



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 16, 2023

Alexander J. Reyes
CNX Resources Corporation

Re: CNX Resources Corporation (the "Company")
Incoming letter dated December 30, 2022

Dear Alexander J. Reyes:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Handlery Hotels Inc (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

We are unable to concur in your view that the Company may exclude the Proposal under Rules 14a-8(b) and 14a-8(f). We note that the Proponent appears to have supplied documentary support sufficiently evidencing the Proponent's eligibility to submit the Proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Michael Passoff
Proxy Impact



Alexander J. Reyes
Executive Vice President and General Counsel
Work: 724-485-4375
Email: alexanderreyes@cnx.com

CNX Center
1000 Horizon Vue Drive
Canonsburg, PA 15317-6506
724-485-4000

December 30, 2022

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: CNX Resources Corporation
Omission of Shareholder Proposal of Handlery Hotels Inc
Rule 14a-8 under the Securities Exchange Act of 1934, as amended

Ladies and Gentlemen:

This letter is to inform you that CNX Resources Corporation (“**CNX**” or the “**Company**”) intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the “**2023 Proxy Materials**”) a shareholder proposal and statement in support thereof (the “**Proposal**”) received by the Company from Mr. Michael Passoff, CEO of Proxy Impact (the “**Representative**”), purportedly on behalf of Handlery Hotels Inc (the “**Proponent**”). We respectfully request confirmation that the staff of the Division of Corporation Finance (the “**Staff**”) will not recommend to the Securities and Exchange Commission (the “**Commission**”) that enforcement action be taken if the Company omits the Proposal from its 2023 Proxy Materials for the reasons discussed below.

In accordance with Section C of Staff Legal Bulletin No. 14D (November 7, 2008) (“**SLB 14D**”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov in lieu of filing six paper copies of this request, as otherwise specified in Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”). Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than 80 calendar days before the date that the Company intends to file its definitive 2023 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Representative and the Proponent.

This letter informs the Representative and the Proponent of the Company’s intention to omit the Proposal from its 2023 Proxy Materials. Rule 14a-8(k) under the Exchange Act and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Representative and the Proponent that if the Representative or the Proponent elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned, on behalf of the Company, pursuant to Rule 14a-8(k) under the Exchange Act and SLB 14D.

BACKGROUND

On November 22, 2022 (the “**Submission Date**”), the Company received the Proposal via email from the Representative, purportedly on behalf of the Proponent (the “**November 22 Email**”). The Proposal was accompanied by a (i) a cover letter from the Representative, stating that Proxy Impact was filing the Proposal on

behalf of the Proponent (the “**Cover Letter**”) and (ii) an “authorization” letter executed by Ashley Handlery, Trustee, dated November 6, 2022 (the “**AH Letter**”), purporting to authorize Proxy Impact “to file a shareholder resolution on [the undersigned’s] behalf” for inclusion in the 2023 Proxy Materials. The AH Letter did not evidence the authority of Ashley Handlery, identifying herself as a trustee of an unnamed trust, to submit the Proposal and otherwise act on the Proponent’s behalf. The AH Letter did not describe the relationship between Ashley Handlery or the unnamed trust and Handlery Hotels Inc. In addition, the AH Letter ambiguously referred to both the undersigned (Ashley Handlery) as “Stockholder” and to Handlery Hotels Inc as “Stockholder.” Copies of the November 22 Email, the AH Letter, the Cover Letter, and the Proposal are attached hereto as [Appendix A](#).

The November 22 Email was not accompanied by any documentary evidence of the Proponent’s ownership of shares of the Company’s common stock (the “**Shares**”). In addition, the Company reviewed its stock records, which did not indicate that the Proponent was a record owner of any Shares.

Subsequently, on December 1, 2022, the Company received from the Representative via email (the “**December 1 Email**”) an unexecuted letter purportedly from Charles Schwab & Co., Inc. (“**Schwab**”), dated December 1, 2022 (“**Schwab Letter #1**”), stating that Handlery Hotels, Inc had held “in trust” 19,815 Shares continuously for at least one year since November 22, 2021. Schwab Letter #1 did not include commonly recognized evidence that it was in fact from Schwab, such as a signature from a Schwab employee authorized to execute such letter. Copies of the December 1 Email and Schwab Letter #1 are attached hereto as [Appendix B](#).

Accordingly, the Company sought verification of Ashley Handlery’s authority to act on behalf of the Proponent, as well as evidence that Schwab Letter #1 was in fact from Schwab. On December 6, 2022, the Company sent a letter to the Representative and the Proponent via email, identifying the procedural deficiencies regarding the Proposal submission, notifying the Representative and the Proponent of the requirements of Rule 14a-8 under the Exchange Act, and explaining how the Representative and the Proponent could cure the procedural deficiencies (the “**Deficiency Letter**”). See [Appendix C](#). Specifically, the Deficiency Letter stated:

- the three ownership requirements (collectively, the “**Ownership Requirements**”) that satisfy Rule 14a-8(b) under the Exchange Act for annual meetings held after January 1, 2023;
- that, according to the Company’s stock records, the Proponent was not a record owner of sufficient Shares to satisfy any of the Ownership Requirements;
- that Schwab Letter #1 was insufficient to demonstrate ownership because “there was no signature of any representative of [Schwab] in [Schwab Letter #1] who could presumably verify the Proponent’s [S]hare ownership in the Company’s securities described in [Schwab Letter #1] (i.e., [Schwab Letter #1] is not signed by [Schwab])”;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b) under the Exchange Act, including “a written statement from the ‘record’ holder of the Proponent’s Shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements”;
- the various requirements that shareholder proponents who use a representative to submit their proposal must meet to satisfy Rule 14a-8(b) under the Exchange Act, and a statement that such requirements “shall not apply to shareholders that are entities so long as the representative’s authority to act on the shareholder’s behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder’s behalf”;
- that the AH Letter does not include sufficient documentation demonstrating that Proxy Impact has the legal authority to submit the Proposal on behalf of the Proponent because the AH Letter “is signed by

Ashley Handlery, as the “Trustee” of the Proponent, a corporate entity, but does not describe the relationship between (i) Ashley Handlery or the unnamed trust and (ii) Handlery Hotels Inc”;

- the type of documentation necessary to confirm that the Representative is authorized to act on behalf of the Proponent with respect to the Proposal, specifically, documentation that evidences that “Ashley Handlery, in her capacity as Trustee, does in fact, in the first instance, have the corporate authority in her capacity as trustee to act on the Proponent’s behalf”; and
- that any response to the Deficiency Letter had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Letter.

On December 7, 2022, the Company received an email from the Representative (“**Deficiency Response #1**”), which stated, in pertinent part (emphasis added):

“Having someone from Schwab sign the proof of ownership makes perfect sense, we will fix that right away.

But I am unclear what more you need from Ashly Handlery to provide evidence of her authority to sign on behalf of the Handlery Hotels?

Do you mean she simply has to write out her full title as Trustee, Handlery Hotels? Or is there some other evidence that is needed?”

A copy of Deficiency Response #1 is attached hereto as Appendix D.

Also on December 7, 2022, the Company sent an email response to the Representative (“**Company Response #1**”), reiterating that the “letter [the Representative] provided, dated November 6, 2022, is signed by Ashley Handlery, as the “Trustee” of the [P]roponent, a corporate entity, but does not describe the relationship between (i) Ashley Handlery or the unnamed trust and (ii) Handlery Hotels Inc. [CNX’s] December 6, 2022 response contains details about what is required to verify [the Representative’s] authority to act on the [P]roponent’s behalf ... [CNX is] simply looking to understand the relationship among the various parties and verify that Ms. Handlery has the requisite authority to act [for the Proponent]” and referring the Representative to the Deficiency Letter. A copy of Company Response #1 is attached hereto as Appendix E.

On December 16, 2022, the Company received another email from the Representative (“**Deficiency Response #2**”) attaching another unexecuted letter purportedly from Schwab, dated December 9, 2022 (“**Schwab Letter #2**”), stating that Handlery Hotels, Inc holds Shares “in trust” and purporting to satisfy the Ownership Requirements for the Proponent. Despite the Representative’s statement in Deficiency Response #1 that “[h]aving someone from Schwab sign the proof of ownership makes perfect sense,” Schwab Letter #2 once again did not include any signature from a Schwab employee authorized to execute such letter on behalf of Schwab, and in lieu of any signature, merely inserted a typed name.

In addition, Deficiency Response #2 stated in pertinent part:

“Handlery Hotels Inc’s holdings are in trusts, of which Ashely is a trustee. However she is also a Director of the Board of Handlery Hotel’s Inc.”

Copies of Deficiency Response #2 and Schwab Letter #2 are attached hereto as Appendix F.

Deficiency Response #2 continued to fail to provide sufficient evidence as to the authority of Ashley Handlery to act on behalf of the Proponent, a corporate entity, with respect to the Proposal, and provided no evidence directly from the Proponent of her authority to act on behalf of the Proponent. In addition, Deficiency Response #2 and Schwab Letter #2 continued to be ambiguous regarding the nature of the Proponent’s Share holdings, as Schwab Letter #2 referred to holdings “in trust” (singular) while Deficiency Response #2 referred to holdings “in trusts” (plural).

On December 20, 2022, the Company sent an email response to the Representative, again referring the Representative to the prior correspondence on the procedural deficiencies. See [Appendix G](#). Also on December 20, 2022, the Company received an email from the Representative asking which deficiencies still existed. See [Appendix H](#). On December 20, 2022, the Company sent another email response to the Representative, summarizing the remaining deficiencies including that the Company was continuing to seek (1) the verification of the Proponent's ownership of the requisite amount of Shares and (2) verification of Ashley Handlery's authority to act on behalf of the Proponent. See [Appendix I](#).

On December 22, 2022, two days after the 14-day deadline to cure the deficiencies noted in the Deficiency Letter had passed, the Company received an email from Austin.Wilson@blackrock.com attaching a written statement from Ashley Handlery, as Board Director Handlery Hotels Inc, dated December 22, 2022 (the "**AH Statement**"), purporting to provide evidence as to the authority of Ashley Handlery to act on behalf of the Proponent with respect to the Proposal ("**Deficiency Response #3**"). However, Deficiency Response #3 failed to provide such evidence and instead merely stated, in pertinent part:

"I signed that letter with the title of Trustee. I am on the Board of Directors for Handlery Hotels and confirm that I have authority to act on behalf of Handlery Hotels Inc."

A copy of Deficiency Response #3 and the AH Statement are attached hereto as [Appendix I](#).

As of the date of this letter, the Company has not received any additional correspondence from the Proponent or the Representative.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Company may exclude the Proposal from its 2023 Proxy Materials pursuant to Rule 14a-8(f)(1) under the Exchange Act because the Proponent failed to satisfy the eligibility requirements of Rule 14a-8(b) under the Exchange Act.

ANALYSIS

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

A. Failure to Demonstrate the Representative's Authority to Act on the Proponent's Behalf.

Rule 14a-8(b)(1)(iv) under the Exchange Act provides that if a proponent uses a representative to submit a shareholder proposal on his or her behalf, the proponent must provide the company with written documentation that:

- Identifies the company to which the proposal is directed;
- Identifies the annual or special meeting for which the proposal is submitted;
- Identifies you as the proponent and identifies the person acting on your behalf as your representative;
- Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;
- Identifies the specific topic of the proposal to be submitted;
- Includes your statement supporting the proposal; and

- Is signed and dated by you.

Rule 14a-8(b)(1)(v) under the Exchange Act provides that the above requirements shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

In addition, in its Adopting Release (*Exchange Act Release No. 34-89964*) (the "**Adopting Release**"), the Staff stated, regarding Rule 14a-8(b)(1)(iv-v) under the Exchange Act, as amended (emphasis added):

"... where a shareholder-proponent is an entity, and thus can act only through an agent, compliance ... will not be necessary if the agent's authority to act is apparent and self-evident such that a reasonable person would understand that the agent has authority to act. For example, compliance generally would not be necessary where a corporation's CEO submits a proposal on behalf of the corporation, where an elected or appointed official who is the custodian of state or local trust funds submits a proposal on behalf of one or more such funds, where a partnership's general partner submits a proposal on behalf of the partnership, or where an adviser to an investment company submits a proposal on behalf of an investment company. On the other hand, compliance would be required where the agency relationship is not apparent and self-evident. For example, compliance would be required where an investment adviser submits a proposal on behalf of a client that is a shareholder."

In this case, the Proponent (Handlery Hotels Inc) is an entity, and thus, pursuant to Rule 14a-8(b)(1)(v) under the Exchange Act, would not be subject to the requirements of Rule 14a-8(b)(1)(iv) under the Exchange Act, so long as the Proponent's representative's authority to act on the Proponent's behalf was "apparent and self-evident" such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf. The AH Letter purports to evidence Ashley Handlery's authority to act on behalf of the Proponent, however, Ashley Handlery's relationship to and authority to act on behalf of the Proponent is neither apparent nor self-evident.

The AH Letter is signed by Ashley Handlery, as trustee of an unnamed trust. It does not refer to a particular trust for which Ashley Handlery serves as trustee, nor does it describe any relationship between (i) Ashley Handlery or the unnamed trust and (ii) the Proponent, as specifically described in the Deficiency Letter. In addition, Schwab Letter #1 and Schwab Letter #2 state that Handlery Hotels Inc's Shares are held "in trust," and Deficiency Response #2 states that Handlery Hotels Inc's Shares are held in multiple "trusts," but no details are provided regarding the name of such trust(s) or their trustees. Similarly, assuming, arguendo, that Deficiency Response #3 and the AH Statement had been timely submitted in advance of the Proponent's 14-day deadline to cure the deficiencies noted in the Deficiency Letter, Ashley Handlery's relationship to and authority to act on behalf of the Proponent is *still* neither apparent nor self-evident (and is perhaps more ambiguous), as she states in the AH Statement that she signed as trustee but also serves on the Board of Directors of the Proponent, without providing any evidence to support either title.

Generally speaking, the officers of a corporation have (and are commonly understood to have) the authority to act on behalf of the corporation—not the board of directors, a single director, or the trustee of a trust that owns shares of the corporation. Indeed, the Staff's example in the Adopting Release of a case where compliance with Rule 14a-8(b)(1)(iv) under the Exchange Act would not be required refers to a corporation's CEO (an officer of the corporation) submitting a proposal on behalf of the corporation. Here, neither the Proponent nor the Representative has provided evidence to indicate that Ashley Handlery is an officer of the Proponent who possesses apparent and self-evident authority to act on behalf of the Proponent. Instead, there is significant ambiguity regarding Ashley Handlery's actual title and position with respect to the Proponent, as well as regarding whether she has, in any capacity, corporate authority to act on the Proponent's behalf. Consequently, there is further significant ambiguity regarding Ashley's Handlery's purported grant of authority to the Representative to act on the Proponent's behalf, because it is unclear whether Ashley Handlery even has the authority to act on behalf of the Proponent in the first instance.

Rule 14a-8(f) under the Exchange Act provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8 under the Exchange Act, provided that the company timely notifies the proponent of the problem, and the proponent fails to correct the deficiency within the required time. Rule 14a-8(f)(1) under the Exchange Act is extremely clear with respect to the deadline for correcting the deficiency and includes, in pertinent part, the following language (emphasis added):

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.*

Here, as established above, the Company satisfied its obligation under Rule 14a-8 under the Exchange Act by transmitting to the Proponent in a timely manner the Deficiency Letter, which specifically set forth the information and instructions listed above. However, despite the clear explanation in the Deficiency Letter and related subsequent correspondence from CNX regarding requisite documentary support for Ashley Handlery's authority to act on behalf of the Proponent, the Proponent and the Representative failed—in each of Deficiency Response #1, Deficiency Response #2, and Deficiency Response #3—to provide documentation evidencing Ashley Handlery's authority to submit the Proposal as an authorized person of the Proponent within the time period specified and as required by Rule 14a-8(f)(1) under the Exchange Act.

The Staff has consistently concurred in 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 shareholder proposal pursuant to Rule 14a-8(b) under the Exchange Act. For example, in *Walgreens Boots Alliance, Inc.* (November 8, 2022), the company received an initial broker letter that did not satisfy any of the Ownership Requirements. The company clearly identified the deficiencies in its deficiency notice that was sent to the proponent within 14 calendar days of the company's receipt of the proposal. The company subsequently received a second broker letter purporting to demonstrate the proponent's ownership of the company's shares two days after the 14-day deadline to cure the deficiency had passed. The Staff concurred with the exclusion of the proposal under Rule 14a-8(f) under the Exchange Act because the proponent "did not comply with Rule 14a-8(b)(1)(i)," noting, "[a]s required by Rule 14a-8(f), the [c]ompany notified the [p]roponent of the problem, and the [p]roponent failed to adequately correct it."

Similarly, in *Visa Inc.* (November 8, 2022), the company received an initial broker letter that did not satisfy any of the Ownership Requirements. The proponent did not subsequently deliver satisfactory proof of ownership until 18 days after the company transmitted a second deficiency notice, and the Staff concurred with the exclusion of the proposal, noting that the proponent "did not comply with Rule 14a-8(b)(1)(i)" and "[a]s required by Rule 14a-8(f), the Company notified the Proponent of the problem, and the [p]roponent failed to adequately correct it." (See also *FedEx Corp.* (June 5, 2019), where 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 exclusion of the proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1)).

Even if the content of Deficiency Response #3 and the AH Statement had cured the noted documentary deficiencies (which they did not), such correspondence was not transmitted to the Company until 16 days after the Representative's receipt of the Deficiency Letter, and, as with the above-cited precedent, the purported evidence of authority is therefore untimely. Accordingly, and consistent with the Staff's prior no-action letters cited above, the Proposal may be excluded pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) under the Exchange Act.

B. Failure to Meet the Requisite Ownership Requirements.

Rule 14a-8(b)(1) under the Exchange Act provides, in part, that to be eligible to submit a proposal for an annual meeting that is scheduled to be held on or after January 1, 2023¹, a shareholder proponent must satisfy one of the Ownership Requirements by having continuously held either:

- at least \$2,000 in market value of the company’s securities entitled to vote on the proposal for at least three years;
- at least \$15,000 in market value of the company’s securities entitled to vote on the proposal for at least two years; or
- at least \$25,000 in market value of the company’s securities entitled to vote on the proposal for at least one year.

SLB 14 specifies that when the shareholder is not the registered holder, the shareholder “is responsible for proving his or her eligibility to submit a proposal to the company,” which the shareholder may do by one of the two ways provided in Rule 14a-8(b)(2)(ii) under the Exchange Act. Further, the Staff has clarified that these proof of ownership letters must come from the “record” holder of the proponent’s shares and that only Depository Trust Company (“DTC”) participants are viewed as record holders of securities that are deposited at DTC. *See* SLB 14F.

In this instance, on December 1, 2022, the Company received Schwab Letter #1, which did not provide evidence that it was in fact from Schwab, such as a signature from a Schwab employee authorized to execute such letter. Accordingly, the Company sent the Deficiency Letter to the Representative and the Proponent seeking verification that Schwab Letter #1 was in fact from Schwab.

As noted above, under Rule 14a-8(f) under the Exchange Act, a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8(b) under the Exchange Act, provided that the company timely notifies the proponent of the deficiency within 14 calendar days of receiving the proposal and the proponent fails to correct the deficiency within 14 days of receiving such deficiency notice.

The Company timely notified the Representative and the Proponent of the deficiency in Schwab Letter #1 via the Deficiency Letter by noting that Schwab Letter #1 was “defective as evidence that the Proponent meets the conditions of any of the Ownership Requirements.” Consistent with Rule 14a-8(f)(1) under the Exchange Act, the Deficiency Letter requested that a response to remedy such deficiencies be postmarked or transmitted electronically to the Company no later than 14 calendar days from the date of the Representative’s and the Proponent’s receipt of the Deficiency Letter by electronic mail.

Following receipt of the Deficiency Letter, on December 7, 2022, the Representative acknowledged in Deficiency Response #1 that Schwab Letter #1 should have been executed by a representative from Schwab. *See* Deficiency Response #1 attached as Appendix D (“*Having someone from Schwab sign the proof of ownership makes perfect sense, we will fix that right away*”). However, despite such acknowledgement, on December 16, 2022, the Representative delivered Schwab Letter #2, which, once again, did not include any signature from a Schwab employee authorized to execute such letter on behalf of Schwab, and in lieu of any signature, merely inserted a typed name (which typed name could have been added by any person (including a person unaffiliated with Schwab)).

Despite the clear explanation in the Deficiency Letter, and the Representative’s acknowledgement discussed above, the Proponent failed to provide the requisite proof of Share ownership to meet the Ownership

¹ Rule 14a-8(b)(1)(i)(D) under the Exchange Act provided a transition period for shareholders who met Rule 14a-8(b)’s prior \$2,000 threshold/one-year minimum holding period. As set forth in Rule 14a-8(b)(3) under the Exchange Act, the transition period expires on January 1, 2023. Exchange Act Release No. 34-89964 (September 23, 2020) further clarifies that the transition period extends only to annual or special meetings held prior to January 1, 2023, and therefore it does not apply for the Company’s 2023 Annual Meeting of Shareholders.

Requirements of Rule 14a-8(b) under the Exchange Act. Accordingly, CNX may exclude the Proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) under the Exchange Act.

CONCLUSION

As discussed above, the Company believes, based on the foregoing, that the Proposal may be excluded from its 2023 Proxy Materials. We respectfully request the Staff's concurrence in the Company's view or, alternatively, confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2023 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to the undersigned at AlexanderReyes@cnx.com. If you have any questions with respect to the foregoing, please contact me at (724) 485-4375 or at the email address set forth above.

Sincerely,



Alexander J. Reyes
Executive Vice President, General Counsel and Corporate Secretary

Enclosures

cc: Michael Passoff, CEO of Proxy Impact
Handlery Hotels Inc (via the shareholder's asset manager)
Amy I. Pandit, Jones Day

Appendix A

From: Michael Passoff [REDACTED]
Date: November 22, 2022 at 2:03:56 PM EST
To: "Reyes, Alexander" [REDACTED]
Cc: "Anderson, Brian (Legal)" [REDACTED]
Subject: [EXTERNAL] CNX shareholder proposal on climate lobbying

CAUTION: This email originated from outside CNX. Do not click links or open attachments unless you recognize the sender and believe the content is safe.

Dear Mr. Reyes,

Proxy Impact is filing a **Climate Lobbying** shareholder resolution on behalf of Handlery Hotels. Attached please find filing documents submitting our shareholder proposal for inclusion in the company's 2023 proxy statement.

Please confirm receipt of this email.

Thank you,
Michael Passoff

Michael Passoff
CEO
Proxy Impact

[REDACTED]
www.proxyimpact.com
www.proxypreview.org
Twitter: @Proxy_Impact

"This communication, including any attachments, may contain confidential and privileged information that is subject to the CNX Resources' Code of Employee Business Conduct & Ethics (as periodically amended) and all other applicable CNX company policies. The information is intended solely for the use of the intended recipient(s). If you are not an intended recipient, you are prohibited from any use, distribution, or copying of this communication. If you have received this communication in error, please immediately notify the sender and then delete this communication in its entirety from your system."

11/6/2022 | 1:18:30 PM EST

Michael Passoff
CEO
Proxy Impact

Re: Authorization to File Shareholder Resolution

Dear Michael Passoff,

The undersigned (“Stockholder”) authorizes Proxy Impact to file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2023 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Handlery Hotels Inc
Company: CNX Resources Corp
Subject: Report on Climate Lobbying

The Stockholder has continuously owned an amount of Company stock for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company’s annual meeting in 2023.


The Stockholder gives Proxy Impact the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name and contact information will be disclosed in the proposal. The Securities and Exchange Commission has confirmed that they remove personally identifiable information from No-Action requests and related correspondence before making these materials publicly available on the Commission’s website. The Stockholder acknowledges that their name, however, may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available for a meeting with the Company regarding this shareholder proposal. The dates/times will be provided by Proxy Impact.

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates: [REDACTED] (the Stockholder's asset manager)
Any correspondence regarding meeting dates must **also be sent to my representative:**
[REDACTED]

The Stockholder also authorizes Proxy Impact to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:

163B90A22BA14D9...

Name: Ashley Handlery

Title: Trustee

Mr. Alexander Reyes
Corporate Secretary
CNX Resources Corporation
CNX Center
1000 Horizon Vue Drive
Canonsburg, PA 15317-6506
Sent via email: [REDACTED]

Dear Mr. Reyes,

Proxy Impact is filing a **Climate Lobbying** shareholder proposal on behalf of Handlery Hotels in order to protect the shareholder's right to raise this issue in the proxy statement. Handlery Hotels is submitting the enclosed shareholder proposal for inclusion in the 2023 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

Handlery Hotels has continuously owned an amount of CNX stock for a duration of time that enables it to file a shareholder resolution for inclusion in the company's proxy statement. Handlery Hotels will hold the required amount of stock through the date of the CNX annual meeting in 2023. Proof of ownership is being sent separately.

A letter from the Handlery Hotels Trust authorizing Proxy Impact to act on its behalf is enclosed. Please forward any correspondence on this matter to Proxy Impact and not to Handlery Hotels. A representative of Handlery Hotels will attend the stockholders' meeting to move the resolution as required.

Handlery Hotels and/or Proxy Impact will be available to speak with the Company via teleconference between 1:00 p.m. - 2:00 p.m. Eastern time on either Wednesday, December 14, or Wednesday, December 21, 2022. Alternatively, we would be happy to arrange for a call to discuss our proposal at a mutually convenient time.

We look forward to a productive dialogue that will make the need for this resolution moot.
Sincerely,



Michael Passoff
CEO
Proxy Impact

Enclosures (2)

- Climate Lobbying Shareholder Proposal
- Handlery Hotels Authorization Letter

CNX Resources - Report on corporate climate lobbying in line with Paris Agreement

WHEREAS: The United Nations Framework Convention on Climate Change asserts that greenhouse gas emissions must decline by 45 percent from 2010 levels by 2030 to limit global warming to 1.5 degrees Celsius. If that goal is not met, even more rapid reductions, at greater cost, will be required to compensate for the slow start on the path to global net zero emissions.¹

Even with the recent passage of the Inflation Reduction Act, critical gaps remain between Nationally Determined Contributions set by the U.S. government and the actions required to prevent the worst effects of climate change. Domestically and internationally, companies have an important and constructive role to play in enabling policymakers to close these gaps.

Corporate lobbying that is inconsistent with the Paris Agreement presents increasingly material risks to companies and their shareholders, as delays in emissions reductions undermine political stability, damage infrastructure, impair access to finance and insurance, and exacerbate health risks and costs. Further, companies face increasing reputational risks from consumers, investors, and other stakeholders if they appear to delay or block effective climate policy.

Of particular concern are trade associations and other politically active organizations that say they speak for business but too often present forceful obstacles to addressing the climate crisis.

Proponents appreciate that CNX has a goal of reducing its Scope 1 and 2 emissions by 90,000 metric tons by 2022 and 200,000 metric tons by 2025. Yet it has not declared a net-zero target or plans to address Scope 3 emissions.

Proponents believe that enhancing this with reporting on the alignment of the company's lobbying with the internationally agreed goals of the Paris Agreement would fill an important gap. The Global Standard on Responsible Climate Lobbying, backed by investors and networks representing \$130 trillion in assets, provides reporting guidelines, particularly in regards to evaluating and mitigating misalignment on climate policies.²

RESOLVED: Shareholders request that the Board of Directors annually conduct an evaluation and issue a report (at reasonable cost, omitting confidential or proprietary information) describing if, and how, CNX Resources' lobbying and policy influence activities (both direct and indirect through trade associations, coalitions, alliances, and other organizations) align with the goal of the Paris Agreement to limit average global warming to "well below" 2°C above pre-

¹ <https://unfccc.int/news/updated-ndc-synthesis-report-worrying-trends-confirmed>

² <https://climate-lobbying.com/>

industrial levels, and to pursue efforts to limit temperature increase to 1.5°C, and how CNX plans to mitigate the risks presented by any misalignment.

SUPPORTING STATEMENT: In evaluating the degree of alignment between the Paris Agreement goals and CNX lobbying, CNX should consider not only its policy positions and those of organizations of which it is a member, but also the actual lobbying and policy influence activities such as comment submissions, with regard to climate provisions of key international, federal and state legislation and regulation.

The proponents believe this request is consistent with the investor expectations described in the Global Standard on Responsible Climate Lobbying, and that this Standard is a useful resource for implementation³.

³ https://climate-lobbying.com/wp-content/uploads/2022/03/2022_global-standard-responsible-climate-lobbying_APPENDIX.pdf

Appendix B

From: Michael Passoff [REDACTED]
Sent: Thursday, December 1, 2022 3:48 PM
To: Reyes, Alexander [REDACTED]
Cc: Anderson, Brian (Legal) [REDACTED]
Subject: [EXTERNAL] Re: CNX shareholder proposal on climate lobbying

CAUTION: This email originated from outside CNX. Do not click links or open attachments unless you recognize the sender and believe the content is safe.

Dear Mr. Reyes,
Attached is Handlery Hotels proof of ownership for their climate lobbying resolution filed on November 22, 2022.
Let me know if you have any questions.
Please confirm receipt of this email.
Thank you,
Michael Passoff
CEO
Proxy Impact

From: Michael Passoff [REDACTED]
Sent: Tuesday, November 22, 2022 11:01 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: CNX shareholder proposal on climate lobbying

Dear Mr. Reyes,

Proxy Impact is filing a **Climate Lobbying** shareholder resolution on behalf of Handlery Hotels. Attached please find filing documents submitting our shareholder proposal for inclusion in the company's 2023 proxy statement.

Please confirm receipt of this email.

Thank you,

Michael Passoff

Michael Passoff
CEO
Proxy Impact



www.proxyimpact.com

www.proxypreview.org

Twitter: @Proxy_Impact

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December 01, 2022

Account ending in: [REDACTED]
Reference #: [REDACTED]

Handlery Hotels, Inc

[REDACTED]
US

As requested, we're confirming a stock holding in your account.

To Whom It May Concern,

As requested, we're writing to confirm that the above account holds in trust 19,815 shares of C N X RESOURCES CORP (CNX) common stock. These shares have been held in the account continuously for at least one year since November 22, 2021.

These shares are held at Depository Trust Company under Charles Schwab & Co., Inc., which serves as custodian for the account.

Thank you for choosing Schwab. If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

Appendix C

From: Anderson, Brian (Legal) [REDACTED]
Sent: Tuesday, December 6, 2022 12:52 PM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Attached please find a letter from Alex Reyes in response to your recent correspondence with CNX Resources Corporation. Please kindly confirm receipt of this e-mail for our records.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317
[REDACTED] – office



cnx.com

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Alexander J. Reyes
Executive Vice President and General Counsel
Work: [REDACTED]
Mobile: [REDACTED]
Email: [REDACTED]

CNX Center
1000 CONSOL Energy Drive
Canonsburg, PA 15317-6506
[REDACTED]

December 6, 2022

VIA ELECTRONIC MAIL

Mr. Michael Passoff, CEO of Proxy Impact
acting on behalf of Handlery Hotels Inc
[REDACTED]

Dear Mr. Passoff:

I am writing on behalf of CNX Resources Corporation (the "**Company**"). On November 22, 2022 (the "**Submission Date**"), the Company received by email from you a letter (collectively with the authorization letter from Ashley Handlery (the "**AH Letter**") and the proposal text, the "**Letter**"), regarding a shareholder proposal submitted on behalf of Handlery Hotels Inc (the "**Proponent**") pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), for inclusion in the proxy statement for the Company's 2023 Annual Meeting of Shareholders (the "**Proposal**"). The Letter states that Proxy Impact is authorized to act on the Proponent's behalf regarding the Proposal.

The Proposal contains certain procedural deficiencies, as set forth below, which the rules and regulations of the Securities and Exchange Commission ("**SEC**") require us to bring to your attention. Unless these deficiencies can be remedied in the appropriate timeframe required under applicable SEC rules as described below, the Company will be entitled to exclude the Proposal from its proxy materials for the Company's 2023 Annual Meeting of Shareholders.

Proof of Ownership under Rule 14a-8(b)

Rule 14a-8(b) of the Exchange Act provides that shareholder proponents must submit sufficient proof of their continuous ownership of:

- at least \$2,000 in market value of the Company's securities entitled to vote on the Proposal for at least three years preceding and including the Submission Date; or
- at least \$15,000 in market value of the Company's securities entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or
- at least \$25,000 in market value of the Company's securities entitled to vote on the Proposal for at least one year preceding and including the Submission Date (each, an "**Ownership Requirement**," and, collectively, the "**Ownership Requirements**").

The Company's stock records do not indicate that the Proponent is a record owner of sufficient shares of the Company's common stock (the "**Shares**") to satisfy any of the Ownership Requirements. In addition, to date, we have not received adequate proof that the Proponent has satisfied any of the Ownership Requirements as of the Submission Date. On December 1, 2022, you sent by email a copy of an unexecuted letter purportedly from Charles Schwab & Co., Inc. (the "**Broker**"), dated December 1, 2022 (the "**Broker Letter**"). The Broker Letter is insufficient supporting evidence for the Proponent's satisfaction of an Ownership Requirement as there was no signature of any representative of the Broker in the Broker Letter who could presumably verify the Proponent's share ownership in the Company's securities described in the Broker Letter (i.e., the Broker Letter is not signed by the Broker). Accordingly, the Broker Letter is defective as evidence that the Proponent meets the conditions of any of the Ownership Requirements.

To remedy this defect, you must submit sufficient proof that the Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the “record” holder of the Proponent’s Shares (usually a broker or bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements; or
- (2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4, and/or Form 5, or amendments to those documents or updated forms demonstrating that the Proponent met at least one of the Ownership Requirements, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements.

If you intend to demonstrate the Proponent’s ownership by submitting a written statement from the “record” holder of its Shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.), or an affiliate thereof. Under SEC Staff Legal Bulletin Nos. 14F and 14G, only DTC participants, or affiliates of DTC participants, are viewed as record holders of securities. You can confirm whether the Proponent’s broker or bank is a DTC participant or an affiliate of a DTC participant by asking the Proponent’s broker or bank or, in the case of DTC participants, by checking DTC’s participant list, which is available at <https://www.dtcc.com/client-center/dtc-directories>. In these situations, shareholders need to obtain proof of ownership from the DTC participant or an affiliate of a DTC participant through which the securities are held, as follows:

- (1) If the broker or bank is a DTC participant or an affiliate of a DTC participant, then you need to submit a written statement from the broker or bank verifying that the Proponent continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements.
- (2) If the broker or bank is not a DTC participant or an affiliate of a DTC participant, then you need to submit proof of the Proponent’s ownership from the DTC participant or affiliate of a DTC participant through which the Shares are held verifying that the Proponent continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements. If the Proponent’s broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant or affiliate of a DTC participant through the Proponent’s account statements, because the clearing broker identified on the account statements generally will be a DTC participant or an affiliate of a DTC participant. If the DTC participant or affiliate of a DTC participant that holds the Proponent’s Shares is not able to confirm the Proponent’s individual holdings but is able to confirm the holdings of the Proponent’s broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held the requisite amount of Shares to satisfy at least one of the Ownership Requirements: (i) one from the Proponent’s broker or bank confirming the Proponent’s ownership; and (ii) the other from the DTC participant or affiliate of a DTC participant confirming the broker or bank’s ownership.

In addition to satisfying at least one of the Ownership Requirements, under Rule 14a-8(b) of the Exchange Act, you must provide the Company with a written statement of the Proponent’s intent to continue to hold through the date of the Company’s 2023 Annual Meeting of Shareholders the requisite amount of Shares used to satisfy the applicable Ownership Requirement. As we have not yet received any sufficient proof of the Proponent’s ownership from you, and therefore do not know with certainty which of the Ownership Requirements will be satisfied, we believe that the Proponent’s written statement in the Letter that the Proponent “intends to hold the required amount of stock through the date of the Company’s annual meeting in 2023” is not adequate as it does not specify which requisite amount of Shares is applicable to the Proponent. To remedy this defect, you must submit a written statement from the Proponent that it intends to continue to hold the same requisite amount of Shares through the date of the Company’s 2023 Annual Meeting of Shareholders as will be documented in the Proponent’s proof of ownership.

Proposals by Proxy under Rule 14a-8(b)

Rule 14a-8(b) of the Exchange Act provides that shareholder proponents who use a representative to submit a proposal on their behalf must provide the Company with written documentation that:

- identifies the company to which the proposal is directed;
- identifies the annual or special meeting for which the proposal is submitted;
- identifies the proponent and identifies the person acting on the proponent's behalf as his or her representative;
- includes the proponent's statement authorizing the designated representative to submit the proposal and otherwise act on his or her behalf;
- identifies the specific topic of the proposal to be submitted;
- includes the proponent's statement supporting the proposal; and
- is signed and dated by the proponent.

The above requirements shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

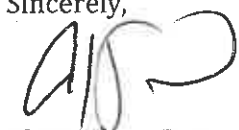
The Letter does not include sufficient documentation demonstrating that Proxy Impact has the legal authority to submit the Proposal on behalf of the Proponent as of the Submission Date. Specifically, the AH Letter describing the Proponent's delegation of authority to Proxy Impact, as its proxy with respect to the Proposal, does not evidence the authority of Ashley Handlery, as Trustee, to submit the Proposal and otherwise act on the Proponent's behalf—the AH Letter is signed by Ashley Handlery, as the "Trustee" of the Proponent, a corporate entity, but does not describe the relationship between (i) Ashley Handlery or the unnamed trust and (ii) Handlery Hotels Inc. Consequently, there is ambiguity as to whether Ashley Handlery, in her capacity as Trustee, does in fact, in the first instance, have the corporate authority in her capacity as trustee to act on the Proponent's behalf to then grant Proxy Impact the authority to act on behalf of the Proponent in connection with the Proposal. As a result, Proxy Impact's authority to act on the Proponent's behalf is not apparent or self-evident such that a reasonable person would understand that Proxy Impact has authority to submit the Proposal and otherwise act on the Proponent's behalf.

To remedy these defects, the Proponent must provide documentation that confirms that on or prior to the Submission Date, the Proponent instructed or authorized you to submit this specific Proposal to the Company on the Proponent's behalf. Specifically, this documentation must evidence Ashley Handlery's authority, in her capacity as Trustee, to submit the Proposal as an authorized person of the Proponent.

The SEC's rules require that a response to remedy the deficiencies set forth in this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter that has been sent by electronic mail. Please address any response to me at CNX Resources Corporation, CNX Center, 1000 Horizon Vue Drive, Canonsburg, PA 15317 and [REDACTED]

If you have any questions with respect to the foregoing, please contact me at [REDACTED] or at my email address set forth above. For your reference, I am enclosing copies of Rule 14a-8 and Staff Legal Bulletin Nos. 14F and 14G.

Sincerely,



Alexander J. Reyes

Enclosures

cc: Handlery Hotels Inc (via the shareholder's asset manager)

§ 240.14a-8

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that will be the subject of the security holder's solicitation or communication and attesting that:

(i) The security holder will not use the list information for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the registrant; and

(ii) The security holder will not disclose such information to any person other than a beneficial owner for whom the request was made and an employee or agent to the extent necessary to effectuate the communication or solicitation.

(d) The security holder shall not use the information furnished by the registrant pursuant to paragraph (a)(2)(ii) of this section for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the registrant; or disclose such information to any person other than an employee, agent, or beneficial owner for whom a request was made to the extent necessary to effectuate the communication or solicitation. The security holder shall return the information provided pursuant to paragraph (a)(2)(ii) of this section and shall not retain any copies thereof or of any information derived from such 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) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to

Securities and Exchange Commission

§ 240.14a-8

vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) 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 requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) 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:

(A) 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 at least \$2,000, \$15,000, or \$25,000 in market value of the company’s securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders’ meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and 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, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

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

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company’s securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company’s annual or special meeting.

(3) If you continuously held at least \$2,000 of a company’s securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is sub-

mitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders’ meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company’s securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders’ meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals 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;

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NOTE TO PARAGRAPH (1)(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 (1)(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 (1)(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 addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(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

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Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

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

(i) The proposal;

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

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

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

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

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

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

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

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

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is

allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

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

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

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

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

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE: At 85 FR 70294, Nov. 4, 2020, § 240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

§ 240.14a-9 False or misleading statements.

(a) No solicitation subject to this regulation shall be made by means of

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.

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, 2006), 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 *Techno 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.

Modified: Oct. 18, 2011

Appendix D

From: Michael Passoff [REDACTED]
Sent: Wednesday, December 7, 2022 12:38:12 AM
To: Anderson, Brian (Legal) [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

CAUTION: This email originated from outside CNX. Do not click links or open attachments unless you recognize the sender and believe the content is safe.

Hi Brian,

Having someone from Schwab sign the proof of ownership makes perfect sense, we will fix that right away.

But I am unclear what more you need from Ashly Handlery to provide evidence of her authority to sign on behalf of the Handlery Hotels?

Do you mean she simply has to write out her full title as Trustee, Handlery Hotels? Or is there some other evidence that is needed?

Thank you,
Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Tuesday, December 6, 2022 9:52 AM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Attached please find a letter from Alex Reyes in response to your recent correspondence with CNX Resources Corporation. Please kindly confirm receipt of this e-mail for our records.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317
[REDACTED] – office



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Appendix E

From: Anderson, Brian (Legal) [REDACTED]
Sent: Wednesday, December 7, 2022 4:44 PM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: RE: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Thank you for the timely reply. In terms of your question, the letter you provided, dated November 6, 2022, is signed by Ashley Handlery, as the "Trustee" of the proponent, a corporate entity, but does not describe the relationship between (i) Ashley Handlery or the unnamed trust and (ii) Handlery Hotels Inc. Our December 6, 2022 response contains details about what is required to verify your authority to act on the proponent's behalf, and we would refer you back to that letter for additional information. Nonetheless, we are simply looking to understand the relationship among the various parties and verify that Ms. Handlery has the requisite authority to act as described in your original correspondence to CNX.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317
[REDACTED] – office



cnx.com

Follow us:



From: Michael Passoff [REDACTED]
Sent: Wednesday, December 7, 2022 12:38 AM
To: Anderson, Brian (Legal) [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

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Hi Brian,

Having someone from Schwab sign the proof of ownership makes perfect sense, we will fix that right away.

But I am unclear what more you need from Ashly Handlery to provide evidence of her authority to sign on behalf of the Handlery Hotels?

Do you mean she simply has to write out her full title as Trustee, Handlery Hotels? Or is there some other evidence that is needed?

Thank you,
Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Tuesday, December 6, 2022 9:52 AM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Attached please find a letter from Alex Reyes in response to your recent correspondence with CNX Resources Corporation. Please kindly confirm receipt of this e-mail for our records.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317
[REDACTED] – office



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Appendix F

From: Michael Passoff [REDACTED]
Sent: Friday, December 16, 2022 2:30:40 PM
To: Anderson, Brian (Legal) [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Hi Brian,

Attached is a revised Handlery Hotels proof of ownership signed by Schwab.

As for the authorization letter - Handlery Hotels Inc's holdings are in trusts, of which Ashely is a trustee. However she is also a Director of the Board of Handlery Hotel's Inc.

Please confirm that all deficiencies have been remedied.

Please recall that:

- the SEC has repeatedly clarified that obvious agent-principal and analogous relationships need not be exhaustively demonstrated or spelled out. *See, e.g., SEC, Final Rule: Release No. 34-89964 (2020)* (noting that compliance with authorization letter amendment “will not be necessary if the agent’s authority to act is apparent and self-evident such that a reasonable person would understand that the agent has authority to act”).
- the SEC has cautioned companies against the application of “an overly technical reading of proof of ownership letters as a means to exclude a proposal,” indicating that it “generally do[es] not find arguments along these lines to be persuasive.” *SEC, Staff Legal Bulletin No. 14L (Nov. 3, 2021)*. Rather, the SEC “expect[s] companies to apply” a “plain meaning approach” in reviewing proof of ownership letters, and not “seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter.” *Id.* What matters is that the letter “sufficiently evidences the requisite minimum ownership requirements.” *Id.*

Let me know if you have any questions.

Regards,
Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Wednesday, December 7, 2022 1:44 PM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: RE: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Thank you for the timely reply. In terms of your question, the letter you provided, dated November 6, 2022, is signed by Ashley Handlery, as the “Trustee” of the proponent, a corporate entity, but does not describe the relationship between (i) Ashley Handlery or the unnamed trust and (ii) Handlery Hotels Inc. Our December 6, 2022 response contains details about what is required to verify your authority to act on the proponent’s behalf, and we would refer you back to that letter for additional information. Nonetheless, we are simply looking to understand the relationship among the various

parties and verify that Ms. Handlery has the requisite authority to act as described in your original correspondence to CNX.

Sincerely,

Brian P. Anderson

CNX Resources Corporation | Assistant General Counsel
CNX Center | **1000 Horizon Vue Drive** | Canonsburg, PA 15317

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Follow us:



From: Michael Passoff ██████████
Sent: Wednesday, December 7, 2022 12:38 AM
To: Anderson, Brian (Legal) ██████████
Cc: ██████████; Reyes, Alexander ██████████
Subject: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

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Hi Brian,

Having someone from Schwab sign the proof of ownership makes perfect sense, we will fix that right away.

But I am unclear what more you need from Ashly Handlery to provide evidence of her authority to sign on behalf of the Handlery Hotels?

Do you mean she simply has to write out her full title as Trustee, Handlery Hotels? Or is there some other evidence that is needed?

Thank you,
Michael

From: Anderson, Brian (Legal) ██████████
Sent: Tuesday, December 6, 2022 9:52 AM
To: Michael Passoff ██████████
Cc: ██████████; Reyes, Alexander ██████████
Subject: Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Attached please find a letter from Alex Reyes in response to your recent correspondence with CNX Resources Corporation. Please kindly confirm receipt of this e-mail for our records.

Sincerely,

Brian P. Anderson

CNX Resources Corporation | Assistant General Counsel

CNX Center | **1000 Horizon Vue Drive** | Canonsburg, PA 15317

██████████ – office



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December 09, 2022

Account ending in: [REDACTED]
Reference #: [REDACTED]

Handlery Hotels, Inc
[REDACTED]
[REDACTED]
US

As requested, we're confirming a stock holding in your account.

To Whom It May Concern,

As requested, we're writing to confirm that the above account holds in trust 19,815 shares of C N X Resources Corp (CNX) common stock. These shares have been held in the account continuously for at least one year since November 22, 2021.

These shares are held at Depository Trust Company under Charles Schwab & Co., Inc., which serves as custodian for the account.

Thank you for choosing Schwab. If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

Shannon Jones

Shannon Jones
Sr Specialist, Operations
Managed Accounts Operations Team 1

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

Appendix G

From: Anderson, Brian (Legal) [REDACTED]
Sent: Tuesday, December 20, 2022 2:11 PM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: RE: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

**** External mail ****

Mr. Passoff,

Thank you. I write to acknowledge receipt of your below e-mail.

Nonetheless, it is CNX's position that the previously referenced deficiencies remain. For more information, please refer to our prior correspondence on these points.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317



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Follow us:



From: Michael Passoff [REDACTED]
Sent: Friday, December 16, 2022 2:31 PM
To: Anderson, Brian (Legal) [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Hi Brian,

Attached is a revised Handlery Hotels proof of ownership signed by Schwab.

As for the authorization letter - Handlery Hotels Inc's holdings are in trusts, of which Ashely is a trustee. However she is also a Director of the Board of Handlery Hotel's Inc.

Please confirm that all deficiencies have been remedied.

Please recall that:

- the SEC has repeatedly clarified that obvious agent-principal and analogous relationships need not be exhaustively demonstrated or spelled out. *See, e.g., SEC, Final Rule: Release No. 34-89964 (2020)* (noting that compliance with authorization letter amendment “will not be necessary if the agent’s authority to act is apparent and self-evident such that a reasonable person would understand that the agent has authority to act”).
- the SEC has cautioned companies against the application of “an overly technical reading of proof of ownership letters as a means to exclude a proposal,” indicating that it “generally do[es] not find arguments along these lines to be persuasive.” *SEC, Staff Legal Bulletin No. 14L (Nov. 3, 2021)*. Rather, the SEC “expect[s] companies to apply” a “plain meaning approach” in reviewing proof of ownership letters, and not “seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter.” *Id.* What matters is that the letter “sufficiently evidences the requisite minimum ownership requirements.” *Id.*

Let me know if you have any questions.

Regards,
Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Wednesday, December 7, 2022 1:44 PM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: RE: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Thank you for the timely reply. In terms of your question, the letter you provided, dated November 6, 2022, is signed by Ashley Handlery, as the “Trustee” of the proponent, a corporate entity, but does not describe the relationship between (i) Ashley Handlery or the unnamed trust and (ii) Handlery Hotels Inc. Our December 6, 2022 response contains details about what is required to verify your authority to act on the proponent’s behalf, and we would refer you back to that letter for additional information. Nonetheless, we are simply looking to understand the relationship among the various parties and verify that Ms. Handlery has the requisite authority to act as described in your original correspondence to CNX.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317
[REDACTED] – office



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Follow us:



From: Michael Passoff [REDACTED]
Sent: Wednesday, December 7, 2022 12:38 AM
To: Anderson, Brian (Legal) [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

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Hi Brian,

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But I am unclear what more you need from Ashly Handlery to provide evidence of her authority to sign on behalf of the Handlery Hotels?

Do you mean she simply has to write out her full title as Trustee, Handlery Hotels? Or is there some other evidence that is needed?

Thank you,
Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Tuesday, December 6, 2022 9:52 AM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Attached please find a letter from Alex Reyes in response to your recent correspondence with CNX Resources Corporation. Please kindly confirm receipt of this e-mail for our records.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317
[REDACTED] – office



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recipient, you are prohibited from any use, distribution, or copying of this communication. If you have received this communication in error, please immediately notify the sender and then delete this communication in its entirety from your system."

Appendix H

From: Michael Passoff [REDACTED]
Sent: Tuesday, December 20, 2022 5:28 PM
To: Anderson, Brian (Legal) [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Hi Brian,
Which deficiencies in particular still exist?
Thanks,
Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Tuesday, December 20, 2022 11:10 AM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: RE: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Thank you. I write to acknowledge receipt of your below e-mail.

Nonetheless, it is CNX's position that the previously referenced deficiencies remain. For more information, please refer to our prior correspondence on these points.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317



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Follow us:



From: Michael Passoff [REDACTED]
Sent: Friday, December 16, 2022 2:31 PM
To: Anderson, Brian (Legal) [REDACTED]

Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Hi Brian,

Attached is a revised Handlery Hotels proof of ownership signed by Schwab.

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Let me know if you have any questions.

Regards,
Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Wednesday, December 7, 2022 1:44 PM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: RE: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Thank you for the timely reply. In terms of your question, the letter you provided, dated November 6, 2022, is signed by Ashley Handlery, as the “Trustee” of the proponent, a corporate entity, but does not describe the relationship between (i) Ashley Handlery or the unnamed trust and (ii) Handlery Hotels Inc. Our December 6, 2022 response contains details about what is required to verify your authority to act on the proponent’s behalf, and we would refer you back to that letter for additional information. Nonetheless, we are simply looking to understand the relationship among the various parties and verify that Ms. Handlery has the requisite authority to act as described in your original correspondence to CNX.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | **1000 Horizon Vue Drive** | **Canonsburg, PA 15317**

[REDACTED] – office



cnx.com

Follow us:



From: Michael Passoff [REDACTED]
Sent: Wednesday, December 7, 2022 12:38 AM
To: Anderson, Brian (Legal) [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

CAUTION: This email originated from outside CNX. Do not click links or open attachments unless you recognize the sender and believe the content is safe.

Hi Brian,

Having someone from Schwab sign the proof of ownership makes perfect sense, we will fix that right away.

But I am unclear what more you need from Ashly Handlery to provide evidence of her authority to sign on behalf of the Handlery Hotels?

Do you mean she simply has to write out her full title as Trustee, Handlery Hotels? Or is there some other evidence that is needed?

Thank you,
Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Tuesday, December 6, 2022 9:52 AM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Attached please find a letter from Alex Reyes in response to your recent correspondence with CNX Resources Corporation. Please kindly confirm receipt of this e-mail for our records.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317

[REDACTED] – office



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Appendix I

From: Anderson, Brian (Legal) [REDACTED]
Date: Tuesday, Dec 20, 2022 at 8:18 PM
To: Michael Passoff [REDACTED]
Cc: [REDACTED], Reyes, Alexander [REDACTED]
Subject: Re: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

**** External mail ****

Mr. Passoff,

Our detailed positions on all deficiencies have been set forth in prior correspondence, which we again direct you to for more particular information about what is required under the rules. We do not intend to engage over e-mail in a protracted debate about the sufficiency of the materials provided. However, to summarize: (1) we have no way to authenticate the purported digital signature on the Charles Schwab letter and (2) have been provided with nothing beyond a cursory statement of Ms. Handlery's authority to act on behalf of the record shareholder, Handlery Hotels Inc. It is our position that each of these is deficient under the requisite rules governing shareholder proposals, as outlined in our initial correspondence to you dated December 6, 2022.

Sincerely,

Brian Anderson

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From: Michael Passoff [REDACTED]
Sent: Tuesday, December 20, 2022 5:27:36 PM
To: Anderson, Brian (Legal) [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Hi Brian,
Which deficiencies in particular still exist?
Thanks,
Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Tuesday, December 20, 2022 11:10 AM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: RE: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Thank you. I write to acknowledge receipt of your below e-mail.

Nonetheless, it is CNX's position that the previously referenced deficiencies remain. For more information, please refer to our prior correspondence on these points.

Sincerely,

Brian P. Anderson

CNX Resources Corporation | Assistant General Counsel
CNX Center | **1000 Horizon Vue Drive** | Canonsburg, PA 15317



cnx.com

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From: Michael Passoff [REDACTED]
Sent: Friday, December 16, 2022 2:31 PM
To: Anderson, Brian (Legal) [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Hi Brian,

Attached is a revised Handlery Hotels proof of ownership signed by Schwab.

As for the authorization letter - Handlery Hotels Inc's holdings are in trusts, of which Ashely is a trustee. However she is also a Director of the Board of Handlery Hotel's Inc.

Please confirm that all deficiencies have been remedied.

Please recall that:

- the SEC has repeatedly clarified that obvious agent-principal and analogous relationships need not be exhaustively demonstrated or spelled out. *See, e.g., SEC, Final Rule: Release No. 34-89964 (2020)* (noting that compliance with authorization letter amendment "will not be necessary if the agent's authority to act is apparent and self-evident such that a reasonable person would understand that the agent has authority to act").
- the SEC has cautioned companies against the application of "an overly technical reading of proof of ownership letters as a means to exclude a proposal," indicating that it "generally do[es] not find arguments along these lines to be persuasive." *SEC, Staff Legal Bulletin No. 14L (Nov. 3, 2021)*. Rather, the SEC "expect[s] companies to apply" a "plain meaning approach" in reviewing proof of ownership letters, and not "seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter." *Id.* What matters is that the letter "sufficiently evidences the requisite minimum ownership requirements." *Id.*

Let me know if you have any questions.

Regards,

Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Wednesday, December 7, 2022 1:44 PM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: RE: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Thank you for the timely reply. In terms of your question, the letter you provided, dated November 6, 2022, is signed by Ashley Handlery, as the "Trustee" of the proponent, a corporate entity, but does not describe the relationship between (i) Ashley Handlery or the unnamed trust and (ii) Handlery Hotels Inc. Our December 6, 2022 response contains details about what is required to verify your authority to act on the proponent's behalf, and we would refer you back to that letter for additional information. Nonetheless, we are simply looking to understand the relationship among the various parties and verify that Ms. Handlery has the requisite authority to act as described in your original correspondence to CNX.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317
[REDACTED] – office



cnx.com

Follow us:



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CAUTION: This email originated from outside CNX. Do not click links or open attachments unless you recognize the sender and believe the content is safe.

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But I am unclear what more you need from Ashly Handlery to provide evidence of her authority to sign on behalf of the Handlery Hotels?

Do you mean she simply has to write out her full title as Trustee, Handlery Hotels? Or is there some other evidence that is needed?

Thank you,
Michael

From: Anderson, Brian (Legal) [REDACTED]
Sent: Tuesday, December 6, 2022 9:52 AM
To: Michael Passoff [REDACTED]
Cc: [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Mr. Passoff,

Attached please find a letter from Alex Reyes in response to your recent correspondence with CNX Resources Corporation. Please kindly confirm receipt of this e-mail for our records.

Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317
[REDACTED] – office



cnx.com

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Appendix J

From: Wilson, Austin (Aperio) [REDACTED]
Sent: Thursday, December 22, 2022 3:42 PM
To: Anderson, Brian (Legal) [REDACTED]; Michael Passoff [REDACTED]
Cc: Reyes, Alexander [REDACTED]
Subject: RE: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

Brian,

I have attached a letter from Ashley Handlery clarifying her authority to act on behalf of Handlery Hotels Inc.

Best,

Austin

From: Anderson, Brian (Legal) [REDACTED]
Sent: Tuesday, December 20, 2022 5:19 PM
To: Michael Passoff [REDACTED]
Cc: Wilson, Austin (Aperio) [REDACTED]; Reyes, Alexander [REDACTED]
Subject: Re: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

External Email: Use caution with links and attachments

Mr. Passoff,

Our detailed positions on all deficiencies have been set forth in prior correspondence, which we again direct you to for more particular information about what is required under the rules. We do not intend to engage over e-mail in a protracted debate about the sufficiency of the materials provided. However, to summarize: (1) we have no way to authenticate the purported digital signature on the Charles Schwab letter and (2) have been provided with nothing beyond a cursory statement of Ms. Handlery's authority to act on behalf of the record shareholder, Handlery Hotels Inc. It is our position that each of these is deficient under the requisite rules governing shareholder proposals, as outlined in our initial correspondence to you dated December 6, 2022.

Sincerely,

Brian Anderson

Get [Outlook for iOS](#)

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cnx.com

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Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | **1000 Horizon Vue Drive** | Canonsburg, PA 15317
[REDACTED] – office



cnx.com

Follow us:



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Sincerely,

Brian P. Anderson
CNX Resources Corporation | Assistant General Counsel
CNX Center | [1000 Horizon Vue Drive](#) | Canonsburg, PA 15317
[REDACTED] – office



cnx.com

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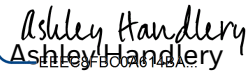
"This communication, including any attachments, may contain confidential and privileged information that is subject to the CNX Resources' Code of Employee Business Conduct & Ethics (as periodically amended) and all other applicable CNX company policies. The information is intended solely for the use of the intended recipient(s). If you are not an intended recipient, you are prohibited from any use, distribution, or copying of this communication. If you have received this communication in error, please immediately notify the sender and then delete this communication in its entirety from your system."

12/22/2022 | 12:35:09 PM PST

To Whom It May Concern,

I signed a letter on behalf of Handlery Hotels Inc authorizing Proxy Impact to file a shareholder resolution regarding climate lobbying with CNX Resources Corporation for inclusion in the company's 2023 proxy statement. I signed that letter with the title of Trustee. I am on the Board of Directors for Handlery Hotels and confirm that I have authority to act on behalf of Handlery Hotels Inc.

DocuSigned by:


Ashley Handlery

Board Director
Handlery Hotels Inc

March 3, 2023
Via electronic mail

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

Re: Shareholder Proposal to CNX Resources Regarding Climate Lobbying on Behalf of Handlery Hotels

Ladies and Gentlemen:

Handlery Hotels (the “Proponent”) is a beneficial owner of common stock of CNX Resources (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company. The Company sent a No Action letter and I have been authorized by the Proponent to respond on their behalf in this matter.

- The Proponent filed a Climate Lobbying resolution with the Company on 11/22/22. (attached)
- Proof of ownership from Charles Schwab was sent on 12/1/22. (attached)
 - The ownership letter (attached) stated that the Proponent held 19,815 shares of CNX common stock for at least one year prior to the filing date, and provided partial account information, a reference number, and a phone number to contact Schwab and stated that:
- The Company then sent a deficiency notice on 12/6/22 stating that the Proponents failed to provide:
 - 1) Proof of Ownership

CNX Deficiency Notice 12/6/22

The Company’s stock records do not indicate that the Proponent is a record owner of sufficient shares of the Company’s common stock (the “**Shares**”) to satisfy any of the Ownership Requirements. In addition, to date, we have not received adequate proof that the Proponent has satisfied any of the Ownership Requirements as of the Submission Date. On December 1, 2022, you sent by email a copy of an unexecuted letter purportedly from Charles Schwab & Co., Inc. (the “**Broker**”), dated December 1, 2022 (the “**Broker Letter**”). The Broker Letter is insufficient supporting evidence for the Proponent’s satisfaction of an Ownership Requirement as there was no signature of any representative of the Broker in the Broker Letter who could presumably verify the Proponent’s share ownership in the Company’s securities described in the Broker Letter (i.e., the Broker Letter is not signed by the Broker). Accordingly, the Broker Letter is defective as evidence that the Proponent meets the conditions of any of the Ownership Requirements.

Proponent’s response:

- a) On 12/16/22, I sent a revised proof of ownership letter from Schwab (dated 12/9/22), which was signed by Schwab’s Shannon Jones (attached).

2) Failure to Demonstrate the Representative's Authority

CNX Deficiency Notice 12/6/22

The Letter does not include sufficient documentation demonstrating that Proxy Impact has the legal authority to submit the Proposal on behalf of the Proponent as of the Submission Date. Specifically, the AH Letter describing the Proponent's delegation of authority to Proxy Impact, as its proxy with respect to the Proposal, does not evidence the authority of Ashley Handlery, as Trustee, to submit the Proposal and otherwise act on the Proponent's behalf—the AH Letter is signed by Ashley Handlery, as the "Trustee" of the Proponent, a corporate entity, but does not describe the relationship between (i) Ashley Handlery or the unnamed trust and (ii) Handlery Hotels Inc. Consequently, there is ambiguity as to whether Ashley Handlery, in her capacity as Trustee, does in fact, in the first instance, have the corporate authority in her capacity as trustee to act on the Proponent's behalf to then grant Proxy Impact the authority to act on behalf of the Proponent in connection with the Proposal. As a result, Proxy Impact's authority to act on the Proponent's behalf is not apparent or self-evident such that a reasonable person would understand that Proxy Impact has authority to submit the Proposal and otherwise act on the Proponent's behalf.

Proponent's response:

- a) Ms. Handlery is a member of Handlery Hotels Board of Directors and of their Trust. Her confusing her Trustee and Director title on the authorization letter was a simple mistake.
- b) Along with the revised proof of ownership, our 12/16/22 email to the Company stated that Ashely Handlery is both a Trustee and "a Director of the Board of Handlery Hotel's Inc. "
- c) On 12/22/22, Austin Wilson of Aperio (the Proponent's broker) emailed the Company a letter from Ashley Handlery, clearly stating that she is a Handlery Hotels Board Director with authority to file a resolution (see below and attached).

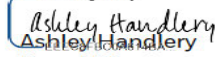
Proponents letter to the Company 12/22/22

12/22/2022 | 12:35:09 PM PST

To Whom It May Concern,

I signed a letter on behalf of Handlery Hotels Inc authorizing Proxy Impact to file a shareholder resolution regarding climate lobbying with CNX Resources Corporation for inclusion in the company's 2023 proxy statement. I signed that letter with the title of Trustee. I am on the Board of Directors for Handlery Hotels and confirm that I have authority to act on behalf of Handlery Hotels Inc.

DocuSigned by:


Ashley Handlery
Board Director
Handlery Hotels Inc

- The Company responded with a No Action letter on 12/30/22 claiming that the Proponent failed to provide proof of ownership or proof of authority to file a resolution, despite that:
 - The Proponent had previously responded to the Company's 12/6/22 deficiency notice on 12/16/22 and 12/22/22.
 - RE: Proof of ownership – Charles Schwab provided two proof of ownership letters showing that sufficient shares were held, and providing account and reference numbers along with a contact number which the Company could have easily used to confirm this information. The second letter also included a Schwab representative's contact name, title, phone number and signature – which the company rejected because it was a digital signature.
 - RE: Proof of Authority – the Company asked the Proponent to "describe the relationship between (i) Ashley Handlery or the unnamed trust and (ii) Handlery Hotels Inc." and was informed twice that Ms. Handlery was a Handlery Hotels Board of Director with authority to file a resolution. This was followed by a signed and dated letter form Ms. Handlery herself stating this to be the case.

- SEC Rulings
 - The SEC has repeatedly clarified that obvious agent-principal and analogous relationships need not be exhaustively demonstrated or spelled out. See, e.g., SEC, Final Rule: Release No. 34-89964 (2020) (noting that compliance with authorization letter amendment “will not be necessary if the agent’s authority to act is apparent and self-evident such that a reasonable person would understand that the agent has authority to act”).
 - The SEC has cautioned companies against the application of “an overly technical reading of proof of ownership letters as a means to exclude a proposal,” indicating that it “generally do[es] not find arguments along these lines to be persuasive.” SEC, Staff Legal Bulletin No. 14L (Nov. 3, 2021). Rather, the SEC “expect[s] companies to apply” a “plain meaning approach” in reviewing proof of ownership letters, and not “seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter.” Id. What matters is that the letter “sufficiently evidences the requisite minimum ownership requirements.” Id.

CONCLUSION

The Proponent made a simple mistake in listing her title. Clarification was sent twice from the Proponents to the Company including a letter from Ms. Handlery stating that she was a Handlery Hotels Board of Director with authority to file a resolution.

Proxy Impact has frequently had Charles Schwab send similar Proof of Ownership letters that have been accepted by numerous companies without a challenge. The Company’s rejection of the letter based on Schwab’s use of a digital signature seems trivial in this digital age. (Furthermore, Proponents have no authority to tell a custodian how to sign its letters).

It should also be noted that the Company never offered to talk with the Proponent on the dates provided in the filing letter, nor did it respond to the Proponents offer to meet with the Company at a time of mutual convenience. The Company only offered to meet with Proponents once it had to submit its Opposition Statement and realized that the proposal may be on proxy.

The Company’s failure to offer to dialogue with the Proponents for three months, combined with its refusal to accept two valid proof of ownership letters provided by Charles Schwab, and its refusal to accept clarification and a signed letter proving the Proponent’s authority to file – indicates that this is a company not acting in good faith and is exactly the type behavior that the SEC rules listed above were meant to prevent.

Based on the foregoing, we believe the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the company that it is denying the no action letter request.

Sincerely,



Michael Passoff
CEO
Proxy Impact

Attachments:

- Charles Schwab proof of ownership 12/1/22 and 12/9/22
- Handlery confirmation of authority to file 12/22/22 and original authorization letter 11/6/22

Cc: Brian Anderson, CNX Resources Corporation, Assistant General Counsel
Austin Wilson, Aperio, Head of Active Ownership and Associate ESG/ Investment Strategist



December 09, 2022

Account ending in [REDACTED] PI
Reference #: AM20524817

Handlery Hotels, Inc
180 Geary Street, Suite 700
San Francisco, CA 94108
US

As requested, we're confirming a stock holding in your account.

To Whom It May Concern,

As requested, we're writing to confirm that the above account holds in trust 19,815 shares of C N X Resources Corp (CNX) common stock. These shares have been held in the account continuously for at least one year since November 22, 2021.

These shares are held at Depository Trust Company under Charles Schwab & Co., Inc., which serves as custodian for the account.

Thank you for choosing Schwab. If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

Shannon Jones

Shannon Jones
Sr Specialist, Operations
Managed Accounts Operations Team 1

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

11/6/2022 | 1:18:30 PM EST

Michael Passoff
CEO
Proxy Impact

Re: Authorization to File Shareholder Resolution

Dear Michael Passoff,

The undersigned (“Stockholder”) authorizes Proxy Impact to file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2023 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Handlery Hotels Inc
Company: CNX Resources Corp
Subject: Report on Climate Lobbying

The Stockholder has continuously owned an amount of Company stock for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company’s annual meeting in 2023.


The Stockholder gives Proxy Impact the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name and contact information will be disclosed in the proposal. The Securities and Exchange Commission has confirmed that they remove personally identifiable information from No-Action requests and related correspondence before making these materials publicly available on the Commission’s website. The Stockholder acknowledges that their name, however, may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available for a meeting with the Company regarding this shareholder proposal. The dates/times will be provided by Proxy Impact.

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates: austin.wilson@blackrock.com (the Stockholder's asset manager)
Any correspondence regarding meeting dates must **also be sent to my representative:**
michael@proxyimpact.com

The Stockholder also authorizes Proxy Impact to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:

163B90A22BA14D9...

Name: Ashley Handlery

Title: Trustee

Letter from Austin Wilson, Aperio to Brain Anderson, CNX, which included an attachment / letter from Ms. Ashley Handlery affirming her authority to file a resolution and authorizing Proxy Impact to act on her behalf.

12/22/2022 | 12:35:09 PM PST

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DocuSigned by:

Ashley Handlery
Board Director
Handlery Hotels Inc

RE: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

WA

Wilson, Austin (Aperio) <Austin.Wilson@blackrock.com>

To:

- Anderson, Brian (Legal) <BrianAnderson@cnx.com>;
- Michael Passoff

Cc:

- Reyes, Alexander <AlexanderReyes@cnx.com>

Thu 12/22/2022 12:42 PM

To_Whom_It_May_Concern.docx.pdf



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Sent: Tuesday, December 20, 2022 5:19 PM

To: Michael Passoff <michael@proxyimpact.com>

Cc: Wilson, Austin (Aperio) <Austin.Wilson@blackrock.com>; Reyes, Alexander <AlexanderReyes@cnx.com>

Subject: Re: [EXTERNAL] Re: Proxy Impact Proposal on behalf of Handlery Hotels Inc.

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