



May 7, 2021

Via email: shareholderproposals@sec.gov

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

Re: NortonLifeLock Inc. - Omission of Stockholder Proposal Submitted by Eric F. Nusbaum on behalf of the Micah G. Nusbaum Irrevocable Trust and the Ariel H. Nusbaum Irrevocable Trust

Ladies and Gentlemen:

NortonLifeLock Inc., a Delaware corporation ("**NortonLifeLock**"), hereby notifies the Securities and Exchange Commission (the "**Commission**") that NortonLifeLock intends to omit from its form of proxy card and other proxy materials (its "**Proxy Materials**") for NortonLifeLock's 2021 annual meeting of stockholders (the "**2021 Annual Meeting**"), the stockholder proposals and supporting statements (the "**Proposals**") submitted to NortonLifeLock by Eric F. Nusbaum on behalf of the Micah G. Nusbaum Irrevocable Trust and the Ariel H. Nusbaum Irrevocable Trust (the "**Proponents**"). Pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended, NortonLifeLock requests confirmation that the staff (the "**Staff**") of the Commission will not recommend enforcement action if NortonLifeLock excludes the Proposals from its Proxy Materials for the reasons discussed below. The Proposals, the accompanying supporting statements, along with copies of all relevant correspondence between NortonLifeLock and the Proponent are attached to this letter as Attachment A.

REASONS FOR EXCLUDING THE PROPOSAL

NortonLifeLock may exclude the Proposals from its Proxy Materials pursuant to:

- Rule 14a-8(b) and Rule 14a-8(f)(1) because Mr. Nusbaum failed to provide the requisite proof of share ownership in response to NortonLifeLock's proper request for that information;
- Rule 14a-8(b)(2) and Rule 14a-8(f)(1) because Mr. Nusbaum has not provided a written statement that sufficiently communicates Proponents' intent to hold the requisite number of shares through the 2021 Annual Meeting; and
- Rule 14a-8(c) and Rule 14a-8(f)(1) because Mr. Nusbaum has submitted more than one stockholder proposal for consideration at the 2021 Annual Meeting and, despite proper notice, has failed to correct this deficiency.

BACKGROUND

Mr. Nusbaum submitted the Proposals on behalf of the Proponents, which are both irrevocable trusts. Mr. Nusbaum serves as the trustee of each Proponent. On April 7, 2021, the Proposals were received in the mail by NortonLifeLock. See Exhibit A. Mr. Nusbaum's submission of the Proposals failed to provide verification of the Proponents' ownership of the requisite number of Company shares for at least one year as of the date the Proposals were submitted and did not include a statement that the Proponents intended to hold the requisite number of Company shares through the date of the 2021 Annual Meeting

In addition, NortonLifeLock reviewed its stock records, which did not indicate that either Proponent was a record owner of Company shares. After NortonLifeLock verified that neither Proponent was a stockholder of record, NortonLifeLock sent a deficiency notice by e-mail and federal express mail to Mr. Nusbaum on April 13, 2021 (the "Deficiency Notice," attached hereto as Exhibit B). Because the materials submitted by Mr. Nusbaum contained a number of deficiencies, the Deficiency Notice expressly identified each deficiency, explained the steps Mr. Nusbaum could take to cure each of the deficiencies and stated that the Commission's rules required any response to the Deficiency Notice to be postmarked or transmitted electronically no later than 14 calendar days from the date the Deficiency Notice was received. The Deficiency Notice also included a copy of Rule 14a-8.

The Deficiency Notice specified the information required to demonstrate the applicable Proponent's continuous ownership of NortonLifeLock shares for the one-year period preceding and including the date the Proposals were submitted, and to confirm the Proponent's intention to continue to hold the requisite number of Company shares through the date of the 2021 Annual Meeting. See Exhibit B. In addition, the Deficiency Notice informed Mr. Nusbaum that he was not permitted to submit more than one proposal, directly or indirectly, to NortonLifeLock and requested that he amend his proposal request to only include one of the Proposals. In making this request, the Deficiency Notice noted that the Commission had previously interpreted Rule 14a-8 to permit the exclusion of multiple proposals submitted on behalf of multiple trusts by a single trustee acting on behalf on such trusts. The Deficiency Notice referenced a December 1995 no-action letter to First Union Real Estate Equity and Mortgage Investments, in which the SEC concurred with the exclusion of three proposals, which were submitted on behalf of three trusts by a single individual, who served as trustee for all three trusts, on the basis "that the nominal proponents are acting on behalf of, under the control of, or alter ego of collective group headed by trustee."

The 14-day deadline to respond to the Deficiency Notice expired on April 27, 2021. As of the date of this letter, NortonLifeLock has not received any additional correspondence from Mr. Nusbaum.

ANALYSIS

I. The Proposals may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) because Mr. Nusbaum failed to establish the requisite eligibility to submit the Proposals.

NortonLifeLock may exclude both the Proposals under Rule 14a-8(f)(1) because Mr. Nusbaum failed to substantiate the Proponents eligibility to submit the Proposals in compliance with Rule 14a-8. Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, a stockholder must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be

voted on the proposal at the meeting for at least one year by the date the stockholder submit[s] the proposal.” Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”) specifies that when the stockholder is not the registered holder, the stockholder “is responsible for proving his or her eligibility to submit a proposal to the company,” which the stockholder may do by one of the two ways provided in Rule 14a-8(b)(2). See Section C.1.c., SLB 14. Rule 14a-8(f)(1) permits a company to exclude a stockholder proposal from the company’s proxy materials if the proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, including failing to provide the beneficial ownership information required under Rule 14a-8(b), provided that the company has timely notified the proponent of the deficiency, and the proponent has failed to correct such deficiency within 14 calendar days of receipt of such notice.

The Staff has consistently concurred with the exclusion of proposals when proponents have failed, following a timely and proper request by a company, to timely furnish evidence of eligibility to submit the stockholder proposal pursuant to Rule 14a-8(b). For example, in *FedEx Corp.* (avail. June 5, 2019), the proponent submitted a proposal without any accompanying proof of ownership and did not provide any documentary support until 15 days following receipt of the company’s deficiency notice. Despite being just one day late, the Staff concurred with the exclusion of the proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1). See also *Time Warner Inc.* (avail. Mar. 13, 2018); *ITC Holdings Corp.* (avail. Feb. 9, 2016); *Prudential Financial, Inc.* (avail. Dec. 28, 2015); *Mondelēz International, Inc.* (avail. Feb. 27, 2015) (each concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 18, 35, 23, and 16 days, respectively, after receiving the company’s timely deficiency notice). This was the outcome even if the evidence ultimately furnished otherwise satisfied Rule 14a-8(b). Here, Mr. Nusbaum submitted the proposals without any accompanying proof of ownership and did not provide any documentary support following receipt of NortonLifeLock’s Deficiency Notice. As such, NortonLifeLock may exclude the Proposals pursuant to Rule 14a-8(f)(1) and Rule 14a-8(b).

As discussed above and consistent with this guidance, NortonLifeLock satisfied its obligation under Rule 14a-8 to timely notify the Proponents of this deficiency by timely providing the Proponents with the Deficiency Notice, clearly identifying the deficiency and specifically setting forth the requirement that the Proponent include a written statement from the record holder of the shares. See Exhibit B. The Deficiency Notice also included a copy of Rule 14a-8. The Proponent failed to provide any documentary evidence of ownership of Company shares, either with the original Proposals or in response to NortonLifeLock’s timely Deficiency Notice, and has therefore not demonstrated eligibility under Rule 14a-8 to submit the Proposals.

II. The Proposals may be excluded under Rule 14a-8(b)(2) and Rule 14a-8(f)(1) because Mr. Nusbaum failed to provide a statement of intent to hold the requisite amount of securities through the 2021 Annual Meeting.

NortonLifeLock may also exclude the Proposals under Rule 14a-8(f)(1) because Mr. Nusbaum failed to provide a statement of intent to hold the requisite amount of securities through the 2021 Annual Meeting. Rule 14a-8(b)(2) prescribes the procedures that a stockholder must follow to demonstrate eligibility to submit a proposal:

“ you [a stockholder seeking to submit a proposal] 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;” and the stockholder must submit to the Company “[y]our written statement that you intend to continue ownership of the shares through the date of the company’s annual or special meeting.” See Rule 14a-8(b)(2). Staff Legal Bulletin 14 (July 13, 2001) underscores the need to furnish this statement of intent, noting in Section C.1.d that “[t]he stockholder must provide this written statement regardless of the method the stockholder uses to prove that he or she continuously owned the securities for a period of one year as of the time the stockholder submits the proposal.”

Here, Mr. Nusbaum did not provide a written statement in his cover letter that communicates an intent by the Proponents to hold the requisite number of shares through the date of the 2021 Annual Meeting. See Exhibit A. Accordingly, the Deficiency Notice specifically described the Rule 14a-8(b) requirements, stated that the stockholder is required to provide the statement of intent, and stated that Mr. Nusbaum was required to provide “a written statement that the Stockholder intends to continue to hold at least \$2,000 of such securities through the date of the Meeting” and “this written statement was omitted from the documents submitted with the Proposals.”

Because Mr. Nusbaum’s did not timely respond to specifically confirm his intention to continue to hold the required number of NortonLifeLock shares, we believe that the Proposals may be excluded pursuant to Rule 14a-8(b)(2) and Rule 14a-8(f)(1).

III. The Proposals may be excluded under Rule 14a-8(c) because Mr. Nusbaum submitted the Proposals in violation of the one proposal rule and failed to correct this deficiency after proper notice.

The facts and circumstances demonstrate that Mr. Nusbaum is, in fact, the proponent of the Proposals and that the Proponents are his alter egos. Thus, the Proposals are excludable pursuant to Rule 14a-8(c), which states that each stockholder may submit no more than one proposal for each stockholder meeting. In this regard, Mr. Nusbaum has failed to select which of the two Proposals it wishes to sponsor for consideration at NortonLifeLock’s 2021 Annual Meeting of Stockholders despite being provided notice of the one proposal limit in Rule 14a-8(c).

Rule 14a-8(c) provides that “each stockholder may submit no more than one proposal to a company for a particular stockholders’ meeting.” The Staff has interpreted Rule 14a-8(c) (and its predecessor) to permit exclusion of multiple proposals when the facts and circumstances show that nominal proponents “are acting on behalf of, under the control of, or as the alter ego of the proponent. *BankAmerica Corp.* (avail. Feb. 8, 1996). See also *Weyerhaeuser Co.* (avail. Dec. 20, 1995); *First Union Real Estate (Winthrop)* (avail. Dec. 20, 1995); *Stone & Webster Inc.* (avail. Mar. 3, 1995); *Banc One Corp.* (avail. Feb. 2, 1993). Moreover, the Staff (echoing the Commission’s statement in the 1976 Release) has on several occasions noted that “the one proposal limitation applies in those instances where a person (or entity) attempts to avoid the one proposal limitation through maneuvers, such as having persons they control submit a proposal.” See *American Power Conversion Corp.* (avail. Mar. 27, 1996); *Consolidated Freightways, Inc. (Recon.)* (avail. Feb. 23, 1994). In *First Union Real Estate (Winthrop)*, the Staff concurred with the exclusion of three

proposals, stating that "the nominal proponents are acting on behalf of, under the control of, or alter ego of a collective group headed by [the trustee]."

The Staff's application of the "control" standard is well founded in principles of agency. As set forth in the Restatement of Agency:

The relation of agency is created as the result of conduct by two parties manifesting that one of them is willing for the other to act for him subject to his control, and that the other consents so to act. The principal must in some manner indicate that the agent is to act for him, and the agent must act or agree to act on the principal's behalf and subject to his control. Agency is a legal concept which depends upon the existence of required factual elements: the manifestation by the principal that the agent shall act for him, the agent's acceptance of the undertaking and the understanding of the parties that the principal is to be in control of the undertaking. Restatement (Second) of Agency § 1 (1958).

The Staff on numerous instances has concurred that the one proposal limitation under Rule 14a-8(c) applies when multiple proposals were submitted under the name of nominal proponents served in as the alter ego or under the control of a single proponent. Even in the absence of an explicit acknowledgment that stockholders are serving as nominal proponents or acting as a group, Staff precedent indicates across a wide variety of factual scenarios that circumstantial evidence can satisfy the burden of demonstrating that nominal proponents are the alter ego of a single proponent. *See, e.g., Peregrine Pharmaceuticals Inc.* (avail. July 28, 2006) (proposals submitted by father and son excluded where the father served as custodian of the son's shares); *BankAmerica Corp.* (avail. Feb. 8, 1996) (proposals excludable where the same person was the president of a corporation that submitted one proposal and the custodian of shares held by another); *First Union Real Estate (Winthrop)* (avail. Dec. 20, 1995) (proposals excluded where trustee submitted proposals on behalf of three trusts and signed each cover letter in his capacity as trustee); *Albertson's Inc.* (avail. Mar. 11, 1994) (proposals submitted by two individuals who identified themselves as associated with the "Albertson's Stockholder's Committee" excludable); *TPI Enterprises, Inc.* (avail. July 15, 1987) (proposals excluded where, among other things, the individual coordinating the proposals communicated directly with the company regarding the proposals, and the content of the documents accompanying the proposals were identical, including the same typographical error in two proposals).

Of particular relevance to the facts here, is *First Union Real Estate (Winthrop)*, where the Staff concurred with the exclusion under the predecessor to Rule 14a-8(c) of three proposals submitted by one individual on behalf of a group of trusts where the trustee, after being informed of the one proposal rule resubmitted the proposals, allocating one to each trust, but the trustee signed each cover letter submitting the proposals in his capacity as fiduciary. The Staff concurred that under the facts "the nominal proponents are acting on behalf of, under the control of, or alter ego of collective group headed by [the trustee]."

The facts and circumstances surrounding the Proposals, the Proponents, and Mr. Nusbaum demonstrate that Mr. Nusbaum is the proponent of the Proposals. Each proponent is an irrevocable trust

of which Mr. Nusbaum serves as trustee and both Proposals were sent to NortonLifeLock by Mr. Nusbaum under one cover letter.

Accordingly, the Deficiency Notice informed Mr. Nusbaum of the one proposal limit and asked Mr. Nusbaum to amend his proposal request to only include one of the Proposals. See Exhibit B. Because Mr. Nusbaum has failed to timely cure the deficiency of submitting multiple proposals in violation of the one-proposal rule, we believe both Proposals may be excluded under Rule 14a-8(c).

REQUEST FOR WAIVER OF 80-DAY SUBMISSION REQUIREMENT

In connection with the foregoing request, NortonLifeLock also respectfully requests a waiver of the requirement under Rule 14a-8(j)(1) that NortonLifeLock file with the Commission its reasons for exclusion of the Proposals from its Proxy Materials no later than 80 calendar days before the filing of its Proxy Materials in the event that NortonLifeLock files its Proxy Materials earlier than 80 days from the date of this request. NortonLifeLock currently anticipates filing its proxy statement on or around July 23, 2021, which is only three days prior to July 26, 2021, the date that is 80 days from the date of this request. The Staff has previously granted waivers of Rule 14a-8(j)(1) where the reason for the delayed submission of a request for "no action" was that the company has been waiting for a response from the proponent to correct deficiencies in the proponent's submission. See, e.g. *Toll Brothers, Inc.* (avail. Jan 10, 2006); *Toll Brothers, Inc.* (avail. Jan. 5, 2006); *E*TRADE Group, Inc.* (avail. October 31, 2000). Here the deadline for Mr. Nusbaum to correct the deficiencies was April 27, 2021 and NortonLifeLock provided him 10 additional days to respond. Had the company been aware that Mr. Nusbaum was not going to communicate any further with the company on this matters, this request would have been submitted on or before the 80 day deadline, assuming a July 23, 2021 filing date of the Proxy Materials. If the Staff is unwilling to grant this waiver, NortonLifeLock will file its Proxy Materials on a date that is at least 80 days after the date of this request.

CONCLUSION

Based on the foregoing analysis, we respectively request that the Staff concur it will take no action if NortonLifeLock excludes the Proposals from its 2021 Proxy Materials. Should the Staff disagree with our conclusions regarding the omission of the Proposals, or should the Staff have questions or desire any additional information in support of our positions, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its Rule 14a-8(j) response. In this case, please contact Bryan Ko, Chief Legal Officer and Secretary of NortonLifeLock by telephone at (650) 527-6001 or by email at Bryan.Ko@nortonlifelock.com.

Sincerely,


Bryan Ko
Chief Legal Officer
NortonLifeLock Inc.

Enclosures

Office of the Chief Counsel

May 7, 2021

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cc: Eric F. Nusbaum, trustee of the Micah G. Nusbaum Irrevocable Trust and the Ariel H. Nusbaum Irrevocable Trust

Exhibit A

Wheelwright Consultants

Consulting and Training for the Service Industries since 1995!

9453 Palestro Street
Lake Worth, FL 33467-6145
(617) 938-8668

March 20, 2021

Mr. Bryan Ko
General Counsel and Corporate Secretary
Norton-Lifelock Corporation
60 E. Rio Salado Parkway
Tempe, AZ 85281-9124

Re: Enclosed submissions for consideration by Shareholders of Norton-Lifelock Corporation at 2021 Annual Meeting

Dear Mr. Ko:

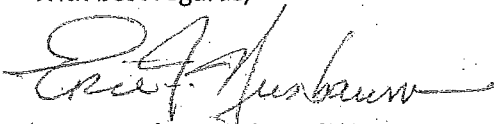
My name is Eric F. Nusbaum and I am the trustee of the Micah G. Nusbaum Irrevocable Trust and the trustee of the Ariel H Nusbaum Irrevocable Trust, each of which is the beneficial owner of 100 shares of Norton-Lifelock Corporation.

I am submitting the enclosed resolutions for consideration by the shareholders of the Corporation at the upcoming 2021 Annual Meeting.

Please acknowledge the receipt of these resolutions by emailing me at:
info@wheelwrightconsultants.com.

Please also use this address if you have questions about the enclosed submission or if changes need to be made to it to make it acceptable for presentation at this year's annual meeting of the Corporation.

With best regards,



Eric F. Nusbaum, Ph.D., CHA
Trustee

Enc.: Corporate Resolution on Political Contributions to Electoral College Deniers
Corporate Resolution on Political Contributions to Voting Suppressers

Why reinvent the wheel, when Wheelwright Consultants can supply it.

Resolution for Consideration by Norton-Lifelock Corporation Stockholders at April 2021 Annual Meeting

From 1797 to January 6, 2021, the peaceful transition of power from an existing administration to its elected successor was a defining attribute of representative democracy and a hallmark of the electoral process in the United States of America. That tradition was shattered by the repeated false claims of a sitting President of the United States of wide-spread election fraud and irregularities in the 2020 Presidential Election, claims that were repeatedly echoed by multiple elected officials, political party officials, and print, broadcast, and e-media personalities, commentators and posters.

On multiple occasions and in multiple jurisdictions the substance of these lies about election fraud and irregularities was rejected by state and local officials who oversaw the election and by multiple state and federal courts.

Regrettably, despite statements from multiple state and federal election officials who characterized the 2020 Presidential Election as one of the most secure in the history of the United States and the nearly unanimous rejection of these falsehoods by courts, the repetition of the lies has undermined the belief and faith in the electoral process in the minds of many American citizens. This lack of faith ultimately led to the unprecedented attack on the United States Capitol building on January 6, 2021 which resulted in the loss of at least five lives and more than \$500 million dollars of damage to the Capitol itself. Restoring faith in the electoral process is a necessary step in repairing and strengthening our democracy and one which deserves the support of all citizens and corporations doing business in the United States of America as a stable political environment is a necessary foundation of a stable business environment.

Resolved, that the shareholders of **Norton-Lifelock Corporation** direct the Board of Directors and Management to establish permanent policies that prevent any future company political donations being made to individual political candidates, political parties, or political action committees that in the past have voted to or advocated the overturning of an election that had been certified by the duly constituted local, state or national electoral officials. Be it furthermore resolved that the company will not provide political donations to any individual political candidate, political party, or political action committee that in the future will not agree to abide by the results of any election certified by duly constituted election officials at all levels, local, state, or national or who advocates overturning any certified electoral results.

Submitted by: Eric F. Nusbaum, Ph.D., CHA:

Resolution for Consideration by Shareholders of Norton-Lifelock Corporation at 2021 Annual Meeting

The United States of America is the oldest constitutional republic in the world. One of the foundations of a republic is the ability of the citizens of the republic to elect their representative leaders in a free and fair electoral process; one that encourages citizens to vote without undue impediments or fear of disenfranchisement or retaliation.

Despite the fact that the 2020 Presidential, Senatorial, and Congressional elections were held in the midst of a deadly pandemic, there was a consensus among electoral officials and scholars who study elections that the 2020 Presidential Election and its associated down-ballot elections were free, fair, and largely free of voting irregularities. Much of the credit for the success of the 2020 United States Election is due to the efforts of local and state officials who worked to keep the election safe and secure.

Despite there being no evidence of major voting irregularities, certain politicians, political parties, and political action committees have falsely stated there is a need to "secure" future elections and these politicians, parties, and political action committee have introduced an avalanche of laws that purport to fix non-existent flaws in the voting system of various states and which have the consequence of reducing access to voting for many Americans. While there must be rules to ensure that the voting process is fair and secure, enactment of many of these laws would deprive many American citizens, particularly those of lower income or who are members of racial minorities of their right to participate in the electoral process.

Resolved, that the shareholders of **Norton-Lifelock Corporation** direct the Board of Directors and Management to establish permanent policies that prevent any future company political donations being made to individual political candidates, political parties, or political action committees that in the past have voted for or advocated implementation of regulations that the League of Women Voters has characterized as restricting the access of United States Citizens to vote. Be it furthermore resolved that the corporation will not provide political donations to any individual political candidate, political party, or political action committee that in the future proposes or supports election and voting-related legislation that has not been characterized as unbiased and free by the League of Women Voters.

Submitted by: Eric F. Nusbaum, Ph.D., CHA:

Exhibit B



April 13, 2021

Via Email and Federal Express

Eric F. Nusbaum, Ph.D., CHA

info@wheelwrightconsultants.com

Dear Dr. Nusbaum:

On April 7, 2021, NortonLifeLock Inc. ("NortonLifeLock") received the two shareholder proposals (the "Proposals") that you submitted for inclusion in the proxy statement for NortonLifeLock's 2021 Annual Meeting of Shareholders (the "Meeting") on behalf of the Micah G. Nusbaum Irrevocable Trust and the Ariel H Nusbaum Irrevocable Trust (each, a "Shareholder") in a letter dated March 20, 2021.

Please be advised that under Rule 14a-8 of the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), you are not permitted to submit more than one proposal, directly or indirectly, to NortonLifeLock. The Securities and Exchange Commission (the "SEC") has previously interpreted Rule 14a-8 to permit the exclusion of multiple proposals submitted on behalf of multiple trusts by a single trustee acting on behalf on such trusts. For example, in a December 1995 no-action letter to First Union Real Estate Equity and Mortgage Investments, the SEC concurred with the exclusion of three proposals, which were submitted on behalf of three trusts by a single individual, who served as trustee for all three trusts, on the basis "that the nominal proponents are acting on behalf of, under the control of, or alter ego of collective group headed by trustee." Therefore, we ask that you amend your proposal request to only include one of the Proposals.


In addition, under Rule 14a-8, you are required to provide (i) proof that the Shareholder for whom you wish to submit a shareholder proposal on behalf of, has continuously held at least \$2,000 in market value of NortonLifeLock's shares for at least one year, and (ii) a written statement that the Shareholder intends to continue to hold at least \$2,000 of such securities through the date of the Meeting. Proof of ownership and this written statement was omitted from the documents submitted with the Proposals. To prove the Shareholder's eligibility to NortonLifeLock, you must provide NortonLifeLock's Secretary with a written statement from the record holder of the Shareholder's shares (usually a broker or bank) verifying that, at the time you submitted the Proposal (April 7, 2021), the Shareholder continuously held at least \$2,000 in market value of NortonLifeLock shares for at least one year.

For your convenience, we have enclosed a copy of Rule 14a-8. Question 3 sets forth the one proposal per shareholder limit requirement. Question 2 sets forth the eligibility requirements for submitting a shareholder proposal, how you can demonstrate that the Shareholder is eligible to submit a proposal to NortonLifeLock, and the requirement that you include a written statement that the Shareholder intends to continue to hold at least \$2,000 of such securities through the date of the Meeting. We have also enclosed a copy of the no-action letter from the SEC, which we referenced above.

If you are able to correct these deficiencies, please send the revised proposal request and the written statement of ownership referred to above to NortonLifeLock Inc., c/o Bryan Ko, Chief Legal Officer and Secretary, 60 E. Rio Salado Parkway Tempe, AZ 85281-9124 (or alternatively, you may transmit the materials electronically to Bryan.Ko@nortonlifelock.com). Pursuant to Rule 14a-8, your response must be postmarked, or transmitted electronically, no later than 14 calendar days from the date that you receive this notification. If the deficiencies noted above are not corrected within this time period, NortonLifeLock may elect not to include either of the Proposals in its proxy statement for the Meeting.

If you have any questions, please feel free to contact me at (650) 527-8000.

Very truly yours,

Bryan Ko 
Chief Legal Officer and Secretary

§ 240.14a-8

17 CFR Ch. II (4-1-13 Edition)

information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

NOTE 1 TO §240.14A-7. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

NOTE 2 TO §240.14A-7. When providing the information required by §240.14a-7(a)(1)(ii), if the registrant has received affirmative written or implied consent to delivery of a single copy of proxy materials to a shared address in accordance with §240.14a-3(e)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.

[57 FR 48292, Oct. 22, 1992, as amended at 59 FR 63684, Dec. 8, 1994; 61 FR 24657, May 15, 1996; 65 FR 65750, Nov. 2, 2000; 72 FR 4167, Jan. 29, 2007; 72 FR 42238, Aug. 1, 2007]

§ 240.14a-8 Shareholder proposals.

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

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is

placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

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

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

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

(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 pro-

hibits materially false or misleading statements in proxy soliciting materials;

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

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

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

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

(8) *Director elections*: If the proposal: (i) Would disqualify a nominee who is standing for election; (ii) Would remove a director from office before his or her term expired; (iii) Questions the competence, business judgment, or character of one or more nominees or directors; (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

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

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

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

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

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant

to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

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

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

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

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

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

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

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

finitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

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

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

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

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

§240.14a-9 False or misleading statements.

(a) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading

with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

(b) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

(c) No nominee, nominating shareholder or nominating shareholder group, or any member thereof, shall cause to be included in a registrant's proxy materials, either pursuant to the Federal proxy rules, an applicable state or foreign law provision, or a registrant's governing documents as they relate to including shareholder nominees for director in a registrant's proxy materials, include in a notice on Schedule 14N (§240.14n-101), or include in any other related communication, any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to a solicitation for the same meeting or subject matter which has become false or misleading.

NOTE: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

a. Predictions as to specific future market values.

b. Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.