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

DIVISION OF
CORPORATION FINANCE

March 7, 2023

Paul L. Choi
Sidley Austin LLP

Re: Abbott Laboratories (the "Company")
Incoming letter dated March 1, 2023

Dear Paul L. Choi:

This letter is in response to your correspondence dated March 1, 2023 concerning the shareholder proposal (the "Proposal") submitted to the Company by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. On February 27, 2023, we issued a no-action response expressing our informal view that the Company could not exclude the Proposal from its proxy materials in reliance on Rule 14a-8(i)(2). You have asked us to reconsider our position. After reviewing the information contained in your correspondence, we find no basis to reconsider our position.

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,

Erik Gerding
Director, Division of
Corporation Finance

cc: John Chevedden

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March 1, 2023

By Email

Shareholderproposals@sec.gov
Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Request for Reconsideration – Abbott Laboratories – Shareholder Proposal Submitted by Mr. John Chevedden

Dear Ladies and Gentlemen:

On behalf of Abbott Laboratories ("Abbott" or the "Company"), we are writing to respectfully request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission" or the "SEC") reconsider its response on February 27, 2023, denying Abbott no-action relief with respect to a proposal submitted on October 2, 2022 (together with the supporting statement, the "Proposal") by Mr. John Chevedden (the "Proponent") relating to the proxy materials for Abbott's 2023 annual shareholders' meeting (the "2023 Proxy Materials"). Abbott expects to file its definitive proxy statement with the SEC on or about March 17, 2023. We note that Abbott plans to provide final signoff to print its proxy materials on March 7, 2023, and we respectfully request that the Staff make a determination prior to that date.

Abbott believes that it provided a legal opinion satisfying the requirements of Rule 14a-8(j)(2)(iii) and consistent with the Staff's guidance in *Staff Legal Bulletin No. 14B* (September 15, 2004) ("SLB 14B") indicating that implementation of the Proposal would cause Abbott to violate Illinois law. As a result, the Company believes that this Proposal warrants exclusion under Rule 14a-8(i)(2). Further, if the Proposal were to be included in the 2023 Proxy Materials and receive majority support from the shareholders, Abbott's Board of Directors (the "Board") would be in a position of having to reject the expressed will of its shareholders, because it will not approve an action that it believes would violate Illinois law based on advice of counsel.

Pursuant to *Staff Legal Bulletin No. 14D* (Nov. 7, 2008), this letter and its exhibit are being submitted to *shareholderproposals@sec.gov*.

ARGUMENT

The Proposal May be Excluded Under Rule 14a-8(i)(2) Because Implementation of the Proposal Would Cause the Company to Violate Illinois Law, and the Company has Provided an Unqualified and Uncontested Legal Opinion in Support of this Determination.

A. Abbott's No-Action Request Included a Legal Opinion from Counsel Admitted in the Relevant Jurisdiction that Comports with the Staff's Guidance in SLB 14B.

Rule 14a-8(i)(2) permits the omission of a shareholder proposal that would, if implemented, cause a company to violate applicable law. Under Rule 14a-8(j)(2)(iii), a company must provide "[a] supporting opinion of counsel when [the reasons for exclusion] are based on matters of state or foreign law." Abbott provided a legal opinion regarding Illinois law from Sidley Austin LLP attached to its initial request for no-action relief as Exhibit B thereto (the "Illinois Law Opinion"). For your convenience, we have also attached the Illinois Law Opinion as Exhibit A hereto.

The Illinois Law Opinion provided, without qualification or limiting language, that "it is [Sidley Austin LLP's] opinion that the Proposal, if implemented, would cause Abbott to violate Illinois law." The opinion was also submitted by counsel licensed to practice law in Illinois, the jurisdiction where the law is at issue, as required by SLB 14B.

SLB 14B also provides that in reviewing an opinion of counsel, the Staff will "consider the extent to which the opinion makes assumptions about the operation of the proposal that are not called for by the language of the proposal." The Illinois Law Opinion takes the Proposal at face value and does not make any assumptions about its operation. Rather, the Illinois Law Opinion provides for a statutory interpretation of Section 7.05 of the Illinois Business Corporation Act (the "IBCA"), based on the plain language of the statutory provision, as well as a review of the Model Business Corporation Act's history of revisions and comparisons to similar special meeting provisions in other states.

The analysis in the Illinois Law Opinion is also consistent with the Staff's guidance in SLB 14B that "the company and its counsel should consider whether the law underlying the opinion of counsel is unsettled or unresolved and, whenever possible, the opinion of counsel

should cite relevant legislative authority or judicial precedents regarding the opinion of counsel." In this instance, the Illinois Law Opinion does not include citations to judicial precedents, because, after conducting thorough research of Illinois case law, we are not aware of any relevant judicial precedent. The Illinois Law Opinion states: "Illinois courts have not addressed whether corporations may establish a threshold for shareholders to call a special meeting that is below the 20 percent threshold set in the IBCA. Therefore, we look to the text of the IBCA, interpreted in accordance with the principles of statutory construction laid out by the Illinois Supreme Court." Similarly, the Illinois Law Opinion does not include a discussion of legislative authority, because, after conducting thorough research of the relevant legislative history, we were unable to locate any relevant statements of legislative intent.

B. The Proponent Did Not Submit a Legal Opinion Asserting an Alternative Interpretation of Illinois Law.

SLB 14B provides that "[s]hareholder proponents who wish to contest a company's reliance on an opinion of counsel as to matters of state or foreign law may, but are not required to, submit an opinion of counsel supporting their position." The Proponent did not submit a conflicting opinion suggesting that implementation of the Proposal would *not* cause Abbott to violate Illinois law. As a result, no other opinion of counsel with a contradictory interpretation of Illinois law has been provided to the Staff for its consideration.

Rather than submitting a legal analysis regarding the interpretation of Illinois law, the Proponent has merely noted that Abbott did not raise this argument in its request for no-action relief relating to the Proponent's proposal calling for the same 10% special meeting threshold last proxy season. However, that is irrelevant to Abbott's request for no-action relief with respect to the Proposal. Abbott's Board reviewed the results of the 2022 annual shareholders' meeting, including the significant shareholder support received by the Proponent's proposal. Abbott evaluated amending its bylaws to lower the required ownership threshold to call a special meeting and, with the advice of counsel, determined that doing so would violate Illinois law.

C. Abbott Is Not Aware of Any Other Public Illinois Corporations that Provide for a Shareholder Special Meeting Threshold Below the Statutory Minimum Set Forth in IBCA Section 7.05.

Abbott is aware of five other public companies that are presently incorporated in Illinois—Lifeway Foods, Inc., Midland States Bancorp, Inc., Morningstar, Inc., W.W. Grainger, Inc. and Wintrust Financial Corporation. None of these companies has a bylaw provision that

provides for a requisite percentage ownership for shareholders to call a special meeting that is lower than the statutory minimum prescribed by IBCA Section 7.05. In fact, like Abbott, all five of these other Illinois-incorporated public companies use language in the special meeting provisions of their bylaws that tracks the statutory minimum prescribed by IBCA Section 7.05 by referring to a requisite ownership percentage of holders of "not less than" one-fifth or 20% of the outstanding shares entitled to vote. The absence of lower special meeting thresholds among other publicly-traded Illinois corporations is consistent with the opinion of counsel provided in the Illinois Law Opinion that Section 7.05 of the IBCA provides for a 20 percent minimum threshold.

As a result, Abbott respectfully asks that the Staff reconsider its position in light of the Illinois Law Opinion, which is substantiated by the market practice of all other Illinois-incorporated public companies, and the absence of any other interpretation of Illinois law provided by the Proponent.

If the Proposal Were To Receive Majority Support from Abbott's Shareholders, Abbott Would Be Forced into the Position the SEC Rules Intend to Avoid.

The reason Rule 14a-8(i)(2) provides a company with the ability to exclude a shareholder proposal that would cause it to violate state law is to avoid a situation where a company is forced to include proposals for a shareholder vote that it cannot lawfully implement. Exchange Act Release No. 34-12999 (Nov. 22, 1976) provided that "it does not appear appropriate to allow the inclusion in proxy materials of any proposal which, if implemented, would violate an applicable law." If the Proposal were to be submitted to, and receive majority support from, Abbott's shareholders at Abbott's 2023 annual shareholders' meeting, Abbott's Board would be forced to reject the expressed will of its shareholders because it will not approve actions that would violate Illinois law based on advice from counsel. Accordingly, it would not serve any shareholder interest to require Abbott to include the Proposal in its 2023 Proxy Materials and allow the Proposal to be presented at its 2023 annual shareholders' meeting.

CONCLUSION

For the foregoing reasons, on behalf of Abbott, we respectfully request that the Staff reconsider its position and concur that it will not recommend any enforcement action to the Commission if the Proposal is omitted from Abbott's 2023 Proxy Materials for the reasons described in this letter. As noted above, Abbott plans to provide final signoff to print its proxy

materials on March 7, 2023, and we respectfully request that the Staff make a determination prior to that date.

If the Staff has any questions, or if for any reason the Staff does not agree that Abbott may omit the Proposal from its 2023 Proxy Materials, please contact Sonia Barros at (202) 736-8387 or sbarros@sidley.com or me at (312) 853-2145 or pchoi@sidley.com.

Sincerely yours,

Paul L. Choi

cc: Mr. John Chevedden ([redacted])

Exhibit A

Illinois Law Opinion

See attached.

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December 16, 2022

Abbott Laboratories
100 Abbott Park Road
Abbott Park, IL 60064

Re: Shareholder Proposal Submitted by Mr. John Chevedden

Ladies and Gentlemen:

This letter is in response to your request for our opinion regarding a shareholder proposal (the "Proposal") submitted to Abbott Laboratories ("Abbott") by Mr. John Chevedden. Specifically, you have requested our opinion as to whether the Proposal, if implemented, would cause Abbott to violate Illinois law.

I. The Proposal

The Proposal requests that Abbott amend its appropriate company governing documents (in this case, the bylaws) to lower the minimum percentage of shares required for shareholders to call a special meeting from 20 percent of outstanding common stock to 10 percent of outstanding common stock.

The relevant text of the Proposal reads:

> Shareholders ask our board to take the steps necessary to amend the appropriate company governing documents to give the owners of a combined 10% of our outstanding common stock the power to call a special shareholder meeting.

Abbott is an Illinois corporation subject to the Illinois Business Corporation Act ("IBCA") of 1983. It is our opinion that the Proposal, if implemented, would cause Abbott to violate Illinois law because the IBCA establishes a strict 20 percent minimum threshold for shareholders to call a special meeting and does not contain any language that would authorize a corporation to establish a lower threshold. Our reasoning is set forth below.

II. The Proposal, if Implemented Would Cause Abbott to Violate Illinois Law

A. Text of the Illinois Business Corporation Act

Illinois courts have not addressed whether corporations may establish a threshold for shareholders to call a special meeting that is below the 20 percent threshold set in the IBCA. Therefore, we look to the text of the IBCA, interpreted in accordance with the principles of statutory construction laid out by the Illinois Supreme Court. The text of the IBCA establishes that, for shareholders to call a special meeting, approval by at least 20 percent of all the outstanding shares entitled to vote at the meeting is required, and corporations may not establish a lower threshold.

The relevant provision of the IBCA states that:

> Special meetings of the shareholders may be called by the president, by the board of directors, **by the holders of not less than one-fifth of all the outstanding shares entitled to vote on the matter for which the meeting is called** or by such other officers or persons as may be provided in the articles of incorporation or the by-laws.

805 ILCS 5/7.05 (emphasis added). Under Illinois law, "[t]he primary objective of statutory construction is to ascertain and give effect to the true intent of the legislature. … The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *People v. Casler*, 2020 IL 125117, ¶ 24. The text of the IBCA establishes that "**not less than** one-fifth" of shares entitled to vote at the special meeting may approve calling the meeting. The plain and ordinary meaning of this statutory provision thus establishes that one-fifth of shares is a minimum requirement, and corporations organized under the laws of Illinois cannot permit less than one-fifth of shares to call a special meeting.

The IBCA's provision for meetings called "by such other officers or persons as may be provided in the articles of incorporation or the by-laws" does not alter the plain meaning of the text. According to the Illinois Supreme Court, when interpreting statutes, "[a] court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *Casler* at ¶ 24. To read the statutory language regarding "such other officers or persons" to permit a corporation to hold special meetings called by less than one-fifth of shares—for example, by seeking to include shareholders as "other officers or persons"—would fail to understand the statute as a coherent whole. Such an interpretation would effectively write out "not less than" from the statute since, on that interpretation, any corporation could simply ignore the "not less than" requirement and amend its bylaws or charter to allow a special meeting to be called by as few shares as it desired.

B. Comparisons to the Model Business Corporation Act and Approaches in Other States

A review of the Model Business Corporation Act's history of revisions, as well as comparisons to similar provisions in other states, both provide further support for this interpretation of the IBCA. The Model Business Corporation Act is a model act drafted and periodically amended by the Corporate Laws Committee of the Business Law Section of the American Bar Association (Committee). Versions of the MBCA have been adopted by numerous jurisdictions, and the MBCA provides an important reference for the promulgation of corporate statutes.

The IBCA was enacted in 1983. The text of the law as originally enacted included the "not less than one fifth" language. P.A. 83-1025 § 7.05. At that time, the Model Business Corporation Act ("MBCA") also fixed a minimum percentage for the number of shares required to call a special meeting. MODEL BUSINESS CORPORATION ACT ANNOTATED, 2013-2014 Edition, Vol. 2, Ch. 7 at 12-13 (noting that the 1969 Model Act provided that "holders of not less than 10% of the voting shares…could call a special meeting"). In 1996, the MBCA was amended to explicitly authorize a corporation to establish a shareholder vote threshold for calling a special meeting that was lower than the statutory minimum. MBCA § 7.02(a)(2) ("[T]he articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25% of all the votes entitled to be cast on any issue proposed to be considered."). This addition, adopted 13 years after the IBCA's enactment, implies that prior language setting a minimum percentage of shares required to call a special meeting—such as the language in the IBCA and the pre-1996 MBCA—was something that could not be varied, whether by amendment to the articles of incorporation or otherwise. To understand the language otherwise would render superfluous the 1996 addition to the MBCA permitting corporations to "fix a lower percentage."

Moreover, as demonstrated by the 1996 MBCA, it is clear how a statute can provide corporations with the authority to establish a shareholder vote threshold for calling a special meeting that is below the statutory minimum. A number of states have done just that. *See e.g.* D.C. Code Ann. §§ 29-305.02 (providing that "the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25% of all the votes entitled to be cast on any issue proposed to be considered"); Ga. Code Ann. § 14-2-702 (allowing special meetings to be called by "such greater or lesser percentage as may be provided in the articles of incorporation or bylaws"); Mass. Gen. Laws Ann. Ch. 156D, § 7.02 (setting a 40 percent minimum "unless otherwise provided in the articles of organization or bylaws"). *See also Olson v. Wells Fargo Bank, N.A.*, 961 F. Supp. 2d 1149, 1158 n.8 (C.D. Cal. 2013) (noting the difference between Cal. Corp. Code § 600(d) where "special meetings may be called by shareholders 'entitled to cast not less than 10 percent of the votes at the meeting'" and Del. Gen. Corp. Law § 211(d) where "special meetings may be called as 'authorized by the certificate of incorporation or by the

bylaws'"). The Illinois legislature, in contrast, has not adopted such language,[1] instead maintaining a clear statutory minimum with no room for individual corporations to set a threshold below that minimum.

III. Conclusion

Based upon and subject to the foregoing, it is our opinion that the Proposal, if implemented, would cause Abbott to violate Illinois law.

Very truly yours,

Sidley Austin LLP

[1] This stands in contrast to other sections of the IBCA, where the Illinois legislature did explicitly provide for a means of deviating from a statutorily established requirement. *See, e.g.*, 805 ILCS 5/10.20 ("The articles of incorporation of a corporation may supersede the two-thirds vote requirement of subsection (c) by specifying any smaller or larger vote requirement…"); 805 ILCS 5/11.20 (similar); 805 ILCS 5/11.60 (similar); 805 ILCS 5/12.15 (similar). Note, these statutory provisions also contain "not less than" language to establish a minimum threshold, demonstrating the legislature's intent to use "not less than" language to establish a hard floor, even where it is otherwise allowing for variation to a requirement.

JOHN CHEVEDDEN
PII
[redacted]

March 6, 2023

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

 # 3 Rule 14a-8 Proposal
Abbott Laboratories (ABT)
Special Shareholder Meeting Improvement
John Chevedden

Ladies and Gentlemen:

This is a counterpoint to the March 1, 2023 request for reconsideration.

Page 4 of this letter has this heading:

"If the Proposal Were To Receive Majority Support from Abbott's Shareholders, Abbott Would Be Forced into the Position the SEC Rules Intend to Avoid."

This heading fails to address the second sentence of the rule 14a-8 proposal:

"One of the main purposes of this proposal is to give all shareholders the right to formally participate in calling for a special shareholder meeting regardless of length of stock ownership to the fullest extent possible."

Sincerely,

John Chevedden