JOHN CHEVEDDEN

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October 30, 2020

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

 # 4 Rule 14a-8 Proposal
Becton, Dickinson and Company (BDX)
Special Shareholder Meeting Improvement
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the September 23, 2020 no-action request.

Attached is a page from the 2020 General Dynamics (Delaware) annual meeting proxy that shows that a large shareholder can get special treatment.

Source:
https://www.sec.gov/Archives/edgar/data/40533/000120677420000937/gd3668711-def14a.htm#SHAREHOLDER_PROPOSAL_SPECIAL_SHAREHOLDER_MEETINGS

Perhaps the company can put forth an argument that Delaware and New Jersey law differ on this point.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Gary DeFazio <gary_defazio@bd.com>

Shareholder Proposal

Statement by Your Board of Directors against the Shareholder Proposal

This proposal seeks to amend our company's current special shareholder meeting right. Our current Bylaws provide that your Board will call a special meeting upon the written request of the following:

- a single stockholder holding 10% of our outstanding Common Stock, or
- one or more stockholders holding 25% of our outstanding stock, without any material restrictions.

Given the company's current shareholder base, shareholders have the ability to call a special meeting at both thresholds. Your Board understands the importance that the right to call a special meeting can provide to the company's shareholders, but also acknowledges that reasonable provisions must be in place so that the right serves its purpose without a risk of misuse.

The proposal requests that the threshold for calling a special shareholder meeting be set at 15% of the outstanding common stock. Your Board of Directors has considered this proposal and believes its adoption is redundant as our existing special meeting bylaw strikes an appropriate balance between the right of shareholders to call a special meeting and the interests of our company and shareholders in promoting the appropriate use of corporate funds and resources.

Your Board proposes the following responses to the proponent's letter:

Appropriate Threshold for Special Meetings

- The Board has concluded that a 15% threshold is too low for a group of investors to call a special meeting and that our current requirement is reasonable and appropriate for our company at this time, particularly when a single shareholder owning 10% can call a meeting under our current structure. In our recent engagement with a majority of our shareholders, we have continued to solicit input on this topic. While some shareholders support lower thresholds, most have conveyed support for levels that are in line with our current provision. Importantly, a 25% threshold is the most prevalent level among General Dynamics' peers, as well as S&P 500 companies. In fact, the majority of General Dynamics' peers have this threshold in place. In addition, 37% of S&P 500 companies require a 25% ownership threshold, as compared to only 8% for the 15% level (source: SharkRepellent as of July 1, 2019). Moreover, General Dynamics' current special shareholder meeting provision not only matches the prevalent practice but goes further by granting a single 10% shareholder the right to call a special meeting.

Director Independence

- As has become the proponent's perennial custom, rather than focusing on the actual merits of special meeting rights for shareholders, the proponent engages in a diatribe that confuses director tenure with director independence. His assertion that James Crown lacks independence is without merit and without basis in applicable rules or regulations. Further, it is directly contradictory to the Board's reasoned judgment of Mr. Crown's independence. Your Board strongly objects to the proponent's suggestion that the independence of a board member may be impaired merely because of length of service. We believe that the tenure of directors like Mr. Crown demonstrates strong commitment to our company and its shareholders, providing your Board with valuable insight into the long-term business cycles and the complex operations of our company. Also, your Board reviews the independence of each director annually to confirm compliance with the company's Director Independence Guidelines and the independence rules of the New York Stock Exchange. Mr. Crown, who is affiliated with our largest shareholder and regularly engages with some of our largest shareholders, serves as our independent lead director, providing an important, shareholder-aligned voice on our Board. To balance long-tenure in the board room, your Board maintains strong refreshment, with six new independent directors having been appointed over the last four years.

JOHN CHEVEDDEN

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October 4, 2020

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

 # 3 Rule 14a-8 Proposal
Becton, Dickinson and Company (BDX)
Special Shareholder Meeting Improvement
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the September 23, 2020 no-action request.

The first sentence of the proposal is:
"Shareowners ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 15% of our outstanding common stock the power to call a special shareowner meeting."

Contrary to the management September 30, 2020 letter, first sentence is not followed by a statement the begins with "or."

The second sentence of the proposal is a dependent sentence and uses the word "could" which gives the Board discretion in regard to the second sentence.

The second sentence of the proposal responds to the management text next to the 2020 rule 14a-8 proposal on this same topic:
"Lowering this threshold to 10% creates the risk that a few shareholders (and currently, **as few as one shareholder)** with narrow or short-term interests could call special meetings to advance their own particular agendas that are not aligned with the long-term interests of BD and our other shareholders." Emphasis added.

If management forwards another letter to the Staff I will reply.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Gary DeFazio <gary_defazio@bd.com>

2020 BDX Proxy

A shareholder proposal to call a special meeting also obtained a 57% vote at Electronic Arts (EA) in August 2019 even though shareholders at the same meeting approved a management proposal for a special meeting right that would require action by 25% of EA shareholders.

This proposal topic, sponsored by William Steiner, also won 78% support at a Sprint annual meeting with 1.7 Billion yes-votes. This 78% support might have been even higher if more shareholders had access to independent proxy voting advice.

Shareholders need to have the power to play a greater role in Becton Dickinson due to the mismanagement of the company. AmerisourceBergen is among opioid distributors proposing $10 billion in payments to settle state claims. It's the first time in two years of discussions that AmerisourceBergen and 2 other distributors put a dollar figure on the table to resolve lawsuits against them. The National Association of Attorneys General- handling talks on behalf of more than 35 states- countered with a demand for $45 billion to cover costs from the public-health crisis of opioid addiction and overdoses.

A 10% stock ownership threshold is important because the current 25% stock ownership threshold for shareholders to call a special meeting may be unreachable due to time constraints and the detailed technical requirements that can trip up half of shareholders who want a special shareholder meeting. Thus the 25% stock ownership threshold to call a special meeting can be a 50% stock ownership threshold to call a special meeting for all practical purposes.

Any claim that a shareholder right to call a special meeting can be costly - may be moot. When shareholders have a good reason to call a special meeting- our Board of Directors should be able to take positive responding action to make a special meeting unnecessary.

Please vote yes:

Make the Right to Call a Special Shareholder Meeting More Accessible to Shareholders
Proposal 6

* * *

BOARD OF DIRECTORS' RESPONSE

The Board has carefully considered this proposal and believes that the proposal is unnecessary and not in the best interests of our shareholders. Accordingly, the Board recommends that shareholders vote "AGAINST" the proposal.

We believe that it is important for our shareholders to have the ability to call special shareholder meetings to address matters that require attention prior to the next annual shareholders meeting. BD's bylaws provide for a 25% ownership threshold, which we believe is an appropriate standard for balancing shareholder rights and is consistent with prevailing practices at large public corporations. Lowering this threshold to 10% creates the risk that a few shareholders (and currently, as few as one shareholder) with narrow or short-term interests could call special meetings to advance their own particular agendas that are not aligned with the long-term interests of BD and our other shareholders. Such shareholders could also call special meetings solely to seek concessions that serve their own interests in exchange for avoiding a special meeting. In addition, special shareholder meetings not only subject BD to considerable expense, but also distract management and the Board from important business initiatives and objectives. Preserving our current 25% ownership threshold ensures that a special meeting will be called only when there is significant support for the meeting among our shareholders.

We also note that if holders of less than 25% of BD's common stock believe a special meeting should be called, New Jersey law provides that holders of 10% or more of BD's common stock have the right to have a court call a special shareholders meeting upon a showing of good cause.

For these reasons, we believe this proposal is unnecessary and not in the best interests of our shareholders.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "AGAINST" PROPOSAL 6.

New York
Northern California
Washington DC
London
Paris
Madrid
Tokyo
Beijing
Hong Kong

Davis Polk

Ning Chiu

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ning.chiu@davispolk.com

September 30, 2020

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Ladies and Gentlemen:

On behalf of Becton, Dickinson and Company, a New Jersey corporation (the "**Company**"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, we are filing this letter in response to the two letters submitted by John Chevedden dated September 23, 2020 and September 26, 2020 (the "**Proponent Letters**") with respect to the shareholder proposal (the "**Proposal**") submitted by Ken Steiner with Mr. Chevedden as his representative (the "**Proponent**") for inclusion in the proxy materials the Company intends to distribute in connection with its 2021 Annual Meeting of Shareholders (the "**2021 Proxy Materials**"). This letter supplements the prior letter the Company submitted to the Staff dated September 23, 2020 (the "**No-Action Letter**").

The Proponent Letters identify two alternative readings of the Proposal and characterize them as "option[s]." As explained in the No-Action Letter, the Staff previously permitted companies to exclude proposals asking boards to take steps to enable shareholders to call special meetings as vague and indefinite under Rule 14a-8(i)(3) when those proposals provided for two distinct alternative ownership thresholds within the resolution. *United Continental Holdings, Inc.* (Mar. 8, 2012). The proposal there sought to "enable one or more shareholders, holding not less than one-tenth* of the voting power of the Corporation, to call a special meeting. **Or* the lowest percentage of our outstanding common stock permitted by state law" (emphasis added, * in original). In *United Continental Holdings, Inc.*, the company argued that the proposal presented two "options":

Option 1: Holders of stock representing one-tenth of the voting power of the Company shall be allowed to call, or cause to be called, a special shareholders meeting.

Option 2: Holders of stock representing the minimum number of shares required -i.e., one- to call a special shareholders meeting under Delaware law shall be allowed to call, or cause to be called, a special shareholders meeting.

As a result, the resolution embodied two distinct thresholds. One threshold would allow shareholders "holding not less than one-tenth of the voting power of the [c]orporation" to call a special shareholders meeting, and the second alternative threshold was "the lowest percentage of our outstanding common stock permitted by state law," which would have been one share for a

Delaware corporation. It did not matter that the second ownership threshold was set forth as an alternative and started with "Or" in the resolution. See also *Danaher Corporation* (Feb. 16, 2012), *Western Union Company* (Jan. 13, 2012) and *Newell Rubbermaid, Inc.* (Feb. 21, 2012).

The proposal described above contained two sentences with different alternative ownership thresholds necessary for shareholders to call a special meeting, similar to the construct of the Proposal. The resolution in the Proposal contains two sentences providing for two different alternative and conditional ownership thresholds:

Option 1: give any shareholder owning 15% of common stock the ability to call a special shareowner meeting.

Option 2: not allow a shareholder owning 15% of common stock the ability to call a special meeting by counting that shareholder as owning 7.5% instead.

The Proponent Letters indicate that the Proposal is supposed to "giv[e] the board the option of allowing at minimum 2 shareholders to call a special meeting," but this alternative reading is not evident from the text of the Proposal (including the supporting statement), and merely reinforces that the resolution is clearly vague and ambiguous and could have multiple meanings. The intended ownership threshold of the Proposal is simply not clear, and presenting the second sentence as "could include" is the equivalent of using "or," which does not prevent the Proposal from being vague and indefinite.

If shareholders were to vote on the Proposal, they would have no way of knowing whether they were being asked to approve a special meeting right conditioned upon allowing a shareholder who owns 15% of common stock to call a meeting, or whether they were being asked to approve a special meeting right that would entirely prohibit any one shareholder who owns 15% of common stock to call a special meeting. The Company would similarly not know what was required in order to implement the Proposal, and its actions may be different from those envisioned by shareholders voting on the Proposal.

We hereby again request confirmation that the Staff of the Division of Corporation Finance will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2021 Proxy Materials.

Respectfully

Ning Chiu

cc w/ att: Gary DeFazio, Becton, Dickinson and Company

John Chevedden

JOHN CHEVEDDEN

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September 26, 2020

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

 # 2 Rule 14a-8 Proposal
Becton, Dickinson and Company (BDX)
Special Shareholder Meeting Improvement
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the September 23, 2020 no-action request.

The second sentence of the proposal states:
"Adoption of this proposal could include a provision that any single shareholder could get credit for only half of the 15% threshold."

This second sentence gives the Board the option or discretion of taking steps to adopt only the first sentence of the proposal:
"Shareowners ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 15% of our outstanding common stock the power to call a special shareowner meeting."

Management did not object to the first sentence.

Sincerely,

John Chevedden

cc: Kenneth Steiner

Gary DeFazio <gary_defazio@bd.com>

JOHN CHEVEDDEN

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September 23, 2020

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

 # 1 Rule 14a-8 Proposal
Becton, Dickinson and Company (BDX)
Special Shareholder Meeting Improvement
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to today's September 23, 2020 no-action request.

This proposal will clearly not diminish the voting rights of any shareholder at an annual meeting or at a special shareholder meeting.

This proposal gives the board the option of allowing at minimum 2 shareholders to call a special meeting.

The second sentence of the proposal states:
"Adoption of this proposal could include a provision that any single shareholder could get credit for only half of the 15% threshold."

The word "could" means "might" and merely offers the board a clear option.

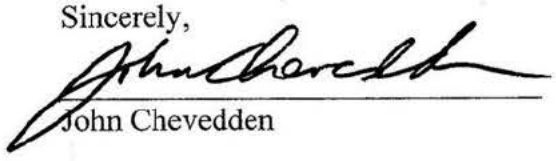
Management relies on an "analogy." A similar false analogy would be that the company cannot restrict a shareholder who owns $100 of stock from successfully filing a rule 14a-8 proposal because such a shareholder is entitled to the same rights as a shareholder who owns $2000 of stock.

Another similar false analogy would be that a company cannot limit the number of shareholders who initiate proxy access because all shareholders would supposedly have an equal right to be part of a group initiating proxy access.

However maybe management is right on its analogy and the limitation on the number of shareholders who can initiate proxy access needs to be revised at 500 companies.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2021 proxy.

Sincerely,



John Chevedden

cc: Kenneth Steiner

Gary DeFazio <gary_defazio@bd.com>

[BDX – Rule 14a-8 Proposal, August 17, 2020]
[This line and any line above it is not for publication.]

Proposal 4 – Special Shareholder Meeting Improvement

Shareowners ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 15% of our outstanding common stock the power to call a special shareowner meeting. Adoption of this proposal could include a provision that any single shareholder could get credit for only half of the 15% threshold. The Board of Directors would continue to have its existing power to call a special meeting.

The current right of 10% of shares to try to convince a New Jersey judge that a special meeting is necessary is probably useless. It would probably be less difficult for the current 25% of shares to call a special meeting than for 10% of shares to convince a New Jersey judge that a special meeting was necessary. Management previously failed to produce evidence of the shareholders of any large cap company ever convincing a New Jersey judge of the need for a special meeting.

Special meetings allow shareholders to vote on important matters, such as electing new directors that can arise between annual meetings. This is more important at Becton Dickinson because BD does not have an independent board chairman.

This proposal topic won 60%-support at the 2009 Becton Dickinson annual meeting. It even won 49% support at the 2011 Becton Dickinson annual meeting just after BDX adopted a lesser shareholder right to call a special meeting that would require action by 25% of BDX shareholders. This 49% support would have exceeded 50% if more shareholders had access to independent proxy voting advice. Six special meeting proposals won majority votes in 2020.

A shareholder proposal to call a special meeting also obtained a 57% vote at Electronic Arts (EA) in August 2019 even though shareholders at the same meeting approved a management proposal for a special meeting right that would require action by 25% of EA shareholders. This proposal topic, sponsored by William Steiner, also won 78% support at a Sprint annual meeting with 1.7 Billion yes-votes.

A 15% stock ownership threshold is important because the current 25% stock ownership threshold for shareholders to call a special meeting may be unreachable due to time constraints and the detailed technical requirements that can trip up half of shareholders who want a special shareholder meeting. Thus the 25% stock ownership threshold to call a special meeting can be a 50% stock ownership threshold to call a special meeting for all practical purposes.

Any claim that a shareholder right to call a special meeting can be costly – may be moot. When shareholders have a good reason to call a special meeting – our Board of Directors should be able to take positive responding action to make a special meeting unnecessary.

Please vote yes:

Special Shareholder Meeting Improvement – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

New York
Northern California
Washington DC
London
Paris
Madrid
Tokyo
Beijing
Hong Kong

Davis Polk

Ning Chiu

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ning.chiu@davispolk.com

September 23, 2020

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Ladies and Gentlemen:

On behalf of Becton, Dickinson and Company, a New Jersey corporation (the "**Company**"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), we are filing this letter with respect to the shareholder proposal (the "**Proposal**") submitted by Ken Steiner with John Chevedden as his representative (the "**Proponent**") for inclusion in the proxy materials the Company intends to distribute in connection with its 2021 Annual Meeting of Shareholders (the "**2021 Proxy Materials**"). The Proposal is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the "**Staff**") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2021 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter via email to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from the 2021 Proxy Materials. Pursuant to Rule 14-8(j), we are submitting this letter not less than 80 days before the Company intends to file its definitive 2021 proxy statement. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal to be proper.

THE PROPOSAL

The Proposal states:

> RESOLVED: Shareowners ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 15% of our standing common stock the power to call a special shareowner meeting. Adoption of this proposal could include a provision that any single shareholder could get credit for only half of the 15% threshold. The Board of Directors would continue to have its existing power to call a special meeting.

REASONS FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may properly be excluded from the 2021 Proxy Materials pursuant to:

- Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate New Jersey law; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

The Proposal May Be Excluded Under Rule 14a-8(i)(2) Because Implementation Would Cause the Company to Violate New Jersey Law.

Rule 14a-8(i)(2) permits a company to omit from its proxy materials a shareholder proposal if the "proposal would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject." As further discussed in the opinion of the Company's New Jersey counsel, McCarter & English, LLP, which is attached hereto as Exhibit B (the "**New Jersey Counsel Opinion**"), the Company cannot implement the Proposal without violating the New Jersey Business Corporation Act (the "**Act**").

The Proposal requests that the Company give shareholders owning 15% of the Company's common stock the ability to call a special meeting (the "**15% Ownership Threshold**"), including a provision that could require that any one shareholder "get credit for only half of the 15% threshold." The Company only has one class of outstanding common stock. As explained in the New Jersey Counsel Opinion, New Jersey law prohibits discrimination among holders of the same class of stock. It is a fundamental rule under the Act that shares of the same class of stock are equal, and that the holders of such shares have the same rights on the pro rata basis.

The Staff has previously concurred with the exclusion under Rule 14a-8(i)(2) of a shareholder proposal that similarly sought to provide shareholders with the power to call special meetings but treated shareholders owning the same class of stock differently. The proposal in *Marathon Oil Corporation* (Feb. 6, 2009) asked the board to take the steps necessary to amend the bylaws and governing documents to provide 10% holders of Marathon's outstanding common stock the power to call special shareowner meetings, with certain provisions that treated differently common stock owned by management and/or the board from other shareholders. The Staff determined that this proposal could be excluded as it would cause Marathon to violate Delaware law by discriminating amongst holders of the same class of stock.

Half of the 15% Ownership Threshold is 7.5% of the Company's common stock. The Proposal violates the Act by treating differently those shareholders who own more than, and equal to or less than, 7.5%% of the Company's common stock. A shareholder who owns exactly 7.5% or less of the Company's common stock can apply and count the entirety of its position (get "credit", as the Proposal states) toward the 15% Ownership Threshold, but a shareholder who owns more than that amount would be restricted from having all of its holdings count for purposes of meeting the 15% Ownership Threshold, and that shareholder is therefore prohibited from exercising the same rights accorded to shareholders who own equal to or less than 7.5% of the Company's common stock. A shareholder who owns 15% of more of the Company's common stock, and would otherwise meet

the 15% Ownership Threshold, cannot by itself call a special meeting because a substantial portion of its stock holdings would be treated differently under the Proposal.

As the New Jersey Counsel Opinion explains, under the Act all shareholders holding the same class of shares must have the same rights, without discrimination based upon percentage ownership of that class. As such, the restriction imposed by the Proposal constitutes a limitation on the ability of any shareholder who owns more than 7.5% of shares to exercise its right as a holder of common stock to meet the 15% Ownership Threshold, violating the Act's requirement that shares of stock of the same class be accorded equal and identical rights.

On other occasions, the Staff has concurred in the exclusion of shareholder proposals where the proposal, if implemented, would violate state law. See *eBay Inc.* (Apr. 1, 2020) where the proposal asked employees to elect at least 20% of the board members in violation of Delaware law and *Dominion Resources, Inc.* (Jan. 14, 2015) where the proposal asked a director be appointed by the board without a stockholder vote in violation of Virginia law.

The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because the Proposal Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

Rule 14a-8(i)(3) provides that a company may exclude a shareholder proposal from its proxy materials if the proposal or supporting statement is contrary to any of the Commission's proxy rules. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "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." Staff Legal Bulletin No. 14B (Sept. 15, 2004). The Staff has further explained that a shareholder proposal can be sufficiently misleading and therefore excludable under Rule 14a-8(i)(3) when the company and its shareholders might interpret the proposal differently such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *Fuqua Industries, Inc.* (Mar. 12, 1991).

The Staff has articulated that when the terms of a proposal are unclear and the proponent fails to provide adequate guidance on how such uncertainties should be resolved, that proposal may be excluded as vague and indefinite under Rule 14a-8(i)(3). See *eBay, Inc.* (Apr. 10, 2019) (the proposal asked the company to reform the company's executive compensation committee where neither shareholders nor the company would be able to determine with any reasonable certainty the "reform" requested by the proposal); *Microsoft Corporation* (Oct. 7, 2016) (the proposal asked the board not to take action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action) and *JP Morgan Chase & Co.* (Mar. 11, 2014) (the proposal asked the board to amend the company's governing documents to provide that all matters presented to shareholders shall be decided by a simple majority of the shares voted for and against an item (or, "withheld" in the case of board elections), such that the proposal has conflicting mandates by providing for both majority vote and plurality vote systems for director elections).

In *United Continental Holdings, Inc.* (Mar. 8, 2012), a proposal to provide shareholders with the right to call special meetings was excluded as vague and indefinite because it had two different and conflicting standards for the requisite ownership threshold, as the proposal asked the board to amend the governing documents to enable not less than one-tenth of the company's voting power or the lowest percentage of outstanding common stock permitted by state law.

Similarly, the Proposal asks the Company's board to both give shareholders owning 15% of the Company's common stock the right to call a special meeting, and include a provision that any one shareholder could only count a maximum of 7.5% of its ownership of the Company's common stock toward the ownership requirement. The Proposal is internally inconsistent with conflicting mandates. The first part would permit any single shareholder owning 15% or more to demand that the Company hold a special meeting, and the supporting statement suggests that the purpose of the proposal is to give shareholders who own 15% or more of the Company's stock the ability to call special meetings ("[a] 15% stock ownership threshold is important…"). However, the second part of the Proposal requests that the board restrict that same shareholder and limit its ownership to 7.5% of common stock, preventing a single shareholder who owns 15% or more of common stock from calling a special meeting by itself.

Like in *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.") and *Capital One Financial Corp.* (Feb. 7, 2003) (concurring in exclusion of a proposal under Rule 14a-8(i)(3) where the company argued that its stockholders "would not know with any certainty what they are voting either for or against"). The Company is not sure how to implement the Proposal, and shareholders will not be certain what they are voting for, given that the Proposal lacks sufficient description about the actions that the Company and shareholders should consider in implementing the Proposal. *Apple Inc.* (Dec. 6, 2019). Because the Proposal reasonably can be read to have two differing and conflicting interpretations, stockholders voting on the Proposal are unlikely to all agree as to how this ambiguity should be resolved, such that it would be impossible to assure that all stockholders voting on the Proposal share a common understanding of the effect of implementing the Proposal. As a result, the Company would not be able to determine with any reasonable certainty whether stockholders intended to require that a single shareholder owning 15% or more should be able to call a special meeting.

CONCLUSION

The Company requests confirmation that the Staff will not recommend any enforcement action if, in reliance on the foregoing, the Company omits the Proposal from its 2021 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at (212) 450-4908 or ning.chiu@davispolk.com.

Respectfully

Ning Chiu

Attachment

cc w/ att: Gary DeFazio, Becton, Dickinson and Company
John Chevedden

Exhibit A

Proposal

Proposal 4 – Special Shareholder Meeting Improvement

Shareowners ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 15% of our outstanding common stock the power to call a special shareowner meeting. Adoption of this proposal could include a provision that any single shareholder could get credit for only half of the 15% threshold. The Board of Directors would continue to have its existing power to call a special meeting.

The Current right of 10% of shares to try to convince a New Jersey judge that a special meeting is necessary is probably useless. It would probably be less difficult for the current 25% of shares to call a special meeting than for 10% of shares to convince a New Jersey judge that a special meeting was necessary. Management previously failed to produce evidence of the shareholders of any large cap company even convincing a New Jersey judge of the need for a special meeting.

Special meetings allow shareholders to vote on important matters, such as electing new directors that can arise between annual meetings. This is more important at Becton Dickinson because BD does not have an independent board chairman.

This proposal topic won 60%-support at the 2009 Becton Dickinson annual meeting. It even won 49% support at the 2011 Becton Dickinson annual meeting just after BDX adopted a lesser shareholder right to call a special meeting that would require action by 25% of BDX shareholders. This 49% support would have exceeded 50% if more shareholders had access to independent proxy voting advice. Six special meeting proposal won majority votes in 2020.

A shareholder proposal to call a special meeting also obtained a 57% vote at Electronic Arts (EA) in August 2019 even though shareholders at the same meeting approved a management proposal for a special meeting right that would require action by 25% of EA shareholders. This proposal topic, sponsored by William Steiner, also won 78% support at Sprint annual meeting with 1.7 Billion yes-votes.

A 15% stock ownership threshold is important because the current 25% stock ownership threshold for shareholders to call a special meeting may be unreachable due to time constraints and the detailed technical requirements that can trip up half of shareholders who want a special shareholder meeting. Thus, the 25% stock ownership threshold to call a special meeting can be a 50% stock ownership threshold to call a special meeting for a practical purposes.

Any claim that a shareholder right to call a special meeting can be costly – may be moot. When shareholders have a good reason to call a special meeting – our Board of Directors should be able to take positive responding action to make a special meeting unnecessary.

Please vote yes:

Special Shareholder Meeting Improvement – Proposal 4

Exhibit B

New Jersey Counsel Opinion

McCarter & English

David F. Broderick
Partner
T. 973-639-2031
F. 973-297-3815
dbroderick@mccarter.com

McCarter & English, LLP
Four Gateway Center
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Newark, NJ 07102-4056
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September 23, 2020

Becton, Dickinson and Company
1 Becton Drive
Franklin Lakes, NJ 07417-1880

Re: Shareholder Special Meeting Proposal Submitted By Kenneth Steiner

Ladies and Gentlemen:

We have acted as special New Jersey counsel to Becton, Dickinson and Company, a New Jersey corporation (the "Company"), in connection with a proposal (the "Proposal") submitted by Kenneth Steiner (the "Proponent"), which the Proponent intends to present at the Company's 2021 annual meeting of shareholders. In this connection, you have requested our opinion as to the validity of certain changes to the Company's corporate governance documents, which are contemplated by the Proposal, under the New Jersey Business Corporation Act, N.J.S.A. 14A:1-1 et. seq. (the "Act").

For purposes of rendering our opinion as expressed herein, we have been furnished and have reviewed the following documents: (i) the Restated Certificate of Incorporation of the Company (the "Certificate"); (ii) the By-Laws of the Company, as amended as of April 24, 2018 (the "Bylaws"); and (iii) the Proposal and its supporting statement.

The Proposal

The Proposal states that:

"Shareowners ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 15% of our outstanding common stock the power to call a special shareowner meeting. Adoption of this proposal could include a provision that any single shareholder could get credit for only half of the 15% threshold. The Board of Directors would continue to have its existing power to call a special meeting."

Discussion

You have asked for our opinion as to whether the Proposal, if implemented by the Company, would be valid under the Act.

As set forth in greater detail below, it is our opinion that the Proposal, if implemented by the Company, would not be valid under the Act, because the amendments to the Company's governing documents which it envisions being adopted by the Company would violate the Act.

Special Shareholders Meetings under the Act

Section 14A:5-3 of the Act deals with the subject of special shareholders meetings, and reads as follows:

> "14A:5-3. Call of special meetings of shareholders. Special meetings of the shareholders may be called by the president or the board, or by such other officers, directors or shareholders as may be provided in the by-laws. Notwithstanding any such provision, upon the application of the holder or holders of not less than 10% of all the shares entitled to vote at a meeting, the Superior Court, in an action in which the court may proceed in a summary manner, for good cause shown, may order a special meeting of the shareholders to be called and held at such time and place, upon such notice and for the transaction of such business as may be designated in such order. At any meeting ordered to be called pursuant to this section, the shareholders constitute a quorum for the transaction of the business designated in such order."

The Company's By-laws currently provide that "a special meeting of shareholders shall be called by the Secretary at the written request (a "Special Meeting Request") of holders of record of at least 25% of the voting power of the outstanding capital stock of the Company entitled to vote on the matter or matters to be brought before the proposed special meeting." (Bylaws, Section 2A(C)). As a practical matter, holders of the Company's common stock hold all of the voting power, so this provision entitles holders of 25% or more of the common stock to call a special meeting of shareholders.

The Proposal, If Adopted, Would Cause The Company to Violate New Jersey Law.

The Proposal contemplates two changes being made to the Company's By-Law provisions governing the ability of Company shareholders to call special meetings of shareholders:

First, the threshold for the voting power of the shareholders who are entitled to call a special meeting would be lowered from the current 25% to 15%.

Second, because under the Proposal "any single shareholder could get credit for only half of the 15% threshold [for calling a special meeting]", any shareholder holding more than 7.5% of the outstanding common stock would not be entitled to have all of its shares count toward the 15% threshold, so to that extent it would be disadvantaged as compared to other holders of common stock in its ability to join in a call of a special meeting or, in the case of a 15% shareholder, itself call a special meeting. (For ease of reference, we will hereafter refer to this portion of the Proposal as the "7.5% Limitation.")[1]

it is our opinion that the 7.5% Limitation would not be valid under the Act. We base this conclusion on our reading of the Act and the court's holding in Asarco Inc. vs. Court, 611 F. Supp. 468 (D. NJ 1985), where the court analyzed the voting provisions of the Act and invalidated a charter provision which provided that holders of greater than 20% of a class of preferred stock would have diminished voting rights with respect to their shares than other holders had with respect to their shares of the same class. The court held that it was not valid under the Act to have voting rights of the holders of the same class of shares vary based upon the shareholder's percentage of ownership of that class of shares:

> Neither N.J.S.A. 14A:7–2 nor any other provision of the Business Corporation Act confer upon the corporation or its directors the power to issue classes of shares which have differing voting rights within the same class or which modify previously issued classes of shares so as to confer different voting rights upon shares within that class……. With respect to voting rights of shareholders, N.J.S.A. 14A:5–10 provides that "[e]ach outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, unless otherwise permitted in the certificate of incorporation." Thus differing voting rights are contemplated. The power to issue shares is provided for in N.J.S.A. 14A:7–1(1): "... Such shares may consist of one class or may be divided into two or more classes and one class may be divided into one or more series. Each class and series may have such designation and such relative voting, dividend, liquidation and other rights, preferences, and limitations as shall be stated in the certificate of incorporation ..."

The court concluded that while a New Jersey corporation has the power to issue different classes or series of capital stock with different voting rights as among the classes or the series, it cannot provide for different voting rights as among the holders of the same class or series of capital stock.

[1] Because, as explained below, the 7.5% Limitation portion of the Proposal would violate the Act, this opinion does not discuss the portion of the Proposal which would reduce the threshold from 25% to 15%.

We think that there is a direct analogy to the proposed 7.5% Limitation. Although perhaps not strictly a "voting right", a percentage-based limitation on the right of a shareholder to call a special shareholders meeting is directly analogous to a limitation on that shareholder's voting rights based upon his or its percentage of ownership of the class of shares, common stock, which has the power to call such a meeting. The power to call a special shareholders meeting fits directly into the language of N.J.S.A. 14A:7-1(1) quoted above as constituting one of the "other rights, preferences, and limitations" of the holders of a class of shares (in this case, common stock) and, as such, fits directly into the logic of the Asarco decision holding that all shareholders holding the same class of shares must have the same rights, without discrimination based upon percentage of ownership of that class. As such, it is our opinion that the 7.5% Limitation constitutes a prohibited limitation on a greater than 7.5% shareholder's ability to exercise its rights as a holder of common stock, and would be invalid under the Act.

Conclusion

Based upon and subject to the foregoing, and subject to the limitations stated herein, it is our opinion that:

The Proposal, if implemented by the Company, would not be valid under the Act because the amendments which it envisions being adopted by the Company's Board of Directors would violate the Act.

We are admitted to practice law in the state of New Jersey. The foregoing opinion is limited to New Jersey law. We have not considered and we express no opinion on any other laws or the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

/s/ McCarter & English, LLP

McCarter & English, LLP