SANFORD J. LEWIS, ATTORNEY

February 16, 2021
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Union Pacific Corporation Regarding climate transition plan on Behalf of James McRitchie

Ladies and Gentlemen:

James McRitchie (the "Proponent") is beneficial owner of common stock of Union Pacific Corporation (the "Company") and As You Sow (the "Representative") has submitted a shareholder proposal on his behalf (the "Proposal") (Exhibit A to this letter) to the Company. I have been asked by the Proponent to respond to the letter dated January 15, 2021 ("Company Letter") sent to the Securities and Exchange Commission by Ronald Mueller. In that letter, the Company contends that the Proposal may be excluded from the Company's 2021 proxy statement. A copy of this letter is being emailed concurrently to Ronald Mueller.

Based on review of the letter sent by the Company, the Proposal must be included in the Company's 2021 proxy materials, unless the proposal previously submitted by The Children's Investment Fund (TCIF), and also included in the Company's no action request, is found to be not excludable and will be included in the proxy, in which case the proponent would withdraw the McRitchie proposal.

ANALYSIS

The Company makes three arguments against the McRitchie proposal, either that the authorization of the representative was inadequate, or that the McRitchie proposal constitutes "two proposals" in violation of the one proposal rule, or that the proposal is duplicative with the proposal filed by the TCI Fund.

Authorization

The Company asserts that the specificity of the proposal topic included in the authorization letter was inconsistent with authorization of the representative to file the McRitchie proposal, and therefore that the proposal can be excluded pursuant to 14a-8(b) and Rule 14a-8(f). To the contrary, the proponent submitted sufficient evidence of a representative relationship, with As You Sow acting as an agent on behalf of James McRitchie. Pursuant to State law (both parties

are in California), the authorization provides appropriate discretion to As You Sow, as the agent and expert, to represent the proponent's interests and intentions in filing the present Proposal.

The Proponent's Authorization Is Fully Consistent with the Proposal

The subject matter in the authorization correspondence -- "climate transition reporting" – clarifies two things. First, it demonstrates that the shareholder is concerned about the issue of the Company's climate reporting. Second, the lack of further specificity from the shareholder demonstrates that it has given its representative authority to craft a Proposal related to that subject matter in the manner *As You Sow* deems appropriate.

Given authorization to file a proposal on climate transition reporting, the ultimate approach taken by *As You Sow* in drafting the Proposal was a request for an annual investor vote on any publicly available climate transition strategy reported by the company. That the Proponent's stated purpose is fulfilled by the Proposal is demonstrated in its very first paragraph which acknowledges the need for clear climate reporting from companies and the desire to have a say on the adequacy of such reporting:

> **Whereas:** Increasingly, investors are seeking to ascertain whether their companies' climate strategies are being undertaken at a scale and pace necessary to reduce climate transition risk and address global climate change needs. Shareholders therefore seek a voice in advising the Company regarding its plans related to climate change.

A vote on the Company's climate transition reporting, the focus of the Proposal, was well within the scope of McRitchie's delegation of authority. There is no question that the Proponent's stated intent was fulfilled and that no unauthorized proposal was filed in Proponent's name.

State law authorizes delegation of authority to interpret its generalized intent

The Proponent delegated authority to *As You Sow* to file a proposal on the broad topic of "climate transition reporting." The authorization letter did not state that *As You Sow* must file a proposal asking only for a climate transition report, as the Company suggests. The Proponent's grant of authority on the broad subject matter of climate transition reporting is adequate to demonstrate that the Proponent delegated to his representative the responsibility to file a proposal related to the subject matter, in the form the specialist deemed appropriate and necessary to maximize successful filing and proxy consideration.[1]

[1] According to the Restatement of the Law, Third, Agency: (1) An agent has actual authority to take action designated or implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives, as the agent reasonably understands the principal's manifestations and objectives when the agent determines how to act.

An agency relationship pursuant to state law is a fiduciary relationship built on the exercise of discretion and judgment, in this case professional judgment by the representative *As You Sow*. As a matter of public policy, the Commission and Staff try whenever possible, to avoid overstepping on state law relationships. Such a relationship is demonstrated here, and the proposal filed represented an appropriate level of discretion for the agent.[2] An agent necessarily has latitude to implement the authority granted by the client, and the discretion to interpret and apply the client's wishes is inherent in the agency relationship. Here, the agent implemented the "climate transition reporting" goal in light of the earlier filed TCIF proposal, with the goal of filing a proposal on climate transition reporting that would survive the no action process in the event the TCIF proposal were to fail.

Staff Legal Bulletin 14I provides guidance in ensuring that a Proposal is authorized by a Proponent

The Staff has previously addressed the issue of whether a representative's authorization documentation must follow the dictates of Staff Legal Bulletin 14I, or otherwise meet a specific format.[3] In *International Business Machines* Corp. (avail. Dec. 20, 2019, recon. denied, Jan. 17, 2020) ("IBM"), the Staff was unable to concur with the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f). The company argued that the authorization letter from the proponent failed to identify the specific proposal to be submitted, and therefore failed to delegate authority to his representative consistent with SLB 14I and failed to cure the deficiency within 14 calendar days. The request to exclude the proposal was rejected without a written decision. The company sought reconsideration and in an unusual course of events, Corporation Finance Director William

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(2) An agent's interpretation of the principal's manifestations is reasonable if it reflects any meaning known by the agent to be ascribed by the principal and, in the absence of any meaning known to the agent, as a reasonable person in the agent's position would interpret the manifestations in light of the context, including circumstances of which the agent has notice and the agent's fiduciary duty to the principal.

(3) An agent's understanding of the principal's objectives is reasonable if it accords with the principal's manifestations and the inferences that a reasonable person in the agent's position would draw from the circumstances creating the agency.

[2] Although the interpretation of the rules that may take effect next year will be a separate matter that is not applicable in 2021, with the law as it stands today, it is not necessary to fulfill the details of SLB 14I but only demonstrate an agency relationship, as discussed below. We acknowledge that if the recent amendments to Rule 14a-8 come into effect for the 2022 proxy season, a different interpretation regarding the scope of discretion of agents and representatives may be applicable.

[3] The Company Letter makes an awkward and erroneous distinction for the IBM ruling: "Unlike in *IBM*, where the proponent himself submitted the proposal to the company and designated a representative." In fact, review of the record of the IBM case reveals that this distinction is in error. IBM's counsel wrote to the SEC in the no action request that "On October 18, 2019, the Representative submitted the Proposal to the Company via email, which the Company received on the same day. …The Proposal was provided along with a letter dated October 9, 2019, purporting to authorize the Representative to submit a proposal on behalf of the Proponent (the "Authorization Letter".)"

Hinman wrote a letter under his own signature personally denying the request for reconsideration:

> Rule 14a-8 currently does not provide a basis to exclude a proposal where the shareholder that uses a representative fails to provide documentation meeting all of the guidelines set forth in [SLB 14I]. SLB 14I is not a rule or regulation. SLB 14I addresses situations where there may be ambiguities about the actual proponent and their role with respect to the proposal.

As such, the terms of Staff Legal Bulletin 14I on authorization are not binding requirements, but rather references to assess whether authorization of the representative had occurred. In this instance, it is clear that such representative relationship was implemented consistent with the intent of the proponent. A similar approach was taken, prior to the Staff Legal Bulletin, in *Baker Hughes Inc.* (February 22, 2016) where the assertion of inadequate documentation of authorization was rejected by the Staff viewing the information in context.

"Two Proposals"

The Proponent strongly disagrees with the perspective of the Company Letter that an integrated approach taken in the TCIF proposal, that requests a climate report and annual vote, would constitute two proposals. A proposal can seek actions as well as a report without violating rule 14a-8(c).

However, as to the McRitchie Proposal, the Proposal seeks an annual evaluation of any public information on any climate transition plans available from the Company. Therefore, the McRitchie Proposal cannot be construed as requiring a publication of a new or separate transition plan, and therefore cannot be construed as the submission of two proposals even if the TCIF proposal is so interpreted.

Duplication

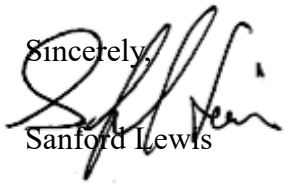
Neither the authorization assertion nor the "two proposals" assertions are valid as to exclude the current proposal. However, the McRitchie proposal was submitted subsequent to a proposal submitted by a different shareholder, TCIF, which involves an annual vote on a climate transition plan requested as part of the proposal.

Although the proposals are significantly different, in that the McRitchie proposal does not request a Company report, the proponent does not intend to oppose the Rule 14a-8(i)(11) challenge. If the TCIF proposal is sustained by the Staff against the Company's objections and will appear on the proxy, the Proponent would withdraw the Proposal.

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis, in the absence of a commitment to publish the TCIF proposal on the proxy, for the conclusion that the Proposal is excludable from the 2021 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,



Sanford Lewis

cc:
Ronald Mueller

The Proposal

Whereas: Increasingly, investors are seeking to ascertain whether their companies' climate strategies are being undertaken at a scale and pace necessary to reduce climate transition risk and address global climate change needs. Shareholders therefore seek a voice in advising the Company regarding its plans related to climate change.

In response to material climate risk, investors frequently refer to two key benchmarks of progress.

The steering committee of the Climate Action 100+ initiative, a coalition of more than 500 investors with over $52 trillion in assets, has developed a Net Zero Company Benchmark (Benchmark) outlining metrics of climate accountability for companies, and transparency for shareholders, including metrics related to greenhouse gas (GHG) emissions, GHG targets, improved climate governance, and climate related financial disclosures, among others.

The Science-Based Targets Initiative (SBTi) has established a credible means of assuring that corporate targets align with climate science. The initiative's robust validation process helps to provides investors a standardized view for evaluating climate targets.

Resolved: Shareholders of the Union Pacific Corporation request that the Company provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies, in consideration of key climate benchmarks.

Supporting Statement: In assessing the company's policies and strategies, shareholders can refer to benchmarks such as the Net Zero Benchmark and/or Science Based Targets.

Nothing in this proposal shall be construed as constraining the discretion of the board and management in its disclosures or implementation of a climate change transition strategy.

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February 12, 2021

BY E-MAIL

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

Re: Union Pacific Corporation
Shareholder Proposal of The Children's Investment Master Fund
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

We represent The Children's Investment Master Fund ("TCI") in connection with the above-referenced matter and write in response to the letter submitted on behalf of Union Pacific Corporation (the "Company"), dated January 15, 2021 (the "Company Letter"). In the Company Letter, the Company asserts that it intends to exclude from its proxy statement and form of proxy for its 2021 annual meeting of shareholders (collectively, the "Proxy Materials") a shareholder proposal submitted to the Company on November 11, 2020 by TCI (the "TCI Proposal") pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended ("Rule 14a-8").

Rule 14a-8—commonly known as the "Shareholder Proposal Rule"—requires companies that are subject to the federal proxy rules to include shareholder proposals (along with corresponding supporting statements) in the companies' proxy statements to shareholders, subject to certain procedural and substantive requirements. The rule was enacted for the purpose of, and is a central tool in achieving, corporate democracy—namely, by giving shareholders an effective means of presenting their proposals to other shareholders and soliciting proxies for their proposals. *See Roosevelt v. E.I. DuPont de Nemours & Co.*, 958 F.2d 416, 421-22 (D.C. Cir. 1992) (Ginsburg, J.).

Pursuant to Rule 14a-8, TCI submitted the TCI Proposal, which reads:

> RESOLVED, that shareholders of Union Pacific Corporation ("UP" or the "Company") request that the Board of Directors of UP disclose at each annual meeting of shareholders, as soon as reasonably practicable but no later than 60 days after this annual meeting, and thereafter no later than the date the Company disseminates its proxy statement in connection with each subsequent annual meeting, a report disclosing the Company's greenhouse gas emission levels (the "Emissions") in a manner consistent with the Task Force on Climate-related Financial Disclosure recommendations as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future, including any Emissions' progress made year over year (the "Reduction Plan"), and provide shareholders with the opportunity, at each such annual meeting (starting at the next annual meeting), to express non-binding advisory approval or disapproval of the Reduction Plan.

(*See* Company Letter, Ex. A.)

On November 24, 2020, the Company sent a deficiency notice to TCI, asserting that the TCI Proposal was improper under Rule 14a-8(c) because it purportedly contains two proposals, rather than one. (Company Letter, Ex. C.) TCI responded by letter, dated December 1, 2020, explaining that the TCI Proposal does, in fact, satisfy Rule 14a-8(c) because it is "comprised of complementary components that are 'closely related and essential to a single well-defined unifying concept.'" (Company Letter, Ex. D (citation omitted).) Nevertheless, the Company seeks the Staff's concurrence to exclude the TCI Proposal from the Proxy Materials.

TCI respectfully submits that the Staff should decline to endorse the Company's effort to exclude the TCI Proposal from its Proxy Materials. Inclusion of the TCI Proposal in the Proxy Materials would be consistent with the underlying purpose, as well as the substantive and procedural requirements, of Rule 14a-8. It would also represent a critical step toward sustaining the health of public companies, as well as the environment, and assist investors in evaluating their investments in such companies. The Company has no basis to exclude the TCI Proposal under Rule 14a-8(c) or otherwise.

I. THE TCI PROPOSAL REPRESENTS A CRITICAL STEP TOWARD IMPROVING THE HEALTH AND SUSTAINABILITY OF PUBLIC COMPANIES

Climate change is undeniably one of the most significant risks faced by companies today. Decades of scientific evidence collected by the Intergovernmental Panel on Climate Change, which includes more than 1,300 scientists from across the globe, demonstrates that absent aggressive action by governments and business leaders, the world faces severe climate-related risks to food production, infrastructure, water supply, human security, and

economic growth.[1] Those risks pose severe consequences to public companies and their shareholders, in the face of which the business world, including shareholders, cannot stand silent.

A. *The Threat of Catastrophic Climate Change Poses Risks of Severe Harm to Companies and Their Shareholders.*

Climate change poses countless major risks to companies. The primary physical effects are now well-known: extreme weather, flooding, drought, sea level rise, heat stress, and wind. Those occurrences can cause physical damage to company assets (and thereby raise insurance and replacement costs). They also can significantly disrupt production, operations and supply chains—for example, extreme weather could lead to widespread power outages that grind operations to a halt. Climate effects may also lead to resource shortages, increasing input prices.[2] All of those risks have the potential to seriously damage companies' capacities to operate profitably or, in extreme circumstances, their ongoing viability.[3]

World governments already have taken action. For example, 190 countries (including the United States) have ratified the Paris Agreement.[4] Through the Paris Agreement, hundreds of governmental bodies have committed to curbing global temperature rise to well-below 2°C above pre-industrial levels and pursuing efforts to limit warming to 1.5°C, which would substantially mitigate the most severe impacts of climate change.[5] To achieve that goal, greenhouse gas emissions must be halved by 2030 and drop to net zero by 2050.[6] Absent significant action to limit global warming to the benchmarks established in the Paris Agreement,

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[1] Climate Action 100: *The Business Case*, http://www.climateaction100.org/business-case (last visited Feb. 9, 2021).

[2] *See* Christa Clapp, Harald Francke Lund, Borgar Aamaas & Elisabeth Lannoo, *Shades of Climate Risk: Categorizing climate risk for investors*, Cicero Center for International Climate Research (Feb. 2, 2017) at 5.

[3] KPMG, Building effective climate governance: What boards need to know, https://home.kpmg/xx/en/home/insights/2019/03/building-effective-climate-governance.html (last visited Feb. 9, 2021).

[4] United Nations Framework on Climate Change, *Paris Agreement – Status of Ratification*, http://unfccc.int/process/the-paris-agreement/status-of-ratification (last visited Feb. 9, 2021). The United States had withdrawn from the Paris Agreement during the Trump Administration, but in one of his first acts as President, Joe Biden issued an executive order providing that the United States would rejoin the international climate accord. Press Release, White House, *Paris Climate Agreement* (Jan. 20, 2021), *available at* https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/paris-climate-agreement/; *see also* Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021), *available at* https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/. In addition, just last month, on January 27, 2021, President Biden signed a sweeping, unprecedented executive order directed at fighting climate change—including by, among other things, creating a National Climate Task Force to plan for reducing the United States' emissions and calling for a government-wide approach to combatting the climate crisis. *Id.*

[5] Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

[6] Press Release, United Nations, *Net-Zero Emissions Must Be Met by 2050 or COVID-19 Impact on Global Economies Will Pale Beside Climate Crisis, Secretary-General Tells Finance Summit*, U.N. Press Release SG/SM/20411 (Nov. 12, 2020).

temperatures are expected to rise by at least 4°C over the next 80 years, leading to untold human suffering and an estimated $23 trillion in global economic losses.[7] The losses to investors in that scenario would be catastrophic.

The Economist Intelligence Unit, the research and analysis division of the Economist Group, estimated in 2015 that warming of approximately 4°C could lead to $4 trillion in losses to the global stock of manageable assets—roughly equal to Japan's entire GDP that year.[8] Even slightly greater warming would substantially increase those losses: warming of 5°C could result in $7 trillion in losses and warming of 6°C could result in $13.8 trillion in losses.[9] If, however, warming is kept under 2°C, those projected losses could be halved.[10]

The significant negative impact climate change can have on investment returns means that investors need to factor those risks into their investment strategies.[11] It is crucial for companies to take aggressive action to transition to a lower-carbon economy, which could very well be the only real path to protecting long-term investment value and returns. Indeed, the Cambridge Institute for Sustainability Research has found that climate change is an "unhedgeable risk"—that is, the systematic risks posed by climate change cannot be hedged through industrial sector diversification.[12] According to its research, avoiding those risks "will require system-wide approaches such as climate change mitigation and adaptation measures at the local, regional, national and global levels."[13]

This should not be a matter of debate. As climate change has become a primary area of focus for governments around the world, it is virtually certain that future governments will take action to increase regulatory restrictions on emissions and/or begin taxing emissions at higher rates.[14] Many such laws and regulations will have the potential to impact the operations of companies across all sectors of the economy, and companies that have not taken aggressive

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[7] Tom Kompas *et al.*, *The Effects of Climate Change on GDP by Country and the Global Economic Gains From Complying With the Paris Climate Accord*, 6 EARTH'S FUTURE 1153 (2018).

[8] The Economist Intelligence Unit, *The cost of inaction: Recognizing the value at risk from climate change*, THE ECONOMIST, at 2 (2015).

[9] *Id.*

[10] *Id.* at 3.

[11] World Economic Forum, *How to Set Up Effective Climate Governance on Corporate Boards: Guiding principles and questions*, at 10 (Jan. 2019); *see also* Economist Intelligence Unit, *supra* note 8, at 3 ("[M]uch of the impact on future assets will come through lower growth and weaker asset returns across the board.").

[12] University of Cambridge Institute for Sustainability Research, *Unhedgeable risk: How climate change sentiment impacts investment*, at 7 (2015).

[13] *Id.*

[14] *See* World Economic Forum, *supra* note 11, at 19 ("There is an ever-increasing volume of climate-change legislation and policies across the globe. All of the parties to the Paris Agreement have at least one law that explicitly addresses climate change or the transition to a low-carbon economy, and there are now over 1,500 laws worldwide covering energy, transport, land use, and climate resilience."); *see also* discussion of President Biden's sweeping climate change directives, *supra* note 4.

action to reduce emissions will feel the brunt of that impact.[15] Those companies will also have a higher cost of capital moving forward, thereby further depressing shareholders' returns.

In addition, a company's climate record will impact its credit rating. For instance, Moody's Corporation ("Moody's") has committed to transparently and systematically integrate Environment, Social and Governance (commonly referred to as "ESG") considerations into its credit ratings and risk management solutions. A company's action or inaction on ESG also will factor into lenders' risk assessments, with the result being higher interest rates and/or fewer financing options for climate laggards.

Further, companies that fail to take sufficient action on climate change will expose themselves to heightened litigation risk. There has been a steady increase in the number of climate-related litigation claims brought by property owners, municipalities, states, insurers, shareholders, and public interest organizations over the last several years.[16] Those plaintiffs have sought redress for, among other things, "the failure of organizations to mitigate impacts of climate change, failure to adapt to climate change, and the insufficiency of disclosure around material financial risks."[17] As the damage caused by the climate crisis becomes increasingly severe, the number of those claims will continue to climb.

In sum, companies that fail to take aggressive action on climate change will be doing a grave disservice to themselves and their shareholders. They will ultimately struggle to compete. On the other hand, companies that take aggressive action on climate change will demonstrate credibility to shareholders, employees and clients, which will strengthen those companies' sustainability branding and, therefore, their competitive positions. That credibility also will strengthen customer bonds and promote employee recruitment and morale.

B. *Public Companies Are Failing to Take Adequate Steps to Combat Value-Destructive Climate Change.*

Companies account for more than 35% of all greenhouse gas emissions, the key contributor to detrimental climate change risks.[18] However, very few companies are taking sufficient action to reduce their emissions and thereby combat climate change.

The Science Based Targets Initiative, a partnership between the Climate Disclosure Project, the United Nations Global Compact, World Resources Institute, and the World Wide Fund for Nature, develops targets to inform companies of the speed and levels at which they should aim to reduce greenhouse gas emissions to meet the benchmarks embodied in

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[15] World Economic Forum, *supra* note 11, at 19.

[16] Task Force on Climate-Related Financial Disclosures, *Final Report – Recommendations of the Task Force on Climate-related Financial Disclosures* (June 2017) at 5.

[17] *Id.*

[18] Children's Investment Fund Foundation, *Say On Climate: Shareholder voting on climate transition action plans*, (Nov. 2020), https://www.sayonclimate.org/wp-content/uploads/2021/01/Shareholder-votes-on-climate-transition-action-plans-FULL-SLIDES-1.pdf, at 3.

the Paris Agreement and prevent the catastrophic effects of warming above 1.5°C.[19] As of November 2020, only 3% of listed companies have adopted any sort of science-based emissions targets.[20] That very low percentage could increase dramatically if shareholders had a means of holding management and directors accountable for their failures to take steps to reduce emissions.[21] That is precisely what the TCI Proposal seeks to accomplish.

C. *Inclusion of the TCI Proposal in the Proxy Materials Represents a Critical Step Toward Limiting Disastrous Outcomes Caused by Climate Change.*

TCI, like many other investors, recognizes the serious risks posed by climate change and the opportunities presented for companies to mitigate those risks. In recognition of the fact that the vast majority of companies are taking little or no action on climate change, TCI supports an initiative known as "Say on Climate."[22] Say on Climate presses for change through shareholder resolutions, like the TCI Proposal, that would give shareholders an opportunity to make an informed judgment and have their voices heard on a company's climate action plan.[23]

Say on Climate's proposed resolutions enjoy wide support. Mark Carney, the United Nations' Special Envoy on Climate Change and Finance, has supported similar resolutions, reasoning that "[r]ather than have authorities be overly prescriptive on plans, it may be desirable to have investors have a say on transition … This would establish a critical link between responsibility, accountability and sustainability."[24]

Say on Climate's proposed resolutions are also supported by leading investors and asset managers, including the Local Authority Pension Fund Forum ("LAPFF"), which has £300 billion in assets under management across more than 80 pension plans representing millions of UK public sector workers. LAPFF "believes asset owners and managers should incorporate 'Say on Climate' into their investment and voting policies, and where investee companies do not

[19] The Science Based Targets Initiative, https://sciencebasedtargets.org (last visited Feb. 9, 2021).

[20] Children's Investment Fund Foundation, *supra* note 18, at 3.

[21] *See* Say on Climate, https://www.sayonclimate.org/ (last visited Feb. 9, 2021) (fewer than 100 companies globally permit shareholders to vote on climate policy every year).

[22] *Id.*

[23] While, as set forth below, an informed shareholder vote requires that the Company prepare a climate action plan and share it with shareholders, TCI is not advocating merely for greater disclosure. Mere disclosure of a plan would not be sufficient—the shareholder vote, while non-binding, would give investors a mechanism by which they can hold management accountable for an inadequate plan or inadequate implementation of the plan.

[24] Simon Jessop, Matthew Green & Ross Kerber, *U.N. envoy Carney backs annual investor votes on company climate plans*, REUTERS, Nov. 9, 2020, https://www.reuters.com/article/us-climatechange-britain-summit/u-n-envoy-carney-backs-annual-investor-votes-on-company-climate-plans-idUSKBN27P10O.

voluntarily put an action plan to shareholders for approval, consider filing or co-filing 'say on climate' resolutions." [25]

Certain companies already have accepted and endorsed Rule 14a-8 proposals substantively identical to the TCI Proposal. For example, TCI submitted a substantively identical shareholder proposal to Canadian National Railway ("Canadian National") on November 19, 2020. In response, Canadian National's board of directors proposed a resolution to publish a climate transition plan for a vote at its annual general meeting in April 2021. In the press release announcing this action, Canadian National's Chairman, Robert Pace, stated that "[Canadian National] supports the Paris Agreement and is proud to be part of the climate solution, including being amongst the leading companies globally to enable shareholders to vote on the Company's climate action plan."[26]

Similarly, TCI submitted another substantively identical shareholder proposal to Moody's on November 11, 2020. In response, Moody's board of directors proposed a resolution to publish a climate transition plan for a vote at its annual general meeting in May 2021. In its press release, the CEO, Robert Fauber, stated that "[a]ctivating a sustainable future for the environment is a core objective for Moody's and we are proud to take a leading role in supporting the Say on Climate campaign."[27]

By way of further example, Unilever PLC ("Unilever")[28] announced, on December 14, 2020, that its board intends to (i) publish a climate transition plan, (ii) put the plan to a shareholder vote at its annual general meeting in May 2021, (iii) update the transition plan on a rolling basis and provide an annual report on its progress as measured against the plan, and (iv) seek an advisory vote of shareholders every three years on any material changes to the plan. When announcing those actions, Unilever noted that it "believes that the economy-wide shift to net zero emissions will require a greater and deeper level of engagement between companies and their investors about their climate action plans."[29] Unilever further stated that it "hope[s] this increased level of transparency and accountability will strengthen the dialogue with our shareholders and encourage other companies to follow suit."[30] TCI shares this hope.

Canadian National, Moody's, and Unilever span a broad spectrum of industries, activities and geographies and evidence the legitimacy of TCI's Proposal and its aim of giving

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[25] Local Authority Pension Fund Forum, LAPFF pledges support for the 'Say on Climate' initiative, https://lapfforum.org/engagements/lapff-pledges-support-for-the-say-on-climate-initiative/ (last visited Feb. 9, 2021).

[26] Press Release, Canadian National Railway, *CN Continues to set Ambitious Goals for Sustainability with Advisory Vote on the Company's Climate Action Plan* (February 11, 2021).

[27] Press Release, Moody's Corporation, *Moody's Announces Commitment to 'Say on Climate' Campaign* (Dec. 22, 2020).

[28] While Unilever is a British company, it is also listed in the United States, on the New York Stock Exchange.

[29] Press Release, Unilever PLC, *Unilever to seek shareholder approval for climate transition plan* (Dec. 14, 2020).

[30] *Id.*

shareholders a means of holding management and directors accountable on climate change practices and policies.

Further, TCI already has filed proposals that are substantively identical to the TCI Proposal with additional companies, including Canadian Pacific Railway, S&P Global, Charter Communications, and Alphabet. The Children's Investment Fund Foundation (UK) has agreed to fund bodies to file substantively identical resolutions at more than 100 additional companies, predominately those in the S&P 500, within the next year.[31]

The Staff's disposition of the Company's challenge to the TCI Proposal likely will have important repercussions for potential future challenges by the 100+ other companies at which Say on Climate resolutions will be filed. As such, in the event that the Staff has any technical concern about the form of the TCI Proposal, TCI welcomes a dialogue with the Staff to ensure full compliance with Rule 14a-8 now and in the future.

II. THE COMPANY HAS FAILED TO DEMONSTRATE ANY BASIS TO EXCLUDE THE TCI PROPOSAL FROM THE PROXY MATERIALS UNDER RULE 14a-8(c)

Rule 14a-8(c) provides that a shareholder may submit only one shareholder proposal for consideration at any given annual shareholders' meeting. *See* 17 C.F.R. § 240.14a-8(c). The Company contends that the TCI Proposal does not comply with the "one proposal" limitation because it purportedly contains two proposals: (1) that the Company provide its shareholders an opportunity, at each annual meeting, to express non-binding, advisory approval of the Company's greenhouse gas emissions levels and any plans or strategies to reduce them, and (2) that the Company disclose to shareholders the Company's greenhouse gas emissions levels, and any remedial plans or strategies in respect thereof. (Company Letter at 4-5, 10-11.)

In fact, while the TCI Proposal contains two elements—*i.e.*, (1) a non-binding vote on climate change progress and policies and (2) disclosure of any such progress and policies, so that such vote can be informed—they are part of a *single proposal*, as made clear by ample SEC precedent. Thus, the Company has failed to carry its burden of establishing that exclusion of the TCI Proposal from the Proxy Materials is permissible. *See* 17 C.F.R. § 240.14a-8(g) ("the burden is on the company to demonstrate that it is entitled to exclude a proposal").

A. *The TCI Proposal Is a Single Proposal With More Than One Element.*

The Staff repeatedly has stated that a submission with multiple elements constitutes a single proposal, and therefore is not excludable under Rule 14a-8(c), so long as its separate elements are "closely related and essential to a single well-defined unifying concept." *See, e.g.*, *AT&T Wireless Services, Inc.* (avail. Feb. 11, 2004); *see also Computer Horizons Corp.* (avail. Apr. 1, 1993). Exclusion under Rule 14a-8(c) is permitted *only* where the proposal at issue deals with "separate and distinct matters" and lacks a unifying concept. *See Pfizer, Inc.*

[31] *See* Children's Investment Fund Foundation, *supra* note 18, at 22.

(Kenneth Steiner) (avail Jan. 9, 2013); *McDonald's Corp.* (avail. Mar. 20, 2013); *Marathon Petroleum Corp.* (avail Feb. 17, 2017). That standard for exclusion plainly is not met here.

There can be no serious question that the elements of the TCI Proposal are "closely related and essential to a single well-defined unifying concept." The TCI Proposal constitutes a single resolution aimed at achieving its unitary purpose of giving the Company's shareholders a means of voicing their approval or disapproval of the Company's greenhouse gas emissions levels, and any plans or strategies it may adopt with respect thereto, through an annual shareholder advisory vote. The annual disclosure of those emissions levels, and any related remedial plans, is a necessary prerequisite to presenting any such vote to shareholders—as the Company itself acknowledges.

1. *When Opposing the McRitchie Submission, the Company Concedes That Disclosure of a Plan Is a "Necessary" Prerequisite to a Vote on That Plan.*

When objecting to a similar proposal submitted by a different shareholder, As You Sow (the "McRitchie Submission"), the Company concedes that disclosure of a greenhouse gas emissions reduction plan is an essential element of an advisory shareholder vote on such a plan, as, logically, one cannot happen without the other.

The Company contends that the McRitchie Submission "implicitly contains a second proposal requesting, as a second precedent act, that the Company publicly report on its climate change policies and strategies."[32] (Company Letter at 6.) When doing so, the Company went so far as to assert that a shareholder advisory vote on the Company's climate change plans without adequate disclosure of those plans, likely would violate the very federal securities law of which Rule 14a-8 is a part:

> We believe that it is not credible to assert that the McRitchie Submission does not presuppose the publication, in advance of each annual meeting, of a specific type of climate change report, as that argument *would result in shareholders voting on something that does not exist and, as a result, would be inconsistent with federal securities laws*.

[32] The Company's Letter makes clear that the McRitchie Submission's request for a shareholder advisory vote implicitly requires a report on the Company's climate change plans, similar to the request made by TCI:

> [T]he McRitchie Supporting Statement makes clear that the McRitchie Submission contemplates disclosure of "a climate change transition strategy" which would address the Company's "plans related to climate change" and which would have quantitative targets of a nature which shareholders could assess "by refer[ring] to benchmarks such as the Net Zero Benchmark and/or Science Based Targets." Thus, even though the McRitchie Submission does not expressly request a report, it presupposes the existence of a report setting forth specific quantitative "plans" and "strategies" related to climate change. The McRitchie Submission therefore implicitly requests the Company to prepare and issue a Climate Strategy Report …

(Company Letter at 6.)

(*Id.* at 6 n.2 (emphasis added).)[33]

Significantly, the Company expressly agrees with TCI's position that disclosure of the Company's climate change plan is a prerequisite to a vote on that plan:

> As stated by TCI Fund in its response ..., "Disclosure of the Company's Reduction Plan is *necessary* for shareholders to express their non-binding advisory approval or disapproval of it."

(*Id.* (emphasis added).)

In other words, the Company concedes that the two elements—disclosure of a plan and a vote on that plan—are "closely related and essential to a single well-defined unifying concept."

2. *The Company Is Correct: Fulsome Disclosure of the Company's Plan in Advance of an Advisory Vote on that Plan Is Necessary to Comply With the Federal Securities Laws.*

As suggested by the Company, any proposal in the Company's Proxy Materials that would submit a matter to shareholders for a vote without providing them sufficient information to cast an informed vote would potentially violate Rule 14a-9.[34] *See MONY Grp., Inc. v. Highfields Capital Mgmt., L.P.*, 368 F.3d 138, 147-48 (2d Cir. 2004) ("[I]n passing Section 14(a), Congress sought to avoid a very particular harm—the solicitation of shareholder proxies without adequate disclosure. The SEC rules promulgated under Section 14(a) are intended to ... force disclosures that promote informed shareholder voting."); *Allergan, Inc. v. Valeant Pharms. Int'l, Inc.*, No. SACV 14-1214 DOC(ANx), 2014 WL 5604539, at *16 (C.D. Cal. Nov. 4, 2014) ("An uninformed shareholder vote is often considered an irreparable harm, particularly because the *raison d'etre* of many of the securities laws is to ensure that shareholders make informed decisions.") (collecting cases).

Rule 14a-9 broadly prohibits issuers from misleading their shareholders in the proxy solicitation process, including by omitting material information. *See* 17 C.F.R. § 240.14a-9; *see also, e.g.*, *United Paperworkers Int'l Union v. Int'l Paper Co.*, 985 F.2d 1190, 1197-1202

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[33] The Company contradicts itself on this point by (incorrectly) arguing elsewhere in the same letter that "communicating with shareholders[] ... through a report ... is a separate and distinct action from putting a matter to a shareholder vote." (Company Letter at 10-11.)

[34] Rule 14a-9(a) provides, in relevant part:

> No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

17 C.F.R. § 240.14a-9(a).

(2d Cir. 1993) (finding proxy materials misleading where they omitted material information bearing on a shareholder proposal regarding company's environmental accountability); *Allergan*, 2014 WL 5604539, at *14-16 (ordering company to issue corrective proxy disclosures remedying material omissions in its original proxy materials). As a leading treatise explains: "[T]o participate effectively, shareholders must be informed by management[] ... about the ... measures for which their authorization is solicited. The general purpose of the federal proxy rules is to require that security holders be provided with sufficient information bearing upon an explanation of the matters on which the persons to whom they give proxies are authorized to cast their votes, so that they may know what they are authorizing." JAMES D. COX & THOMAS LEE HAZEN, 2 TREATISE ON THE LAW OF CORPORATIONS § 13:30 (3d ed. 2020). The same is true of advisory votes. *See Greenlight Capital, L.P. v. Apple, Inc.*, Nos. 13 Civ. 900(RJS), 13 Civ. 976(RJS), 2013 WL 646547, at *11 (S.D.N.Y. Feb. 22, 2013); *Advanced Advisors G.P. v. Berman*, No. LA CV14-01420 JAK (SSx), 2014 WL 12772264, at *8, *12-14 (C.D. Cal. Sept. 16, 2014). Here, information concerning the Company's emissions levels and any remedial plans relating thereto may not be omitted from the Proxy Materials, as that information is material to the shareholder advisory vote that the TCI Proposal contemplates.

Shareholders cannot possibly be asked to express their approval or disapproval of the Company's progress toward, and any plans with respect to, reducing its emissions unless they are made aware of what that progress looks like, and what any such plans entail. Indeed, if the Company were to hold a "vote" without providing "disclosure" it likely would violate Rule 14a-9. It follows that the TCI Proposal's "disclosure" and "vote" elements are "closely related and essential to a well-defined unifying concept," and therefore well within the bounds of Rule 14a-8(c).

B. *The TCI Proposal Is Analogous to Pre-Legislative Say-On-Pay Proposals, Which Were Deemed Compliant With Rule 14a-8(c).*

Substantial precedent supports the conclusion that the TCI Proposal is proper under Rule 14a-8(c)—including, perhaps most prominently, the "Say-on-Pay" shareholder proposals that began to proliferate in the mid-2000s. In general, Say-on-Pay is the practice of providing shareholders with an advisory vote on executive compensation. While that practice had for many years been a legal requirement in certain countries, including the United Kingdom and the Netherlands, it gained foothold in the United States only more recently.

Specifically, in 2006, the American Federation of State, County and Municipal Employees ("AFSCME"), a large institutional investor, sponsored several Rule 14a-8 shareholder proposals calling on boards to hold annual shareholder advisory votes on executive compensation packages. AFSCME's proposals received widespread support, and similar Say-on-Pay proposals emerged as a major initiative of corporate governance activists, with over 50 Say-on-Pay proposals being submitted to various public companies in 2007 and over 70 the following year. *Dodd-Frank's Say on Pay: Will It Lead to a Greater Role for Shareholders in Corporate Governance?*, 97 CORNELL L. REV. 1213, 1218-19, 1242 (July 2012).

Given that Say-on-Pay proposals call for a shareholder vote approving or disapproving of executive compensation policies and practices, the proposals, by necessity,

required that the company disclose those policies and practices to its shareholders in advance of the vote. *See, e.g., id.* at 1219 ("relatively fixed formula" for say-on-pay shareholder proposals in the mid- to late-2000s reflected that advisory vote would be based on compensation disclosures made in proxy materials, and mandated that companies "provide that appropriate disclosures ... be made" in connection with such votes); *id.* at 1240-41 (noting that a particular variety of "Say-on-Pay" proposals requested that boards submit "specific, less popular payment practices"—"rather than the publicly disclosed overall pay packages of top executives"—for shareholder approval, thereby also necessitating initial step of disclosing such pay practices). Yet, despite containing both "disclosure" and "advisory vote" components, the Staff repeatedly confirmed that Say-on-Pay proposals were "single" proposals that comply with Rule 14a-8(c). *Parker-Hannifin Corp.* (avail. Sept. 4, 2009), upon which the Company relies, is illustrative of this point.

In *Parker-Hannifin*, the Staff was presented with a shareholder proposal containing three distinct elements, two of which called for triennial "Say-on-Pay" votes on certain aspects of executive compensation that were to be "described and disclosed in the Company's proxy statement." The company's request for no-action relief under Rule 14a-8(c) focused exclusively on the third element of the proposal, the creation of a shareholder forum that would allow shareholders to comment on and inquire about executive compensation issues. (*See infra* at 15-16.)

In its letter seeking no-action relief, the company expressly recognized that the two Say-on-Pay components of the proposal—*i.e.*, disclosure of the company's executive compensation policies and practices and two different votes on those policies and practices—were "interconnected" and would "operate hand-in-hand to have the board of directors establish a shareholder advisory vote to present at its annual meeting of shareholders on a triennial basis." The company thus acknowledged—as did the Staff—that the first two elements of the shareholder proposal would be considered a single proposal under Rule 14a-8(c).

Several other Staff no-action decisions confirm that disclosure of a company's compensation policies and practices and a vote on those policies and practices constitute a single proposal under Rule 14a-8(c), as the companies at issue raised no challenge on that basis. *See, e.g., Whirlpool Corp.* (avail. Jan. 28, 2011) (disagreeing with company that it could exclude proposal requiring company to disclose *and* seek shareholder approval of any "future severance agreements [entered into] with senior executives that provide total benefits exceeding 2.99 times the sum of the executive's base salary plus bonus"); *Raytheon Co.* (avail. Mar. 27, 2009) (company could not exclude proposal asking board to report on and seek shareholder approval of specific retirement benefits for senior executives in the future); *AT&T Corp.* (avail. Mar. 2, 2005) (in sum and substance, same).[35]

Ultimately, the Say-on-Pay movement spurred congressional action. Say-on-Pay legislation was enacted in 2009 and again in 2011, mandating that companies make certain

[35] Moreover, in *Johnson & Johnson* (avail. Jan. 31, 2007), the company sought to exclude a shareholder proposal calling for an advisory vote on executive compensation, which "specifically request[ed] disclosure of the percentage of total executive pay and benefits that are performance-based," on a number of grounds, including because it

disclosures and hold advisory shareholder votes on particular executive compensation items. *See* 12 U.S.C. § 5221; 15 U.S.C. § 78n-1.[36]

The TCI Proposal is analogous to such Say-on-Pay proposals, and follows the same general formula. Say-on-Pay proposals all shared a central, unifying concept: disclosure of executive compensation policies and practices in advance of and in conjunction with a non-binding, advisory shareholder vote on those policies and practices. Similarly, the TCI Proposal's single, unifying concept is a non-binding, advisory shareholder vote approving or disapproving of the Company's progress and plans with respect to reducing its greenhouse gas emissions. And, just as Say-on-Pay proposals required that certain compensation-related disclosures be made to shareholders to enable them to cast an informed vote, so too does the TCI Proposal ask the Company to report, in advance of the contemplated vote, its emissions levels and any plans it has to reduce them. Like Say-on-Pay, TCI's "Say on Climate" Proposal is a single, unified proposal under Rule 14a-8(c).

C. *Precedent Regarding Other Multi-Faceted Proposals Also Supports the Conclusion That the TCI Proposal Is a Single Proposal.*

Precedent outside the "Say-on-Pay" context further illustrates that the TCI Proposal is a single proposal under Rule 14a-8(c). The Staff repeatedly has found that proposals with separate elements qualify as single proposals where the separate elements—as here—are sequential, interdependent or otherwise temporally linked, and together achieve a combined purpose. *See Meadow Valley Corp.* (avail. Mar. 30, 2007) (disagreeing with company that submission, which requested that company take sequential steps of (1) liquidating a particular investment and (2) distributing the proceeds to shareholders, violated the single-proposal rule); *Bank of America Corp.* (avail. Mar. 1, 2017) (denying no-action relief in connection with proposal calling on board to, among other things, conduct studies on the viability of two distinct potential transactions and to publicly report its analyses of those studies). The Staff has reached the same conclusion with respect to multi-step proposals in which the separate steps were associated with a specific legal requirement, such as the implementation of executive compensation reforms set forth for recipients of funding under the Troubled Asset Relief

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purportedly contained multiple proposals in violation of Rule 14a-8(c). The Staff agreed with the company that it could exclude the proposal, but *only* on a different basis—specifically, because it was misleading, in that the contemplated disclosures "w[ould] not contain the information that the [proposal] indicate[d] shareholders [would] be voting on." Thus, *Johnson & Johnson* confirms the interconnectedness of disclosure and voting

[36] The "Say-on-Pay" legislation underscores the point that disclosure of executive compensation is a necessary component to an advisory shareholder vote to approve or disapprove of that compensation. All public companies are now subject to Say-on-Pay requirements pursuant to Section 14A of the Securities Exchange Act of 1934. Section 14A(a)(1) requires all public companies to, at least once every three years, provide shareholders with an opportunity to cast non-binding votes on the compensation of named executive officers—the disclosure of which is required pursuant to Item 402 of Regulation S-K. *See* 15 U.S.C. § 78n-1(a); *see also Greenlight Capital*, 2013 WL 646547, at *11 (detailing Say-on-Pay disclosures required under Section 14A(a)(1)). Relatedly, Section 14A(b)(2), requires that public companies hold a separate vote for approval of "golden parachute" compensation paid to executives upon a merger, consolidation or similar such corporate event—and, given that such compensation would not otherwise be disclosed under Item 402, Section 14A(b)(2) mandates that companies make additional, specific disclosures in order to permit an informed shareholder vote. *See* 15 U.S.C. § 78n-1(b)(2).

Program, *JP Morgan Chase & Co.* (avail. Mar. 3, 2009), or making the company subject to a particular state's corporations act, *Qwest Communications International, Inc.* (avail. Mar. 2, 2009); *Sempra Energy* (avail. Feb. 23, 2009).

In *Safeway Inc.* (avail. Mar. 17, 2010), the shareholder proposal at issue, like the TCI Proposal, was aimed at combatting climate change—it called for the company's board "to adopt principles for national and international action to stop global warming" based on *six principles*.[37] The company argued that the proposal was excludable because "the proponent ha[d] attempted to combine at least six different proposals into a single proposal" and each principle "purportedly require[d] separate and distinct actions by the [b]oard, ranging from engaging in lobbying efforts to creating a market to reduce carbon emissions to providing incentives in other countries to combat global warming." The Staff rejected that argument, finding that the company could not omit the proposal from its proxy materials in reliance on Rule 14a-8(c). As the Staff noted, "In our view, the proponent has submitted only one proposal."

Likewise, in *Franklin Limited Duration Income Trust* (avail. July 27, 2016), the Staff denied the issuer's requested no-action relief where the challenged proposal required, as an intermediate step, that the issuer make certain disclosures. There, the shareholder submission requested that Franklin's board take the following actions: (1) "first, a tender offer for all of [Franklin]'s shares"; and (2) "second, if at the conclusion of the tender offer more than half of [Franklin]'s shares ha[d] been tendered, cancel the just-completed tender offer, and instead take one of two different alternative actions, either liquidating [Franklin] or converting it to an open-end [mutual] fund." In its submission to the SEC, Franklin argued that the shareholder proposal was excludable pursuant to Rule 14a-8(c) because it contained "at least two, and arguably three, separate and distinct" proposals—*i.e.*, (1) a proposal to conduct a tender offer, (2) a proposal to liquidate the trust, and (3) a proposal to open-end the fund.

When arguing that those elements each constituted separate proposals, Franklin *specifically highlighted*, among other things, that each element "would require completely distinct and separate actions and approvals by the board and/or shareholders under both the Federal securities laws and [Franklin]'s governing instruments, as well as distinct and separate regulatory filings with the SEC." For instance, Franklin explained that the tender-offer-component would entail the "filing and mailing of a Schedule TO and related documents" to shareholders. The contemplated conversion to an open-end fund, meanwhile, would require Franklin to "seek further shareholder approval" pursuant to both its governing documents and the Investment Advisers Act of 1940—and, by extension, that it, among other things, "hold a special meeting of shareholders" as well as "issue a proxy statement pursuant to Schedule 14A for approval to open-end the Fund." Despite the fact that the proposed actions, by necessity, would require Franklin to hold shareholder votes and make additional disclosures, the Staff rejected Franklin's view that the proposal was excludable as multiple proposals under Rule 14a-8(c).

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[37] The six principles included, among others: (i) reduce emissions to levels guided by science to avoid dangerous global warming, (ii) set short- and long-term emissions targets that are certain and enforceable, with periodic review of the climate science and adjustments to targets and policies as necessary, and (iii) establish a transparent and accountable market-based system that efficiently reduces carbon emissions.

D. *The Company Provides No Precedent That Supports Its Position.*

The precedent cited in the Company's Letter either further underscores the conclusion that the TCI Proposal is a single proposal under Rule 14a-8(c), or is wholly inapposite.

The principal precedent upon which the Company relies is the *Parker-Hannifin* "Say-on-Pay" decision discussed above—but *Parker-Hannifin* actually supports *TCI*'s position. As discussed, the *Parker-Hannifin* proposal contained two distinct requests for two separate, triennial Say-on-Pay votes, which the company and the Staff deemed to constitute a single proposal for purposes of Rule 14a-8(c). (*See supra* at 12.)

It was only the third element of the *Parker-Hannifin* proposal that was deemed "separate and distinct." That element sought the creation and hosting of a shareholder forum "on at least a triennial basis via webcast or alternative means," so as to permit an open dialogue between shareholders and members of the board's compensation committee. As the company highlighted in its submission, the shareholder forum was distinct from the other two elements because, among other things:

- the forum was not a necessary predicate to the votes, as the company's proxy disclosures would provide shareholders with the necessary information to "help them cast an informed ... [v]ote";

- the forum's timing ("at least" once every three years) would not temporally coincide with the proposed triennial Say-on-Pay votes, and, as such, clearly was not "intended to inform shareholders for th[ose] [votes]"; and

- the forum related to the broad topic of executive compensation policies and practices—and would allow shareholders to "directly comment on and ask questions" regarding those policies and practices—whereas the Say-on-Pay votes asked for the approval or disapproval of specific compensation metrics of a designated group of senior executives.

In contrast, here, a report on the Company's emissions levels, and any plans it has to reduce them, *is* a necessary predicate to the proposed annual shareholder advisory vote, its timing *is* specifically tied to the timing of the that vote, and the report would *specifically provide disclosures* regarding the precise items to be voted upon (*i.e.*, the Company's greenhouse gas emissions levels and any plans or strategies to reduce them). Thus, contrary to the Company's claim, the TCI Proposal is in no way "comparable" to the live, interactive shareholder forum found to be a separate proposal in *Parker-Hannifin.* (*See* Company Letter at 10.) In fact, the TCI Proposal is far more similar to the other two elements of the *Parker-Hannifin* submission—which entailed both Say-on-Pay disclosures and advisory votes thereon, and which were deemed a single shareholder proposal for purposes of Rule 14a-8(c).

Likewise, in *Textron, Inc.* (avail. Mar. 7, 2012), the shareholder proposal at issue sought seven amendments to the company's bylaws and governing documents. The first six

proposed amendments were designed to provide shareholders with a greater say in director elections through enhanced proxy access.[38] Notably, those six amendments, if adopted, would have required the company to alter the information it included in its proxy disclosures and given shareholders greater ability to nominate and vote for directors of their choosing. Still, the Staff concluded that those six proposed amendments all were related to the single "unifying concept" of the proposal: providing shareholders with greater proxy access in connection with the election of directors. The Staff only found the proposal excludable based on the seventh component, which dealt with how the company defined a change in control. As Textron pointed out, unlike the other six components, this last component had nothing to do with providing, and was not necessary to provide, enhanced proxy access to its shareholders. Thus, *Textron* has no bearing on the present dispute, as the issuance of a report on the Company's emissions levels and its plans to reduce them is directly related—indeed, is a necessary prerequisite—to the TCI Proposal's contemplated shareholder advisory vote.

The other precedents invoked by the Company likewise lends no support to its argument. In *General Motors Corp.* (avail. Feb. 5, 2007), for instance, the proposal sought shareholder approval of multiple, distinct transformative transactions—including a number of spin-offs, a sale of another business, a cash distribution, and a stock-for-stock exchange—improperly packaged as a single proposal for a "restructuring." Notably, in that case, the proposal itself effectively conceded the separate, distinct nature of its various components by expressly providing that "[t]he failure of [one transaction] to ... proceed due to legal, statutory or any other impediment[] shall not be cause to impede the balance of the [proposed] restructuring." Thus, unlike the disclosure and subsequent vote envisioned in the TCI Proposal, the components of the *General Motors* proposal were not interdependent.

Similarly, in *PG&E Corp.* (avail. Mar. 11, 2010), the Staff determined that a proposal to address the company's renewal of operating licenses for one if its power plants was distinct from proposals asking the company to mitigate environmental risks and cap production levels at that plant—which, as the company pointed out, were matters independent of one another, each with its own different "underlying processes and timelines," and which did not flow from any common legal requirement. *See also Exxon Mobil Corp.* (avail. Jan. 17, 2002) (concurring with company that proposal was excludable under Rule 14a-8(c) because there was no "necessary link or relationship" between its two component parts). Here, by contrast, as the Company concedes, the proposed advisory vote is directly dependent on the disclosure of the Company's emissions levels beforehand, as an advisory vote without such disclosure likely would violate Rule 14a-9. (*See supra* at 9-11.)

The interconnectedness of the two elements of the TCI Proposal also distinguishes the present scenario from those cited by the Company involving shareholder proposals calling for amendments to two or more separate, independently-operating provisions of a company's governing documents, *see American Electric Power Co., Inc.* (avail. Jan. 2, 2001)

[38] The six amendments, which were designed to make it easier for shareholders to nominate directors, and for those directors to get elected to the board, included, for example, an amendment mandating the company include nominees of particular shareholder groups, and an amendment requiring the company to list all board candidates—whether nominated by a shareholder or by management—"together, alphabetically by last name."

(proposal requested amendments to four different provisions of corporate charter, including changes to director term limits, the imposition of new requirements on directors in terms of hours spent preparing for board meetings, and a $36,000 increase in annual retainers for nonemployee directors); *Centra Software, Inc.* (avail. Mar. 31, 2003) (permitting exclusion of proposal that sought to amend two separate and distinct sections of bylaws—one requiring separate meetings of the independent directors, and another concerning chairman eligibility criteria); *Duke Energy Corp.* (avail. Dec. 30, 2008) (proposal asked for three separate amendments to corporate bylaws—one that would require directors to own a minimum amount of the company's stock, a second that would govern disclosure of director conflicts-of-interest, and a third regarding the manner and form of director compensation); *Morgan Stanley* (avail. Feb. 4, 2009) (similar proposal); *HealthSouth Corp.* (avail. Mar. 28, 2006) (permitting exclusion of proposal that sought to amend bylaws to grant shareholders the power to increase the size of the board, as well as an amendment to an entirely different bylaw provision, to allow shareholders to fill any vacancies on the board).[39]

The Company further claims that a submission may still constitute multiple proposals where "one part of [the] submission addresses matters or actions that are a necessary precedent to implementation of another part of the submission," citing in support *HealthSouth Corp.* (avail. Mar. 28, 2006), *Exxon Mobil Corp.* (avail. Mar. 19, 2002), and *Allstate Corp.* (avail. Jan. 29, 2007). (Company Letter at 9.) But none of those cases actually involved a multi-component proposal in which one component—such as the proposed report on the Company's emissions levels and any related remedial plans—was a prerequisite to another component—such as the advisory vote to approve or disapprove of those emissions levels and any plans the Company may adopt to reduce them. *HealthSouth* involved a proposal that asked the board to amend two separate provisions of the company's bylaws. The submission in *Exxon Mobil* requested that the election of directors include more nominees than there were available board seats, *and* that board nominees come from diverse backgrounds—neither of which is a necessary condition of the other. And in *Allstate*, the submission asked the company to adopt cumulative voting for director elections, and separately sought to prohibit the board from taking certain actions that might conceivably diminish such cumulative voting rights (*e.g.*, decreasing the size of the board or staggering director terms). As the company there correctly argued, those actions were wholly unrelated to granting cumulative voting rights to shareholders, and further were ones that the board could choose to take for a variety of wholly unrelated and legitimate reasons. For example, Allstate noted that a company may decide to stagger director term limits for many reasons other than to dilute its shareholders' voting power.

[39] Likewise, the decisions cited by the Company in which the only "unifying concept" the shareholder-proponent could point to as tying together distinct elements was a generic and very broad corporate aim such as improving "director accountability," or simply the "governance of [the company]," are totally distinguishable. *Morgan Stanley* (avail. Feb. 4, 2009) (rejecting proponent's argument that various bylaw amendments were a single proposal simply because they all were based on the "concept [of] improving director accountability"); *Duke Energy Corp.* (avail. Dec. 30, 2008) (same); *American Electric Power Co., Inc.* (avail. Jan. 2, 2001) (proposal constituted multiple proposals despite proponent's argument that all of the contemplated actions were about improving the "governance of AEP").

Finally, the Company asserts that the TCI Proposal violates Rule 14a-8(c) because it contravenes the "unbundling" requirement of Rule 14a-4(a)(3), which prohibits the "bundling" of items on proxy disclosures unless those items are "'inextricably intertwined' as to effectively constitute a single matter." (Company Letter at 10 (citation omitted).) That argument is a red herring.

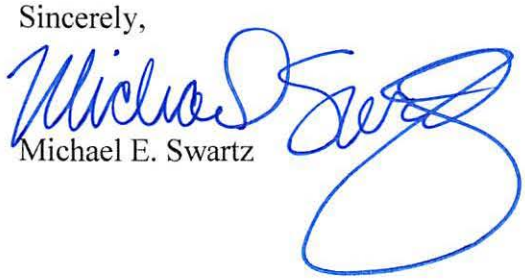
Rule 14a-4 governs the manner in which *companies* must format proxy solicitations. It was designed to prevent management from "bundling" disparate matters into one voting item, thereby "forc[ing] [shareholders] to approve or disapprove a package of items and thus approve matters they might not if presented independently." *Greenlight Capital*, 2013 WL 2013 WL 646547, at *5. Rule 14a-4 was intended to enhance corporate suffrage and the ability of shareholders to communicate their views to corporate boards. *Id.* at *4-5. It has *nothing* to do with the issue at hand, *i.e.*, whether a company may exclude a *shareholder's* proposal from its proxy materials. Accordingly, whether two issues are "separate" for purposes of Rule 14a-4(a)(3) is an entirely distinct analysis, and has no bearing on, whether those issues constitute a single proposal under Rule 14a-8(c).

Indeed, the Company cites no precedent, and we are not aware of any, in which the Staff determined that Rule 14a-4(a)(3)'s "inextricably intertwined" test may be used as a basis for excluding a shareholder proposal. There is, however, precedent suggesting otherwise. In *AT&T Inc.* (avail. Apr. 10, 2002), the Staff rejected the company's argument that a multipart shareholder proposal was excludable under Rule 14a-8(c), deeming it to be a single proposal, even though the proposal at issue asked that the company "unbundle" various issues on the form of proxy when presenting them for a shareholder vote.

* * *

For all the foregoing reasons, TCI respectfully submits that the Company has failed to meet its burden of demonstrating that it may exclude the TCI Proposal from the Proxy Materials on the ground that it violates Rule 14a-8(c) or otherwise.

Sincerely,



Michael E. Swartz

cc: Ronald O. Mueller, Esq.
Danielle Fugere, As You Sow

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January 15, 2021

VIA E-MAIL

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

Re: *Union Pacific Corporation*
Shareholder Proposals of The Children's Investment Fund and James McRitchie
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Union Pacific Corporation (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") (i) a shareholder proposal (the "TCI Submission") and recitals and statement in support thereof (the "TCI Supporting Statement") received from The Children's Investment Master Fund ("TCI Fund"); and (ii) a shareholder proposal (the "McRitchie Submission") and recitals and statement in support thereof (the "McRitchie Supporting Statement") received from As You Sow (the "McRitchie Representative") on behalf of James McRitchie[1] ("McRitchie," and together with TCI Fund, the "Proponents"). The TCI Submission and the McRitchie Submission are each referred to herein as a "Duplicate Submission," and collectively as the "Duplicate Submissions."

[1] Co-filers of the McRitchie Submission previously included Liz Michaels and the Merck Family Fund, but the McRitchie Representative subsequently informed the Company via email on December 30, 2020 that it was withdrawing Liz Michaels and the Merck Family Fund as co-filers of the McRitchie Submission. *See* Exhibit F.

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

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

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the expected deadline for the Company to file its definitive 2021 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 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 of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Duplicate Submissions, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE DUPLICATE SUBMISSIONS

The TCI Submission states:

> RESOLVED, that shareholders of Union Pacific Corporation ("UP" or the "Company") request that the Board of Directors of UP disclose at each annual meeting of shareholders, as soon as reasonably practicable but no later than 60 days after this annual meeting, and thereafter no later than the date the Company disseminates its proxy statement in connection with each subsequent annual meeting, a report disclosing the Company's greenhouse gas emission levels (the "Emissions") in a manner consistent with the Task Force on Climate-related Financial Disclosure recommendations as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future, including any Emissions' progress made year over year (the "Reduction Plan"), and provide shareholders with the opportunity, at each such annual meeting (starting at the next annual meeting), to express non-binding advisory approval or disapproval of the Reduction Plan.

A copy of the TCI Submission and the TCI Supporting Statement, as well as related correspondence with TCI Fund, is attached to this letter as Exhibit A.

The McRitchie Submission states:

> **Resolved:** Shareholders of the Union Pacific Corporation request that the Company provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies, in consideration of key climate benchmarks.

A copy of the McRitchie Submission and the McRitchie Supporting Statement, as well as related correspondence with McRitchie, is attached to this letter as Exhibit B.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Duplicate Submissions may each be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(c) because each Duplicate Submission consists of multiple proposals, and despite proper notice, the Proponents have failed to correct this deficiency.

In addition, to the extent the Staff is unable to concur in our view that the TCI Submission consists of multiple proposals, we hereby respectfully request that the Staff concur in our view that the McRitchie Submission may be excluded from the 2021 Proxy Materials pursuant to:

- Rule 14a-8(f), as the McRitchie Representative did not provide sufficient documentation demonstrating McRitchie's delegation of authority to the McRitchie Representative consistent with Rule 14a-8(b), despite the Company's timely notice of the procedural deficiency; and

- Rule 14a-8(i)(11) because the McRitchie Submission substantially duplicates the TCI Submission, which the Company would include in its 2021 Proxy Materials.

ANALYSIS

I. The Duplicate Submissions May Each Be Excluded Under Rule 14a-8(c) Because Each Duplicate Submission Consists Of Multiple Proposals.

A. The TCI Submission Background.

On November 11, 2020, TCI Fund submitted the TCI Submission to the Company via email, which the Company received on November 11, 2020. After reviewing the TCI Submission, the Company sent a letter to TCI Fund (the "TCI Deficiency Notice") on November 24, 2020, which was within 14 days of the date on which the TCI Submission was received, notifying TCI Fund of the Company's belief that the TCI Submission contained more than one shareholder proposal in violation of Rule 14a-8(c) and of TCI Fund's obligation to "indicat[e] which proposal [TCI Fund] would like to submit and which proposal [TCI Fund] would like to withdraw." A copy of the TCI Deficiency Notice is attached to this letter as Exhibit C.

Specifically, the Resolved clause of the TCI Submission set forth the first proposal by stating:

> RESOLVED, that shareholders of Union Pacific Corporation ("UP" or the "Company") request that the Board of Directors of UP disclose at each annual meeting of shareholders, as soon as reasonably practicable but no later than 60 days after this annual meeting, and thereafter no later than the date the Company disseminates its proxy statement in connection with each subsequent annual meeting, a report disclosing the Company's greenhouse gas emission levels (the "Emissions") in a manner consistent with the Task Force on Climate-related Financial Disclosure recommendations as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future, including any Emissions' progress made year over year (the "Reduction Plan") . . . .

Separately, the Resolved clause of the TCI Submission requested an annual vote on the Reduction Plan, specifically asking that the Company "provide shareholders with the opportunity, at each such annual meeting (starting at the next annual meeting), to express non-binding advisory approval or disapproval of the Reduction Plan."

On December 1, 2020, TCI Fund responded via email to the TCI Deficiency Notice. *See* Exhibit D. Instead of indicating which of the two distinct proposals TCI Fund wished to submit and which TCI Fund wished to withdraw, TCI Fund stated:

> The Proposal requests that shareholders be provided with an opportunity at each annual meeting to express non-binding advisory approval or disapproval with regard to a report disclosing the Company's greenhouse gas emission levels, as well as any strategy that the Company may have adopted or will adopt to reduce such emissions (the "Reduction Plan"). Disclosure of the Company's Reduction Plan is necessary for shareholders to express their non-binding advisory approval or disapproval of it. It follows that the Proposal is comprised of complementary components that are "closely related and essential to a single well-defined unifying concept." (SEC Release No. 2412,999 (Nov. 22, 1976).

Accordingly, the TCI Submission continues to have two separate and distinct requests in a single proposal in violation of Rule 14a-8(c): (1) prepare and issue "a report disclosing the Company's greenhouse gas emission levels . . . as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future"; and (2) to provide an annual vote for shareholders "to express non-binding advisory approval or disapproval of the Reduction Plan."

B. The McRitchie Submission Background.

On December 3, 2020, the McRitchie Representative submitted the McRitchie Submission to the Company via overnight mail, which the Company received on December 4, 2020. After reviewing the McRitchie Submission, the Company sent a letter to the McRitchie Representative (the "McRitchie Deficiency Notice") on December 17, 2020, which was within 14 days of the date on which the McRitchie Submission was received, notifying McRitchie of, among other things, the Company's belief that the McRitchie Submission contained more than one shareholder proposal in violation of Rule 14a-8(c) and McRitchie could "correct this procedural deficiency by revising the [McRitchie Submission] to consist of only one proposal." A copy of the McRitchie Deficiency Notice is attached to this letter as Exhibit E.

The Resolved clause of the McRitchie Submission expressly sets forth one first proposal requesting an annual non-binding advisory shareholder vote on the Company's climate policies and strategies. Specifically, the proposal states:

> **Resolved:** Shareholders of the Union Pacific Corporation request that the Company provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies, in consideration of key climate benchmarks.

However, the McRitchie Submission also implicitly contains a second proposal requesting, as a separate and precedent act, that the Company publicly report on its climate change policies and strategies (the "Climate Strategy Report"). In this respect, the McRitchie Supporting Statement makes clear that the McRitchie Submission contemplates disclosure of "a climate change transition strategy" which would address the Company's "plans related to climate change" and which would have quantitative targets of a nature which shareholders could assess by "refer[ring] to benchmarks such as the Net Zero Benchmark and/or Science Based Targets." Thus, even though the McRitchie Submission does not expressly request a report, it presupposes the existence of a report setting forth specific quantitative "plans" and "strategies" related to climate change.[2] The McRitchie Submission therefore implicitly

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[2] We believe that it is not credible to assert that the McRitchie Submission does not presuppose the publication, in advance of each annual meeting, of a specific type of climate change report, as that argument would result in shareholders voting on something that does not exist and, as a result, would be inconsistent with federal securities laws. As stated by TCI Fund in its response quoted above, "Disclosure of the Company's Reduction Plan is necessary for shareholders to express their non-binding advisory approval or disapproval of it."

In fact, on the same day that the McRitchie Representative sent the McRitchie Submission to the Company, it also submitted a separate proposal to the Company, purportedly as representative of different shareholders of the Company, that requested that the Company "issue a climate transition report, at least 120 days prior to the next annual meeting, and updated annually, that addresses the scale and pace of its responsive measures associated with climate change." The supporting statement to this proposal state, "Shareholders believe that planning and reporting by [the Company] on its climate transition plans and strategies will benefit the [C]ompany and its investors" and recommends that the requested report "[set] forth a Reduction Plan with goals, ambitions, and time frames that the Company has adopted (or proposes to adopt) to reduce those greenhouse gas emissions over time." Because the McRitchie Representative did not provide proof that any of the proponents of this separate proposal satisfied the ownership requirements of Rule 14a-8, it is the subject of a separate no-action request.

requests the Company to prepare and issue a Climate Strategy Report, which as discussed below, is a separate and distinct act from the request for an annual shareholder advisory vote, and thus constitutes a second proposal.

As discussed in further detail below, the Company received a response from the McRitchie Representative addressing other procedural defects in the McRitchie Submission, but to date, the Company has not received a response from McRitchie or the McRitchie Representative regarding the multiple proposal deficiency. Accordingly, the McRitchie Submission continues to have two separate and distinct requests in a single proposal in violation of Rule 14a-8(c): (1) to prepare and issue a Climate Strategy Report; and (2) to provide an annual "non-binding, advisory [shareholder] approval or disapproval" vote on the Climate Strategy Report.

C. Analysis.

The Duplicate Submissions may each be omitted pursuant to Rule 14a-8(c) because the Proponents have each combined two separate and distinct matters into a single proposal in violation of Rule 14a-8(c). Specifically, after receiving the Duplicate Submissions, the Company timely provided the TCI Deficiency Notice and McRitchie Deficiency Notice to TCI Fund and McRitchie, respectively, stating that the Duplicate Submissions consisted of two proposals and instructing how the Proponents could cure the deficiency. Then, instead of curing the deficiency, TCI Fund stated that there was no deficiency and neither McRitchie nor the McRitchie Representative responded to the deficiency.

Rule 14a-8(c) provides that a shareholder "may submit no more than one proposal to a company for a particular shareholders' meeting." The Staff has consistently recognized that Rule 14a-8(c) permits the exclusion of submissions combining separate and distinct elements that lack a single well-defined unifying concept, even if the elements are presented as part of a single program and relate to the same general subject matter. For example, in *General Motors Corp.* (avail. Apr. 9, 2007, *recon. denied* May 15, 2007), the submission requested that the board "seek shareholder approval for the restructuring of the [company]" and proceeded to set forth several transactions that the restructuring plan should entail. The company explained that though the overall transaction contemplated the separation of four company operations into separate companies, the transaction entailed distinct steps and a variety of elements that are "intended to be independent." The Staff concurred in the company's exclusion of the submission under Rule 14a-8(c). Similarly, in *PG&E Corp.*

(avail. Mar. 11, 2010), the Staff concurred with exclusion of a submission asking that, pending completion of certain studies of a specific power plant site, the company: (i) mitigate potential risks encompassed by those studies; (ii) defer any request for or expenditure of public or corporate funds for license renewal at the site; and (iii) not increase production of certain waste at the site beyond the levels then authorized. Notwithstanding the proponent's argument that the steps requested in its submission would avoid circumvention of state law in the operation of the specific power plant, the Staff specifically noted that "the proposal relating to license renewal involves a separate and distinct matter from the proposals relating to mitigating risks and production level." *See also American Electric Power Company, Inc.* (avail. Jan. 2, 2001) (concurring in the exclusion of a stockholder submission which sought to: (i) limit the term of director service, (ii) require at least one board meeting per month, (iii) increase the retainer paid to the company's directors, and (iv) hold additional special board meetings when requested by the chairman or any other director, where the Staff found that the submission constituted multiple proposals despite the proponent's argument that all of the actions were about the "governance of [the company]"); *Duke Energy Corp.* (avail. Feb. 27, 2009) (concurring in the exclusion of a stockholder submission to impose director qualifications, to limit director pay and to disclose director conflicts of interest, despite the proponent's claim that all three elements related to "director accountability"); *Morgan Stanley* (avail. Feb. 4, 2009) (concurring in the exclusion of a submission requesting stock ownership guidelines for director candidates, new conflict of interest disclosures and restrictions on director compensation, notwithstanding the proponent's argument that each of those items related to the broad concept of "improving director accountability").

The Staff has concurred in the availability of Rule 14a-8(c) even in cases where the shareholder's submission was phrased in terms of a series of specific but separate actions that related to a common theme. For example, in *Textron Inc.* (avail. Mar. 7, 2012), the Staff concurred in the exclusion of a submission that sought to allow shareholders to make director nominations in the company's proxy materials where the proposal also included a provision that addressed whether operation of the nomination process would constitute a change of control of the company. The Staff concurred that this collateral provision "constitute[d] a separate and distinct matter from the proposal relating to the inclusion of stockholder nominations for director in Textron's proxy materials," and accordingly that the submission was excludable under Rule 14a-8(c). Similarly, in *Parker-Hannifin Corp.* (avail. Sept. 4, 2009), the Staff concurred in the exclusion of a submission that sought to create a "Triennial Executive Pay Vote" program that consisted of three elements: (i) a triennial executive pay vote to approve the compensation of the company's executive officers; (ii) a triennial

executive pay vote ballot that would provide stockholders an opportunity to register their approval or disapproval of three components of the executives' compensation; and (iii) a triennial forum that would allow stockholders to comment on and ask questions about the company's executive compensation policies and practices. The Staff concurred in exclusion under Rule 14a-8(c), specifically noting that the third part of the proposed program was a "separate and distinct matter" from the first and second parts and, therefore, that all of the proposals could be excluded. *See also, Centra Software, Inc.* (avail. Mar. 31, 2003) (concurring in the exclusion of a submission requesting amendments to the bylaws to require separate meetings of the independent directors and that the chairman of the board not be a company officer or employee, where the company argued the proposals would amend "quite different provisions" of the bylaws and were therefore unrelated).

Moreover, the Staff has concurred that multiple proposals are involved when one part of a shareholder's submission addresses matters or actions that are a necessary precedent to implementation of another part of the submission. For example, in *HealthSouth Corp.* (avail. Mar. 28, 2006), the submission would have amended the company's bylaws to: (i) grant shareholders the power to increase the size of the board; and (ii) allow shareholders to fill any director vacancies created by such an increase. The Staff concurred that the submission constituted multiple proposals even though the proponent claimed that the proposals were related to the single concept of giving shareholders the power to add directors of their own choosing. In *Exxon Mobil Corp.* (avail. Mar. 19, 2002) the Staff concurred that multiple proposals were involved in a submission requesting that the election of directors include a slate of nominees larger than the number of available board seats and that the additional nominees come from individuals with experience from a variety of shareholder groups, notwithstanding the proponent's claim that the proposals related to the single concept of diversification of the board. In *Allstate Corp.* (avail. Jan. 29, 1997), the Staff concurred that a submission constituted multiple proposals when it requested that the company adopt cumulative voting and then avoid certain actions that the proponent indicated may indirectly impair the effectiveness of cumulative voting.

Like the multiple-proposal submissions described in the precedents above, each of the Duplicate Submissions actually contains two proposals that request separate and distinct actions, in violation of Rule 14a-8(c). Specifically, the TCI Submission plainly requests that the Company (1) prepare and issue "a report disclosing the Company's greenhouse gas emission levels . . . as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future"; and (2) provide an annual vote for shareholders "to

express non-binding advisory approval or disapproval of the Reduction Plan." Similarly, the McRitchie Submission (1) implicitly requests that the Company prepare and issue a Climate Strategy Report addressing the Company's "climate policies and strategies, in consideration of key climate benchmarks"; and (2) explicitly requests that the Company provide an annual shareholder vote for "non-binding, advisory approval or disapproval" of the Climate Strategy Report.

The fact that the Duplicate Submissions each involve two separate and distinct requests is clear from both the face of the submissions and from precedent. One of the actions entails the Company preparing a specific type of climate change report, setting forth its plans and strategies. The second proposal entails an entirely different action, providing for and soliciting shareholders' vote on the Company's plans (which of itself would require preparation of proxy disclosures framing the Reduction Plan/Climate Strategy Report for a vote). Each of these is a distinct and material action. In its Compliance and Disclosure Interpretations (Regarding Unbundling under Rule 14a-4(a)(3) Generally) (updated Jan. 24, 2014), the Staff clarified that (other than in the context of equity incentive plans), proposals bundling two or more material matters into a single proposal violate the unbundling requirement of Rule 14a-4(a)(3) (and therefore violate the single proposal requirement of Rule 14a-8(c)) unless the two matters are "so 'inextricably intertwined' as to effectively constitute a single matter." The fact that an advisory vote to approve a company's climate change strategy plan is not "inextricably intertwined" with a vote on requiring a company to issue a climate change strategy plan is demonstrated by the fact that many companies have received and allowed shareholders to vote on proposals requesting issuance of a report on climate change strategy, and none of those has previously involved separately putting that report forward for an advisory vote of shareholders.

Moreover, the Duplicate Submissions present two separate and distinct issues for shareholders to consider: a shareholder who supports having a company annually report on its climate change strategy would not necessarily also support imposing the burden on the company, the shareholder itself, and other shareholders, of having to annually assess and cast an advisory vote on the company's strategy. In this respect, the Duplicate Submissions present the same issue that the Staff considered in *Parker-Hannifin Corp.* The communications and engagement with shareholders requested through the climate change strategy report under the Duplicate Submissions is comparable to the shareholder engagement forum requested by the submission in *Parker-Hannifin Corp.* However, communicating with shareholders, whether through a report or a company-sponsored forum,

is a separate and distinct action from putting a matter to a shareholder vote. As demonstrated by *HealthSouth Corp.*, *Exxon Mobil Corp.*, and *Allstate Corp.*, discussed above, the fact that one action may be a necessary predicate for the other does not mean that the two are "inextricably intertwined."

For the reasons addressed above, each of the Duplicate Submissions contains two separate and distinct requests, each requiring a material action that is distinct from and involves different processes from the other. Furthermore, the Company provided Deficiency Notices to the proponents within the time-period specified by Rule 14a-8 for notifying them of the multiple proposals, and neither corrected the deficiency as required by Rule 14a-8. For these reasons, the Duplicate Submissions may be excluded from the Company's 2021 Proxy Materials under Rule 14a-8(c).

II. The McRitchie Submission May Be Omitted In Reliance On Rule 14a-8(f), As The McRitchie Representative Has Not Provided Sufficient Documentation Demonstrating McRitchie's Delegation Of Authority Consistent With Rule 14a-8(b) And Did Not Provide Sufficient Documentation Demonstrating The Proponent's Delegation of Authority Upon Request After Receiving Proper Notice Under Rule 14a-8(f)(1).

A. Background.

Rule 14a-8(b) provides guidance as to "who is eligible to submit a proposal." On November 1, 2017, the Staff published Staff Legal Bulletin No. 14I ("SLB 14I") which announced the Staff's policy regarding the application of Rule 14a-8(b) when a shareholder submits a proposal through a representative (i.e., a "proposal by proxy"). The Staff stated in SLB 14I that a shareholder's submission by proxy is consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b) if the shareholder who submits a proposal by proxy provides documentation describing the shareholder's delegation of authority to the proxy. The Staff noted that sufficient documentation would do the following:

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

- be signed and dated by the shareholder.

Further, to state expressly the Staff's interpretations regarding the submission of proposals by proxy, the Commission proposed, and has since adopted, amendments to Rule 14a-8 that reflects the need for documentation of the nature discussed in SLB 14I and also:

- includes the shareholder's statement authorizing the designated representative to submit the proposal and/or otherwise act on the shareholder's behalf; and
- includes the shareholder's statement supporting the proposal.

Exchange Act Release No. 34-87458 (November 5, 2019) (the "November 2019 Proposing Release"). The November 2019 Proposing Release emphasized the importance of safeguarding the integrity of the shareholder proposal process and the eligibility restrictions and stated:

> We believe an affirmative statement that the shareholder authorizes the designated representative to submit the proposal and/or otherwise act on the shareholder's behalf would help to make clear that the representative has been so authorized.

Accordingly, the Staff's guidance in SLB 14I and the Commission's recent rule proposal make clear that it is necessary for a proper Rule 14a-8 delegation of authority to identify the specific proposal to which the delegation relates. In *General Motors Co. (Mayhugh)* (avail. Mar. 27, 2020), the proponent's cover letter addressed most of the eligibility requirements under SLB 14I except that it failed to identify the specific proposal to be submitted. The company argued, among other reasons, that the proposal was excludable because the proponent's cover letter only included "a vague reference to a 'Rule 14a-8 proposal' rather than describe the subject matter of the [p]roposal with any degree of specificity." The Staff concurred with exclusion under Rules 14a-8(b) and 14a-8(f). Also, in *Fitbit, Inc.* (avail. Mar. 20, 2020), the company requested the exclusion of a proposal under Rule 14a-8(f) where the proponent's representative failed to provide sufficient documentation demonstrating the proponent's delegation of authority to the proponent's representative consistent with Rule 14a-8(b). The Staff concurred with the exclusion of the proposal under Rule 14a-8(f).

B. McRitchie Has Failed To Provide Sufficient Evidence Of A Delegation Of Authority To The McRitchie Representative.

As described above, the Staff's guidance in SLB 14I sets forth specific requirements regarding the type of information that the Staff expects a proponent to provide to sufficiently evidence a delegation of authority to the proponent's representative. In this regard, the Staff further notes that it expects companies to apply reasonable judgment when the documentation may be technically deficient but otherwise provides reasonable support for such delegation. The Company is aware that the Staff has denied no-action requests that were based solely on a proponent's failure to sufficiently identify the subject matter of a proposal to which its delegation of authority relates.

The delegation of authority with respect to the McRitchie Submission, however, goes beyond a mere technical deficiency. The documentation included by the McRitchie Representative dated December 2, 2020, purporting to authorize the McRitchie Representative to act on behalf of McRitchie (the "McRitchie Authorization Letter") did not accurately identify the McRitchie Submission. As highlighted in the McRitchie Deficiency Notice, the McRitchie Authorization Letter identified the subject of the McRitchie Submission as relating to "Climate transition reporting," yet the McRitchie Submission appears to relate more specifically to a "vote to express non-binding advisory approval or disapproval of the Company's publicly available climate policies and strategies." The Company notified the McRitchie Representative of its concerns relating to the McRitchie Authorization Letter in the Deficiency Notice, but the Company did not receive a response from McRitchie or the McRitchie Representative regarding this deficiency. Instead, on December 30, 2020, the McRitchie Representative responded via email with a proof of ownership letter from TD Ameritrade (which the Company determined satisfied the proof of ownership issue identified in the McRitchie Deficiency Notice) and also informing the Company that it was "withdrawing the named co-filers: Liz Michaels and Merck Family Fund from [the McRitchie Submission]." *See* Exhibit F. The Company remains concerned that the McRitchie Representative switched the subject matter of the McRitchie Submission without any indication that McRitchie consented to submission of a proposal addressing an entirely different subject matter. The Company is of the view that such a concern goes to the core of why a delegation of authority must specifically identify the proposal to which it relates, consistent with Staff guidance in SLB 14I, and therefore it may omit the Proposal from its 2021 Proxy Materials.

Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company's proxy materials if a shareholder proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, provided that the company has timely notified the proponent

of any eligibility or procedural deficiencies and the proponent has failed to correct such deficiencies within 14 days of receipt of such notice; *see also* SLB 14I ("Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder's failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. *See* Rule 14a-8(f)(1).").

The Company respects the Staff's expectation that companies will not seek to exclude proposals by proxy based on highly technical readings of documentation of eligibility. The Company further understands that the Staff has declined to concur in no-action requests where companies argued that exclusion of a proposal was permitted based solely on the failure to name a specific proposal in a delegation of authority where only one proposal was attached. The Company respectfully submits, however, that the issues raised by each McRitchie Authorization Letter inaccurately identifying the subject matter of the McRitchie Submission and the McRitchie Representative failure to respond to a notice of the deficiency with respect to the McRitchie Authorization letter are inconsistencies that are not mere foot faults, but rather demonstrates exactly the issues that the Staff attempted to address with its guidance on proposals by proxy in SLB 14I, namely, the failure to make a company aware of the specific subject matter of a proponent's proposal that is the subject of a delegation of authority. Consistent with Rule 14a8(f)(1), the Company timely notified the McRitchie Representative of the eligibility deficiencies, including the deficiency related to the McRitchie Authorization Letters. By ignoring the deficiency related to the McRitchie Authorization Letter, the McRitchie Representative has fully disregarded the intent of Rule 14a-8(b) and the Staff's related guidance in SLB 14I. Acceptance of the purported McRitchie Authorization Letter would fundamentally undermine SLB 14I and render that guidance moot.

The Company is aware of *International Business Machines Corp.* (avail. Dec. 20, 2019, *recon. denied* Jan. 17, 2020) ("*IBM*") where the Staff was unable to concur with the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f). In *IBM*, the company argued that the proponent failed to identify the specific proposal to be submitted, failed to delegate authority to its representative consistent with SLB 14I and failed to cure the deficiency within fourteen calendar days. In the denial of reconsideration, the Staff explained that:

> Rule 14a-8 currently does not provide a basis to exclude a proposal where the shareholder that uses a representative fails to provide documentation meeting

> all of the guidelines set forth in [SLB 14I]. SLB 14I is not a rule or regulation. SLB 14I addresses situations where there may be ambiguities about the actual proponent and their role with respect to the proposal.

Unlike in *IBM*, where the proponent himself submitted the proposal to the company and designated a representative, here, the McRitchie Representative, Danielle Fugere of As You Sow, submitted the McRitchie Submission. As a result, there continues to be existing ambiguities related to McRitchie's role with respect to the McRitchie Submission because (1) the McRitchie Representative submitted the McRitchie Submission, (2) the Company has received no correspondence and has not otherwise been contacted by McRitchie, and (3) the McRitchie Authorization Letter appears to be a standard form from As You Sow and fails to address the issue discussed in the McRitchie Deficiency Notice related to concerns raised by SLB 14I.

To date, the Company has not received any correspondence from McRitchie or the McRitchie Representative relating to the McRitchie Authorization Letter's failure to specifically identify the proposal to be submitted to the Company. Accordingly, the Company believes that it may properly omit the Proposal from its 2021 Proxy Materials in reliance on paragraphs (b) and (f) of Rule 14a-8.

III. The McRitchie Submission May Also Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates Another Proposal That The Company May Include In Its 2021 Proxy Materials.

A. Background.

To the extent that the Staff disagrees that the TCI Submission and the McRitchie Submission constitute multiple proposals, then the McRitchie Submission substantially duplicates the TCI Submission, a shareholder proposal the Company previously received, because both Duplicate Submissions request the Company to prepare and issue a report regarding the Company's greenhouse gas emissions and climate change policies and to provide for an annual, non-binding shareholder vote on those policies.

The Company received the TCI Submission on November 11, 2020, whereas the Company subsequently received the McRitchie Submission on December 4, 2020. Moreover, as discussed above, the Company believes the TCI Submission may be excluded under Rule 14a-8(c). However, if the Staff does not concur with the exclusion of the TCI Submission under Rule 14a-8(c), the Company intends to include the TCI Submission in the 2021 Proxy Materials. As discussed below, the principal focus of each of the Duplicate Submissions is the same, and therefore, in the event the Staff does not concur with the exclusion of the TCI Submission, the McRitchie Submission is properly excludable under Rule 14a-8(i)(11).

B. The "Substantially Duplicates" Standard.

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it "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." The Commission has stated that "the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976). When two substantially duplicative proposals are received by a company, the Staff has indicated that the company must include the first of the proposals it received in its proxy materials, unless that proposal otherwise may be excluded. *See, e.g.*, *Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994).

The standard that the Staff has traditionally applied for determining whether a proposal substantially duplicates an earlier received proposal is whether the proposals present the same "principal thrust" or "principal focus." *See Pacific Gas & Electric Co.* (avail. Feb. 1, 1993). A proposal may be excluded as substantially duplicative of another proposal despite differences in terms or scope and even if the proposals request different actions. *See, e.g., Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring that a proposal seeking a review and report on the company's loan modifications, foreclosures, and securitizations was substantially duplicative of a proposal seeking a report that would include "home preservation rates" and "loss mitigation outcomes," which would not necessarily be covered by the other proposal); *Chevron Corp.* (avail. Mar. 23, 2009, *recon. denied* Apr. 6, 2009) (concurring that a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company's expanding oil sands operations in the Canadian boreal forest was substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company's products and operations); *Ford Motor Co. (Leeds)* (avail. Mar. 3, 2008) (concurring that a proposal to establish an independent committee to prevent founding family shareholder conflicts of interest with non-family shareholders substantially duplicated a proposal requesting that the board take steps to adopt a recapitalization plan for all of the company's outstanding stock to have one vote per share).

C. The McRitchie Submission Substantially Duplicates The TCI Submission.

Although phrased differently, the principal thrust and focus of the McRitchie Submission and the TCI Submission are the same: a request for the Company to prepare and issue a report regarding the Company's greenhouse gas emissions and climate change policies and to provide for an annual, non-binding shareholder vote on those policies. This duplication is demonstrated by the following chart:

The TCI Submission		***The McRitchie Submission***
The subject matter of each of the Duplicate Submissions requires a report on the Company's plan to address climate change.		
". . . a report disclosing the Company's greenhouse gas emission levels (the 'Emissions') . . . as well as any strategy . . . to reduce the Emissions in the future, including any Emissions' progress made year over year (the 'Reduction Plan') . . . ."		" . . . the Company's publicly available climate policies and strategies, in consideration of key benchmarks."
Each of the Duplicate Submissions requests the Company to provide for a non-binding, advisory shareholder vote on the Company's climate change strategy plan.		
". . . provide shareholders with the opportunity . . . to express non-binding advisory approval or disapproval of the Reduction Plan."		". . . provide shareholders with the opportunity . . . to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies."
Each of the Duplicate Submissions requests that shareholders be allowed to vote annually on the Company's climate change strategy plans starting next year.		
" . . . provide shareholders with the opportunity, at each such annual meeting (starting at the next annual meeting), to express . . . approval or disapproval . . . ."		". . . provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote . . . ."

The two ways in which the Duplicate Submissions vary are: (i) how the climate change-related plan is requested, and (ii) the information specified to be included in the climate change-related plan. With regards to how the climate change strategy plan is requested, the TCI Submission expressly requests the Company's Board of Directors disclose the

Company's climate change-related plans via "a report disclosing the Company's greenhouse gas emission levels." Meanwhile, the McRitchie Submission does not expressly request such a plan, but as previously discussed, the McRitchie Submission implicitly requests a climate change-related plan considering that to satisfy the McRitchie Submission's request to allow shareholders to annually vote on the Company's "climate policies and strategies," the Company must publish its climate policies and strategies in order for the Company's shareholders to review such policies and strategies. Thus, the McRitchie Submission implicitly requests that the Company publicly report on its climate policies and strategies.

With respect to information to be included in the climate change-related plan, the TCI Submission requests that the Company disclose greenhouse gas emission levels and any strategies the Company may or will adopt to reduce these levels in the Reduction Plan. The McRitchie Supporting Statement acknowledges that greenhouse gas emissions is a metric of "climate accountability for companies" and the McRitchie Submission requests that "key climate benchmarks" be considered. Thus, greenhouse gas emission levels are encompassed by the Climate Strategy Report.

The overlap of the Duplicate Submissions is further demonstrated by the similar concerns addressed in the TCI Supporting Statement and the McRitchie Supporting Statement (collectively, the "Supporting Statements"):

The TCI Submission		***The McRitchie Submission***
". . . disclosing reduction targets . . . is an important means of assuring shareholders that management is taking seriously the physical and transition risks associated with climate change."		"Increasingly, investors are seeking to ascertain whether their companies' climate strategies are being undertaken at a scale and pace necessary to reduce climate transition risk and address global climate change needs."

The language in the Supporting Statements regarding climate change concerns makes clear that the objective of the TCI Submission and the McRitchie Submission is to address risks associated with climate change. As demonstrated in the foregoing comparisons, the differences in how a climate change-related plan is requested and what specifically must be

addressed in such a plan do not change the conclusion that the Duplicate Submissions share the same principal thrust and focus, and therefore substantially duplicate one another.

The Staff has consistently concurred that two proposals can be substantially similar within the scope of Rule 14a-8(i)(11) notwithstanding a slight difference in the actions requested. *See, e.g.*, *Caterpillar Inc. (AFSCME Employees Pension Plan)* (avail. Mar. 25, 2013) (concurring that a proposal requesting a report was substantially duplicative of a proposal that the company "review and amend, where applicable," certain policies and post a summary of the review on the company's website, despite the addition of an additional action in connection with the requested report); *Cooper Industries, Ltd.* (avail. Jan. 17, 2006) (permitting the exclusion of a proposal requesting that the company "review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies and to report its findings" as substantially duplicating a prior proposal requesting that the company "commit itself to the implementation of a code of conduct based on . . . ILO human rights standards and United Nations' Norms on the Responsibilities of Transnational Corporations with Regard to Human Rights"); *Ford Motor Co.* (avail. Feb. 19, 2004) (concurring in the exclusion of a proposal calling for internal goals related to greenhouse gases as substantially similar to a proposal calling for a report on historical data on greenhouse gas emissions and the company's planned response to regulatory scenarios, where the company successfully argued that "[a]lthough the terms and the breadth of the two proposals are somewhat different, the principal thrust and focus are substantially the same, namely to encourage the [c]ompany to adopt policies that reduce greenhouse gas emissions in order to enhance competitiveness").

Here, notwithstanding some differences, the Duplicate Submissions have the same principal thrust and focus: requesting the Company to prepare and issue a report regarding the Company's greenhouse gas emissions and climate change policies and to provide for an annual, non-binding shareholder vote on those policies. As a result, the actions requested by the Duplicate Submissions would address substantially the same issues and concerns.

Further, the Staff previously has concurred in the exclusion of shareholder proposals as substantially duplicative regardless of whether one of the proposals is more specific or limited than the other proposal. For example, in *JPMorgan Chase & Co. (New York City Employees' Retirement System et al.)* (avail. Mar. 14, 2011), the Staff concluded that a proposal that specifically requested a report on internal controls over its mortgage servicing operations could be omitted in reliance on Rule 14a-8(i)(11) as substantially duplicative of

other previous proposals that asked for general oversight on the development and enforcement on already-existing internal controls related to loan modification methods. Irrespective of the differences in scope and detail, the principal focus and the core issue of general mortgage modification practices remained the same. *See also Exxon Mobil Corp. (Goodwin et al.)* (avail. Mar. 19, 2010) (concurring in the exclusion of a proposal seeking consideration of a decrease in the demand for fossil fuels as substantially duplicative of a proposal asking for a report to assess the financial risks associated with climate change); *Lehman Brothers Holdings Inc.* (avail. Jan. 12, 2007) (concurring in the exclusion of a proposal requesting semi-annual reports on independent expenditures, political contributions, and related policies and procedures as substantially duplicative of a proposal that sought an annual disclosure of independent expenditures and political contributions); *American Power Conversion Corp.* (avail. Mar. 29, 2002) (concurring in the exclusion of a proposal asking that the company's board of directors create a goal to establish a two-thirds independent board as substantially duplicative of a proposal that sought a policy requiring nomination of a majority of independent directors).

Finally, because the McRitchie Submission substantially duplicates the TCI Submission, if the Company were required to include both of the Duplicate Submissions in its 2021 Proxy Materials, there is a significant risk that the Company's shareholders would be confused when asked to vote on the Duplicate Submissions. In such a circumstance, shareholders could assume incorrectly that there must be substantive differences between the Duplicate Submissions and the requested actions. As noted above, the purpose of Rule 14a-8(i)(11) "is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976). Accordingly, the Company believes that the McRitchie Submission may be excluded pursuant to Rule 14a-8(i)(11) as substantially duplicative of the TCI Submission.

CONCLUSION

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

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter

should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or John A. Menicucci, Jr., the Company's Sr. Counsel – Corporate & Compliance, at (402) 544-3440.

Sincerely,

Ronald O. Mueller

Enclosures

cc: John A. Menicucci, Jr., Union Pacific Corporation
Danielle Fugere, As You Sow
Richard Kelly and James Hawks, TCI Fund Management Limited

EXHIBIT A

From: "Schwartz, Abraham" <Abraham.Schwartz@srz.com>
To: "JMENICUCCI@UP.COM" <JMENICUCCI@UP.COM>
Cc: "Klein, Eleazer" <Eleazer.Klein@srz.com>, "Gold, Brandon" <Brandon.Gold@srz.com>
Date: 11/11/2020 11:33 AM
Subject: TCI - 14a-8

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* PROCEED WITH CAUTION - This email was sent from outside the Company *

Dear Mr. Menicucci, Jr.,

On behalf of our client, TCI Fund Management Limited, attached please find a shareholder proposal submitted pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended, for inclusion in Union Pacific Corporation's (the "Company") proxy statement for its next annual meeting of stockholders. A copy of the attached is being delivered to the Company's principal executive offices as well.

Can you kindly confirm receipt of this email?

Thanks,

Abraham Schwartz
Associate
212.756.2195
abraham.schwartz@srz.com

919 Third Avenue, New York, NY 10022
212.756.2000 | 212.593.5955 fax

Schulte Roth & Zabel LLP
New York | Washington DC | London
www.srz.com

**

THE CHILDREN'S INVESTMENT MASTER FUND
c/o TCI FUND MANAGEMENT LIMITED
7 Clifford Street
London
W1S 2FT

November 11, 2020

VIA HAND DELIVERY AND EMAIL TO JOHN A. MENICUCCI, JR., SENIOR COUNSEL AND ASSISTANT CORPORATE SECRETARY – JMENICUCCI@UP.COM

Union Pacific Corporation
Attention: John A. Menicucci, Jr., Senior Counsel and Assistant Corporate Secretary
Officer 1400 Douglas Street, 19th Floor
Omaha, Nebraska 68179

Re: Union Pacific Corporation (the "Company")

Dear Mr. Menicucci, Jr.,

TCI Fund Management Limited ("TCI" or "we") is the investment manager to The Children's Investment Master Fund (the "Fund"), the owner of 6,016,539 shares of common stock, par value $2.50 per share of the Company (the "Common Stock"), or approximately 0.89% of the outstanding shares, which has held continuously for more than one year shares representing a market value of $2,000 or more prior to and including the date hereof.

This letter shall serve as notice to the Company of TCI's timely submission of a stockholder proposal on behalf of the Fund pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended, ("Rule 14a-8") for presentation to the Company's stockholders at the Company's next annual meeting of shareholders, anticipated to be held in May 2021, or any postponement or adjournment or special meeting held in lieu thereof (the "Meeting").

The Fund's Rule 14a-8 proposal (the "Proposal") is as follows:

PROPOSAL

> "RESOLVED, that shareholders of Union Pacific Corporation ("UP" or the "Company") request that the Board of Directors of UP disclose at each annual meeting of shareholders, as soon as reasonably practicable but no later than 60 days after this annual meeting, and thereafter no later than the date the Company disseminates its proxy statement in connection with each subsequent annual meeting, a report disclosing the Company's greenhouse gas emission levels (the "Emissions") in a manner consistent with the Task Force on Climate-related Financial Disclosure recommendations as well as any strategy that the Company may have adopted or will adopt to reduce the Emissions in the future, including any Emissions' progress made year over year (the "Reduction Plan"), and provide shareholders with the opportunity, at each such annual meeting (starting at the next

annual meeting), to express non-binding advisory approval or disapproval of the Reduction Plan."

SUPPORTING STATEMENT

As governments take steps to limit greenhouse gas emissions and mandate reporting in line with the Task Force on Climate-related Financial Disclosure; disclosing reduction targets, detailing strategies for embedding climate change throughout their business models and services and providing progress therein to shareholders, is an important means of assuring shareholders that management is taking seriously the physical and transition risks associated with climate change. Although this resolution cannot and does not compel the Company to do so, we believe it is in the best interests of the Company and its shareholders for the Board of Directors to disclose its current Emissions and its Reduction Plan, if any, prior to the Meeting and provide shareholders with an advisory vote on the Reduction Plan at the Meeting.

END OF PROPOSAL

As is required by Rule 14a-8, attached is a letter from HSBC BANK USA, NA verifying that the Fund continuously and beneficially owned shares of Common Stock having a market value of $2,000 or more for at least one year prior to the date of the submission of the above Proposal. As of the date hereof, the Fund has continuously held the required number of shares of Common Stock for over a one-year period. The Fund intends to continue to hold shares of Common Stock having a market value of not less than $2,000 through the date of the Meeting.

TCI represents that, as investment manager to the Fund, it has the power to invest, vote, or direct the vote of such Common Stock and has full power and authority to submit the Proposal on the Fund's behalf.

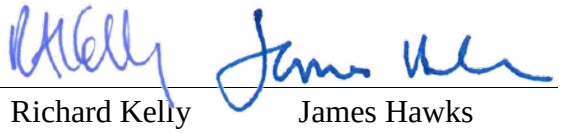
Please notify us as soon as possible if you would like any further information or if you believe this notice is deficient in any way or if additional information is required so that TCI may promptly provide it to you in order to cure any deficiency.

Thank you for your time and consideration.

Very truly yours,

THE CHILDREN'S INVESTMENT MASTER FUND

By: **TCI FUND MANAGEMENT LIMITED**

By: 

Name: Richard Kelly James Hawks
Title: Authorized Signatories

cc: The Board of Directors of the Company

EXHIBIT B

AS YOU SOW
2150 Kittredge Street, Suite 450
Berkeley, CA 94704
www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

DEC – 4 2020

VIA FEDEX & EMAIL

December 3, 2020

Rhonda S. Ferguson
Executive Vice President,
Chief Legal Officer & Corporate Secretary
Union Pacific Corporation
1400 Douglas Street, 19th Floor
Omaha, NE 68179
rferguson@up.com

Dear Ms. Ferguson,

As You Sow is filing a shareholder proposal on behalf of James McRitchie, Proponent, a shareholder of Union Pacific, for inclusion in Union Pacific's 2021 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

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

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent's concerns.

To schedule a dialogue, please contact me at DFugere@asyousow.org. Also, please send all correspondence to me **with a copy to shareholderengagement@asyousow.org**.

Sincerely,

Danielle Fugere
President

Enclosures

- Shareholder Proposal
- Shareholder Authorization

Whereas: Increasingly, investors are seeking to ascertain whether their companies' climate strategies are being undertaken at a scale and pace necessary to reduce climate transition risk and address global climate change needs. Shareholders therefore seek a voice in advising the Company regarding its plans related to climate change.

In response to material climate risk, investors frequently refer to two key benchmarks of progress.

The steering committee of the Climate Action 100+ initiative, a coalition of more than 500 investors with over $52 trillion in assets, has developed a Net Zero Company Benchmark (Benchmark) outlining metrics of climate accountability for companies, and transparency for shareholders, including metrics related to greenhouse gas (GHG) emissions, GHG targets, improved climate governance, and climate related financial disclosures, among others.

The Science-Based Targets Initiative (SBTi) has established a credible means of assuring that corporate targets align with climate science. The initiative's robust validation process helps to provides investors a standardized view for evaluating climate targets.

Resolved: Shareholders of the Union Pacific Corporation request that the Company provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies, in consideration of key climate benchmarks.

Supporting Statement: In assessing the company's policies and strategies, shareholders can refer to benchmarks such as the Net Zero Benchmark and/or Science Based Targets.

Nothing in this proposal shall be construed as constraining the discretion of the board and management in its disclosures or implementation of a climate change transition strategy.

December 2, 2020

Andrew Behar
CEO
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned ("Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with the named Company for inclusion in the Company's 2021 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: James McRitchie

Company: Union Pacific Corporation

Annual Meeting / Proxy Statement Year: 2021

Subject: Climate transition reporting

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2021.

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

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

Sincerely,

DocuSigned by:
James McRitchie
FF59A56595064FC...

Name: James McRitchie

Title: Shareholder Advocate

AS YOU SOW

2150 Kittredge Street, Suite 450
Berkeley, CA 94704

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

VIA FEDEX & EMAIL

December 3, 2020

Rhonda S. Ferguson
Executive Vice President,
Chief Legal Officer & Corporate Scty
Union Pacific Corporation
1400 Douglas Street, 19th Floor
Omaha, NE 68179
rferguson@up.com

Dear Ms. Ferguson,

As You Sow is co-filing a shareholder proposal on behalf of the following Union Pacific shareholders for action at the next annual meeting of Union Pacific.

- Liz Michaels
- Merck Family Fund

Shareholders are co-filers of the enclosed proposal with James McRitchie, who is the Proponent of the proposal. *As You Sow* has submitted the enclosed shareholder proposal on behalf of Proponent for inclusion in the 2021 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. *As You Sow* is authorized to act on Liz Michaels's and Merck Family Fund's behalf with regard to withdrawal of the proposal.

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

To schedule a dialogue, please contact me at DFugere@asyousow.org. Also, please send all correspondence to me **with a copy to shareholderengagement@asyousow.org**.

Sincerely,

Danielle Fugere
President

Enclosures
- Shareholder Proposal
- Shareholder Authorization

Whereas: Increasingly, investors are seeking to ascertain whether their companies' climate strategies are being undertaken at a scale and pace necessary to reduce climate transition risk and address global climate change needs. Shareholders therefore seek a voice in advising the Company regarding its plans related to climate change.

In response to material climate risk, investors frequently refer to two key benchmarks of progress.

The steering committee of the Climate Action 100+ initiative, a coalition of more than 500 investors with over $52 trillion in assets, has developed a Net Zero Company Benchmark (Benchmark) outlining metrics of climate accountability for companies, and transparency for shareholders, including metrics related to greenhouse gas (GHG) emissions, GHG targets, improved climate governance, and climate related financial disclosures, among others.

The Science-Based Targets Initiative (SBTi) has established a credible means of assuring that corporate targets align with climate science. The initiative's robust validation process helps to provides investors a standardized view for evaluating climate targets.

Resolved: Shareholders of the Union Pacific Corporation request that the Company provide shareholders with the opportunity, in the annual proxy statement (starting with 2022) to vote to express non-binding, advisory approval or disapproval of the Company's publicly available climate policies and strategies, in consideration of key climate benchmarks.

Supporting Statement: In assessing the company's policies and strategies, shareholders can refer to benchmarks such as the Net Zero Benchmark and/or Science Based Targets.

Nothing in this proposal shall be construed as constraining the discretion of the board and management in its disclosures or implementation of a climate change transition strategy.

December 2, 2020

Andrew Behar
CEO
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned ("Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with the named Company for inclusion in the Company's 2021 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Liz Michaels

Company: Union Pacific Corporation

Annual Meeting / Proxy Statement Year: 2021

Subject: Climate transition reporting

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2021.

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

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

Sincerely,

DocuSigned by:
Liz Michaels
47338525B5E8404...

Name: Liz Michaels

Title: Shareholder

December 2, 2020

Andrew Behar
CEO
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704

Re: Authorization to File Shareholder Resolution

Dear Mr. Behar,

The undersigned ("Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with the named Company for inclusion in the Company's 2021 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Merck Family Fund

Company: Union Pacific Corporation

Annual Meeting / Proxy Statement Year: 2021

Subject: Climate transition reporting

The Stockholder has continuously owned over $2,000 worth of Company stock, with voting rights, for over a year. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2021.

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

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

Sincerely,

DocuSigned by:
Jamie Maguire
1BD57BBE52414E8...

Name: Jamie Maguire

Title: Manager

DocuSigned by:
Jenny Russell
89AEC31D875040A...

Name: Jenny Russell

Title: Manager

EXHIBIT C

From: Twu, Victor
Sent: Tuesday, November 24, 2020 4:15 PM
To: 'Eleazer.Klein@srz.com' <Eleazer.Klein@srz.com>; 'Brandon.Gold@srz.com' <Brandon.Gold@srz.com>; 'abraham.schwartz@srz.com' <abraham.schwartz@srz.com>
Cc: Mueller, Ronald O. <RMueller@gibsondunn.com>
Subject: Union Pacific Corp. - Deficiency Notice (TCI)

Gentlemen –

Attached please find a copy of the letter correspondence regarding the shareholder proposal you submitted on behalf of your client, TCI Fund Management Limited. Copies of this letter are also being sent to you and your client via UPS.

Best,
Victor

Victor Twu

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
3161 Michelson Drive, Irvine, CA 92612-4412
Tel +1 949.451.3870 • Fax +1 949.475.4787
VTwu@gibsondunn.com • www.gibsondunn.com

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Ronald O. Mueller
Direct: +1 202.955.8671
Fax: +1 202.530.9569
RMueller@gibsondunn.com

November 24, 2020

VIA INTERNATIONAL MAIL

The Children's Investment Master Fund
c/o Richard Kelly and James Hawks
TCI Fund Management Limited
7 Clifford Street
London
W1S 2FT
United Kingdom

Dear Messrs. Kelly and Hawks:

I am writing on behalf of Union Pacific Corporation (the "Company"), which received on November 11, 2020, the shareholder proposal you submitted on behalf of The Children's Investment Master Fund (the "Proponent") pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2021 Annual Meeting of Shareholders (the "Submission"). Pending the opportunity for the Company to engage with the Proponent on this matter, we are providing this notice at the current time to address certain deadlines set forth in SEC Rule 14a-8.

The Submission contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Pursuant to Rule 14a-8(c) under the Exchange Act, a shareholder may submit no more than one proposal to a company for a particular shareholders' meeting. We believe that the Submission constitutes more than one shareholder proposal. Specifically, while parts of the Submission relate to a report on the Company's greenhouse gas emission levels, we believe that the request for an annual non-binding advisory vote regarding the "Reduction Plan" constitutes a separate proposal. The Proponent can correct this procedural deficiency by indicating which proposal the Proponent would like to submit and which proposal the Proponent would like to withdraw.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue NW, Washington, D.C. 20036-5306. Alternatively, you may transmit any response by email to me at RMueller@gibsondunn.com.

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8.

Sincerely,

Ronald O. Mueller

Enclosure

cc: Eleazer Klein, Schulte Roth & Zabel LLP
Brandon S. Gold, Schulte Roth & Zabel LLP
Abraham Schwartz, Schulte Roth & Zabel LLP

Rule 14a-8 – Shareholder Proposals

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

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

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

> (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.
>
> (2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
>
> > (i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or
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> > (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:
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> > > (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.

Proof of Delivery

Dear Customer,

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

Tracking Number
1Z9754636692412914

Service

UPS Worldwide Express®

Shipped / Billed On
11/19/2020

Delivered On

11/27/2020 9:40 A.M.

Delivered To
LONDON, GB

Received By

ALI

Left At
Reception

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: 12/16/2020 4:08 P.M. EST

EXHIBIT D

THE CHILDREN'S INVESTMENT MASTER FUND
c/o TCI FUND MANAGEMENT LIMITED
7 Clifford Street
London
W1S 2FT

December 1, 2020

VIA E-MAIL AND COURIER

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington DC 20036-5306

Dear Mr. Mueller:

On behalf of TCI Fund Management Limited ("TCI"), the investment manager to The Children's Investment Master Fund, we are writing to you in response to your letter, dated November 24, 2020 (the "Letter"), regarding the proposal, dated November 11, 2020 (the "Proposal"), submitted by TCI to Union Pacific Corporation (the "Company") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, to be included in the Company's proxy statement for its 2021 annual meeting of shareholders.

Your Letter asserts that the Proposal does not comply with the "one proposal" limitation embodied in Rule 14a-8(c) on the basis that the requested annual non-binding advisory vote on the Company's plans for greenhouse gas emissions is a separate proposal from the report on those plans. That is not correct.

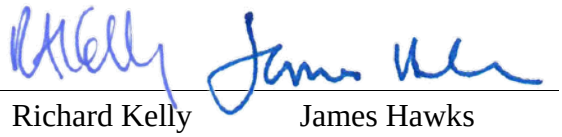
The Proposal requests that shareholders be provided with an opportunity at each annual meeting to express non-binding advisory approval or disapproval with regard to a report disclosing the Company's greenhouse gas emission levels, as well as any strategy that the Company may have adopted or will adopt to reduce such emissions (the "Reduction Plan"). Disclosure of the Company's Reduction Plan is necessary for shareholders to express their non-binding advisory approval or disapproval of it. It follows that the Proposal is comprised of complementary components that are "closely related and essential to a single well-defined unifying concept." (SEC Release No. 2412,999 (Nov. 22, 1976).

As a result, the Proposal is in full compliance and fully consistent with the requirements of Rule 14a-8(c).

Sincerely,

THE CHILDREN'S INVESTMENT MASTER FUND

By: **TCI FUND MANAGEMENT LIMITED**

By: 

Name: Richard Kelly James Hawks
Title: Authorized Signatories

cc: Sherri J. Starr

EXHIBIT E

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Ronald O. Mueller
Direct: +1 202.955.8671
Fax: +1 202.530.9569
RMueller@gibsondunn.com

December 17, 2020

VIA OVERNIGHT MAIL

Danielle Fugere
As You Sow
2150 Kittredge Street, Suite 450
Berkeley, CA 94704

Dear Ms. Fugere:

I am writing on behalf of Union Pacific Corporation (the "Company"), which received on December 4, 2020, the shareholder proposal you submitted on behalf of James McRitchie, Liz Michaels, and the Merck Family Fund (each, a "Proponent") regarding a climate transition report pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2021 Annual Meeting of Shareholders (the "Submission").

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

1. Proposals by Proxy

Your correspondence did not include sufficient documentation demonstrating that you had the legal authority to submit the Submission on behalf of any Proponent as of the date the Submission was submitted (December 4, 2020). In Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB 14I"), the SEC's Division of Corporation Finance ("Division") noted that proposals submitted by proxy, such as the Submission, may present challenges and concerns, including "concerns raised that shareholders may not know that proposals are being submitted on their behalf." Accordingly, in evaluating whether there is a basis to exclude a proposal under the eligibility requirements of Rule 14a-8(b), as addressed below, SLB 14I states that in general the Division would expect any shareholder who submits a proposal by proxy to provide documentation to:

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

The documentation that you provided with the Submission raises the concerns referred to in SLB 14I. Specifically, the Submission raises the concerns referred to in SLB 14I because the documentation from each Proponent, each dated December 2, 2020, purporting to authorize you to act on that Proponent's behalf (each, an "Authorization Letter") does not accurately identify the specific proposal to be submitted. In this regard, while each Authorization Letter identifies the subject of the proposal to submitted as relating to "Climate transition reporting," the Submission appears to relate more specifically to a "vote to express non-binding advisory approval or disapproval of the Company's publicly available climate policies and strategies." To remedy this defect, each Proponent should provide documentation that confirms that as of the date you submitted the Submission, the Proponent had instructed or authorized you to submit the specific proposal to the Company on the Proponent's behalf, and should identify the specific proposal submitted.

2. Proof of Continuous Ownership

To the extent that the Proponents authorized you to submit the Submission to the Company, please note the following. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company's stock records do not indicate that either Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that either Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Submission was submitted to the Company.

To remedy this defect, each Proponent must submit sufficient proof of its continuous ownership of the required number or amount of Company shares for the one-year period preceding and including December 4, 2020, the date the Submission was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 4, 2020; or

2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the

Proponent continuously held the required number or amount of Company shares for the one-year period.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, 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 the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 4, 2020.

2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including December 4, 2020. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including December 4, 2020, the required number or amount of Company shares were continuously held: (i) one from the Proponent's broker or bank

confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

3. Multiple Proposals

Pursuant to Rule 14a-8(c) under the Exchange Act, a shareholder may submit no more than one proposal to a company for a particular shareholders' meeting. We believe that the Submission constitutes more than one shareholder proposal. Specifically, the Submission implicitly requires, as a separate and precedent act, that the Company publicly report on its climate change transition policies and strategies. The Proponent can correct this procedural deficiency by revising the Submission to consist of only one proposal..

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington, DC 20036. Alternatively, you may transmit any response by email to me at RMueller@gibsondunn.com.

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

Ronald O. Mueller

Enclosures

Rule 14a-8 – Shareholder Proposals

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.
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> (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:
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> > (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
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> > (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:
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> > > (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.

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(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.

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://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of

Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals.

Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

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

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

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

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

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the

company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

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

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

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

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

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

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

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

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

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

Proof of Delivery

Dear Customer,

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

Tracking Number
1Z975463NT93928385

Service

UPS Next Day Air®

Shipped / Billed On
12/17/2020

Delivered On

12/18/2020 10:39 A.M.

Delivered To
BERKELEY, CA, US

Received By

REL 364

Left At
Other

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: 12/30/2020 8:54 P.M. EST

EXHIBIT F

From: Gail Follansbee <gail@asyousow.org>
Sent: Wednesday, December 30, 2020 6:57 PM
To: Mueller, Ronald O. <RMueller@gibsondunn.com>
Cc: Danielle Fugere <DFugere@asyousow.org>; Shareholder Engagement <shareholderengagement@asyousow.org>
Subject: Union Pacific - Shareholder proposal - climate transition reporting 21.UNP.2

[External Email]
Hello Mr. Mueller,

This is a response to the deficiency notice received by overnight mail dated December 17, 2020 and received at our offices on December 18, 2020.

Please see attached the Proof of Ownership documentation of Union Pacific for 80 shares from James McRitchie, the Proponent.

Please note that we are withdrawing the named co-filers: Liz Michaels and Merck Family Fund from this proposal.

Please confirm receipt and let us know if any deficiencies remain.

Thank you so much,
Gail

Gail Follansbee (she/her)
Coordinator, Shareholder Relations
As You Sow
2150 Kittredge St., Suite 450
Berkeley, CA 94704
(510) 735-8139 (direct line) ~ (650) 868-9828 (cell)
gail@asyousow.org | www.asyousow.org

12/09/2020

James McRitchie
***

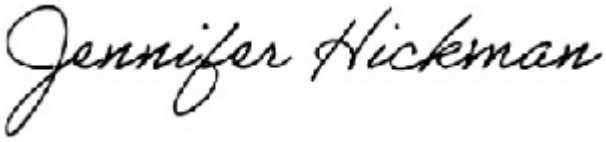
Re: Your TD Ameritrade Account Ending in ***

Dear James McRitchie,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held and had held continuously for at least 13 months, 80 common shares of the Union Pacific Corporation (UNP) in an account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,



Jennifer Hickman
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