sent from *As You Sow* to Proponents Bartlett Naylor and Gun Denhart of the Gun Denhart Living, on October 28, 2018 and November 9, 2018, respectively. The information transmitted by *As You Sow* is set forth below:

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<b>Program</b>	<b>Initiative</b>	<b>Resolution</b>	<b>Notes</b>
Energy	Climate Change	Coal Risk	Assess risks of expanding coal infrastructure abroad and the feasibility of substituting clean energy alternatives

ii. As You Sow’s Response Failed to Demonstrate Proof Of Ownership On Behalf Of All Except Two Proponents.

In the Response Letter, As You Sow indicated that the Jim and Patty Rouse Charitable Foundation would no longer be the lead filer of the Proposal because after As You Sow had submitted the Proposal on November 14, 2018 purportedly on the foundation’s behalf, As You Sow learned that “the Foundation is no longer a client of the asset manager and thus [As You Sow is] unable to identify and contact a custodial for proof ownership.” As You Sow then stated that it was identifying Bartlett Naylor as the leader proponent for the Proposal. *See Exhibit D.*

In addition, As You Sow enclosed letters purporting to provide proof of ownership of Company securities for several of the Proponents—Bartlett Naylor; the Mulliken Family Trust; The Amy Wendel Revocable Living Trust; and The Nicola Miner Living Trust. No proof of ownership was provided for Schwab Charitable Fund FBO The Resiliency Fund or The Gun Denhart Living Trust.

Of the letters submitted, only the letters provided for The Amy Wendel Revocable Trust and The Nicola Miner Living Trust demonstrated such Proponent’s continuous share ownership for the full one-year period preceding and including November 14, 2018, the date on which the Proposal was submitted. *See Exhibit F and Exhibit G.* However, the letters provided for the remaining two Proponents failed to demonstrate the applicable Proponent’s ownership as required by Rule 14a-8(b).

For Bartlett Naylor, As You Sow submitted a letter from Charles Schwab & Co., Inc., dated November 26, 2018 (the “Naylor Charles Schwab Letter”), which stated, in pertinent part:

The above account, registered as BARTLETT C NAYLOR, Schwab One Individual Brokerage account, contains the security General Electric ( GE) which has been owned in the account at least two years and has been owned continuously in that time period. As of 11/26/2018, the account contains at least \$2000.00 in market value of GE stock.

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See Exhibit H. As such, the Naylor Charles Schwab Letter failed to provide verification of Mr. Naylor's continuous ownership of the required number or amount of Company shares for at least one year prior to and including the date on which Proposal was submitted (*i.e.*, November 14, 2018) because it did not indicate either the number or amount of Company shares Mr. Naylor had continuously owned as of November 26, 2018.

For the Mulliken Family Trust, As You Sow submitted a letter from TD Ameritrade Institutional, dated November 29, 2018 (the "Mulliken Ameritrade Letter"), which stated in pertinent part:

TD Ameritrade Institutional, a DTC participant, acts as the custodian for Mulliken Family Trust account ending \*\*\*. As of the date of this letter, Mulliken Family Trust held, and has held continuously for at least 365 days, 230 shares of General Electric common stock.

See Exhibit I. As such, the Mulliken Ameritrade Letter failed to provide verification of the Mulliken Family Trust's continuous ownership of the required number or amount of Company shares for at least one year prior to and including the date on which the Proposal was submitted (*i.e.*, November 14, 2018).<sup>2</sup>

## *E. Analysis*

The Company may exclude the Proposal under Rule 14a-8(f)(1) because none of the Proponents substantiated its eligibility to submit the Proposal under Rule 14a-8(b), as requested by, and described in, the Company's timely Deficiency Notice. Specifically, no Proponent has provided the Company with both (i) sufficient documentation describing such Proponent's delegation of authority to As You Sow to submit the Proposal to the Company and (ii) the beneficial ownership information required under Rule 14a-8(b) and (ii).

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<sup>2</sup> We note that As You Sow provided a letter from Charles Schwab & Co., Inc. dated November 30, 2018 addressed to Schwab Charitable Fund Emily Scott-Pottruck Donor. However, the Company received no other correspondence or submission materials from As You Sow related to such an entity.

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- i. Only One Proponent Provided Sufficient Documentation Describing Its Sufficient Delegation Of Authority To As You Sow To Submit The Proposal.

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

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

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

The Staff indicated that such documentation is intended to address concerns about proposals by proxy including, "whether [shareowners] may not know that proposals are being submitted on their behalf." *Id.* In addition, the Staff instructed companies seeking exclusion of a proposal under Rule 14a-8(b) based on a shareowner's failure to provide some or all of the information described above that the company "must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect." *Id.* n. 12.

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Here, the documentation submitted by As You Sow with the Proposal on November 14, 2018 was insufficient to demonstrate any Proponent's proper delegation of authority to As You Sow to submit the Proposal on behalf of such Proponent. The Deficiency Notice clearly explained that the documentation submitted was not sufficient because the documentation "does not identify the Proposal as the specific proposal to be submitted" on behalf of the Proponents. The Deficiency Notice explained that the documentation provided "describes the proposal that you are authorized to submit as 'Coal' or 'relating to coal risk,'" whereas "the subject matter of the Proposal is not focused on 'coal risk' but instead addresses climate change related investment criteria for fossil fuel projects in emerging markets." The Deficiency Notice further explained that in order to cure these deficiencies, "each Proponent should provide documentation that confirms that as of the date [As You Sow] submitted the Proposal, each Proponent had instructed or authorized [As You Sow] to submit the Proposal to the Company on each Proponent's behalf" and that such documentation "should identify the specific proposal to authorized to be submitted."<sup>3</sup> See Exhibit C.

Despite the Deficiency Notice's clearly identifying the specific defects in the materials submitted by As You Sow and providing clear instructions that to cure such defects As You Sow should provide documentation for each Proponent "that confirms that as of the date [As You Sow] submitted the Proposal, each Proponent had instructed or authorized [As You Sow] to submit the Proposal to the Company on each Proponent's behalf," the Response Letter only provided such documentation for one Proponent, The Gun Denhart Trust. See Exhibit E. With respect to each other Proponent, As You Sow failed to provide such documentation and instead claimed in its December 5, 2018 letter to the Company that "[w]hile the authorization letters inadvertently included the topic 'coal' instead of the description of the Proposal, a detailed description was transmitted to Proponents, either

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<sup>3</sup> We note that the Deficiency Notice also indicated that the documentation provided by As You Sow for the Jim and Patty Rouse Charitable Foundation, which had previously been designated as lead filer of the Proposal, was insufficient because it did not "evidence the signatory's authority to sign the documentation on behalf" of the Jim and Patty Rouse Charitable Foundation. The Deficiency Notice clearly stated that to cure the deficiency, the documentation "should be signed by the shareowner or should indicate the signatory's authority to sign the documentation on behalf of the shareowner." As discussed above, in its December 5, 2018 response to the Deficiency Notice, As You Sow withdrew the Jim and Patty Rouse Charitable Foundation, which had previously been designated as lead filer of the Proposal, because As You Sow learned "that the Foundation is no longer a client of the asset manager" after As You Sow purported to submit the Proposal on behalf of the foundation on November 14, 2018.

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directly or through their asset managers prior to authorization.”<sup>4</sup> See Exhibit D (emphasis added).

However, the “detailed description” that the Response Letter states was provided to the Proponents or their asset managers does not relate to the Proposal. As noted above, the description that As You Sow states was transmitted refers to the Proposal as “Coal Risk” and notes, “Assess risks of expanding coal infrastructure abroad and the feasibility of substituting clean energy alternatives.” This note does not specifically identify or sufficiently describe a proposal that addresses climate change related investment criteria for fossil fuel projects in emerging markets. In particular, the term “fossil fuels” covers a wide variety of energy sources beyond “coal,” such as natural gas.<sup>5</sup> In addition, the description that As You Sow states was provided to the Proponents or their asset managers does not refer at all to fossil fuel investments or funding, and (unlike that description) the Proposal does not refer to “the feasibility of substituting clean energy alternatives.” Thus, even relying on As You Sow’s statement as to the information provided to each of the Proponents or their asset managers, As You Sow has not demonstrated that the Proponents know the specific proposal submitted purportedly on their behalf.

In addition, we note that on its website As You Sow maintains a dedicated webpage to track the shareowner proposals it submits.<sup>6</sup> On the webpage, shareowner proposals can be sorted by company, program, initiative and status. See Exhibit J. On this As You Sow website page, “Coal” and “Climate Change” are presented as two separate and distinct initiatives. Notably, as You Sow lists the Proposal under “Climate Change,” and thus on its own website

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<sup>4</sup> As You Sow has not provided any evidence or assurance that, when As You Sow provided a document to a Proponent’s asset manager, that document was then provided to the Proponent.

<sup>5</sup> With respect to the use of natural gas to generate energy, natural gas emissions are lower than emissions for coal and thus can be viewed as a preferred source of energy production. While emissions related to the production or supply chain of natural gas may raise climate change concerns, shareowners may not have those concerns with respect to investments in natural gas powered electricity generation facilities.

<sup>6</sup> See As You Sow, *Current Resolutions*, available at <https://www.asyousow.org/resolutions-tracker/> (as of December 21, 2018). Screen shots of the As You Sow website are attached to this letter as Exhibit J.

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is presenting the Proposal as addressing a topic different from “Coal” and “Coal Risk.”<sup>7</sup> Thus, if as stated by As You Sow, the Proposal were presented to the Proponents or to the Proponents’ asset managers as related to “Coal Risk,” there is no basis for concluding that the Proponents would have supported a Proposal that As You Sow now characterizes as part of its “Climate Change” initiative

Although the Proponent’s failure to include a description of the Proposal in the documentation submitted by As You Sow may have been “inadvertent[.]” neither that fact nor As You Sow’s representation in its December 5, 2018 letter is sufficient to cure the deficiencies with the documentation submitted by As You Sow on behalf of the Proponents Bartlett Naylor, the Mulliken Family Trust, The Amy Wendel Revocable Trust, The Nicola Miner Revocable Trust and Schwab Charitable Fund FBO The Resiliency Fund.

As discussed above, when evaluating a proposal by proxy, the Staff will evaluate whether the proponent provides sufficient documentation “describing the [shareowner]’s delegation of authority to the proxy,” including whether the documentation “identif[ies] the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%).” *See* Section D, SLB 14I. Requiring such information is intended to “alleviate concerns about proposals by proxy,” including whether shareowners know what proposals are being submitted on their behalf. *Id.* The documentation issues raised by the materials and explanations provided by As You Sow, including how As You Sow itself categorizes the Proposal on its website, and the inconsistencies with respect to the documentation provided by As You Sow, are exactly the types of issues that the Staff described in SLB 14I. Despite the Deficiency Notice’s clear instructions, only one Proponent, The Gun Denhart Trust, provided sufficient documentation that confirmed that as of the date the Proposal was submitted The Gun Denhart Trust had authorized As You Sow to submit the Proposal to the Company on its behalf and, as discussed below, that Proponent failed to provide proof that it was eligible to submit the Proposal. Accordingly, As You Sow has failed to demonstrate that it was authorized to act as the Proponents’ proxy to submit the Proposal to the Company.

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<sup>7</sup> The website indicates that for the current proxy season, Duke Energy is the only company to which As You Sow has submitted a proposal relating to “Coal.”



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ii. Only Two Proponents Provided Proof Of Beneficial Ownership Required Under Rule 14a-8(b).

Rule 14a-8(b)(1) provides, in part, that “[i]n order to be eligible to submit a proposal, [a shareowner] 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 [the shareowner] submit[s] the proposal.” Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”) specifies that when the shareowner is not the registered holder, the shareowner “is responsible for proving his or her eligibility to submit a proposal to the company,” which the shareowner may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, SLB 14.

Rule 14a-8(f) provides that a company may exclude a shareowner proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. The Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponent in a timely manner the Deficiency Notice, which specifically set forth the information listed above and included a copy of both Rule 14a-8 and SLB 14F. *See Exhibit C.*

In addition, Staff Legal Bulletin No. 14G (Oct. 16, 2012) (“SLB 14G”) provides specific guidance on 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). Specifically, it states that where “a proponent’s proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted,” a company must “provide[] 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.”

Thus, the Staff has consistently granted no-action relief where proponents have failed, following a timely and proper request by a company, to furnish the full and proper evidence of continuous share ownership for the full one-year period preceding and including the submission date of the proposal, even where the date gap was only for one day. For example, in *PepsiCo, Inc. (Albert)* (avail. Jan. 10, 2013), the proponent submitted the proposal on November 20, 2012, and included a broker letter that established ownership of the company’s securities for one year as of November 19, 2012. The company sent a timely deficiency notice to the proponent identifying the date gap, and the proponent did not respond to the deficiency notice. The company argued that the proposal could be excluded because the broker letter was insufficient to prove continuous share ownership for one year preceding and including November 20, 2012, the date the proposal was submitted. The Staff

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concurring with the exclusion of the proposal under Rules 14a-8(f) and 14a-8(b). *See also Mondelēz International, Inc.* (avail. Feb. 11, 2014) (letter from broker stating ownership for one year as of November 27, 2013 was insufficient to prove continuous ownership for one year as of November 29, 2013); *Morgan Stanley* (avail. Jan. 15, 2013) (letter from broker stating ownership for one year as of November 6, 2012 was insufficient to prove continuous ownership for one year as of November 9, 2012, the date the proposal was submitted); *Comcast Corp.* (avail. Mar. 26, 2012) (letter from broker stating ownership for one year as of November 23, 2011 was insufficient to prove continuous ownership for one year as of November 30, 2011, the date the proposal was submitted); *Verizon Communications Inc.* (avail. Jan. 12, 2011) (first broker letter stating ownership “for more than one year” as of November 16, 2010 was insufficient to prove continuous ownership for one year as of November 17, 2010, the proposal submission date, and second broker letter furnished by proponent was untimely and similarly worded); *The McGraw Hill Companies, Inc.* (avail. Jan. 28, 2008) (letter from broker stating ownership for one year as of November 16, 2007 was insufficient to prove continuous ownership for one year as of November 19, 2007); *International Business Machines Corp.* (avail. Dec. 7, 2007) (letter from broker stating ownership as of October 15, 2007 was insufficient to prove continuous ownership for one year as of October 22, 2007, the date the proposal was submitted); *The Home Depot, Inc.* (avail. Feb. 5, 2007) (letter from broker stating ownership for one year as of November 7, 2005 to November 7, 2006 was insufficient to prove continuous ownership for one year as of October 19, 2006, the date the proposal was submitted).

Here, As You Sow submitted the Proposal on November 14, 2018. Therefore the Proponents were each required to verify continuous ownership for the one-year period preceding and including that date, *i.e.*, November 14, 2017 through November 14, 2018. However, As You Sow did not include in its original submission any documentary evidence of any Proponent’s ownership of Company shares. *See Exhibit A.* While As You Sow’s response on December 5, 2018, cured this deficiency with respect to two Proponents—The Amy Wendel Revocable Trust and The Nicola Miner Revocable Trust—it failed to cure this deficiency with respect to the other Proponents as follows:

- *The Gun Denhart Living Trust*—As You Sow failed to provide any documentary support indicating that The Gun Denhart Living Trust has satisfied the minimum ownership requirement for the one-year period required by Rule 14a-8(b).
- *Schwab Charitable Fund FBO The Resiliency Fund*—As You Sow failed to provide any documentary support indicating that the Schwab Charitable Fund FBO The Resiliency Fund has satisfied the minimum ownership requirement for the one-year period required by Rule 14a-8(b).

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- *Bartlett Naylor*—the Naylor Charles Schwab Letter indicates only that Mr. Naylor’s brokerage account “contains the security General Electric ( GE) which been owned in the account at least two years and has been owned continuously in that time period” and that as of November 26, 2018 (12 days after the date on which the Proposal was submitted) the account “contains at least \$2000.00 in market value of GE stock.” The Naylor Charles Schwab letter neither indicates the market value or number of Company shares Mr. Naylor held as of November 14, 2018 (the date on which the Proposal was submitted) nor does it provide that Mr. Naylor has continuously held the requisite number or amount of shares “for at least one year prior to, and including, November 14, 2018.” See Exhibit H.
- *Mulliken Family Trust*—the Mulliken Ameritrade Letter states the number of shares held by the Mulliken Family Trust as of November 29, 2018 and indicates that such shares have been continuously held “for at least 365 days.” Neither of these statements is sufficient to prove the Mulliken Family Trust’s continuous ownership for one year as of November 14, 2018, the date the proposal was submitted, because neither proves ownership during the 14-day period between November 14, 2017 and November 29, 2017. See Exhibit I.

The Deficiency Notice clearly stated the necessity for each Proponent to prove continuous ownership for the one-year period preceding and including November 14, 2018. The Deficiency Notice instructed As You Sow that each Proponent must “sufficient proof of ownership” in the form of “a written statement from the ‘record’ holder of [the Proponent’s] shares (usually a broker or a bank) verifying that [the Proponent] continuously held the required number or amount of Company shares the one-year period preceding and including November 14, 2018.” In doing so, the Company complied with the Staff’s guidance in SLB 14G for providing the Proponents with adequate instruction as to Rule 14a-8’s proof of ownership requirements, including by attaching copies of both Rule 14a-8 and SLB 14F.

Despite the Deficiency Notice’s instructions, The Gun Denhart Living Trust, Bartlett Naylor, the Mulliken Family Trust and Schwab Charitable Fund FBO The Resiliency Fund failed to provide, within the required 14-day time period from the date As You Sow received the Company’s timely Deficiency Notice, the proof of ownership required by Rule 14a-8(b)(2), and as described in the Deficiency Notice and in SLB 14F.

Importantly, even if any of these Proponents were to provide proof of such Proponent’s ownership of Company securities now, such proof is not timely and thus does not satisfy Rule 14a-8(b) because the 14-day period expired on December 5, 2018. See, e.g., *ITC Holdings Corp.* (avail. Feb. 9, 2016) (concurring with exclusion of proposal because the

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proponent failed to supply, in response to the company's deficiency notice, sufficient proof that the proponent satisfied the minimum ownership requirement as required by Rule 14a-8(b) where the proponent supplied proof of ownership 35 days after receiving the timely deficiency notice); *Prudential Financial, Inc.* (avail. Dec. 28, 2015) (concurring with exclusion of proposal because the proponent failed to supply, in response to the company's deficiency notice, sufficient proof that the proponent satisfied the minimum ownership requirement as required by Rule 14a-8(b) where the proponent supplied proof of ownership 23 days after receiving the timely deficiency notice); *Mondelēz International, Inc.* (avail. Feb. 27, 2015) (concurring with exclusion of proposal because the proponent failed to supply, in response to the company's deficiency notice, sufficient proof that the proponent satisfied the minimum ownership requirement as required by Rule 14a-8(b) where the proponent supplied proof of ownership 16 days after receiving the timely deficiency notice); *Pitney Bowes Inc.* (avail. Jan. 13, 2012) (concurring with exclusion of proposal because the proponents failed to supply, in response to the company's deficiency notice, sufficient proof that the proponents satisfied the minimum ownership requirement as required by Rule 14a-8(b) where proponents supplied proof of ownership 34 days after receiving the timely deficiency notice).

iii. No Proponent Has Established The Requisite Eligibility To Submit The Proposal.

No Proponent has provided both sufficient documentation demonstrating its delegation of authority to As You Sow consistent with Rule 14a-8(b) and the required proof of continuous stock ownership required by Rule 14a-8(b)(2).

As discussed above, only one Proponent, The Gun Denhart Living Trust, has provided sufficient documentation demonstrating its delegation of authority to As You Sow consistent with Rule 14a-8(b) after receiving the Company's timely Deficiency Notice. *See Exhibit E.* However, because The Gun Denhart Living Trust failed to provide any documentary support indicating that The Gun Denhart Living Trust has satisfied the minimum ownership requirement for the one-year period required by Rule 14a-8(b), The Gun Denhart Living Trust has failed to establish the requisite eligibility to submit the Proposal under Rule 14a-8(b).

With respect to the other Proponents, As You Sow acknowledged that their original authorization letters inadvertently failed to specify the Proposal as the proposal authorized to be submitted by As You Sow on behalf of each Proponent. *See Exhibit D.* However, As You Sow did not remedy that initial oversight and instead provided no documentation demonstrating that the Proponents had actually authorized As You Sow to submit the Proposal to the Company on the date As You Sow submitted the Proposal on November 14,

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2018. As You Sow's statements as to the information it provided to the Proponents or to the Proponents' asset managers did not "identify the specific proposal to be submitted."

Accordingly, while two Proponents, The Amy Wendel Revocable Trust and The Nicola Miner Trust, provided the required proof of continuous stock ownership required by Rule 14a-8(b)(2), neither The Amy Wendel Revocable Trust nor The Nicola Miner Trust provided sufficient documentation demonstrating its delegation of authority to As You Sow consistent with Rule 14a-8(b) after receiving the Company's timely Deficiency Notice.

Accordingly, consistent with the precedent cited above, the Proposal is excludable because, despite receiving a timely and proper Deficiency Notice pursuant to Rule 14a-8(f)(1), none of the Proponents have established the requisite eligibility to submit the Proposal as required by Rule 14a-8(b).

## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Deals With Matters Relating To The Company's Ordinary Business Operations.**

### *A. Background*

Pursuant to Rule 14a-8(i)(7), a shareowner proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission explained that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for [shareowners] to decide how to solve such problems at an annual [shareowners] meeting," and identified two central considerations that underlie this policy. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct [shareowner] oversight." The second consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which [shareowners], as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). Moreover, as is relevant here, under Rule 14a-8(i)(7) a proposal that seeks to micro-manage a company's business operations is excludable even if it involves a significant policy issue.

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Framing the stockholder proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). In Staff Legal Bulletin No. 14J (Oct. 23, 2018) (“SLB 14J”), the Commission reaffirmed that the framework for evaluating whether a proposal micro-manages a company “applies to proposals that call for a study or report.” Under that framework, if “the substance of the report relates to the imposition or assumption of specific timeframes or methods for implementing complex policies” it may properly be excluded under Rule 14a-8(i)(7) on micro-management grounds. *Id.*

Consistent with the guidance in the 1998 Release and as described in SLB 14J, the Staff has concurred that proposals that seek to direct how a company evaluates complex policies and to impose specific prescriptive methods and metrics to implement those policies attempt to micro-manage a company, and thus are excludable under Rule 14a-8(i)(7). *See, e.g., Amazon.com, Inc.* (avail. Mar. 6, 2018); *Deere & Co.* (avail. Dec. 27, 2017); *Apple Inc. (Jantz)* (avail. Dec. 21, 2017) (each concurring with the exclusion of a proposal requesting the company prepare a report that sought to impose a specific time-frame and specific method for implementing complex policies related to climate change where the company had already made complex business decisions related to that issue).

*B. The Company Already Has Made Complex Business Decisions To Evaluate Climate Change Implications Of Its Fossil Fuel Investments.*

The Company supports carbon policies to reduce emissions and encourages businesses to do what they do best: innovate and compete to create and disseminate advanced technologies and solutions at the lowest net cost. The Company believes that the Paris Agreement will lead to efforts around the world to reduce global greenhouse gas emissions. Given the unique breadth and diversity of its products, solutions and business activities, the Company plays an important role by providing more energy efficient, cleaner and cost-effective products to its customers in the many industries the Company serves. The Company is committed to reducing the environmental impacts of its operations, while enabling the Company’s customers and partners to do the same through the Company’s products and solutions. Although the Proposal specifically targets the Company’s proposed project in Lamu, Kenya, the Company believes the project exemplifies the Company’s commitment to crafting energy solutions for underserved areas using the world’s best technology to mitigate emissions and environmental impacts.

Specifically, with respect to the investment decisions relating to the types of risk raised by the Proposal, the Company takes into consideration environmental, health and safety issues, including the impact that an investment, such as the Lamu Kenya project, may have on the

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environment and local communities. In addition, the Company takes into account climate change impacts and reputational risks when making an investment decision in coal-fired power generation projects. When a project is located in a developing market, this assessment will also take into account the project's adherence to World Bank Guidelines and International Finance Corporation Performance Standards on environmental, health and safety Performance Standards. In addition, when the Company makes an equity investment in a power generation project, and in particular one involving coal-fired power generation, the Company retains third-party technical and environmental consultants to assist the Company in assessing the environmental and social impacts of such an investment.

As noted in the recitals to the Proposal, the Company is pursuing new development of fossil fuel projects internationally, and each project has its own unique political climate and combination of available renewable resources to help meet national climate goals. The Company's existing policies and practices provide the Company with the flexibility it needs in order to adequately respond to the unique environmental and economic considerations of each potential investment, including fossil fuel projects in developing markets, while maintaining the Company's commitment to supporting carbon policies to reduce emissions.

*C. The Proposal Involves Complex Operational And Business Decisions.*

As noted above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion was "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which [shareowners], as a group, would not be in a position to make an informed judgment." The 1998 Release further states, "[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."

Here, the Proposal requests that the Company, with oversight from the Company's Board of Directors, publish a report assessing the adequacy of the Company's criteria for "ensuring that investments in fossil fuel projects in emerging markets are consistent with the Paris Agreement's goal of limiting global temperature increase to 'well below 2 degrees Celsius.'" In the Supporting Statement, the Proponents requested that the report include an assessment of (1) whether the Company's criteria adequately "manage the reputational, financial, and climate risks" related to "proposed fossil fuel projects," and (2) whether the Company's criteria "avoid investments in fossil fuel projects in developing markets that run counter to a country's ability to meet its Nationally Determined Contribution to the Paris Agreement, especially in countries with inadequate mechanisms to enforce climate policies."

Developing, implementing and evolving these policies and practices necessarily requires complex operational and business decisions. By specifically referencing the Paris

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Agreement's goals, the Proposal seeks to impose a specific method on how the Company evaluates and reports climate-related risks. The approach advocated by the Proposal would establish a specific quantitative standard based upon projected global temperature forecasts as a criteria for any investment in an emerging market fossil fuel project. As elaborated on in the Supporting Statement, this standard would require the Company to consider not only the specific energy implications for a proposed project, but also all the other activities going on in a country that could affect that country's ability to meet its Nationally Determined Contribution under the Paris Agreement. The Proposal does not appear to contemplate consideration of important criteria such as whether, absent the Company's investment, the country would use a less efficient alternative that would cause greater greenhouse gas emissions.

The Proposal seeks to micro-manage how the Company reports and analyzes certain climate-related risks associated with specific investment decisions related to fossil fuel projects in specific markets and regions. While set against the backdrop of the issue of climate change, the Proposal does not focus on a high level policy issue. Instead, it requires the Company to assess whether its current policies and practices for assessing climate-change related implications of its investments are consistent with the prescriptive standard referenced in the Proposal, which is inconsistent with the approach the Company has determined is most appropriate for the Company and its shareowners. Because the appropriateness of applying such a standard to each investment involves complex considerations as to which shareowners as a group are not positioned to make an informed judgment, the Proposal seeks to micro-manage the Company's fundamental day-to-day decisions. The Proposal thus falls squarely within the scope of the 1998 Release by addressing intricate details and specifying a specific method for evaluating and implementing complex policies.

*D. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Seeks To Micro-Manage The Company.*

As discussed above, a proposal may be excluded under Rule 14a-8(i)(7) if it seeks to micro-manage a company by specifying in detail the manner in which the company should address a policy issue, even if the proposal involves a significant policy issue. Here, although the Proposal's reference to "climate change" may raise significant policy considerations, the environmental goals of the Proposal are secondary to the Proposal's efforts to micro-manage the Company's decisions regarding its loan and investment portfolio in addressing this issue. Therefore, the Proposal remains excludable under Rule 14a-8(i)(7).

As in *Amazon*, *Deere* and *Apple*, the Proposal here impermissibly seeks to replace management's informed and reasoned judgments on how to report, analyze, and act on a complex operational and business issue. In particular, it imposes a specific standard (which itself dictates prescriptive objectives and a specific timeframe) for addressing a complex



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issue, and dictates a specific procedure for applying that standard (*ie.*, placing the assessment in the context of all other activities that a country may take that could advance or impair its ability to meet its “Nationally Determined Contribution” to the Paris Agreement). The extent of intrusion by the Proposal on the Company’s ordinary operations, as documented above, means that the subject matter does not “transcend[] the day to day business matters of the company,” and, therefore, like the proposals considered in *Amazon*, *Deere* and *Apple*, the Proposal may be properly excluded under Rule 14a 8(i)(7). The *Amazon*, *Deere* and *Apple* letters demonstrate that the Staff has consistently concurred in the exclusion of proposals that seek to micro manage a company’s business operations, regardless of whether the proposals also address significant policy issues. Thus, even though the Proposal relates to a significant policy issue, the Proposal deals with ordinary business by seeking to impose specific methods for implementing complex policies and accordingly, the Proposal may be excluded under Rule 14a-8(i)(7).

## CONCLUSION

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

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or Brian Sandstrom, the Company’s Executive Counsel, Corporate, Securities and Finance, at (617) 443-2920.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Brian Sandstrom, General Electric Company  
Danielle Fugere, As You Sow

**EXHIBIT A**

**From:** Kwan Hong Teoh <Kwan@asyousow.org>  
**Sent:** Wednesday, November 14, 2018 4:27 PM  
**To:** ~CORP ShareownerProposals <Shareowner.Proposals@ge.com>  
**Cc:** Lila Holzman <lholzman@asyousow.org>; Danielle Fugere <DFugere@asyousow.org>  
**Subject:** GE - Shareholder Resolution Filing ATTN: CORP SEC.

Dear Mr. Dimitrief,

Please find enclosed the filing letters for a shareholder proposal for inclusion in General Electric's 2019 proxy statement. Per instructions in the Company's 2018 proxy statement, we are submitting this filing by email alone. Please confirm receipt of this email.

Thank you

Best Regards,  
Kwan

**Kwan Hong Teoh**  
**Environmental Health Program**  
**Research Manager**

**As You Sow**

1611 Telegraph Ave., Ste. 1450

Oakland, CA 94612

(510) 735-8147 (direct line) | (605) 651-5517 (cell)

[kwan@asyousow.org](mailto:kwan@asyousow.org) | [www.asyousow.org](http://www.asyousow.org)

~Building a Safe, Just and Sustainable World since 1992~



**VIA EMAIL**

November 14, 2018

Alex Dimitrief  
Corporate Secretary  
General Electric Company  
41 Farnsworth Street  
Boston, MA 02210

Dear Mr. Dimitrief:

*As You Sow* is filing a shareholder proposal on behalf of Jim and Patty Rouse Charitable Foundation ("Proponent"), a shareholder of General Electric Company, for action at the next annual meeting of General Electric. Proponent submits the enclosed shareholder proposal for inclusion in General Electric's 2019 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

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

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

Sincerely,



Danielle Fugere  
President

Enclosures

- Shareholder Proposal
- Shareholder Authorization

## REPORT ON CLIMATE RISK MANAGEMENT IN EMERGING MARKETS

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

The Intergovernmental Panel on Climate Change "*Special Report on Global Warming of 1.5C*" details that to avoid the worst impacts of climate change, we must limit warming to 1.5 degrees Celsius. To achieve this goal, 70-85 percent of electricity demand must be met by renewables by mid-century, while coal combustion must decline to close to 0 percent by 2050 (<http://www.ipcc.ch/report/sr15/>).

Many financing institutions, such as Morgan Stanley, are reducing their exposure to coal given its significant climate and regulatory risks ([https://www.morganstanley.com/about-us-governance/pdf/Morgan\\_Stanley\\_Coal\\_and\\_Oil\\_Sands\\_Policy\\_Statement.pdf](https://www.morganstanley.com/about-us-governance/pdf/Morgan_Stanley_Coal_and_Oil_Sands_Policy_Statement.pdf)).

In spite of the above, General Electric is pursuing new development of fossil fuel projects internationally, including in Pakistan, Cambodia, Bangladesh, Vietnam, Kenya, and Mozambique; each of which has its own unique political climate and combination of available renewable resources to help meet national climate goals.

Many emerging market countries lack sufficient mechanisms to ensure proposed energy projects do not jeopardize the country's ability to meet climate goals. For example, in 2018 General Electric announced a partnership to build a coal plant in Lamu, Kenya despite there being clean, economically competitive alternatives. Kenya has 7,000 – 10,000 MW of geothermal potential that could be developed for baseload generation. The Lamu project has met with intense local opposition regarding its potential health and climate impacts, and the potentially higher cost of coal-based electricity, creating risks for General Electric.

Given the urgency of addressing climate change, General Electric must adopt policies to avoid locking developing economies into decades of uneconomical, polluting energy while creating risk to its investments and its reputation.

**RESOLVED:** Shareholders request that General Electric, with board oversight, publish a report, omitting proprietary information and prepared at reasonable cost, assessing the adequacy of the company's climate change related criteria for ensuring that investments in fossil fuel projects in emerging markets are consistent with the Paris Agreement's goal of limiting global temperature increase to "well below 2 degrees Celsius."

### **SUPPORTING STATEMENT:**

In creating the report, investors request the company consider:

- Whether its criteria adequately manage the reputational, financial, and climate risks to GE associated with such proposed fossil fuel projects
- Whether its criteria avoid investments in fossil fuel projects in developing markets that run counter to a country's ability to meet its Nationally Determined Contribution to the Paris Agreement, especially in countries with inadequate mechanisms to enforce climate policies

10/19/2018

Andrew Behar  
CEO

As You Sow Foundation  
1611 Telegraph Ave., Ste. 1450  
Oakland, CA 94612

**Re: Authorization to File Shareholder Resolution**

Dear Andrew Behar,

As of the date of this letter, the undersigned authorizes As You Sow (AYS) file, cofile, or endorse the shareholder resolution identified below on Stockholder's behalf with the identified company, and that it be included in the proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

The Stockholder: Jim and Patty Rouse Charitable Fndtn (S)

Company: General Electric

Annual Meeting/Proxy Statement Year: 2019

Resolution: Coal

Background information re: AYS Campaign: <https://www.asyousow.org/our-work/energy/climate-change>

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

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

Sincerely,

DocuSigned by:  
  
197DD9DBCAB4450...  
James Norton

**EXHIBIT B**





**VIA EMAIL**

November 14, 2018

Alex Dimitrief  
Corporate Secretary  
General Electric Company  
41 Farnsworth Street  
Boston, MA 02210

Dear Mr. Dimitrief:

*As You Sow* is co-filing a shareholder proposal on behalf of the following General Electric Company shareholders for action at the next annual meeting of General Electric:

- Bartlett Naylor
- Mulliken Family Trust
- Schwab Charitable Fund FBO The Resiliency Fund
- The Amy Wendel Revocable Trust
- The Gun Denhart Living Trust
- The Nicola Miner Revocable Trust

The Proponent has submitted the enclosed shareholder proposal for inclusion in the 2019 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

Please note that *As You Sow* also represents the lead filer of this proposal, Jim and Patty Rouse Charitable Foundation.

Letters authorizing *As You Sow* to act on co-filers' behalf are enclosed. A representative of the lead filer will attend the stockholders' meeting to move the resolution as required.

Sincerely,

Danielle Fugere  
President

Enclosures

- Shareholder Proposal
- Shareholder Authorizations

## REPORT ON CLIMATE RISK MANAGEMENT IN EMERGING MARKETS

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

The Intergovernmental Panel on Climate Change "*Special Report on Global Warming of 1.5C*" details that to avoid the worst impacts of climate change, we must limit warming to 1.5 degrees Celsius. To achieve this goal, 70-85 percent of electricity demand must be met by renewables by mid-century, while coal combustion must decline to close to 0 percent by 2050 (<http://www.ipcc.ch/report/sr15/>).

Many financing institutions, such as Morgan Stanley, are reducing their exposure to coal given its significant climate and regulatory risks ([https://www.morganstanley.com/about-us-governance/pdf/Morgan\\_Stanley\\_Coal\\_and\\_Oil\\_Sands\\_Policy\\_Statement.pdf](https://www.morganstanley.com/about-us-governance/pdf/Morgan_Stanley_Coal_and_Oil_Sands_Policy_Statement.pdf)).

In spite of the above, General Electric is pursuing new development of fossil fuel projects internationally, including in Pakistan, Cambodia, Bangladesh, Vietnam, Kenya, and Mozambique; each of which has its own unique political climate and combination of available renewable resources to help meet national climate goals.

Many emerging market countries lack sufficient mechanisms to ensure proposed energy projects do not jeopardize the country's ability to meet climate goals. For example, in 2018 General Electric announced a partnership to build a coal plant in Lamu, Kenya despite there being clean, economically competitive alternatives. Kenya has 7,000 – 10,000 MW of geothermal potential that could be developed for baseload generation. The Lamu project has met with intense local opposition regarding its potential health and climate impacts, and the potentially higher cost of coal-based electricity, creating risks for General Electric.

Given the urgency of addressing climate change, General Electric must adopt policies to avoid locking developing economies into decades of uneconomical, polluting energy while creating risk to its investments and its reputation.

**RESOLVED:** Shareholders request that General Electric, with board oversight, publish a report, omitting proprietary information and prepared at reasonable cost, assessing the adequacy of the company's climate change related criteria for ensuring that investments in fossil fuel projects in emerging markets are consistent with the Paris Agreement's goal of limiting global temperature increase to "well below 2 degrees Celsius."

### **SUPPORTING STATEMENT:**

In creating the report, investors request the company consider:

- Whether its criteria adequately manage the reputational, financial, and climate risks to GE associated with such proposed fossil fuel projects
- Whether its criteria avoid investments in fossil fuel projects in developing markets that run counter to a country's ability to meet its Nationally Determined Contribution to the Paris Agreement, especially in countries with inadequate mechanisms to enforce climate policies



Date:

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

**Re: Authorization to File Shareholder Resolution**

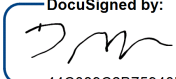
Dear Andrew Behar,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with General Electric (the "Company"), relating to coal risk, and that it be included in the Company's 2019 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

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

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

Sincerely,

DocuSigned by:  
  
44C089C2B75940F...

David Mulliken  
Trustee  
Mulliken Family Trust

10/31/2018 | 7:36 PM PDT

11/3/2018

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

**Re: Authorization to File Shareholder Resolution**

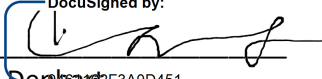
Dear Andrew Behar,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with General Electric (the "Company"), relating to coal risk, and that it be included in the Company's 2019 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

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

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

Sincerely,

DocuSigned by:  
  
Gun Denhart  
Trustee  
The Gun Denhart Living Trust

October 26 2018

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

**Re: Authorization to File Shareholder Resolution**

Dear Andrew Behar,


The undersigned Stockholder authorizes As You Sow to co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder: The Amy Wendel Revocable Trust  
Company: General Electric Company  
Resolution Request: Coal Risk

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

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

Sincerely,

DocuSigned by:  
  
25BB9E974DA9455...  
Daniel Meisel

Trustee  
The Amy Wendel Revocable Trust

11/2/18

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

**Re: Authorization to File Shareholder Resolution**

Dear Andrew Behar,

The undersigned (the "Stockholder") authorizes As You Sow to file or cofile a shareholder resolution on Stockholder's behalf with General Electric (the "Company"), relating to coal risk, and that it be included in the Company's 2019 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

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

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

Sincerely,

DocuSigned by:  
  
87E4A86176B14B4  
Barlett Naylor

October 29, 2018

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

**Re: Authorization to File Shareholder Resolution**

Dear Andrew Behar,

The undersigned Stockholder authorizes As You Sow to file or co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.


Stockholder:               The Nicola Miner Revocable Trust DTD 02/19/1999  
Company:                    General Electric Company  
Resolution Request:       Coal Risk

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

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

The Stockholder understands that the Stockholder's name may appear on the Company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name related to the resolution.

Sincerely,

DocuSigned by:  
  
A4E00301457E4E8...  
Karen Leech

Special Power of Attorney  
The Nicola Miner Revocable Trust DTD 02/19/1999



October 30, 2018

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

**Re: Authorization to File Shareholder Resolution**

Dear Andrew Behar,


The undersigned Stockholder authorizes As You Sow to co-file a shareholder resolution on the Stockholder's behalf with below mentioned Company, and that it be included in below mentioned Company's 2019 proxy statement as specified below, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

Stockholder: Schwab Charitable Fund FBO The Resiliency Fund  
Company: General Electric Company  
Resolution Request: Coal Risk

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

The Stockholder gives As You Sow the authority to deal on the Stockholder's behalf with any and all aspects of the shareholder resolution, including designating another entity as lead filer and representative of the shareholder.

Sincerely,

DocuSigned by:  
  
39590213F37D495...  
Jen Hicks on behalf of Wetherby Asset Management

Authorized Disc etionary Advisor  
Schwab Charitable Fund FBO The Resiliency Fund

**EXHIBIT C**

**From:** [Walter, Geoffrey E.](#)  
**To:** [DFugere@asyousow.org](mailto:DFugere@asyousow.org)  
**Subject:** General Electric (As You Sow) Correspondence  
**Date:** Wednesday, November 21, 2018 1:45:08 PM  
**Attachments:** [General Electric \(As You Sow\).pdf](#)

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Attached on behalf of our client, General Electric Company, please find our notice of deficiency with respect to the shareowner proposal you submitted.

Sincerely,

Geoffrey Walter

**Geoffrey Walter**

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306  
Tel +1 202.887.3749 • Fax +1 202.530.4249  
[GWalter@gibsondunn.com](mailto:GWalter@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

November 21, 2018

VIA EMAIL

Danielle Fugere  
As You Sow Foundation  
1611 Telegraph Ave., Ste. 1450  
Oakland, CA 94612  
DFugere@asyousow.org

Dear Ms. Fugere:

I am writing on behalf of General Electric Company (the “Company”), which received on November 14, 2018, the shareowner proposal you submitted on behalf of the Jim and Patty Rouse Charitable Foundation, Bartlett Naylor, Mulliken Family Trust, Schwab Charitable Fund FBO The Resiliency Fund, The Amy Wendel Revocable Trust, The Gun Denhart Living Trust and The Nicola Miner Revocable Trust (each a “Proponent” and, collectively, the “Proponents”) entitled “Report on Climate Risk Management in Emerging Markets” pursuant to Securities and Exchange Commission (“SEC”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2019 Annual Meeting of Shareowners (the “Proposal”).

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

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

Ms. Danielle Fugere

November 21, 2018

Page 2

The documentation that you provided with the Proposal raises the concerns referred to in SLB 14I. Specifically, the documentation from each of the Proponents purporting to authorize you to act on their behalf does not identify the Proposal as the specific proposal to be submitted. The documentation provided by each Proponent describes the proposal that you are authorized to submit as “Coal” or “relating to coal risk.” In contrast, the subject matter of the Proposal is not focused on “coal risk” but instead addresses climate change related investment criteria for fossil fuel projects in emerging markets. In addition, the documentation purporting to authorize you to act on behalf of the Jim and Patty Rouse Charitable Foundation does not evidence the signatory’s authority to sign the documentation on behalf of the shareowner. To remedy these defects, each Proponent should provide documentation that confirms that as of the date you submitted the Proposal, each Proponent had instructed or authorized you to submit the Proposal to the Company on each Proponent’s behalf. Such documentation should identify the specific proposal authorized to be submitted and, in the case of the Jim and Patty Rouse Charitable Foundation, should be signed by the shareowner or should indicate the signatory’s authority to sign the documentation on behalf of the shareowner.

To the extent the Proponents authorized you to submit the Proposal to the Company, please note the following. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareowner 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 shareowner proposal was submitted. The Company’s stock records do not indicate that the Proponents are the record owners of sufficient shares to satisfy this requirement. In addition, to date the Company has not received proof that the Proponents have satisfied Rule 14a-8’s ownership requirements as of the date that the Proposal was submitted to the Company.

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

- (1) a written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 14; or
- (2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent’s ownership of the required number or amount of

Ms. Danielle Fugere  
November 21, 2018  
Page 3

Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the required number or amount of Company shares for the one-year period.

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

- (1) If the Proponent’s broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent’s broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 14, 2018.
- (2) If the Proponent’s broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including November 14, 2018. You should be able to find out the identity of the DTC participant by asking the Proponent’s broker or bank. If the Proponent’s broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent’s account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent’s shares is not able to confirm the Proponent’s individual holdings but is able to confirm the holdings of the Proponent’s broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including November 14, 2018, the required number or amount of Company shares were continuously held: (i) one from the Proponent’s broker or bank confirming the Proponent’s ownership, and (ii) the other from the DTC participant confirming the broker or bank’s ownership.

Ms. Danielle Fugere  
November 21, 2018  
Page 4

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me care of Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue NW, Suite 300, Washington, DC 20036.

If you have any questions with respect to the foregoing, please contact me at 202-955-8500. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,



Ronald O. Mueller

Enclosures

## Rule 14a-8 – Shareholder Proposals

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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.



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

**Shareholder Proposals**

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

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

**Date:** October 18, 2011

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

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

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

**A. The purpose of this bulletin**

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

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

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

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

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

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

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.<sup>2</sup> 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.<sup>3</sup>

### **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.<sup>4</sup> 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.<sup>5</sup>

### **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.<sup>6</sup> 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<sup>7</sup> 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,<sup>8</sup> 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.<sup>9</sup>

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).<sup>10</sup> 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].”<sup>11</sup>

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).<sup>12</sup> 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.<sup>13</sup>

##### **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,<sup>14</sup> 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.<sup>15</sup>

### **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.<sup>16</sup>

### **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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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> 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.").

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

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

<sup>7</sup> 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.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> 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.

<sup>10</sup> 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.

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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

<sup>15</sup> 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.

<sup>16</sup> 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/interp/leg/cfs14f.htm>

**EXHIBIT D**

**From:** Danielle Fugere <DFugere@asyousow.org>  
**Sent:** Wednesday, December 5, 2018 7:52 PM  
**To:** Mueller, Ronald O. <RMueller@gibsondunn.com>  
**Subject:** Letter Re GE Deficiency Notice 20181205.docx

[External Email]

Dear Mr. Mueller,

We are in receipt of your letter issued November 21, 2018 alleging notice of a deficiency in our November 14, 2018 letter transmitting a proposal for inclusion on the Company's 2019 proxy. Enclosed is a response to your cited deficiencies.

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

Please confirm receipt of this correspondence.

Best Regards,  
Danielle Fugere

---

**Danielle Fugere**

**President**

**As You Sow**

1611 Telegraph Ave., Ste. 1450

Oakland, CA 94612

(510) 735-8141 (direct line) | (415) 577-5594 (cell)

[dfugere@asyousow.org](mailto:dfugere@asyousow.org) | [www.asyousow.org](http://www.asyousow.org)



~Promoting corporate social and environmental responsibility since 1992~



December 5, 2018

**VIA E-MAIL**

Mr. Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue NW, Suite 300  
Washington, DC 20036

Re: Response to Notice of Deficiency Letter

Dear Mr. Mueller,

We are writing in response to your letter issued November 21, 2018 alleging deficiencies in our November 14, 2018 authorization letter and supporting documentation for inclusion in General Electric Company (the Company)'s 2019 proxy statement.

While the authorization letters inadvertently included the topic "coal" instead of the description of the Proposal, a detailed description identifying the Proposal was transmitted to Proponents, either directly or through their asset managers prior to authorization, satisfying the purpose of the Securities and Exchange's Commission (SEC)'s guidance in Staff Legal Bulletin No. 14I.D (Nov. 1, 2017) (SLB 14I) of ensuring that shareholders know that proposals are being submitted on their behalf.

Specifically, prior to shareholders' authorization of the proposal, information identifying the purpose of the proposal as: "Assess risks of expanding coal infrastructure abroad and the feasibility of substituting clean energy alternatives" was sent from *As You Sow* to Proponents Bartlett Naylor and Gun Denhart of the Gun Denhart Living, on October 28, 2018 and November 9, 2018, respectively. The information transmitted by *As You Sow* is set forth below:

Program	Initiative	Resolution	Notes
Energy	Climate Change	Coal Risk	Assess risks of expanding coal infrastructure abroad and the feasibility of substituting clean energy alternatives

The same description was transmitted from *As You Sow* to Abacus Wealth Partners, asset manager of Proponent the Mulliken Family Trust; and Wetherby, asset manager of Proponent The Nicola Miner Revocable Trust. Both asset managers have confirmed that the proposal description was sent to the Proponents as part of the authorization process of the November 14, 2018 letter.

The proposal, entitled "Report on Climate Risk Management In Emerging Markets" asks the company to assess the climate risks of energy projects in emerging markets including whether the company's climate change related criteria "adequately manage[s] the reputational, financial, and climate risks to GE associated with such proposed fossil fuel projects." The transmittals discussed above make clear that the Proponents had sufficient information on the focus of the proposal prior to authorizing the filing.





In contacting the asset manager for Jim and Patty Rouse Charitable Foundation, previously designated as the lead filer of the Proposal, we were alerted that the Foundation is no longer a client of the asset manager and thus we are unable to identify and contact a custodian for proof of ownership. We therefore identify Bartlett Naylor as the lead proponent for this proposal.

Finally, in response to the alleged deficiency concerning proof of the Proponents' continuous ownership of the Company's shares, we also enclose proof of ownership letters establishing the Proponents' ownership of the Company's common stock in the requisite amount and in the timeframe necessary to meet eligibility requirements.

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

Please confirm receipt of this correspondence.

Sincerely,

Danielle Fugere  
President, Chief Counsel  
*As You Sow* Foundation

**EXHIBIT E**

12/4/2018

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

**Re: Authorization to File Shareholder Resolution**

Dear Mr. Behar,

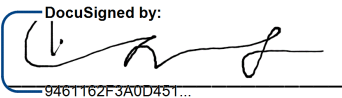
The undersigned (the "Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with General Electric (the "Company") for inclusion in the Company's 2019 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to Address GE's climate change related criteria for ensuring investments in coal and other fossil fuel projects are consistent with Paris Agreement goals.

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

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

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

Sincerely,

DocuSigned by:  


9461162F3A0D451...  
Gun Denhart  
Trustee  
The Gun Denhart Living Trust

12/4/2018

**EXHIBIT F**



November 30, 2018

The Amy Wendel Revocable Trust  
\*\*\*

Account number ending in:

\*\*\*

Questions: Contact your advisor or  
call Schwab Alliance at  
1-800-515-2157.

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**Important information regarding shares in your account.**

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Dear Amy Wendel and Daniel Meisel,

We're writing to confirm information about the account listed above, which Charles Schwab & Co., Inc. holds as custodian. This account holds in trust 576 shares of General Electric GE common stock. These shares have been held in the account continuously for at least one year prior to and including November 14, 2018.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab & Co., Inc., which serves as custodian for the registration listed above.

**Thank you for choosing Schwab.** If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

Jason Almquist  
Sr. Specialist, Institutional  
IST/STAR PHOENIX SERVICE  
2423 E Lincoln Dr  
Phoenix, AZ 85050

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

**EXHIBIT G**



November 30, 2018

Nicola Miner Revocable Trust  
\*\*\*

Account number ending in:

\*\*\*

Questions: Contact your advisor or  
call Schwab Alliance at  
1-800-515-2157.

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**Important information regarding shares in your account.**

---

Dear Nicola Miner,

We're writing to confirm information about the account listed above, which Charles Schwab & Co., Inc. holds as custodian. This account holds in trust 2,863 shares of General Electric GE common stock. These shares have been held in the account continuously for at least one year prior to and including November 14, 2018.

These shares are held at Depository Trust Company under the nominee name of Charles Schwab & Co., Inc., which serves as custodian for the registration listed above.

**Thank you for choosing Schwab.** If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

Jason Almquist  
Sr. Specialist, Institutional  
IST/STAR PHOENIX SERVICE  
2423 E Lincoln Dr  
Phoenix, AZ 85050

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

**EXHIBIT H**





November 26, 2018

Bartlett Naylor  
\*\*\*

Account #: \*\*\*

Questions: +1 (800) 435-4000

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**Your requested account information**

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Dear Bartlett Naylor,

I'm writing in response to your request for certain information regarding the securities in your account.

The above account, registered as BARTLETT C NAYLOR, Schwab One Individual Brokerage account, contains the security General Electric ( GE) which has been owned in the account at least two years and has been owned continuously in that time period. As of 11/26/2018, the account contains at least \$2000.00 in market value of GE stock.

This letter is for informational purposes only and is not an official record of your account. Please refer to your statements and trade confirmations as they are the official record of your transactions.

**Thank you for choosing Schwab.** We appreciate your business and look forward to serving you in the future. If you have any questions, please call me or any Client Service Specialist at +1 (800) 435-4000.

Sincerely,

*Scott Rinear*

Scott Rinear  
PARTNER SUPPORT TEAM  
8332 Woodfield Crossing Blvd  
Indianapolis, IN 46240-2482

**EXHIBIT I**



TD Ameritrade Institutional  
5010 Wateridge Vista Dr  
San Diego, CA 92121

November 29, 2018

David Mulliken:

TD Ameritrade Institutional, a DTC participant, acts as the custodian for Mulliken Family Trust account ending \*\*\*. As of the date of this letter, Mulliken Family Trust held, and has held continuously for at least 365 days, 230 shares of General Electric common stock.

Best Regards,

A handwritten signature in black ink, appearing to read 'Jhojilyn Malicdan', written over a horizontal line.

Jhojilyn Malicdan  
Senior Relationship Manager  
TD Ameritrade Institutional

**EXHIBIT J**



## CURRENT RESOLUTIONS

As You Sow regularly introduces shareholder resolutions that empower shareholders to drive companies toward a sustainable future.

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Company	Initiative	Resolution	Filing Documents	Year	Status
	Materiality	BE IT RESOLVED: Shareholders request that the Board of Directors issue a report on sustainability to shareholders by 180 days after the 2019 Annual Meeting at reasonable expense and excluding confidential information prepared in consideration of the SASB Multiline and Specialty Retailers Distributors standard describing the companys policies performance and improvement targets related to material sustainability risks and opportunities.	• Resolution	2019	Pending
	Climate Change	BE IT RESOLVED: Given the profound societal impacts of climate change and our companys potentially critical role in mitigating harm to society shareholders request that AIG with board oversight publish an assessment at reasonable cost and omitting proprietary information of the plausible impacts of a climate change scenario consistent with a globally agreed upon target of limiting warming to well below 2 degrees Celsius as well as additional scenarios reflecting higher global average temperatures.		2019	Pending
	Climate Change	BE IT RESOLVED: Shareholders request that Amazon.com Inc. adopt a policy with quantitative companywide goals for managing greenhouse gas GHG emissions considering the objectives		2019	Pending



## CURRENT RESOLUTIONS

As You Sow regularly introduces shareholder resolutions that empower shareholders to drive companies toward a sustainable future.

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Company	Initiative	Filing Documents	Year	Status
	Materiality	Resolution	2019	Pending
	Climate Change		2019	Pending
	Climate Change		2019	Pending



## CURRENT RESOLUTIONS

As You Sow regularly introduces shareholder resolutions that empower shareholders to drive companies toward a sustainable future.








Show 100 entries

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Filter by Company | Filter by Program | **Coal** | Filter by Year | Filter by Status

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Company	Initiative	Resolution	Filing Documents	Year	Status
	Coal	BE IT RESOLVED: Shareholders request that Duke Energy publish a report assessing how it will mitigate the public health risks associated with Dukes coal operations in light of increasing vulnerability to climate change impacts such as flooding and severe storms. The report should provide a financial analysis of the cost to the Company of coalrelated public health harms including potential liability and reputational damage. It should be published at reasonable expense and omit proprietary information.		2019	Pending
	Coal	BE IT RESOLVED: Shareholders request that the Board prepare a complete report on the companys efforts above and beyond current compliance to identify and reduce environmental and health hazards associated with past present and future handling of coal combustion residuals and how those efforts may reduce legal reputational and financial risks to the company. This report should be available to shareholders within 6 months of the 2017 annual meeting be prepared at reasonable cost and omit confidential information such as proprietary data or legal strategy.	<ul style="list-style-type: none"> <li>Resolution</li> <li>Proxy Memo</li> </ul>	2018	53.2%
		BE IT RESOLVED: Shareholders request that Duke Energy publish a report assessing the public health impacts of its coal use on rates of illness mortality and infant death due to coal related air			Withdrawn;

Company	Resolution Type	Description	Status	Year	Outcome
	Change	the Paris Climate Agreement and issue a report at reasonable cost and omitting proprietary information on its plans to achieve these goals.	• Withdrawal Letter	2019	Withdrawn
	Climate Change	BE IT RESOLVED: Shareholders request that Exxon issue a report at reasonable cost omitting proprietary information on how it can reduce its carbon footprint in alignment with greenhouse gas reductions necessary to achieve the Paris Agreements goal of maintaining global warming well below 2 degrees Celsius.		2019	Pending
	Climate Change	BE IT RESOLVED: Shareholders request that the Board of Directors in annual reporting from 2020 include disclosure of short medium and longterm greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement to keep the increase in global average temperature to well below 2C and to pursue efforts to limit the increase to 1.5C. This reporting should cover both the corporations operations and products omit proprietary information and be prepared at reasonable cost.		2019	Pending
	Climate Change	BE IT RESOLVED: Shareholders request that General Electric with board oversight publish a report omitting proprietary information and prepared at reasonable cost assessing the adequacy of the companys climate change related criteria for ensuring that investments in fossil fuel projects in emerging markets are consistent with the Paris Agreements goal of limiting global temperature increase to well below 2 degrees Celsius.	• Resolution	2019	Pending
	Climate Change	BE IT RESOLVED: Shareholders request that Goldman Sachs adopt a policy to reduce the carbon footprint of its loan and investment portfolios in alignment with the 2015 Paris goal of maintaining global warming well below 2 degrees and issue annual reports at reasonable cost omitting proprietary information describing targets plans and progress under this policy.		2019	Pending
	Climate Change	BE IT RESOLVED: Shareholders request that JPMorgan Chase adopt a policy to reduce the carbon footprint of its loan and investment portfolios in alignment with the 2015 Paris goal of maintaining global warming well below 2 degrees and issue annual reports at reasonable cost omitting proprietary information describing targets plans and progress under this policy.		2019	Pending
	Climate Change	BE IT RESOLVED: Shareholders request that Pinnacle West Capitals Human Resources Committee prepare a report assessing the feasibility of linking executive compensation metrics to the accomplishment of Parisaligned greenhouse gas emission reduction objectives. The report should		2019	Pending