



December 23, 2020

**VIA EMAIL (shareholderproposals@sec.gov)**

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

**Re: Evergy, Inc. – Exclusion of Shareholder Proposal Pursuant to Rule 14a-8**

Ladies and Gentlemen:

This letter is to inform the staff (the “Staff”) of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “Commission”) that, for the reasons described below, Evergy, Inc. (the “Company”) intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (collectively, the “2021 Proxy Materials”) the enclosed shareholder proposal (the “Proposal”) and statement in support thereof submitted by Paul Rolfe (the “Proponent”). We have set forth below the reasons we believe the Proposal may be omitted from the 2021 Proxy Materials pursuant to Rule 14a-8 under the Securities Act of 1934, as amended (the “Exchange Act”).

In accordance with Rule 14a-8(j), we have (i) submitted this letter to the Commission no later than 80 calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission and (ii) concurrently sent a copy of this correspondence to the Proponent and the Proponent’s representative, the Sierra Club (the “Representative”).

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

**The Proposal**

The Proposal states:

RESOLVED: Shareholders request that the Compensation and Leadership Development Committee of the Board of Directors prepare a report assessing the feasibility of integrating metrics for reduction of Evergy’s carbon output or increasing clean energy adoption in the company’s executive compensation

package, while removing the coal-fired generation availability metric from the company's short-term incentive plan.

### **Basis for Exclusion**

The Company hereby respectfully requests that the Staff concur in its view that the Proposal may properly be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to timely provide the requisite proof of continuous stock ownership in response to the Company's proper request for that information.

### **Background**

The Proposal was submitted to the Company on November 19, 2020 in a letter from the Representative and was received by the Company on November 20, 2020. Additionally, the Proposal was accompanied by (i) a letter from the Proponent authorizing the Representative to submit the Proposal and to otherwise act on his behalf with respect to the Proposal and (ii) an October 2020 account statement showing the Proponent's ownership of 108 shares of Company stock as of October 31, 2020. Neither the Proponent nor the Representative included any additional documentary evidence of the Proponent's ownership of Company stock; however, the Representative noted that "[a] proof of ownership [would] be sent as soon as possible." *See Exhibit A.*

Following receipt of the Proposal, the Company reviewed its stock records and determined that the Proponent was not a record owner of Company stock. Accordingly, the Company properly sought verification of stock ownership from the Proponent. Specifically, the Company sent the Representative (with a copy to the Proponent) a letter dated December 3, 2020, identifying the deficiency, notifying the Representative and the Proponent of the requirements of Rule 14a-8 and explaining how the Proponent could cure the procedural deficiency (the "Deficiency Notice"). The Deficiency Notice, attached hereto as Exhibit B, provided detailed information regarding the "record" holder requirements, as clarified by Staff Legal Bulletin No. 14F (October 18, 2011) ("SLB 14F") and Staff Legal Bulletin 14G (October 16, 2012) ("SLB 14G"), and attached a copy of Rule 14a-8, SLB 14F and SLB 14G thereto. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient shares of Company stock to satisfy the Rule 14a-8(b) ownership requirement;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including "[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 requisite number of shares of common stock for the one-year period preceding and including November 19, 2020," the date the Proposal was submitted to the Company; and

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

The Company sent the Deficiency Notice via email and overnight delivery on December 3, 2020, which was within the 14 calendar days of the Company's receipt of the Proposal. Overnight delivery service records confirm delivery of a physical copy of the Deficiency Notice to the Proponent at 6:30 p.m. on December 4, 2020 and to the Representative at 11:57 a.m. on December 4, 2020. *See Exhibit C.*

The Company received an initial response to the Deficiency Notice from the Representative via email on December 17, 2020, which included a letter from Robinhood Financial, LLC, dated December 2, 2020, and the Proponent's October 2019, November 2019 and December 2019 account statements (the "Initial Deficiency Response"). *See Exhibit D.* However, as discussed below, the Initial Deficiency Response did not contain sufficient proof of the Proponent's *continuous* ownership of the requisite number of shares of Company stock for at least one year as of the date the Proposal was submitted (November 19, 2020) as properly requested by the Deficiency Notice and as required by Rule 14a-8(b). No other proof of ownership was received by the Company within the 14-day cure period following the receipt of the Deficiency Notice.

On December 22, 2020, after the 14-day cure period had expired, the Company received a second response to the Deficiency Notice from the Representative via email, which included a letter from Robinhood Financial, LLC, dated December 9, 2020 (the "Second Deficiency Response"). As discussed below, the Second Deficiency Response was untimely, as it was sent via email to the Company after the 14-day cure period had expired. Furthermore, the Second Deficiency Response still did not contain sufficient proof of the Proponent's continuous ownership of the requisite number of shares of Company stock for at least one year as of the date the Proposal was submitted (November 19, 2020) as properly requested by the Deficiency Notice and as required by Rule 14-a8(b). *See Exhibit E.*

### **Analysis**

**The Proposal may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to timely establish his eligibility to submit the Proposal despite proper notice.**

Rule 14a-8(b) provides guidance regarding what information must be provided to demonstrate that a person is eligible to submit a shareholder proposal. Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a 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 meeting for at least one year by the date [the shareholder] submit[s] the proposal." Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14") specifies that when "the shareholder is not [a] registered holder, the shareholder is responsible for proving his or her eligibility to submit a proposal to the company," which the shareholder may do by one of the two ways provided in Rule 14a-8(b)(2). Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company's proxy materials if the proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, including failing to provide the

beneficial ownership information required under Rule 14a-8(b), provided that the company has timely notified the proponent of the deficiency, and the proponent has failed to correct such deficiency within 14 calendar days of receipt of such notice.

The Staff has consistently permitted companies to omit shareholder proposals pursuant to Rule 14a-8(f)(1) and Rule 14a-8(b) where, after receiving proper notice from a company, the proof of ownership submitted by the shareholder failed to specifically establish that the shareholder continuously held the requisite amount of the company's securities for one year as of the date the proposal was submitted. For example, in *Exxon Mobil Corp.* (March 28, 2019), the Staff concurred that documentation from a broker that established ownership only as of certain specific dates was insufficient to establish continuous ownership for the one-year period required by Rule 14a-8(b). There, the broker letter, like the Initial Deficiency Response here, failed to include a statement from the broker as to the proponent's continuous ownership of shares of company stock for the required one-year period. Likewise, in *General Electric Co.* (January 6, 2016), the Staff concurred that a broker letter stating that a proponent had purchased shares on a specific date more than a year earlier and that no additional shares were posted to or removed from the proponent's account did not establish that the proponent owned the requisite amount of company shares continuously for the one-year period required by Rule 14a-8(b). *See also*, *Ameren Corp.* (January 12, 2017) (concurring with the exclusion of a shareholder proposal where the initial broker letter only addressed the proponent's ownership as of a single date, two days prior to the proposal submission date, and failed to address continuous ownership, and the second broker letter submitted also failed to establish sufficient proof of ownership); *The Boeing Co.* (January 27, 2015) (concurring with the exclusion of a shareholder proposal where the only letter received from a DTC participant confirmed ownership of shares of company stock as of a single date, which was a different date than the proposal submission date, and failed to confirm that the proponent had continuously held the requisite amount of shares of company stock for the one-year period required by Rule 14a-8(b)); and *Verizon Communications Inc.* (January 25, 2008) (concurring with the exclusion of a shareholder proposal where the broker letter only provided information regarding the current ownership of shares of company stock and the original date of purchase, thereby failing to establish the proponent's continuous ownership of the requisite amount of shares of company stock for the one-year period required by Rule 14a-8(b)).

In the present case, the Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponent and the Representative in a timely manner the Deficiency Notice, which specifically set forth the information and instructions listed above and attached a copy of Rule 14a-8, SLB 14F and SLB 14G. *See Exhibit B.* However, despite the clear explanation in the Deficiency Notice to provide a written statement from the "record" holder of the Proponent's shares verifying that the Proponent "continuously held the requisite number of shares of common stock for the one-year period preceding and including November 19, 2020," the Initial Deficiency Response failed to do so. Instead, the Initial Deficiency Response, dated December 17, 2020, only established that (i) the Proponent held 108 shares of Company stock on December 2, 2020, 13 days after the Proposal submission date, and (ii) the Proponent held 53 shares of Company stock on December 2, 2019. Additionally, the Initial Deficiency Response referred to and included October 2019, November 2019 and December 2019 monthly statements. The Initial Deficiency Response failed to verify the continuous nature of the Proponent's ownership

for the one-year period preceding and including the Proposal submission date (November 19, 2020). Specifically, the Initial Deficiency Response was silent regarding the Proponent's ownership of Company shares during the almost entire year period between December 3, 2019 and December 1, 2020. As the Staff noted in SLB 14, "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" is insufficient to prove ownership for purposes of Rule 14a-8(b). Furthermore, the monthly statements with respect to October 2019, November 2019, December 2019 and October 2020 are not sufficient to show continuous ownership even during those four months. The Staff has explicitly stated that monthly, quarterly or other periodic investment statements are not sufficient to demonstrate continuous ownership. SLB 14 addresses this by stating:

**“(2) Do a shareholder’s monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?”**

No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities *continuously* for a period of one year as of the time of submitting the proposal.”

Applying this guidance, in *BlackRock, Inc.* (March 21, 2019), the Staff concurred that a proponent's monthly broker statements were not sufficient to establish that the proponent owned the requisite amount of shares of company stock continuously for the one-year period as of the date the proposal was submitted. *See also, FedEx Corp.* (June 28, 2018) (concurring with the exclusion of a shareholder proposal because an account statement, broker trade confirmation and a list of stock transactions was insufficient verification of continuous ownership); *PepsiCo, Inc.* (January 20, 2016) (concurring with the exclusion of a shareholder proposal because an account statement showing ownership of company shares as of a certain date was insufficient verification of continuous ownership); and *Rite Aid Corp.* (February 14, 2013) (concurring with exclusion of a shareholder proposal because an account statement from a broker verifying ownership of securities as of a certain date was insufficient verification of continuous ownership).

The Second Deficiency Response does not rectify the failings of the Initial Deficiency Response. First, the Second Deficiency Response was untimely, as it was submitted to the Company after the 14-day cure period following the receipt of the Deficiency Notice by the Proponent and the Representative had expired. The Staff has consistently concurred in the exclusion of shareholder proposals when the proponents have failed, following a timely and proper request by a company, to timely furnish evidence of eligibility to submit the shareholder proposal pursuant to Rule 14a-8(b). For example, in *FedEx Corp.* (June 5, 2019), the Staff concurred with exclusion of a proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) when the proponent provided his proof of ownership one day after the 14-day cure period had ended. *See also, Time Warner Inc.* (March 13, 2018) (concurring with the exclusion of a shareholder proposal where the proponent supplied proof of ownership 18 days after receiving the company's timely deficiency notice); *Prudential Financial, Inc.* (December 28, 2015) (concurring with the exclusion of a shareholder proposal where the proponent supplied proof of ownership 23 days after receiving the company's timely deficiency notice); and *Mondelēz International, Inc.* (February 27, 2015) (concurring with the exclusion of a shareholder proposal where the

proponent supplied proof of ownership 16 days after receiving the company’s timely deficiency notice). Here, the Second Deficiency Response was supplied 18 days after both the Proponent and the Representative received the Deficiency Notice; therefore, consistent with the above-cited precedent, it was untimely. Furthermore, the Second Deficiency Response states that the Proponent “has continuously held 80 shares or more of EVRG *as of November 19, 2019*” (emphasis added). In accordance with Rule 14a-8(b), the Deficiency Notice requested a written statement from the “record” holder of the Proponent’s shares verifying that the Proponent “continuously held the requisite number of shares of common stock for the one-year period *preceding and including November 19, 2020*” (emphasis added). The Second Deficiency Response does not address the requested period (November 19, 2019 to November 19, 2020); instead, the Second Deficiency Response speaks of an undefined period prior to November 19, 2019. Although the language in the Robinhood Financial, LLC letter, dated December 9, 2020, is somewhat unclear, we believe it is referring to a period of time as of and prior to November 19, 2019; otherwise, it would directly contradict Robinhood Financial, LLC’s prior letter, dated December 2, 2020, which explicitly stated that the Proponent held 53 shares of Company stock on December 2, 2019 (less than the “80 shares or more of EVRG [the Proponent continuously held] as of November 19, 2019”). Regardless, the only timely proof of ownership that the Proponent submitted was the First Deficiency Response, which (as discussed above) did not satisfy the eligibility requirements of Rule 14a-8(b). The Second Deficiency Response also did not satisfy the eligibility requirements of Rule 14a-8(b) and was untimely. Therefore, the Company may exclude the Proposal pursuant to Rule 14a-8(f)(1) and Rule 14a-8(b).

## **Conclusion**

The Deficiency Notice timely and properly informed the Proponent and the Representative that they could cure the identified procedural deficiencies by sending the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b). However, the Initial Deficiency Response failed to verify the Proponent’s continuous ownership of Company shares for the one-year period preceding and including the date the Proposal was submitted to the Company (November 19, 2020). The Second Deficiency Response was submitted after the 14-day cure period had expired and also failed to verify the Proponent’s continuous ownership of shares of Company stock for the one-year period preceding and including the date the Proposal was submitted to the Company (November 19, 2020). As outlined in Rule 14a-8(f)(1), the Proponent’s response to the Deficiency Notice providing the proper verification must have been postmarked or transmitted electronically, no later than 14 days from receipt of the Deficiency Notice. The Proponent failed to provide such proper verification. Therefore, consistent with the above-cited precedent, the Proposal is excludable because, despite receiving timely and proper notice pursuant to Rule 14a-8(f)(1), the Proponent failed to timely demonstrate that he continuously owned the requisite amount of shares of Company stock for the one-year period preceding and including the date the Proposal was submitted to the Company (November 19, 2020), as required by Rule 14a-8(b).

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2021 Proxy Materials, and it respectfully requests that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We are happy to provide any additional information and answer any questions that you may have with regard to this request. Correspondence regarding this letter should be sent to me at Jeffrey.DeBruin@evergy.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (816) 652-1043.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. DeBruin", followed by a horizontal line.

Jeffery C. DeBruin, Corporate Counsel and  
Assistant Secretary

Enclosures

cc: Paul Rolfe, \*\*\*  
Andy Knott, Sierra Club, 2818 Sutton Blvd., St. Louis, Missouri 63143 (and via email at  
andy.knott@sierraclub.org)  
Heather A. Humphrey, Evergy, Inc., Senior Vice President, General Counsel and  
Corporate Secretary  
Lawton B. Way, Hunton Andrews Kurth LLP (via email at lway@huntonAK.com)

**Exhibit A<sup>1</sup>**

**(See the enclosed.)**

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<sup>1</sup> In accordance with Section G of Staff Legal Bulletin 14C (June 28, 2005), the Company has included the Proponent's October 2020 account statement in this Exhibit A because it clearly constitutes correspondence relevant to this no action request. However, the Company has redacted from this account statement the Proponent's account numbers and information relating to the Proponent's investments other than in the Company's stock, which are not relevant to this no action request. Should the Staff require an unredacted copy of this account statement, the Company will provide them upon request.





November 19, 2020

Heather Humphrey  
Senior Vice President,  
General Counsel and Corporate Secretary  
Energys, Inc.  
1200 Main Street  
Kansas City, Missouri 64105

Dear Ms. Humphrey,

The Sierra Club hereby submits the enclosed shareholder proposal on behalf of Paul Rolfe for inclusion in Energys's 2021 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

Also enclosed is a letter from Mr. Rolfe authorizing Sierra Club to submit this shareholder proposal on his behalf. As stated in this letter, Mr. Rolfe is the owner of over \$2,000 of Energys stock held continuously for over one year and he intends to continue to hold this stock until after the upcoming Annual Meeting.

A proof of ownership will be sent as soon as possible. In the interim, a recent account statement showing Mr. Rolfe's Energys stock is enclosed. A representative of the Sierra Club will attend the shareholder's meeting to move the resolution as required. We hope a dialogue with the company can result in resolution of our concerns.

If you have any questions, please contact me at [andy.knott@sierraclub.org](mailto:andy.knott@sierraclub.org) or 314-803-4695. Thank you.

Sincerely,

Andy Knott  
Senior Campaign Representative, Manager  
Sierra Club  
2818 Sutton Blvd  
St. Louis, MO 63143  
Email: [andy.knott@sierraclub.org](mailto:andy.knott@sierraclub.org)  
Cell: 314-803-4695

Enclosures

**Whereas:**

In 2018, the Intergovernmental Panel on Climate Change released a Special Report on Global Warming of 1.5 Degrees Celsius that found we are already seeing the consequences of a 1 degree Celsius increase in temperature and that we must reduce greenhouse gas emissions by 45 percent by 2030 in order to avert the most catastrophic effects of climate change. The Biden clean energy plan acknowledges that a 100% de-carbonization of the U.S. electric sector by 2035 is required to meet those targets.

In January 2020, Evergy announced its commitment to achieve an 80 percent reduction in carbon dioxide emissions below 2005 levels from its power plants by 2050.

In August 2020, Evergy announced a new Sustainability Transformation Plan to accelerate its clean energy transition, stating that the company has the potential to reduce carbon dioxide emissions 85% by 2030 compared to 2005 levels while meeting or exceeding investor expectations.

Evergy's executive compensation package includes an "Equivalent Availability" metric for coal generation as 10% of the package's short-term incentive plan (Evergy DEF 14A, March 20, 2020, page 33). No consideration is given in executive compensation to whether or how much the company has reduced its carbon emissions or increased clean energy generation.

Failing to provide compensation incentives for carbon reduction or increasing clean energy while incentivizing availability of coal generation, its most carbon-intensive generation resource, is contradictory to Evergy's carbon reduction goals.

Prior to 2020, Ameren's executive compensation plan included a coal generation availability metric. As part of an agreement with Sierra Club on a shareholder proposal filed in 2018, Ameren agreed to examine the feasibility of removing that metric and adding a carbon reduction metric. In 2020, Ameren removed the coal plant availability metric from its short-term incentive program and added a renewable energy and energy storage metric to its long-term incentive program, stating "This change is aligned with Ameren's commitment to strong environmental stewardship..." (Ameren DEF 14A, March 26, 2020, page 57).

While determining specific metrics for executive compensation rests within the discretion of the board, a senior executive compensation policy incorporating progress on carbon emission reduction or clean energy adoption would help better align Evergy's values with its operations, and position the company to thrive in a future impacted by climate change and necessary requirements to reduce carbon emissions, while also protecting shareholder value.

**Resolved:**

Shareholders request that the Compensation and Leadership Development Committee of the Board of Directors prepare a report assessing the feasibility of integrating metrics for reduction of Evergy's carbon output or increasing clean energy adoption in the company's executive compensation package, while removing the coal-fired generation availability metric from the company's short-term incentive plan.

November 19, 2020

Andy Knott  
Senior Campaign Representative, Manager  
Sierra Club  
2818 Sutton Blvd  
St. Louis, MO 63143

**Re: Authorization to File Shareholder Resolution**

Dear Mr. Knott,

As of November 19, 2020, I authorize Sierra Club to file or co-file a shareholder resolution on my behalf with Evergy, Inc., and that it be included in the 2021 proxy statement, in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

I have continuously owned over \$2,000 worth of Evergy stock, with voting rights, for over a year. I intend to hold the stock through the date of the company's annual meeting in 2021.

I give Sierra Club the authority to deal on my behalf with any and all aspects of the shareholder resolution. I understand that the company may send me information about this resolution, and that the media may mention my name related to the resolution; I will alert Sierra Club in either case. I confirm that my name may appear on the company's proxy statement as the filer of the aforementioned resolution.

Sincerely,

  
\_\_\_\_\_  
Paul Rolfe



85 Willow Rd, Menlo Park, CA 94025  
help@robinhood.com

10/01/2020 to 10/31/2020  
Paul Roffe Account [REDACTED]  
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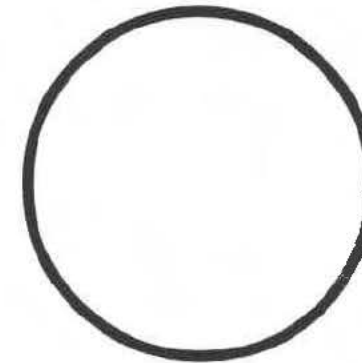
■ Options    ■ Equities    ■ Cash and Cash Equivalents

**Account Summary**

Opening Balance    Closing Balance

Brokerage Cash Balance	[REDACTED]	[REDACTED]
Deposit Sweep Balance	[REDACTED]	[REDACTED]
Total Securities	[REDACTED]	[REDACTED]
<b>Portfolio Value</b>	[REDACTED]	[REDACTED]

**Portfolio Allocation**



**Income and Expense Summary**

This Period    Year to Date

Dividends	[REDACTED]	[REDACTED]
Capital Gains Distributions	[REDACTED]	[REDACTED]
Interest Earned	[REDACTED]	[REDACTED]

Exhibit A - Page 4

The Robinhood Cash Management Annual Percentage Yield (APY) is 0.30% as of the closing date of this statement. APY is determined by the program banks into which your uninvested cash is swept, and may change at any time. Investment products are not FDIC-insured, not bank guaranteed, and may lose value. Uninvested cash swept to the program banks is eligible for FDIC insurance up to applicable limits, subject to FDIC rules. The Securities Investor Protection Corporation has taken the position that uninvested cash swept to the program banks is not covered by the Securities Investor Protection Act.

This statement shall be conclusive if not objected to in writing within ten days (except with respect to debit card transactions). Errors and omissions exempted. Please address all communications to the firm and not to the individuals. Address changes or other material changes in your account should be directed to the office servicing your account. Kindly mention your account number. This statement should be retained for income tax purposes.

Portfolio Summary

Securities Held in Account	Sym/Cusip	Acct Type	Qty	Price	Mkt Value	Est. Dividend Yield	% of Total Portfolio
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Energy Estimated Yield: 3.68%	EVRG	Cash	108	\$55.20	\$5,961.60	\$218.16	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total Securities</b>					[REDACTED]		
<b>Brokerage Cash Balance</b>					[REDACTED]		
<b>Deposit Sweep Balance</b>					[REDACTED]		
<b>Total Priced Portfolio</b>					[REDACTED]		

Exhibit A - Page 5

**Exhibit B**

**(See the enclosed.)**



December 3, 2020

VIA OVERNIGHT MAIL AND EMAIL

Sierra Club  
Attn: Mr. Andy Knott  
Senior Campaign Representative, Manager  
2818 Sutton Blvd  
St. Louis, Missouri 63143  
Email: andy.knott@sierraclub.org

Re: Shareholder proposal dated November 19, 2020 (the "Proposal")

Dear Mr. Knott:

Evergy, Inc., a Missouri corporation (the "Company"), received on November 20, 2020 the Proposal, submitted on behalf of Mr. Paul Rolfe (the "Proponent").

The purpose of this letter is to notify you (pursuant to the requirements of Rule 14a-8(f) under Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) that the above referenced submission of the Proposal fails to satisfy certain eligibility and procedural requirements specified under Rule 14a-8(b). Pursuant to Rule 14a-8(f), your response to this letter must be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter (the "Deadline"). If you fail to adequately correct the eligibility and procedural deficiency specified below and respond to this letter before the Deadline, the Company may exclude the Proposal from its proxy statement.

Under Rule 14a-8(b) of the Exchange Act, in order to be eligible to submit a 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 meeting for at least one year by the date the proposal is submitted and must continue to hold the shares through the date of the meeting. As of the date hereof, we have not received proof that the Proponent has satisfied the Exchange Act Rule 14a-8(b) ownership requirements as of the date that the Proposal was submitted to the Company (which date was November 19, 2020).

Although the Proposal states that the Proponent "is the owner of over \$2,000 of Evergy stock held continuously for over one year," the only proof provided of this ownership was a Robinhood account statement showing the Proponent's stock ownership as of October 31, 2020. Neither the statement in the Proposal regarding the Proponent's shareholdings nor the October 31, 2020 Robinhood account statement satisfy the proof of ownership requirement under Rule 14a-8(b). Furthermore, the Company's stock records do not indicate that the Proponent is the record owner of sufficient shares of Company common stock to satisfy the Rule 14a-8(b) ownership requirement.

To remedy this defect, you must submit sufficient proof demonstrating that the Proponent is a shareholder with continuous ownership of the required amount of Company common stock for the one-year period preceding and including the date the Proposal was submitted to the Company. As explained in Exchange Act Rule 14a-8(b) and in guidance issued by the staff of the Securities and Exchange Commission (the “SEC”), sufficient proof of the Proponent’s continuous ownership must be in the form of:

- (1) A written statement from the record holder of such Proponent’s shares (usually a broker or a bank) verifying that the Proponent continuously held the requisite number of shares of common stock for the one-year period preceding and including November 19, 2020; or
- (2) If such 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 requisite number of shares of Company common stock 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 requisite number of shares of Company common stock for the one-year period preceding and including November 19, 2020.

If you intend to demonstrate the Proponent’s ownership by submitting a written statement from the record holder of the Proponent’s shares of Company common stock as set forth in clause (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 and SEC Staff Legal Bulletin No. 14G, only DTC participants are viewed as record holders of securities that are deposited with DTC. The Proponent can confirm whether his broker or bank is a DTC participant by asking the broker or bank or by checking DTC’s participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent’s broker or bank is a DTC participant, then you need to submit a written statement from the Proponent’s broker or bank verifying that the Proponent continuously held the requisite number of shares of Company common stock for the one-year period preceding and including November 19, 2020.
- (2) If the Proponent’s broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the Proponent’s shares are held verifying that the Proponent continuously held the requisite number of shares of Company common stock for the one-year period preceding and including



Sierra Club  
Mr. Andy Knott  
December 3, 2020  
Page 3 of 3

November 19, 2020. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the DTC participant that holds the Proponent's shares of Company common stock 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 you may 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 19, 2020, the requisite number of shares of Company common stock were continuously held by the Proponent: (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.

This letter will constitute the Company's notice to you under Exchange Act Rule 14a-8(f) of this deficiency. As noted above, the SEC's rules require that your response to this letter correcting this deficiency be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to Mr. Jeffrey C. DeBruin, Corporate Counsel and Assistant Secretary, c/o Evergy, Inc., 1200 Main Street, Kansas City, Missouri 64105. Alternatively, and preferably, you may transmit any response by email to me at Jeffrey.DeBruin@evergy.com. For your reference, we have enclosed copies of evidence of the Proposal submission date, Rule 14a-8 and Staff Legal Bulletins No. 14F and No. 14G. We urge you to review these materials carefully before submitting the proof of the Proponent's ownership to ensure it is compliant.

Please note that the requests in this letter are without prejudice to any other rights that the Company may have to exclude the Proposal from its proxy materials on any other grounds permitted by Rule 14a-8.

If you have any questions on this matter, please feel free to contact me at 816-652-1043.

Sincerely,



Jeffrey C. DeBruin  
Corporate Counsel and Assistant Secretary

Enclosures:

Evidence of Proposal submission date (Exhibit A)

Rule 14a-8 under the Securities Exchange Act of 1934, as amended (Exhibit B)

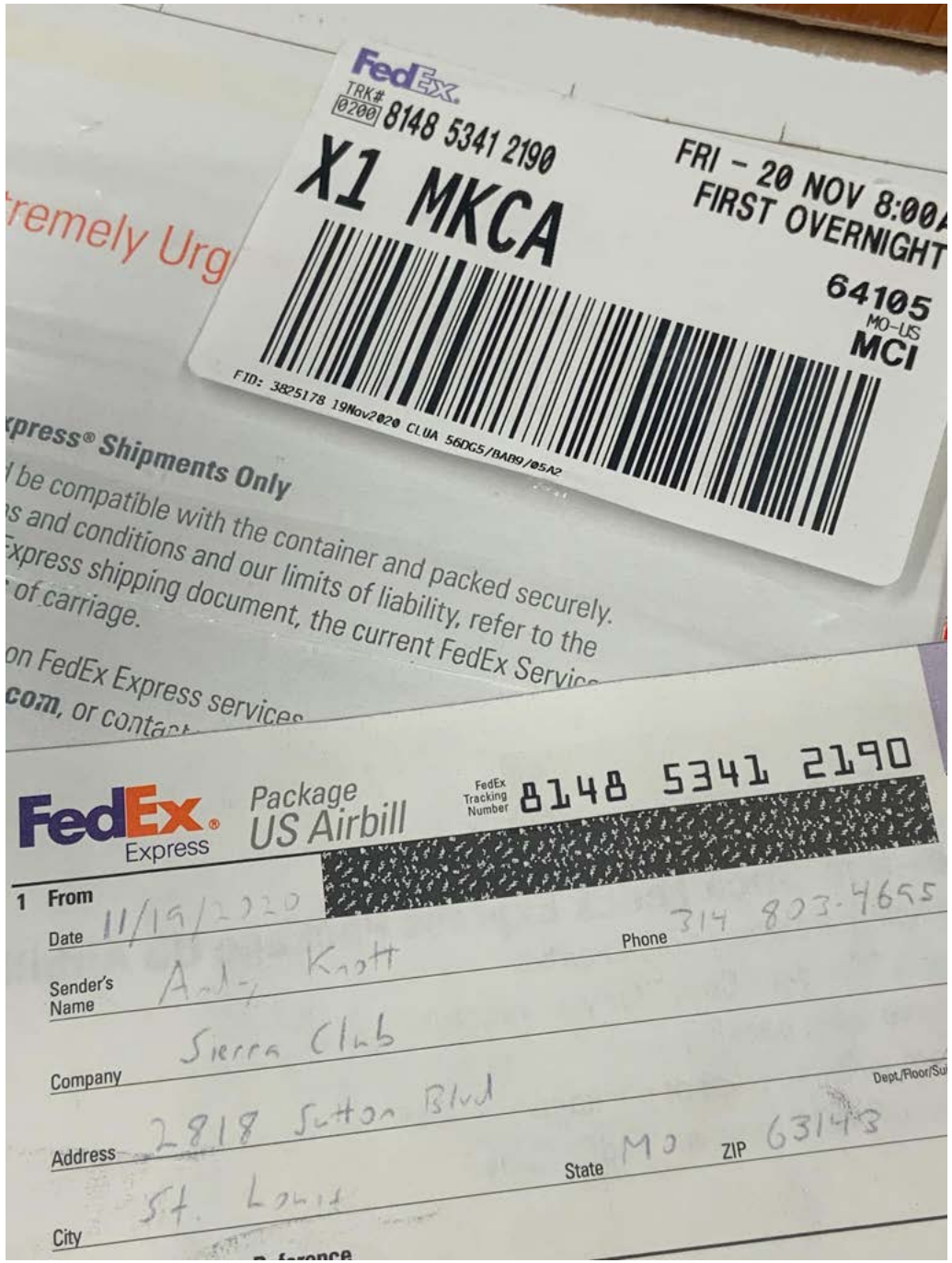
Division of Corporation Finance Staff Legal Bulletins No. 14F and 14G (Exhibit C)

cc: Paul Rolfe,  
Heather A. Humphrey, Senior Vice President, General Counsel and Corporate Secretary

\*\*\*

Proof of Date of Proponent's Submission

Exhibit A



**Exhibit B**

**Exchange Act Rule 14a-8**

# ELECTRONIC CODE OF FEDERAL REGULATIONS

**e-CFR data is current as of November 30, 2020**

Title 17 → Chapter II → Part 240 → §240.14a-8

Title 17: Commodity and Securities Exchanges

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

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## **§240.14a-8 Shareholder proposals.**

[Link to an amendment published at 85 FR 70294, Nov. 4, 2020.](#)

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

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

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

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders.

However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

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

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

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

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

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

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

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

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

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

the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

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

(i) The proposal;



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

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

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

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

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

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

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

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

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

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti fraud rule, §240 14a 9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

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

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

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

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

[Need assistance?](#)

**Exhibit C**

**Staff Legal Bulletins No. 14F and 14G**



## U.S. Securities and Exchange Commission

### Division of Corporation Finance Securities and Exchange Commission

### Shareholder Proposals

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

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

**Date:** October 18, 2011

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

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

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

#### A. The purpose of this bulletin

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

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

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

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

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

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.<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 the question 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 broker and bank that are DTC participants are considered to be the record holder of securities on deposit with DTC when calculating the number of record holder for purposes of Section 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?*

Shareholder 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/File/Download/clientcenter/DTC/alpha.alpha.html>.

*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 proceed on 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/interps/legal/cfs1b14f.htm>

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Modified: 10/18/2011



## U.S. Securities and Exchange Commission

### Division of Corporation Finance Securities and Exchange Commission

### Shareholder Proposals

#### Staff Legal Bulletin No. 14G (CF)

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

**Date:** October 16, 2012

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

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

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

#### A. The purpose of this bulletin

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **D. Use of website addresses in proposals and supporting statements**

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

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

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

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

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

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

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

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

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

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

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

- <sup>1</sup> An entity is an “affiliate” of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.
- <sup>2</sup> Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is “usually,” but not always, a broker or bank.
- <sup>3</sup> Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.
- <sup>4</sup> A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

*<http://www.sec.gov/interps/legal/cfs1b14g.htm>*

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Modified: 10/16/2012



**Exhibit C**

**(See the enclosed.)**



# Shipment Receipt

**Transaction Date:** 03 Dec 2020

**Tracking Number:**

1Z676918NT95250136

## 1 Address Information

<b>Ship To:</b> Sierra Club Mr. Andy Knott, Sr Campaign Rep Mgr 2818 Sutton Blvd SAINT LOUIS MO 63143 3010 email:andy.knott@sierraclub.org	<b>Ship From:</b> EVERGY, INC. Jeffrey C. DeBruin 1200 Main St 16th Floor KANSAS CITY MO 64105 Telephone:816-652-1043 email:jeffrey.debruin@evergy.com	<b>Return Address:</b> EVERGY, INC. Jeffrey C. DeBruin 1200 Main St 16th Floor KANSAS CITY MO 64105 Telephone:816-652-1043 email:jeffrey.debruin@evergy.com
--	--	--

## 2 Package Information

	Weight	Dimensions / Packaging	Declared Value	Reference Numbers
1.	Letter (Letter billable)	UPS Letter		

## 3 UPS Shipping Service and Shipping Options

**Service:** UPS Next Day Air

**Delivered By:** End of Day Friday, Dec 4, 2020

**Shipping Fees Subtotal:** 32.02 USD

**Transportation:** 30.79 USD

**Fuel Surcharge:** 1.23 USD

**Additional Shipping Options:**

- Deliver Without Signature:** 0.00 USD
- Package1: Deliver Without Signature:** 0.00 USD

**Quantum View Notify E-mail Notifications:** No Charge

1 jeffrey.debruin@evergy.com: Ship, Exception, Delivery

## 4 Payment Information

\*\*\*

**Bill Shipping Charges to:** Shipper's Account

<b>Shipping Charges:</b>	<b>32.02 USD</b>
<b>Subtotal Shipping Charges:</b>	<b>32.02 USD</b>
<b>Total Charged:</b>	<b>32.02 USD</b>

Note: This document is not an invoice. Your final invoice may vary from the displayed reference rates.

\* For delivery and guarantee information, see the UPS Service Guide ({}). To speak to a customer service representative, call 1-800-PICK-UPS for domestic services and 1-800-782-7892 for international services.

## Tracking Summary

### Tracking Numbers

**Tracking Number:** 1Z 676 918 NT 9525 013 6  
**Type:** Package  
**Status:** **Delivered**  
**Delivered On:** 12/04/2020  
11:57 A.M.  
**Delivered To:** SAINT LOUIS, MO, US  
**Service:** UPS Next Day Air

Tracking results provided by UPS: 12/04/2020 3:03 P.M. ET

**NOTICE:** UPS authorizes you to use UPS tracking systems solely to track shipments tendered by or for you to UPS for delivery and for no other purpose. Any other use of UPS tracking systems and information is strictly prohibited.

# ups Shipment Receipt

\*\*\*

Transaction Date: 03 Dec 2020

Tracking Number:

## 1 Address Information

\*\*\*

<p><b>Ship From:</b>                  EVERGY, INC.                  Jeffrey C. DeBruin                  1200 Main St 16th Floor                  KANSAS CITY MO 64105                  Telephone:816-652-1043                  email:jeffrey.debruin@evergy.com</p>	<p><b>Return Address:</b>                  EVERGY, INC.                  Jeffrey C. DeBruin                  1200 Main St 16th Floor                  KANSAS CITY MO 64105                  Telephone:816-652-1043 email:jeffrey.debruin@evergy.com</p>
---	---

## 2 Package Information

Weight	Dimensions / Packaging	Declared Value	Reference Numbers
1. Letter (Letter billable)	UPS Letter		

## 3 UPS Shipping Service and Shipping Options

**Service:** UPS Next Day Air  
**Delivered By:** End of Day Friday, Dec 4, 2020

**Shipping Fees Subtotal:** 49.47 USD

<b>Transportation</b>	42.87 USD	<b>Additional Shipping Options</b>	
<b>Fuel Surcharge</b>	1.90 USD	<b>Deliver Without Signature</b>	0.00 USD
<b>Residential Surcharge</b>	4.70 USD	<b>Package1: Deliver Without Signature</b>	
		<b>Quantum View Notify E-mail Notifications:</b>	No Charge
		1 jeffrey.debruin@evergy.com: Ship, Exception, Delivery	

## 4 Payment Information

\*\*\*

**Bill Shipping Charges to:** Shipper's Account

<b>Shipping Charges:</b>	<b>49.47 USD</b>
<b>Subtotal Shipping Charges:</b>	<b>49.47 USD</b>
<b>Total Charged:</b>	<b>49.47 USD</b>

Note: This document is not an invoice. Your final invoice may vary from the displayed reference rates.

\* For delivery and guarantee information, see the UPS Service Guide ({}). To speak to a customer service representative, call 1-800-PICK-UPS for domestic services and 1-800-782-7892 for international services.

# Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

**Tracking Number**

\*\*\*

**Service**

UPS Next Day Air®

**Shipped / Billed On**

12/03/2020

**Delivered On**

12/04/2020 6:30 P.M.

**Delivered To**

PROVIDENCE, RI, US

**Received By**

DRIVER RELEASE

**Left At**

Deck

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 12/07/2020 8:58 A.M. EST

## **Exhibit D<sup>2</sup>**

**(See the enclosed.)**

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<sup>2</sup> In accordance with Section G of Staff Legal Bulletin 14C (June 28, 2005), the Company has included the Proponent's October 2019, November 2019 and December 2019 account statements in this Exhibit D because they clearly constitute correspondence relevant to this no action request. However, the Company has redacted from each account statement the Proponent's account numbers and information relating to the Proponent's investments other than in the Company's stock, which are not relevant to this no action request. Should the Staff require unredacted copies of these account statements, the Company will provide them upon request.

## Jeffrey DeBruin

---

**From:** Andy Knott <andy.knott@sierraclub.org>  
**Sent:** Thursday, December 17, 2020 12:46 PM  
**To:** Jeffrey DeBruin  
**Subject:** Re: Evergy - Shareholder Proposal - Deficiency Notice  
**Attachments:** P.Rolfe Asset Verification-Redacted.pdf; Account Statement - Oct 31, 2019.pdf; Account Statement - Nov 30, 2019.pdf; Account Statement - Dec 31, 2019.pdf

**\*\*CAUTION: This email originated from outside of the Evergy network. Do not click links or open attachments unless you recognize the sender and know the content is safe\*\***

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Good afternoon Mr. DeBruin,

First I wanted to express my appreciation to you for sending this via email as well as by overnight mail as Sierra Club's office is also thinly staffed due to the pandemic.

This is to respond to the deficiency notice for the shareholder resolution Sierra Club filed on behalf of Evergy shareholder Paul Rolfe. Attached is a letter Mr. Rolfe received from his brokerage firm, Robinhood, on December 2, 2020 verifying Mr. Rolfe's Evergy share ownership. The letter also includes this: "Please refer to the account owner for additional account details, which can be found in the monthly statements." Also attached are monthly statements from October, November and December 2019 showing Mr. Rolfe's ownership of Evergy shares from that time frame; see page 2 of each statement for Evergy information.

I will also call you to discuss this matter.

Thank you,  
Andy

On Thu, Dec 3, 2020 at 4:46 PM Jeffrey DeBruin <[Jeffrey.DeBruin@evergy.com](mailto:Jeffrey.DeBruin@evergy.com)> wrote:

Internal Use Only

Good afternoon, Mr. Knott. We received the shareholder proposal submitted by the Sierra Club on behalf of Mr. Rolfe. Thank you for your continued interest in our company, and on an issue that we also take seriously. Please find attached a copy of a deficiency notice related to the proposal. We are sending the notice via overnight courier to comply with regulatory requirements, but please feel free to also use my email for correspondence to ensure we receive any written materials. We have limited office staffing due to COVID and we do take these exchanges and engagement seriously, and I'd hate to miss something. We look forward to interacting with you.

Regards, Jeff

**Jeffrey C. DeBruin**

Evergy

Corporate Counsel and Assistant Secretary

[Jeffrey.DeBruin@evergy.com](mailto:Jeffrey.DeBruin@evergy.com)

**O:** (816) 652-1043 **M:** (612) 836-3877

[evergy.com](http://evergy.com)

*Westar Energy and KCP&L are now Evergy*

--

**Andy Knott**

Pronouns:he/him/his ([learn why I'm listing my pronouns](#))

Senior Campaign Representative, Manager

Sierra Club

Beyond Coal Campaign - Kansas, Missouri, Nebraska

2818 Sutton Boulevard

St. Louis, MO 63143

E-Mail: [andy.knott@sierraclub.org](mailto:andy.knott@sierraclub.org)

Cell: 314.803.4695





Securities offered through  
Robinhood Financial, LLC. member FINRA & SIPC

Robinhood  
85 Willow Road  
Menlo Park, CA 94025

December 02, 2020

Paul Rolfe  
\*\*\*

To Whom It May Concern:

### **ACCOUNT VERIFICATION**

This letter is a verification that Paul Rolfe has an individual account ending \*\*\* at Robinhood Financial opened on December 11, 2014, with a current account equity of [REDACTED] as of December 01, 2020. The customer holds 108 shares of EVRG and held 53 shares of EVRG as of December 02, 2019. Please refer to the account owner for additional account details, which can be found in the monthly statements.

We trust that this confidential information will be of assistance to you.

Sincerely,

Robinhood Support



85 Willow Rd, Menlo Park, CA 94025  
support@robinhood.com

12/01/2019 to 12/31/2019  
Paul Rolfe Account [REDACTED]  
\*\*\*

■ OPTIONS      ■ EQUITIES      ■ CASH AND CASH EQUIVALENTS

### Account Summary

Net Account Balance

Total Securities

### Portfolio Value

### Income and Expense Summary

Dividends

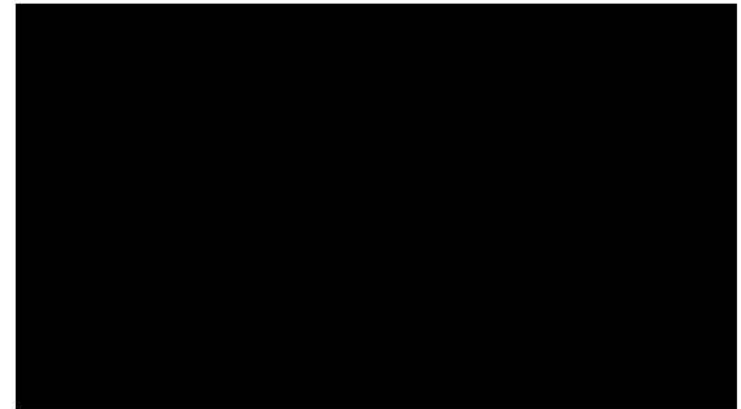
Capital Gains Distributions

Interest Earned

	OPENING BALANCE	CLOSING BALANCE
Net Account Balance	[REDACTED]	[REDACTED]
Total Securities	[REDACTED]	[REDACTED]

	THIS PERIOD	YEAR TO DATE
Dividends	[REDACTED]	[REDACTED]
Capital Gains Distributions	[REDACTED]	[REDACTED]
Interest Earned	[REDACTED]	[REDACTED]

### Portfolio Allocation



This statement shall be conclusive if not objected to in writing within ten days (except with respect to debit card transactions). Errors and omissions exempted. Please address all communications to the firm and not to the individuals. Address changes or other material changes in your account should be directed to the office servicing your account. Kindly mention your account number. This statement should be retained for income tax purposes.

## PORTFOLIO SUMMARY

EQUITIES/OPTIONS	SYM/CUSIP	ACCT TYPE	QTY	PRICE	MKT VALUE	EST. ANNUAL INCOME	% OF TOTAL PORTFOLIO
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Evergy Estimated Yield: 3.14%	EVRG	Cash	103	\$65.09	\$6,704.27	\$210.85	86.27%
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### Total Securities

### Brokerage Cash Balance

### Total Priced Portfolio

## ACCOUNT ACTIVITY

DESCRIPTION	SYMBOL	ACCT TYPE	TRANSACTION	DATE	QTY	PRICE	DEBIT	CREDIT
-------------	--------	-----------	-------------	------	-----	-------	-------	--------

Evergy Unsolicited, CUSIP: 30034W106	EVRG	Cash	Buy	12/12/2019	10	\$62.00	\$620.00	
---	------	------	-----	------------	----	---------	----------	--

Cash Div: R/D 2019 11 27 P/D 2019 12 20 93 shares at 0.505	EVRG	Cash	CDIV	12/20/2019				\$46.97
--	------	------	------	------------	--	--	--	---------

### Total Funds Paid and Received

							\$620.00	\$46.97
--	--	--	--	--	--	--	----------	---------

## EXECUTED TRADES PENDING SETTLEMENT

These transactions may not be reflected in the other summaries

DESCRIPTION	ACCT TYPE	TRANSACTION	TRADE DATE	SETTLE DATE	QTY	PRICE	DEBIT	CREDIT
-------------	-----------	-------------	------------	-------------	-----	-------	-------	--------

### Total Executed Trades Pending Settlement

							\$0.00	\$0.00
--	--	--	--	--	--	--	--------	--------

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We also offer Robinhood Cash Management as an additional feature of your account. Robinhood Cash Management includes debit card access to your account and automatic sweep of uninvested cash to bank deposits. If you participate in Robinhood Cash Management, your use of the debit card, and your rights with respect to debit card transactions, will be governed by the Robinhood Debit Card Agreement, which has been provided to you and is available at <https://rbnhd.co/debit-card-agreement>.

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If you participate in Robinhood Cash Management, your uninvested cash is swept into accounts at FDIC insured program banks, where your uninvested cash will earn interest from the program banks and be eligible for FDIC insurance up to applicable limits, subject to FDIC rules. Please see the Robinhood Securities, LLC & Robinhood Financial LLC Insured Network Deposit Sweep Program Disclosures, available at <https://rbnhd.co/ind-disclosure>, for the terms and conditions of this sweep program, including information regarding FDIC insurance coverage.

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85 Willow Rd, Menlo Park, CA 94025  
support@robinhood.com

11/01/2019 to 11/30/2019  
Paul Rolfe Account [REDACTED]  
\*\*\*

■ OPTIONS      ■ EQUITIES      ■ CASH AND CASH EQUIVALENTS

### Account Summary

Net Account Balance

Total Securities

**Portfolio Value**

OPENING BALANCE      CLOSING BALANCE

[REDACTED]	[REDACTED]
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### Income and Expense Summary

Dividends

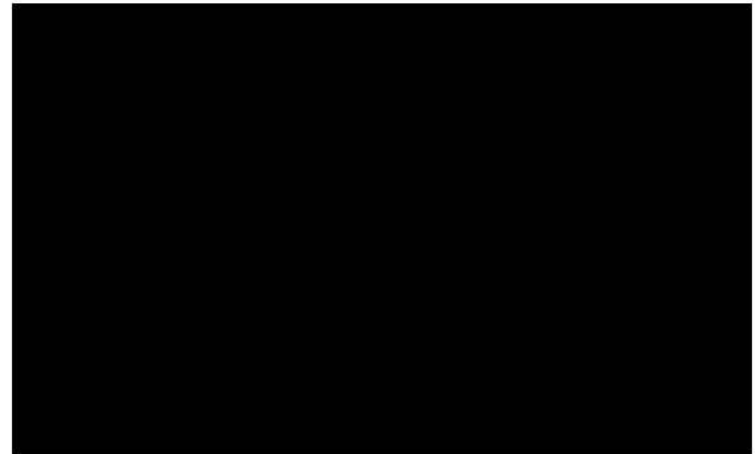
Capital Gains Distributions

Interest Earned

THIS PERIOD      YEAR TO DATE

[REDACTED]	[REDACTED]
------------	------------

### Portfolio Allocation



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**PORTFOLIO SUMMARY**

EQUITIES/OPTIONS	SYM/CUSIP	ACCT TYPE	QTY	PRICE	MKT VALUE	EST. ANNUAL INCOME	% OF TOTAL PORTFOLIO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Every Estimated Yield: 3.06%	EVRG	Cash	93	\$63.27	\$5,884.11	\$179.83	78.60%
<b>Total Securities</b>					[REDACTED]	[REDACTED]	[REDACTED]
<b>Brokerage Cash Balance</b>					[REDACTED]		[REDACTED]
<b>Total Priced Portfolio</b>					[REDACTED]		

**ACCOUNT ACTIVITY**

DESCRIPTION	SYMBOL	ACCT TYPE	TRANSACTION	DATE	QTY	PRICE	DEBIT	CREDIT
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total Funds Paid and Received</b>							[REDACTED]	[REDACTED]



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**EXECUTED TRADES PENDING SETTLEMENT**

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<b>Total Executed Trades Pending Settlement</b>							\$0.00	\$0.00



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11/01/2019 to 11/30/2019

Paul Rolfe Account

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support@robinhood.com

10/01/2019 to 10/31/2019  
Paul Rolfe Account [REDACTED]  
\*\*\*

■ OPTIONS   ■ EQUITIES   ■ CASH

### Account Summary

Net Account Balance

Total Securities

**Portfolio Value**

OPENING BALANCE   CLOSING BALANCE

[REDACTED]	[REDACTED]
------------	------------

### Income and Expense Summary

Dividends

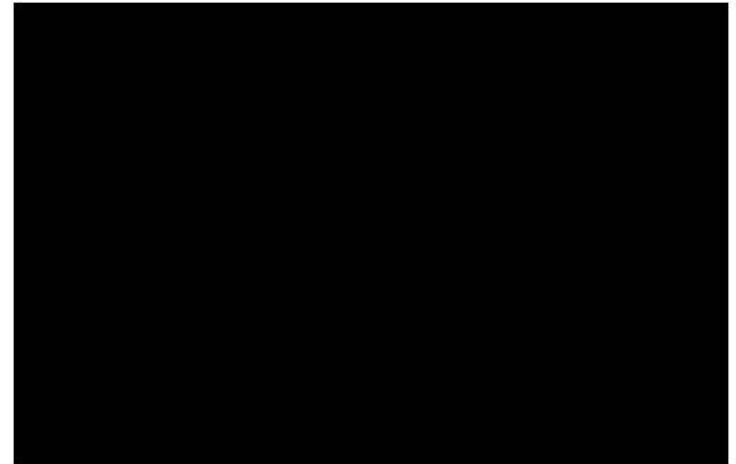
Capital Gains Distributions

Interest Earned

THIS PERIOD   YEAR TO DATE

[REDACTED]	[REDACTED]
------------	------------

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[REDACTED]									
[REDACTED]									
Everygy Estimated Yield: 3.06%	EVRG	Cash	93	\$63.91	\$5,943.63	\$6,190.08	(3.98)%	\$181.65	80.52%
<b>Total Securities</b>					[REDACTED]			[REDACTED]	[REDACTED]
<b>Total Cash (Net Portfolio Balance)</b>					[REDACTED]				[REDACTED]
<b>Total Priced Portfolio</b>					[REDACTED]				

ACCOUNT ACTIVITY

DESCRIPTION	SYMBOL	ACCT TYPE	TRANSACTION	DATE	QTY	PRICE	DEBIT	CREDIT
[REDACTED]								
[REDACTED]								
[REDACTED]								
Everygy Unsolicited, CUSIP: 30034W106	EVRG	Cash	Buy	10/28/2019	5	\$63.00	\$315.00	
<b>Total Funds Paid and Received</b>							[REDACTED]	[REDACTED]



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10/01/2019 to 10/31/2019  
**Paul Rolfe** Account [REDACTED]  
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DESCRIPTION	ACCT TYPE	TRANSACTION	TRADE DATE	SETTLE DATE	QTY	PRICE	DEBIT	CREDIT
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**Exhibit E**

**(See the enclosed.)**

## Jeffrey DeBruin

---

**From:** Andy Knott <[andy.knott@sierraclub.org](mailto:andy.knott@sierraclub.org)>  
**Sent:** Tuesday, December 22, 2020 9:21 AM  
**To:** Jeffrey DeBruin  
**Subject:** Re: Evergy - Shareholder Proposal - Deficiency Notice  
**Attachments:** Paul Rolfe Updated Letter.pdf

**\*\*CAUTION: This email originated from outside of the Evergy network. Do not click links or open attachments unless you recognize the sender and know the content is safe\*\***

---

Mr. DeBruin

I just received the attached from Mr. Rolfe. Please let me know if you would like to discuss.

Thank you,  
Andy

On Thu, Dec 17, 2020 at 12:45 PM Andy Knott <[andy.knott@sierraclub.org](mailto:andy.knott@sierraclub.org)> wrote:  
Good afternoon Mr. DeBruin,

First I wanted to express my appreciation to you for sending this via email as well as by overnight mail as Sierra Club's office is also thinly staffed due to the pandemic.

This is to respond to the deficiency notice for the shareholder resolution Sierra Club filed on behalf of Evergy shareholder Paul Rolfe. Attached is a letter Mr. Rolfe received from his brokerage firm, Robinhood, on December 2, 2020 verifying Mr. Rolfe's Evergy share ownership. The letter also includes this: "Please refer to the account owner for additional account details, which can be found in the monthly statements." Also attached are monthly statements from October, November and December 2019 showing Mr. Rolfe's ownership of Evergy shares from that time frame; see page 2 of each statement for Evergy information.

I will also call you to discuss this matter.

Thank you,  
Andy

On Thu, Dec 3, 2020 at 4:46 PM Jeffrey DeBruin <[Jeffrey.DeBruin@evergy.com](mailto:Jeffrey.DeBruin@evergy.com)> wrote:

Internal Use Only

Good afternoon, Mr. Knott. We received the shareholder proposal submitted by the Sierra Club on behalf of Mr. Rolfe. Thank you for your continued interest in our company, and on an issue that we also take seriously. Please find attached a copy of a deficiency notice related to the proposal. We are sending the notice via overnight courier to comply with regulatory requirements, but please feel free to also use my email for correspondence to ensure we receive any written materials. We have limited office staffing due to COVID and we do take these exchanges and engagement seriously, and I'd hate to miss something. We look forward to interacting with you.



Securities offered through  
Robinhood Financial, LLC. member FINRA & SIPC

Robinhood  
85 Willow Road  
Menlo Park, CA 94025

December 09, 2020

Paul Rolfe  
\*\*\*

To Whom It May Concern:

### **ACCOUNT VERIFICATION**

This letter is a verification that Paul Rolfe has an individual account ending \*\*\* at Robinhood Financial opened on December 11, 2014 with a current account equity of N/A as of N/A. The customer has continuously held 80 shares or more of EVRG as of November 19, 2019. Please refer to the account owner for additional account details, which can be found in the monthly statements.

We trust that this confidential information will be of assistance to you.

Sincerely,

Robinhood Support

Regards, Jeff

**Jeffrey C. DeBruin**

Evergy

Corporate Counsel and Assistant Secretary

[Jeffrey.DeBruin@evergy.com](mailto:Jeffrey.DeBruin@evergy.com)

**O:** (816) 652-1043 **M:** (612) 836-3877

[evergy.com](http://evergy.com)

*Westar Energy and KCP&L are now Evergy*

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**Andy Knott**

Pronouns:he/him/his ([learn why I'm listing my pronouns](#))

Senior Campaign Representative, Manager

Sierra Club

Beyond Coal Campaign - Kansas, Missouri, Nebraska

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St. Louis, MO 63143

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Cell: 314.803.4695

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