

JOHN CHEVEDDEN

February 7, 2021

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

**# 4 Rule 14a-8 Proposal
CVS Caremark Corporation (CVS)
Improve Shareholder Written Consent
John Chevedden**

Ladies and Gentlemen:

This is in regard to the January 12, 2021 no-action request.

This no action request could be suitable if the resolved statement was worded hypnotically like these 2 examples:

Shareholders request that the Board take the steps necessary to enable 10% of shares to request only the first of 2 record date request requirements.

Shareholders request that the Board take the steps necessary to enable 10% of shares to request only the by far easier of 2 record date request requirements.

Sincerely,


John Chevedden

cc: Thomas Moffatt <TSMoffatt@cvs.com>

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JOHN CHEVEDDEN

January 17, 2021 pm

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

3 Rule 14a-8 Proposal
CVS Caremark Corporation (CVS)
Improve Shareholder Written Consent
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 12, 2021 no-action request and in regard to a false and misleading 8-K.

The attached 8-K states that it is an update of written consent.

Update means to improve.

There is no improvement when management adds a false front requirement for shareholders to ask for a record date for written consent prior to the existing requirement to ask for a record date.

Sincerely,



John Chevedden

cc: Thomas Moffatt <TSMoffatt@cvs.com>

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

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported):

July 10, 2020 (July 8, 2020)

♥ **CVSHealth**

CVS HEALTH CORPORATION
(Exact name of registrant as specified in its charter)

Delaware

001-01011

05-0494040

(State or other jurisdiction of incorporation)

(Commission
File Number)

(IRS Employer
Identification No.)

One CVS Drive, Woonsocket, Rhode Island
(Address of principal executive offices)

02895
(Zip Code)

Registrant's telephone number, including area code:

(401) 765-1500

Former name or former address, if changed since last report:

N/A

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	CVS	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Section 5 - Corporate Governance and Management

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On July 8, 2020, the Board of Directors (the "Board") of CVS Health Corporation (the "Company") adopted and approved, effective immediately, the amended and restated By-laws of the Company (the "Amended and Restated By-laws") in order to, among other things:

- revise and update the timing and information requirements of the advance notice provisions for director nominations and stockholder proposals;
- revise and update the requirements and procedures for stockholders to call a special meeting of stockholders and to act by written consent;
- clarify the procedures for stockholder meetings, including those held solely by means of remote communication;

JOHN CHEVEDDEN

January 17, 2021

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

2 Rule 14a-8 Proposal
CVS Caremark Corporation (CVS)
Improve Shareholder Written Consent
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 12, 2021 no-action request.

This 2021 no action request announces the new false front record date requirement that management devised after publishing a similar 2020 rule 14a-8 written consent proposal (attached) in its annual meeting proxy.

Now the bylaws have 2 record date requirements instead of one for no purpose other than to attempt to defeat a rule 14a-8 proposal. There is no particular form for the new false front record date requirement. However the second record date requirement must include everything in "Section 1.10(i)(c) as if the action were to be effected at a stockholder meeting."

In other words management made a 2020 change in the bylaws to wordsmith around the 2020 proposal in the expectation that it would receive a similar 2021 proposal.

This is a fundamentally corrupt practice that attempts to defeat the purpose of a rule 14a-8 proposal. The chair of the Governance Committee, Ms. Nancy-Ann DeParle, deserves a career limited negative vote at the 2021 annual meeting unless she renounces this corrupt wordsmithing.

And it would be worse if a big law firm was involved with this fundamentally corrupt bylaw change.

And it would be worse if the 2020 bundle of bylaw changes by management at one time had other instances of corruption or under the radar attempts to limit the rights of shareholders.

Sincerely,


John Chevedden

cc: Thomas Moffatt <TSMoffatt@cvs.com>

Stockholder Proposals

2020 CVS PROXY

Item 6

Stockholder Proposal for Reducing the Ownership Threshold to Request a Stockholder Action by Written Consent

On or about November 27, 2019 (later revised on December 6, 2019), the Company received the following proposal from Kenneth Steiner, 14 Stoner Avenue, 2M, Great Neck, NY 11021. Mr. Steiner represents that he has held at least \$2,000 worth of the Company's stock for the past year and intends to continue to hold such amount through the date of the Company's next annual meeting. In accordance with SEC rules, we are reprinting the proposal and supporting statement (which we refer to as the "Steiner Proposal") in this proxy statement as they were submitted to us:

Proposal 6 - Make Shareholder Written Consent Meaningful

Shareholders request that our board of directors take the steps necessary to change 25% to 3% in this passage from our bylaws:

"A request by a stockholder for a record date in accordance with Article Eighth of the Certificate of Incorporation must be delivered by the holders of record of at least twenty five percent (25%) of the voting power of the outstanding capital stock of the corporation entitled to express consent on the relevant action... "

This proposal includes taking the steps necessary to make each change in our governing documents that is needed to be consistent with this 25% to 3% amendment.

When CVS directors adopted a shareholder right to act by written consent CVS directors put in a hurdle to make written consent not a meaningful right. CVS directors made it necessary for an unwieldy 25% of CVS shares to simply request a record date.

In other words CVS shareholders need the backing of \$25 Billion of CVS shares to simply ask for a record date. And once the owners of \$25 Billion of CVS stock provide management with their direct contact information in asking for a record date then it is easy for CVS management to defeat written consent by pressuring the initial sponsoring shareholders to revoke their written consents.

It makes no sense to require 25% of shares (\$25 Billion of CVS shares) to just get started to act by written consent when 3% of CVS shares can put a proxy access candidate on our annual meeting ballot.

Please vote yes:

Make Shareholder Written Consent Meaningful- Proposal 6

STATEMENT OF THE BOARD OF DIRECTORS RECOMMENDING A VOTE AGAINST THE STEINER PROPOSAL

CVS Health is strongly committed to good governance practices and is keenly interested in the views and concerns of our stockholders. The Company has adopted many leading corporate governance practices, including the annual election of all directors, majority voting in director elections, the right of stockholders to act by written consent and to call special meetings, and proxy access. In addition, the Company has decreased the size of the Board to further align with corporate governance practices and feedback received through stockholder engagement. Our current QualityScore ratings from Institutional Shareholder Services (ISS) include a 1 in Shareholder Rights and a 2 in Board Structure, meaning that CVS Health is currently in the top 10% to 20% of ranked companies in those categories. The Company's overall Governance QualityScore is a 1 (top 10%), indicating that ISS views our Company as among the lowest in terms of governance risks.

JOHN CHEVEDDEN

January 12, 2021

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

1 Rule 14a-8 Proposal
CVS Caremark Corporation (CVS)
Improve Shareholder Written Consent
John Chevedden

Ladies and Gentlemen:

This is in regard to the January 12, 2021 no-action request.

According to the bylaws provided by management it still requires at least 25% of the voting power to complete a request for a record date.

Sincerely,


John Chevedden

cc: Thomas Moffatt <TSMoffatt@cvs.com>

Proposal 4 – Improve Shareholder Written Consent

Shareholders request that our board of directors take the steps necessary to enable 10% of shares to request a record date to initiate written consent.

Currently it takes the formal backing 35% of all shares that normally cast ballots at the annual meeting to do so little ask for a record date for written consent.

Plus any action taken by written consent would still need more than 70% supermajority approval from the shares that normally cast ballots at the annual meeting. This 70% vote requirement gives almost overwhelming supermajority protection to management that will remain unchanged.

Enabling 10% of shares to apply for a record date for written consent makes sense because scores of companies do not even require 01% of stock ownership to do so little as request a record date.

Taking action by written consent is a means shareholders can use to raise important matters outside the normal annual meeting cycle like the election of a new director. For instance shareholders might determine that the poorest performing directors are in need of replacement.

As a potential example Mr. David Brown, who chaired the management pay committee and received 135 million votes of rejection in 2020 and Mr. David Dorman who chaired the Nomination Committee received 161 million votes of rejection in 2020. By comparison these 2 negative votes were each more than 20-times the negative votes received by Ms. Mary Schapiro.

In 2020 CVS management said, “The Company believes that stockholder meetings provide an important forum for stockholders to present, discuss and vote on proposals on an informed basis.” This has been completely blown out of the water by the onslaught of tightly controlled online shareholder meetings.

With the near universal use of online annual shareholder meetings which can be only 10-minutes long, shareholders no longer have the right for engagement with other shareholders, management and directors at a shareholder meeting. Special shareholder meetings can now be online meetings which has an inferior format to even a free Zoom meeting.

Shareholders are also severely restricted in making their views known at online shareholder meetings because all challenging questions and comments can be screened out.

For instance the Goodyear shareholder meeting was spoiled by a trigger-happy management mute button that was used to quash constructive shareholder criticism. AT&T, with 3000 institutional shareholders, would not even allow shareholders to speak.

Please see:

AT&T investors denied a dial-in as annual meeting goes online

<https://whbl.com/2020/04/17/att-investors-denied-a-dial-in-as-annual-meeting-goes-online/1007928/>

Imagine the control management like AT&T could have over an online special shareholder meeting.

Online meetings also give management a blank check to make false statements because shareholders who are not physically present cannot challenge false statements.

Now more than ever shareholders need to have the option to take action outside of a shareholder meeting since online shareholder meetings are a wasteland for management accountability and shareholder engagement.

Proposal 4 – Improve Shareholder Written Consent

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

Board of Directors or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

Section 1.06 VOTING. At each meeting of the stockholders every stockholder of record having the right to vote shall be entitled to vote either in person or by proxy. Unless a greater number of affirmative votes is required by the certificate of incorporation of the corporation (the "Certificate of Incorporation"), these by-laws, the rules or regulations of the principal U.S. exchange upon which the shares of the corporation are listed, or as otherwise required by law or pursuant to any regulation applicable to the corporation, if a quorum exists at any meeting of stockholders, stockholders shall have approved any matter, other than the election of directors pursuant to Section 2.03, if the matter receives the vote of the majority of the votes cast with respect to that matter. For purposes of this Section 1.06, a majority of votes cast means that the number of votes "for" a matter must exceed fifty percent (50%) of the votes cast with respect to that matter.

Section 1.07 ACTION BY WRITTEN CONSENT.

(i) Any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of such holders or may be effected by a consent in writing by stockholders as provided by, and subject to the limitations in, the Certificate of Incorporation and this Section 1.07.

(ii) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting (the "Consent Record Date") shall be fixed by the Board of Directors at the written request or requests of holders of record representing, as of the Consent Request Record Date (as defined below), at least twenty-five percent (25%) of the voting power of the outstanding capital stock of the corporation entitled to express consent on the relevant action (the "Consent Requisite Percentage").

(iii) No stockholder may request a Consent Record Date unless a stockholder of record has first submitted a request in writing that the Board of Directors fix a record date (a "Consent Request Record Date") for the purpose of determining stockholders entitled to request a Consent Record Date, which request shall be in proper form and delivered to the Secretary at the principal executive offices of the corporation. To be in proper form, the request for a Consent Request Record Date shall: (a) bear the signature and the date of signature by the stockholder of record submitting such request and (b) include all information required to be set forth in a notice under Section 1.10(i)(c) as if the action were to be effected at a stockholder meeting.

(iv) Within ten (10) days after the corporation receives a request to fix a Consent Request Record Date in compliance with this Section 1.07, the Board of Directors shall adopt a resolution fixing a Consent Request Record Date for the purpose of determining the stockholders entitled to request a Consent Record Date, which date shall not precede the date upon which the resolution fixing the Consent Request Record Date is adopted by the Board of Directors. Notwithstanding anything to the contrary in this Section 1.07, no Consent Request Record Date shall be fixed if the Board of Directors determines that any request for a Consent Record Date that would be submitted following such Consent Request Record Date could not comply with the requirements set forth in this Section 1.07.

(v) To be timely, a request for a Consent Record Date must be delivered to the Secretary at the principal executive offices of the corporation not later than sixty (60) days after the Consent Request Record Date. A request for a Consent Record Date shall be signed and dated by each stockholder of record (or duly authorized agent of such stockholder) requesting the Consent Record Date, shall comply with Sections 1.07 and 1.10 (including Section 1.10(iii)), as applicable,

January 12, 2021

VIA E-MAIL (shareholderproposals@sec.gov)

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

**Re: CVS Health Corporation
Stockholder Proposal by John Chevedden
Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen:

CVS Health Corporation, a Delaware corporation (the “**Company**” or “**CVS Health**”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), submits this letter to inform the Staff of the Division of Corporation Finance (the “**Staff**”) of the U.S. Securities and Exchange Commission (the “**Commission**”) of the Company’s intention to omit from its proxy statement and form of proxy (collectively, the “**2021 Proxy Materials**”) the stockholder proposal (the “**Proposal**”) and the statement in support thereof submitted by John Chevedden (the “**Proponent**”). A copy of the Proposal and the statement in support thereof is attached to this letter as Exhibit A and all related correspondence with the Proponent are attached to this letter as Exhibit B. The Company respectfully requests that the Staff concur with the Company’s view that the Proposal may properly be excluded from the Company’s 2021 Proxy Materials pursuant to Rule 14a-8.

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“**SLB 14D**”), we are submitting this request for no-action relief under Rule 14a-8 through the Commission’s email address, shareholderproposals@sec.gov (in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j)), and the undersigned has included his name, telephone number and e-mail address both in this letter and the cover email accompanying this letter.

Rule 14a-8(k) under the Exchange Act and SLB 14D provide that stockholder proponents are required to send the company a copy of any correspondence that the proponents elect to submit to the Commission or Staff. Accordingly, we are taking this opportunity to inform the Proponent

that if the Proponent elects to submit additional correspondence to the Commission or Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal requests that “[the Company’s] board of directors take the steps necessary to enable 10% of shares to request a record date to initiate written consent.”

A complete copy of the Proposal and supporting statement is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

The Company believes that the Proposal may properly be excluded from the 2021 Proxy Materials under Rule 14a-8(i)(10) because the Proposal has already been substantially implemented by the Company.

ANALYSIS

I. The Proposal May Be Properly Excluded from the Company’s 2021 Proxy Materials Pursuant to Rule 14a-8(i)(10) Because the Proposal has been Substantially Implemented.

Rule 14a 8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal. The Commission stated in 1976 that the predecessor to Rule 14a 8(i)(10) was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor Rule and granted no action relief only when proposals were “‘fully’ effected” by the company. See Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the “previous formalistic application of [the Rule] defeated its purpose” because proponents were successfully convincing the Staff to deny no action relief by submitting proposals that differed from existing company policy by only a few words. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983). Therefore, in 1983, the Commission adopted a revised interpretation to the Rule to permit the omission of proposals that had been “substantially implemented,” and the Commission codified this revised interpretation in Exchange Act Release No. 40018 at n.30 (May 21, 1998). Thus, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a stockholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded as moot. See, e.g., *General Electric Co.* (avail. Mar. 3, 2015); *Exelon Corp.* (Feb. 26, 2010); *Exxon Mobil Corp. (Burt)* (Mar. 23, 2009); *Anheuser Busch Companies, Inc.* (Jan. 17, 2007); *ConAgra Foods, Inc.* (July 3, 2006); *Johnson & Johnson* (Feb. 17, 2006); *Talbots Inc.* (Apr. 5, 2002); *Exxon Mobil Corp.* (Jan. 24, 2001); *Masco Corp.* (Mar. 29, 1999); *The Gap, Inc.* (Mar. 8, 1996).

Applying this standard, the Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (Mar. 28, 1991). In other words, substantial implementation under Rule 14a 8(i)(10)

requires a company's actions to have satisfactorily addressed the proposal's essential objective. See, e.g., *General Electric Co.* (Mar. 3, 2015); *Wal Mart Stores, Inc.* (Mar. 27, 2014); *Exelon Corp.* (Feb. 26, 2010); *Anheuser Busch Cos., Inc.* (Jan. 17, 2007); *ConAgra Foods, Inc.* (July 3, 2006); *Johnson & Johnson* (Feb. 17, 2006); *Talbots Inc.* (Apr. 5, 2002); *Masco Corp.* (Mar. 29, 1999).

Here, the Proposal has been substantially implemented because the Company's by-laws (the "**By-Laws**", relevant excerpt attached hereto as Exhibit C) address the essential objective of the Proposal by permitting *any* stockholder to "request a record date to initiate written consent."

The Company's By-Laws permit action by written consent of stockholders. In order to determine which stockholders are eligible to express consent to an action, a record date must be set by the Company's board of directors (the "**Board**") to determine stockholder eligibility (the "**Consent Record Date**"). Furthermore, in order to determine which stockholders are eligible to request that the Board set a Consent Record Date, a second record date (the "**Consent Request Record Date**") must also be set prior to the setting of the Consent Record Date. Section 1.07(iii) of the By-Laws lays out this process by permitting *any* stockholder to request the Board set a Consent Request Record Date. In other words, *any* stockholder of the Company may initiate the written consent process by requesting the Board set a Consent Request Record Date under Section 1.07(iii). There is no minimum ownership percentage or other requirement to initiate this first step of the written consent process. Section 1.07(ii) of the By-Laws states that once a Consent Request Record Date has been set, a Consent Record Date may then be requested by stockholders holding at least 25% of the voting power of the outstanding capital stock of the Company (the "**Consent Requisite Percentage**") as of the Consent Request Record Date.

The Proposal requests steps be taken to enable "10% of shares to request a record date to **initiate** written consent" (emphasis added). Although the Consent Requisite Percentage ownership threshold that would permit stockholders to request the Board set a Consent Record Date is in excess of the 10% threshold requested in the Proposal, the request of the Board to set a Consent Record Date is not what *initiates* the written consent process. The request for a Consent Request Record Date is what *initiates* the written consent process and, as stated above, *any* stockholder is permitted to request a Consent Request Record Date and thereby initiate the written consent process. The essential objective of the Proposal is ensuring that the threshold for stockholders of the Company to initiate the written consent process is set at a low threshold, and the Company's By-Laws substantially implement this essential objective by allowing *any* stockholder to initiate that process.

Thus, because the By-Laws permit *any* stockholder to initiate the written consent process, the Company's By-Laws have substantially implemented the essential objective of the Proposal and the Proposal may be excluded from the 2021 Proxy Materials in reliance on Rule 14a-8(i)(10).

CONCLUSION

For the reasons discussed above, the Company respectfully requests the Staff's concurrence with its decision to omit the Proposal from the 2021 Proxy Materials and further requests the confirmation that the Staff will not recommend any enforcement action in connection with such omission.

In the event the Staff disagrees with any conclusion expressed herein, or should any information in support or explanation of the Company's position be required, we would appreciate an opportunity to confer with the Staff before issuance of its response. If the Staff has any questions regarding this request or requires additional information, please contact the undersigned at (401) 770-5409 or Thomas.Moffatt@CVSHealth.com.

We appreciate your attention to this request.

Respectfully yours,

A handwritten signature in blue ink, appearing to read 'Tom Moffatt', with a long horizontal flourish extending to the right.

Thomas S. Moffatt
Vice President, Assistant Secretary and Assistant General Counsel

cc: John Chevedden
Colleen M. McIntosh, Senior Vice President, Chief Governance Officer, Corporate
Secretary and Assistant General Counsel, CVS Health Corporation
Lona Nallengara, Shearman & Sterling LLP

EXHIBIT A

From: John Chevedden ***
Sent: Wednesday, December 02, 2020 2:06 PM
To: McIntosh, Colleen
Cc: Moffatt, Thomas S.
Subject: [EXTERNAL] Rule 14a-8 Proposal (CVS)`
Attachments: 28102020_5.pdf

**** External Email - Use Caution ****

Dear Ms. McIntosh,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may not be necessary for you to write a formal letter requesting a broker letter.

Sincerely,
John Chevedden

Ms. Colleen M. McIntosh
 CVS Caremark Corporation (CVS)
 One CVS Drive
 Woonsocket RI 02895
 PH: 401-765-1500

Dear Ms. McIntosh,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

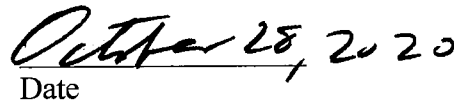
This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it will save you from requesting a broker letter from me.

Sincerely,


 John Chevedden


 Date

cc: Thomas Moffatt <TSMoffatt@cvs.com>
 FX: 401-216-3758
 FX: 401-765-7887

[CVS: Rule 14a-8 Proposal, October 28, 2020]
[This line and any line above it – *Not* for publication.]
Proposal 4 – Improve Shareholder Written Consent

Shareholders request that our board of directors take the steps necessary to enable 10% of shares to request a record date to initiate written consent.

Currently it takes the formal backing 35% of all shares that normally cast ballots at the annual meeting to do so little ask for a record date for written consent.

Plus any action taken by written consent would still need more than 70% supermajority approval from the shares that normally cast ballots at the annual meeting. This 70% vote requirement gives almost overwhelming supermajority protection to management that will remain unchanged.

Enabling 10% of shares to apply for a record date for written consent makes sense because scores of companies do not even require 1% of stock ownership to do so little as request a record date.

Taking action by written consent is a means shareholders can use to raise important matters outside the normal annual meeting cycle like the election of a new director. For instance shareholders might determine that the poorest performing directors are in need of replacement.

As an example Mr. David Brown, who chaired the Executive Pay Committee and received 135 million negative votes in 2020 and Mr. David Dorman who chaired the Nomination Committee received 161 million negative votes in 2020. These 2 negative votes were each more than 20-times the negative votes received by Ms. Mary Schapiro.

In 2020 CVS management said, “The Company believes that stockholder meetings provide an important forum for stockholders to present, discuss and vote on proposals on an informed basis.” This has been completely blown out of the water by the onslaught of tightly controlled online shareholder meetings.

With the near universal use of online annual shareholder meetings which can be only 10-minutes long, shareholders no longer have the right for engagement with other shareholders, management and directors at a shareholder meeting. Special shareholder meetings can now be online meetings which has an inferior format to even a Zoom meeting.

Shareholders are also severely restricted in making their views known at online shareholder meetings because all challenging questions and comments can be screened out. For instance Goodyear management hit the mute button right in the middle of a formal shareholder proposal presentation at its 2020 shareholder meeting to bar constructive shareholder criticism of management.

Plus the management at AT&T would not even allow the proponents of shareholder proposals to read their proposals by telephone at the 2020 AT&T online annual meeting.

Please see:

AT&T investors denied a dial-in as annual meeting goes online

<https://whbl.com/2020/04/17/att-investors-denied-a-dial-in-as-annual-meeting-goes-online/1007928/>

Imagine the control AT&T management could have over an online special shareholder meeting.

Online meetings also give management a blank check to make false statements because shareholders who are not physically present cannot challenge false statements.

Now more than ever shareholders need to have the option to take action outside of a shareholder meeting since online shareholder meetings are an engagement wasteland.

Proposal 4 – Improve Shareholder Written Consent

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

Notes:

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

From: John Chevedden ***
Sent: Friday, December 04, 2020 6:33 PM
To: McIntosh, Colleen
Cc: Moffatt, Thomas S.
Subject: [EXTERNAL] Rule 14a-8 Proposal (CVS)`` revised
Attachments: 04122020_5.pdf

**** External Email - Use Caution ****

Dear Ms. McIntosh,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.
Sincerely,
John Chevedden

Ms. Colleen M. McIntosh
CVS Caremark Corporation (CVS)
One CVS Drive
Woonsocket RI 02895
PH: 401-765-1500

REVISED 04 DEC 2020

Dear Ms. McIntosh,

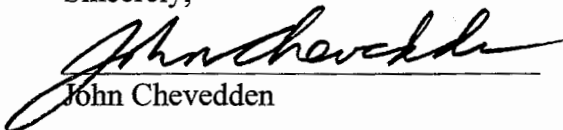
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

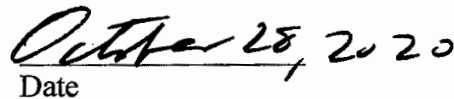
This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it will save you from requesting a broker letter from me.

Sincerely,


John Chevedden


Date

cc: Thomas Moffatt <TSMoffatt@cvs.com>
FX: 401-216-3758
FX: 401-765-7887

Proposal 4 – Improve Shareholder Written Consent

Shareholders request that our board of directors take the steps necessary to enable 10% of shares to request a record date to initiate written consent.

Currently it takes the formal backing 35% of all shares that normally cast ballots at the annual meeting to do so little ask for a record date for written consent.

Plus any action taken by written consent would still need more than 70% supermajority approval from the shares that normally cast ballots at the annual meeting. This 70% vote requirement gives almost overwhelming supermajority protection to management that will remain unchanged.

Enabling 10% of shares to apply for a record date for written consent makes sense because scores of companies do not even require 01% of stock ownership to do so little as request a record date.

Taking action by written consent is a means shareholders can use to raise important matters outside the normal annual meeting cycle like the election of a new director. For instance shareholders might determine that the poorest performing directors are in need of replacement.

As a potential example Mr. David Brown, who chaired the management pay committee and received 135 million votes of rejection in 2020 and Mr. David Dorman who chaired the Nomination Committee received 161 million votes of rejection in 2020. By comparison these 2 negative votes were each more than 20-times the negative votes received by Ms. Mary Schapiro.

In 2020 CVS management said, “The Company believes that stockholder meetings provide an important forum for stockholders to present, discuss and vote on proposals on an informed basis.” This has been completely blown out of the water by the onslaught of tightly controlled online shareholder meetings.

With the near universal use of online annual shareholder meetings which can be only 10-minutes long, shareholders no longer have the right for engagement with other shareholders, management and directors at a shareholder meeting. Special shareholder meetings can now be online meetings which has an inferior format to even a free Zoom meeting.

Shareholders are also severely restricted in making their views known at online shareholder meetings because all challenging questions and comments can be screened out.

For instance the Goodyear shareholder meeting was spoiled by a trigger-happy management mute button that was used to quash constructive shareholder criticism. AT&T, with 3000 institutional shareholders, would not even allow shareholders to speak.

Please see:

AT&T investors denied a dial-in as annual meeting goes online

<https://whbl.com/2020/04/17/att-investors-denied-a-dial-in-as-annual-meeting-goes-online/1007928/>

Imagine the control management like AT&T could have over an online special shareholder meeting.

Online meetings also give management a blank check to make false statements because shareholders who are not physically present cannot challenge false statements.

Now more than ever shareholders need to have the option to take action outside of a shareholder meeting since online shareholder meetings are a wasteland for management accountability and shareholder engagement.

Proposal 4 – Improve Shareholder Written Consent

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

Notes:

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

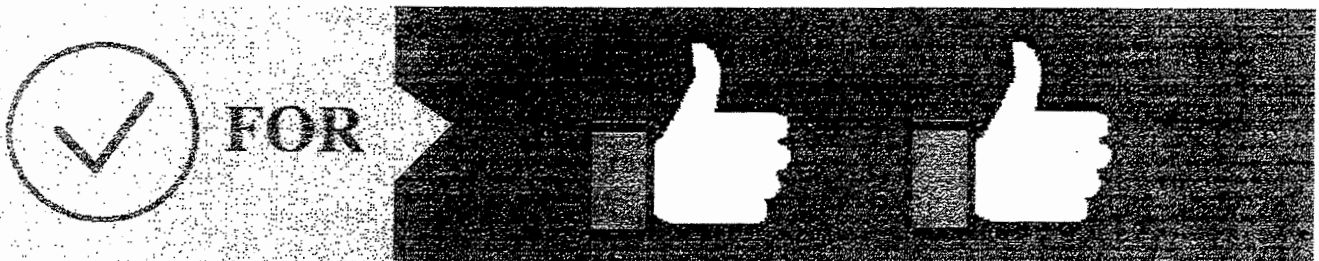
See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email

The graphic below is intended to be published with the rule 14a-8 proposal.

The graphic is to be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.



From: John Chevedden <***>
Sent: Friday, December 04, 2020 10:11 PM
To: McIntosh, Colleen
Cc: Moffatt, Thomas S.
Subject: [EXTERNAL] Rule 14a-8 Center Justified Proposal Graphic (CVS) John Chevedden Proposal

**** External Email - Use Caution ****

Dear Ms. McIntosh,
This is a better copy of the center justified graphic (for proxy publication) included with the rule 14a-8 proposal. The graphic is to be published just below the top title of the rule 14a-8 proposal.
Sincerely,
John Chevedden

The graphic below is intended to be published with the rule 14a-8 proposal. The graphic is to be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.



EXHIBIT B

From: Moffatt, Thomas S.
Sent: Friday, December 11, 2020 4:23 PM
To: John Chevedden
Cc: McIntosh, Colleen
Subject: RE: [EXTERNAL] Rule 14a-8 Proposal (CVS)` revised
Attachments: Ltr. J. Chevedden.pdf; Ltr. J. Chevedden attachments.pdf

Dear Mr. Chevedden:

Please see attached.

Best regards,

Tom Moffatt

Tom Moffatt | Vice President, Asst. Secretary & Asst. General Counsel - Corporate Services | **direct** 401-770-5409 | **cell** 401-499-4102 | **fax** 401-216-3758 | CVS Health | One CVS Drive | MC1160 | Woonsocket, RI 02895 | thomas.moffatt@cvshealth.com



CONFIDENTIALITY NOTICE: This communication and any attachments may contain confidential and/or privileged information for the use of the designated recipients named above. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of it or its contents is prohibited. If you have received this communication in error, please notify the sender immediately by email or telephone and destroy all copies of this communication and any attachments. Thank you.

From: John Chevedden [mailto:***]
Sent: Friday, December 4, 2020 6:33 PM
To: McIntosh, Colleen <Colleen.Mcintosh@CVSHealth.com>
Cc: Moffatt, Thomas S. <Thomas.Moffatt@CVSHealth.com>
Subject: [EXTERNAL] Rule 14a-8 Proposal (CVS)` revised

**** External Email - Use Caution ****

Dear Ms. McIntosh,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.
Sincerely,
John Chevedden



Thomas S. Moffatt
Vice President, Asst. Secretary &
Asst. General Counsel

One CVS Drive
MC 1160
Woonsocket, RI 02895

p 401-770-5409
f 401-216-3758

thomas.moffatt@cvshealth.com

December 11, 2020

Mr. John Chevedden

Re: CVS Health Corporation
Stockholder Proposal – Improve Stockholder Written Consent

Dear Mr. Chevedden:

We received the stockholder proposal that is on its face dated October 28, 2020 and revised on December 4, 2020 (the “Proposal”), that you actually submitted to CVS Health Corporation (“CVS Health” or the “Company”) on December 2, 2020 and on December 4, 2020.

The Proposal contains certain procedural deficiencies, which Securities and Exchange Commission (“SEC”) regulations require us to bring to your attention.

Proof of Ownership

Rule 14a-8(b)(1) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), requires that in order to be eligible to submit a proposal for inclusion in CVS Health’s proxy statement for its 2021 annual meeting of stockholders (the “annual meeting”) each stockholder proponent must, among other things, have continuously held at least \$2,000 in market value, or 1%, of CVS Health’s common stock for at least one year prior to the date the proponent submits the proposal, and must continue to hold such common stock through the date of CVS Health’s annual meeting. Our stock records indicate that you are not currently the registered holder of any shares of CVS Health’s common stock and you have not provided proof of ownership of CVS Health’s common stock.

Accordingly, Rule 14a-8(b) requires that a proponent of a proposal prove eligibility as a beneficial stockholder of the company that is the subject of the proposal by submitting either:

- a written statement from the “record” holder of the shares (usually a bank or broker) verifying that, at the time the proponent submitted the Proposal, the proponent had continuously held at least \$2,000 in market value, or 1%, of CVS Health’s common stock for at least the one-year period prior to and including the date the Proposal was submitted, and that the proponent intend to continue to hold such common stock through the date of CVS Health’s annual meeting; or

- a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the proponent's ownership of shares as of or before the date on which the one-year eligibility period begins, the proponent's written statement that it has continuously held the required number of shares for the one-year period as of the date of the statement and the proponent's written statement that the proponent intends to continue ownership of the shares through the date of CVS Health's annual meeting.

Your letter did not include sufficient proof of your ownership of CVS Health's common stock. By this letter, I am requesting that you provide to us acceptable documentation that you have held the required value or number of shares to submit a proposal continuously for at least the one-year period preceding and including the December 4, 2020 date the Proposal was submitted.

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

If you hold shares through a bank or broker that is not a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds the shares, or an affiliate of such DTC participant. You should be able to find the name of the DTC participant by asking your bank or broker. If the DTC participant that holds your shares knows the holdings of your bank or broker, but does not know your holdings, you may satisfy the proof of ownership requirements by submitting two proof of ownership statements — one from your bank or broker confirming your ownership and the other from the DTC participant confirming the bank's or broker's ownership. Please review SLB 14F carefully before submitting proof of ownership to ensure that it is compliant.

Copies of Rule 14a-8, which applies to stockholder proposals submitted for inclusion in proxy statements, and SLB 14F and SLB 14G, which applies to stockholders' compliance with requirements when submitting proof of ownership to companies, are enclosed for your reference.

In order to meet the eligibility requirements for submitting a stockholder proposal, the SEC rules require that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Please address any response to me at Thomas.Moffatt@CVSHealth.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Moffatt', with a long horizontal flourish extending to the right.

Thomas S. Moffatt

Vice President, Assistant Secretary and Assistant General Counsel

Attachments

cc w/ att: Colleen M. McIntosh, Senior Vice President, Secretary and
Chief Governance Officer, CVS Health Corporation
Lona Nallengara, Shearman & Sterling LLP

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of November 4, 2020

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

Title 17: Commodity and Securities Exchanges
PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.14a-8 Shareholder proposals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) *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 it files definitive copies of its proxy statement and form of proxy under §240.14a-6.

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

Need assistance?



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

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

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

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

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8⁷ 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.

¹ See Rule 14a-8(b).

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

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

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

⁵ See Exchange Act Rule 17Ad-8.

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

⁷ See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company’s non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

⁸ *Techne Corp.* (Sept. 20, 1988).

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

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

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

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

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

the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

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

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

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

<http://www.sec.gov/interps/legal/cfs1b14f.htm>



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

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Use of website addresses in proposals and supporting statements

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

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.³

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

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

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

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

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

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

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

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

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

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

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

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

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

<http://www.sec.gov/interp/leg/cfsib14g.htm>

From: John Chevedden ***
Sent: Friday, December 18, 2020 5:58 PM
To: Moffatt, Thomas S.
Cc: McIntosh, Colleen
Subject: [EXTERNAL] Rule 14a-8 Proposal (CVS) blb
Attachments: 18122020_6.pdf

**** External Email - Use Caution ****

Mr. Moffatt,
Please see the attached broker letter.
Please confirm receipt.
Sincerely,
John Chevedden



December 18, 2020

JOHN R CHEVEDDEN

To Whom It May Concern:

This letter is provided at the request of Mr. John R. Chevedden, a customer of Fidelity Investments.

Please accept this letter as confirmation that as of market close on December 17, 2020, Mr. Chevedden has continuously owned no fewer than the share quantities of the securities shown in the table below, since September 1, 2019.

Security Name	CUSIP	Symbol	Share Quantity
BOOZ ALLEN HAMILTON HLDG CORP	099502106	BAH	100
CHEMED CORP NEW	16359R103	CHE	40
BEST BUY CO INC COM	086516101	BBY	50
CVS HEALTH CORPORATION COM	126650100	CVS	50

These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary. Please note that this information is unaudited and not intended to replace your monthly statements or official tax documents.

I hope this information is helpful. For questions regarding this request please contact the account owner directly. For any other issues or general inquiries, please call your Private Client Group at 800-544-5704. Thank you for choosing Fidelity Investments.

Sincerely,

April Daniels
Operations Specialist

Our File: W847426-14DEC20

Page 1 of 1

EXHIBIT C

Board of Directors or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

Section 1.06 VOTING. At each meeting of the stockholders every stockholder of record having the right to vote shall be entitled to vote either in person or by proxy. Unless a greater number of affirmative votes is required by the certificate of incorporation of the corporation (the "Certificate of Incorporation"), these by-laws, the rules or regulations of the principal U.S. exchange upon which the shares of the corporation are listed, or as otherwise required by law or pursuant to any regulation applicable to the corporation, if a quorum exists at any meeting of stockholders, stockholders shall have approved any matter, other than the election of directors pursuant to Section 2.03, if the matter receives the vote of the majority of the votes cast with respect to that matter. For purposes of this Section 1.06, a majority of votes cast means that the number of votes "for" a matter must exceed fifty percent (50%) of the votes cast with respect to that matter.

Section 1.07 ACTION BY WRITTEN CONSENT.

(i) Any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of such holders or may be effected by a consent in writing by stockholders as provided by, and subject to the limitations in, the Certificate of Incorporation and this Section 1.07.

(ii) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting (the "Consent Record Date") shall be fixed by the Board of Directors at the written request or requests of holders of record representing, as of the Consent Request Record Date (as defined below), at least twenty-five percent (25%) of the voting power of the outstanding capital stock of the corporation entitled to express consent on the relevant action (the "Consent Requisite Percentage").

(iii) No stockholder may request a Consent Record Date unless a stockholder of record has first submitted a request in writing that the Board of Directors fix a record date (a "Consent Request Record Date") for the purpose of determining stockholders entitled to request a Consent Record Date, which request shall be in proper form and delivered to the Secretary at the principal executive offices of the corporation. To be in proper form, the request for a Consent Request Record Date shall: (a) bear the signature and the date of signature by the stockholder of record submitting such request and (b) include all information required to be set forth in a notice under Section 1.10(i)(c) as if the action were to be effected at a stockholder meeting.

(iv) Within ten (10) days after the corporation receives a request to fix a Consent Request Record Date in compliance with this Section 1.07, the Board of Directors shall adopt a resolution fixing a Consent Request Record Date for the purpose of determining the stockholders entitled to request a Consent Record Date, which date shall not precede the date upon which the resolution fixing the Consent Request Record Date is adopted by the Board of Directors. Notwithstanding anything to the contrary in this Section 1.07, no Consent Request Record Date shall be fixed if the Board of Directors determines that any request for a Consent Record Date that would be submitted following such Consent Request Record Date could not comply with the requirements set forth in this Section 1.07.

(v) To be timely, a request for a Consent Record Date must be delivered to the Secretary at the principal executive offices of the corporation not later than sixty (60) days after the Consent Request Record Date. A request for a Consent Record Date shall be signed and dated by each stockholder of record (or duly authorized agent of such stockholder) requesting the Consent Record Date, shall comply with Sections 1.07 and 1.10 (including Section 1.10(iii)), as applicable,

and shall include, other than with respect to a Solicited Stockholder: (a) all information required to be set forth in a notice under Section 1.10(i)(c) of these by-laws as though the stockholders making the request were making a Special Meeting Request in furtherance of the proposed action; (b) an acknowledgment by the stockholder of record making the request and any Stockholder Associated Person (as defined below) other than a Solicited Stockholder (collectively, the “Consent Requesting Stockholders”) that a disposition of shares of the corporation’s capital stock, owned of record or beneficially as of the date on which the request in respect of such shares is delivered to the Secretary, that is made at any time prior to the delivery of the first written consent with respect to the proposed action shall constitute a revocation of such request with respect to such disposed shares; (c) a statement that the Consent Requesting Stockholders intend to solicit consents in accordance with Regulation 14A of the Exchange Act, without reliance on the exemption contained in Rule 14a-2(b)(2) of the Exchange Act; and (d) documentary evidence that the Consent Requesting Stockholders own the Consent Requisite Percentage as of the date that the request is delivered to the Secretary; provided, however, that if any stockholder of record making the request is not the beneficial owner of the shares representing the Consent Requisite Percentage, then to be valid, the request must also include documentary evidence that the beneficial owners on whose behalf the request is made beneficially own the Consent Requisite Percentage as of the date on which such request is delivered to the Secretary. In addition, the Consent Requesting Stockholders shall promptly provide any other information reasonably requested by the corporation.

(vi) In determining whether a Consent Record Date has been requested by Consent Requesting Stockholders of record representing in the aggregate at least the Consent Requisite Percentage, multiple requests delivered to the Secretary will be considered together only if (a) each identifies the same proposed action and includes the same text of the proposal (in each case as determined in good faith by the Board of Directors), and (b) such requests have been dated and delivered to the Secretary within sixty (60) days of the earliest dated request. Any stockholder may revoke a request with respect to his or her shares at any time by written revocation delivered to the Secretary.

(vii) In addition to the requirements of this Section 1.07, all actions by written consent in lieu of a meeting and related stockholder solicitations shall comply with all requirements of applicable law, including all requirements of the Exchange Act.

(viii) Notwithstanding anything to the contrary set forth above, none of the provisions in this Section 1.07 shall apply to any solicitation of stockholder action by written consent in lieu of a meeting by or at the direction of the Board of Directors, and the Board of Directors shall be entitled to solicit stockholder action by written consent in accordance with applicable law.

Section 1.08 INSPECTORS OF ELECTION.

(i) The Board of Directors, in advance of any stockholders’ meeting, shall appoint one or more inspectors of election (each, an “Inspector” or “Inspector of Election” and, collectively, “Inspectors” or “Inspectors of Election”) to act at the meeting or any adjournment or recess thereof. If Inspectors are not so appointed, the person presiding at a stockholders’ meeting shall appoint one or more Inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the Board of Directors in advance of the meeting or at the meeting by the person presiding thereat. Inspectors shall be sworn.

(ii) In the event of the delivery, in the manner provided by Section 1.07 and applicable law, to the corporation of written consent or written consents to take corporate action and/or any related revocation or revocations, the corporation shall appoint one or more Inspectors of Election for the purpose of performing promptly a ministerial review of the validity of the consents and