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

DIVISION OF
CORPORATION FINANCE

March 16, 2026

Kevin Greenslade
Hogan Lovells US LLP

Re: Dell Technologies Inc. (the "Company")
Incoming Letter dated February 24, 2026

Dear Kevin Greenslade:

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

The Company represents that it has a reasonable basis to exclude the Proposal. Based solely on that representation, we will not object if the Company excludes the Proposal from its proxy materials.

Copies of all of the correspondence on which this response is based will be made available on our website.

Sincerely,

Division of Corporation Finance
Office of Chief Counsel

cc: Pia de Solenni
IWP Capital, LLC

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
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Rule 14a-8(b)
Rule 14a-8(f)(l)
Rule 14a-8(i)(3)
Rule 14a-8(i)(7)

February 24, 2026

VIA ONLINE SHAREHOLDER PROPOSAL FORM

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

Re: ***Dell Technologies Inc. – Proposal Submitted by IWP Capital, LLC on behalf of OneAscent Investments***

To the Staff of the Division of Corporation Finance:

On behalf of Dell Technologies Inc. (the "*Company*"), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, to notify the Securities and Exchange Commission (the "*Commission*") of the Company's intention to exclude a shareholder proposal (the "*Proposal*"), and a statement in support thereof (the "*Supporting Statement*"), submitted by IWP Capital, LLC ("*IWP Capital*") on behalf of OneAscent Investments (the "*Proponent*") from the Company's proxy statement and form of proxy (together, the "*2026 Proxy Materials*") to be distributed to the Company's shareholders in connection with its 2026 annual meeting of shareholders (the "*2026 Annual Meeting*").

In accordance with the Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season released on November 17, 2025 (the "*Staff Statement*") the Company respectfully requests confirmation that the staff of the Division of Corporation Finance (the "*Staff*") will not object if the Company omits the Proposal from the 2026 Proxy Materials for the reasons discussed below. In this regard, the Company

represents that it has a reasonable basis to exclude the Proposal based on the provisions of Rule 14a-8 and prior published guidance, as described in further detail below.

In accordance with Staff guidance and the Staff Statement, this letter is being submitted using the Staff's online Shareholder Proposal Form. Pursuant to Rule 14a-8(j), a copy of this submission also is being sent to the Proponent. Rule 14a-8(k) and Staff Legal Bulletin No. 14D provide that a shareholder proponent is required to send to the Company a copy of any correspondence the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent should concurrently furnish a copy of that correspondence to the undersigned on behalf of the Company by e-mail.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (October 18, 2011), we ask that the Staff provide its response to this request to the undersigned via e-mail at the e-mail address noted in the last paragraph of this letter.

The Company currently expects to file its definitive 2026 Proxy Materials with the Commission on or around May 15, 2026, at least 80 days after the date of this letter.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by shareholders at the 2026 Annual Meeting:

> **Resolved:** Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary and confidential information, evaluating the reputational, human capital, operational, legal, and other relevant risks of using Benevity for its employee-gift match program.

A copy of the Proponent's complete submission, including the Proposal and the Supporting Statement, is attached hereto as Exhibit A.

BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2026 Proxy Materials pursuant to:

- Rules 14a-8(b)(1)(i) and 14a-8(f)(1) because the Proponent failed to provide, within fourteen (14) days of receipt of the Company's proper request, the requisite proof of continuous stock ownership in accordance with Rule 14a-8(b)(1);

- Rule 14a-8(i)(3) because the Proposal is materially false and misleading in violation of Rule 14a-9; and

- Rule 14a-8(i)(7) because the Proposal pertains to the ordinary business of the Company and seeks to impermissibly micromanage the Company.

The Proposal May be Excluded Pursuant to Rules 14a-8(b)(1)(i) and 14a8(f)(1) Because the Proponent Failed to Establish the Requisite Eligibility to Submit the Proposal

The Proposal was received by the Company, dated January 23, 2026. The submission package included a cover letter from the Proponent stating that it "has continuously held at least $25,000 worth of the Company's securities entitled to vote on the proposal, for at least one year." The Proponent's cover letter also provided an authorization for IWP Capital to act as the Proponent's representative with respect to "any and all aspects" of the Proposal, including "handling any correspondence" related thereto. A cover letter submitted by IWP Capital on behalf of the Proponent stated that "A proof of ownership letter attesting to the Proponent's ownership of the shares as of the date of this proposal's submission is forthcoming," and requested that correspondence relating to the Proposal be sent to an e-mail address and mailing address for IWP Capital. However, no evidence or proof of ownership of shares was provided and, after reviewing its records, the Company was confirmed that the Proponent was not a registered owner of the Company's common stock.

Consequently, on February 6, 2026, the Company timely sent a letter to IWP Capital, via email and Federal Express to the addresses specified in its cover letter, in accordance with Rule 14a-8(f)(1), notifying IWP Capital of the Proponent's failure to comply with the eligibility and procedural requirements of Rule 14a-8 pertaining to its ownership of shares of the Company's common stock (the "*Deficiency Notice*"). The Deficiency Notice identified the deficiency, explained the proof of ownership requirements of Rule 14a-8(b)(1) and how the Proponent could cure the deficiency, and requested proof of ownership to be postmarked or transmitted to the Company no later than 14 days after receipt of the Deficiency Notice, or February 20, 2026. A copy of the Deficiency Notice is attached hereto as Exhibit B. The Deficiency Notice also attached a copy of Rule 14a-8, including Rule 14a-8(b), and Staff Legal Bulletin Nos. 14F (Oct. 18 2011) and 14G (Oct. 16, 2012). To date, the Proponent has not provided the requested proof of ownership, and has not had any follow up correspondence or communication with the Company.

Rule 14a-8(b)(1)(i) provides, in part, that to be eligible to submit a proposal for an annual or special meeting, a stockholder proponent must satisfy one of the ownership requirements by continuously having held either: at least (A) $2,000 in market value of the Company's securities entitled to vote on the proposal for at least three years; (B) $15,000 in market value of the Company's securities entitled to vote on the proposal for at least two years; or (C) $25,000 in market value of the Company's shares entitled to vote on the proposal for at least one year (collectively, the "*Ownership Requirement*"). Rule 14a-8(f)(1) provides that a company may

exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the Ownership Requirement of Rule 14a-8(b).

The Staff has consistently concurred in the exclusion of proposals under Rule 14a-8(b) and Rule 14a-8(f) where proponents failed to provide adequate proof of ownership within the 14-day period to respond to a company's timely notice of deficiency. *See, e.g., Marvell Technology, Inc.* (April 22, 2024) (concurring in exclusion of a proposal where proof of ownership was provided 17 days following receipt of the company's timely deficiency notice); *General Motors Co.* (April 4, 2023) (concurring in exclusion of a proposal where proof of ownership was provided 15 days following receipt of the company's timely deficiency notice); and *Walgreens Boots Alliance, Inc.* (November 8, 2022) (concurring in exclusion of a proposal where proof of ownership was provided 16 days following receipt of the company's timely deficiency notice).

To date, the Proponent has not provided a written statement verifying that the Proponent meets the Ownership Requirement for at least the requisite period preceding and including January 23, 2026. Accordingly, consistent with the precedent noted above, the Proposal may be excluded pursuant to Rule 14a-8(b)(1)(i) and Rule 14a-8(f)(1).

The Proposal May be Excluded Pursuant to Rule 14a-8(i)(3) Because it is Materially False and Misleading in Violation of Rule 14a-9

A shareholder proposal may be excluded under Rule 14a-8(i)(3) if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in a company's proxy materials. *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("*SLB 14B*"). Rule 14a-9(a) prohibits any statement that is "false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." The Staff has recognized that a proposal may be excluded pursuant to Rule 14a-8(i)(3) if "the company demonstrates objectively that a factual statement is materially false or misleading." SLB 14B.

In accordance with SLB 14B, the Staff has permitted exclusion of proposals under Rule 14a-8(i)(3) where statements made in the supporting statements to proposals were false or misleading under Rule 14a-9. *See, e.g., Ferro Corp.* (Mar. 17, 2015) (permitting exclusion under Rule 14a-8(i)(3) of a proposal that mischaracterized certain facets of Ohio and Delaware corporate law, noting that the company had "demonstrated objectively that certain factual statements in the supporting statement are materially false and misleading such that the proposal as a whole is materially false and misleading"); and *Entergy Corp.* (Feb. 14, 2007) (permitting exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board adopt a policy giving shareholders the opportunity to vote on an advisory management resolution to approve the compensation committee report where the supporting statement made objectively false statements regarding executive compensation at the company, director committee membership and director stock ownership).

Since the beginning of 2025, the Staff has granted no-action relief in connection with three separate proposals that are virtually identical to the Proposal on the basis that such proposals contained materially false and misleading statements and are therefore excludable under Rule 14a-8(i)(3). *See Wells Fargo & Company* (Mar. 5, 2025); *American Express Company* (Mar. 12, 2025); and *BlackRock, Inc.* (Mar. 27, 2025) (in each case, permitting exclusion under Rule 14a-8(i)(3) of virtually identical proposals and expressing the Staff's view that the proposal "is materially false and misleading"). Just as the proposals in Wells Fargo, American Express and BlackRock, the Proposal is materially false and misleading in a manner that would materially impact shareholders' views of the Proposal. Specifically, the underlying theme and premise of the Proposal is that the Company is engaging in religious discrimination against certain of its employees because it allegedly excludes religious charities from its employee gift matching program due to the charities' religious status. However, none of the criteria for eligibility in the Company's employee gift matching program are based on religious status and, in fact, many religious and faith-based organizations are included in the program.

Repeating many of the same statements that the Staff found to be "materially false and misleading" in the proposals underlying the abovementioned precedents, the entire theme and premise of the Proposal's resolution and supporting statement is that the Company is engaging in illegal discrimination against certain of its employees by excluding religious charities from its employee gift match program due to the charities' religious status. This false impression is materially false and misleading in violation of Rule 14a-9.

The supporting statement implies that the operation of the Company's employee gift matching program does not "[r]espect[] diverse religious views", states that it "exclude[s] or threaten[s] to exclude religious organizations from [its] employee-match program[]", and requests that the Board review its policy to ensure "Dell's gift-match program supports religious freedom and expression in its workforce." It also states that the third-party donation processor of Dell's gift-match program "engages in discrimination" against "mainstream charities." However, to be eligible under the Company's employee gift matching program, as serviced by Benevity, Inc., a nonprofit organization must complete a self-certification form attesting to the fact that the organization itself does not discriminate on the basis of age, race, sex, disability, religion, ethnic or national origin or sexual orientation. The organization also must be recognized as a non-profit, tax-exempt organization by the appropriate governing body (e.g., the IRS in the United States). Under these criteria, religious and faith-based organizations that focus on social issues such as education or poverty are among the many organizations that are eligible to receive matching contributions under the Company's employee gift matching program.

Further, the Proposal is materially false and misleading in the way it mischaracterizes the law. Like the proposals underlying the abovementioned precedents, the Proposal cites the Supreme Court's decisions in Groff and Muldrow to support its claim that the Company is legally required to match employee gifts to any and all religious charities. That is not the case. Neither case establishes that employee gift-matching programs are among the benefit programs entitled to the "religious protections" afforded employees by law. As the Company's employee

gift matching program does not distinguish between or among religions, the program is lawful and any suggestion to the contrary is materially false and misleading.

Taken together, the Proposal's resolution and supporting statement is clearly premised on, and conveys to shareholders, objectively false and misleading statements that would materially impact shareholders' views of the Proposal in violation of Rule 14a-9.

The Proposal May be Excluded Under Rule 14a-8(i)(7) Because it Relates to the Company's Ordinary Business Operations and Seeks to Micromanage the Company

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "*1998 Release*"), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As demonstrated below, the Proposal implicates the first consideration.

Framing a proposal as a request for an evaluation of risk, or as a request for a report on risk assessment, does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company. *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983). When evaluating a proposal that relates to a company's assessment of risk, the Staff has focused on the subject matter to which the risk pertains, or that gives rise to the risk, to determine whether the proposal relates to the company's ordinary business. *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009). The Staff has consistently permitted exclusion of shareholder proposals under Rule 14a-8(i)(7) requesting an assessment of risks when the underlying subject matter concerns the ordinary business of the company.

The Proposal is excludable because it relates to the Company's workforce management and relationships with and contributions to a specific type of organization, both fundamentally issues of ordinary business

Taken together, the Proposal's resolved clause and supporting statement focus on the Company's hiring and retention practices and its workforce management, including the benefit programs it offers, all of which are ordinary business matters. The Staff has consistently concurred in the exclusion under Rule 14a-8(i)(7) of shareholder proposals that relate to management of a company's workforce, including employee compensation and benefit matters. *See Dollar Tree, Inc.* (May 2, 2022) (concurring with the exclusion of a proposal that requested a report explaining how the company's business strategy and incentives will enable competitive employment standards, including wages and benefits, finding that the proposal was related to

ordinary business matters). A shareholder proposal that focuses on even just one aspect of non-executive employee compensation and benefits, such as stock-based incentives, relates to ordinary business operations and is thus excludable. *See, e.g., Amazon.com, Inc.* (Apr. 8, 2022) (concurring with the exclusion of a proposal that requested an annual report assessing the distribution of stock-based incentives throughout the company's worldwide workforce, finding that the proposal was related to ordinary business operations); *Walmart Inc.* (Mar. 12, 2021) (concurring with the exclusion of a proposal that requested a report on the feasibility of providing two weeks of paid sick leave as an employee benefit); *McDonald's Corp.* (Feb. 19, 2021) (concurring with the exclusion of a proposal that requested a report on the feasibility of extending the paid sick leave policy adopted in response to COVID-19 as a standard employee benefit); and *Exelon Corp.* (Feb. 21, 2007) (concurring with the exclusion of a proposal to eliminate pension plan offsets). Because the Proposal focuses on nonexecutive employee benefits programs and their administration, the Company may exclude it from the 2026 Proxy Materials pursuant to Rule 14a-8(i)(7).

In addition, the Staff has consistently concurred that proposals that focus on a company's charitable contributions, including its practices with respect to matching employees' charitable contributions, may be excluded pursuant to Rule 14a-8(i)(7) because such contributions are ordinary business matters. *See Netflix, Inc.* (Apr. 9, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested an annual report listing and analyzing charitable contributions made or committed during the prior year). The Staff has found that selecting from a range of communities and social issues to support, choosing beneficiaries and allocating financial and labor resources are ordinary business issues for management. *The Walt Disney Co.* (Nov. 20, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company preserve the policy of acknowledging the Boy Scouts of America as a charitable organization to receive matching contributions).

Further, the Staff has permitted companies to exclude shareholder proposals under Rule 14a-8(i)(7) when, viewed in their entirety, those proposals focused primarily on relationships with or contributions made to specific types of organizations. Accordingly, a proposal focused primarily on relationships with or contributions made to specific organizations or types of organizations is excludable under Rule 14a-8(i)(7) as relating to ordinary business operations. *See AT&T Inc.* (Jan. 15, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report listing and analyzing charitable contributions where the supporting statement referred to "highly divisive" charitable commitments); *Facebook, Inc.* (Mar. 26, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report listing and analyzing charitable contributions where the supporting statement referred to "highly divisive" charitable commitments, including contributions to specific organizations that supported certain racial justice movements); *JPMorgan Chase & Co.* (Feb. 28, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting an annual report concerning the company's charitable contributions where the supporting statement referenced contributions to specific organizations as relating to "contributions to specific types of organizations"); and *PG&E Corp.* (Feb. 4, 2015) (permitting exclusion of a proposal requesting that the company form a committee to solicit feedback on the effect of anti-traditional family political and charitable contributions).

In this instance, the Proposal clearly focuses on (1) an aspect of the Company's strategy for attracting and managing its workplace—i.e., its employee gift matching program and (2) the Company's relationships with and contributions to a specific type of organization. Consistent with longstanding Staff precedents, both issues are complex and are impracticable for shareholders to decide how to resolve at an annual shareholders meeting. Accordingly, the Proposal should be excluded from the 2026 Proxy Materials pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

In addition, consistent with Staff Legal Bulletin No. 14M (Feb. 12, 2025), the mere reference to certain policy issues, without a Company-specific analysis, does not subject this Proposal to the "significant policy exception" under this prong of Rule 14a-8(i)(7). The social policy of freedom of religion, referenced in the supporting statement, is not significantly related to the Company's business, particularly in the context of its employee gift-matching problem, particularly because, as described in the section concerning Rule 14a-8(i)(3) above, a charity's religious status has no impact on whether it is eligible to receive contributions under the Company's employee gift match program. Thus, even if the Proposal may touch upon a significant policy issue, the Proposal's overwhelming concern with the interplay of the Company's hiring and retention practices and its workforce management and the Company's employee gift matching program, as well as the Proposal's focus on a specific type of organization, demonstrates that the Proposal's focus is on ordinary business matters.

* * *

CONCLUSION

Based on the foregoing analysis and representation, the Company respectfully requests that the Staff respond with a letter indicating that, based solely on the Company's representations, the Staff will not object if the Company excludes the Proposal from the 2026 Proxy Materials.

If the Staff has any questions with respect to the foregoing, please do not hesitate to contact me at kevin.greenslade@hoganlovells.com or (703) 610-6189.

Sincerely,

Kevin Greenslade

Enclosures

cc: Christopher Garcia, Dell Technologies Inc.
Pia de Solenni, SThD, IWP Capital, LLC

Exhibit A

Proponent's Submission

OneAscent
INVESTMENTS

23 Inverness Center Parkway
Birmingham, AL 35242

205.847.1343

info@oneascent.com

January 23, 2026

Attn: Corporate Secretary
Dell Technologies Inc.
One Dell Way
RR1-33
Round Rock, TX 78682

Authorization to File Shareholder Proposal and other Supplemental Information

Dear Corporate Secretary,

In accordance with Securities and Exchange Commission Rule 14a-8 (17 CFR § 240.14a-8)

1. I, Andy Manton, on behalf of OneAscent hereby authorize IWP Capital, LLC ("Representative") to file a shareholder proposal on behalf of OneAscent ("Proponent") with Dell Technologies Inc. ("the Company") for inclusion in the Company's 2026 proxy statement.

2. Proponent gives Representative authority to handle, on the Proponent's behalf, submitting the proposal and to otherwise act on Proponent's behalf for any and all aspects of the shareholder proposal, including drafting the proposal and handling any correspondence, meetings, or agreements with the Company. Proponent understands that the Proponent's name may appear on the Company's proxy statement as the filer of the aforementioned proposal, and that the media may mention the Proponent's name in relation to the proposal.

3. The proposal at issue relates to Report on Employee Charitable Gift Match

4. Proponent supports this proposal.

5. Proponent has continuously owned at least $25,000 worth of the Company's securities entitled to vote on the proposal, for at least one year and intends to continue holding the requisite amount of securities through the date of the Company's 2026 annual meeting of shareholders.

6. I am able to meet with the Company via teleconference under the time frame set forth in Rule 14a-8. I initially propose the following times for a telephone conference to discuss this proposal:

OneAscent
INVESTMENTS

23 Inverness Center Parkway
Birmingham, AL 35242

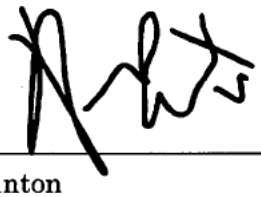
205.847.1343

info@oneascent.com

Meeting Time 1: Monday, February 16, 1 pm CT
Meeting Time 2: Tuesday, February 17, 130 pm CT

If these times prove inconvenient, please suggest some other times to meet. Feel free to contact me at [redacted] copying [redacted] so that we can determine the mode and method of communication.

Sincerely,



Andrew Manton
Chief Equity Strategist
Sr Portfolio Manager

IWP
CAPITAL, LLC
INVESTING WITH PURPOSE

201 Main Street · Suite 1198
Fort Worth, Texas · 76102

January 23, 2026

Attn: Corporate Secretary
Dell Technologies Inc.
One Dell Way
RR1-33
Round Rock, TX 78682

Re: Proposal regarding Report on Employee Gift Match

Dear Corporate Secretary,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Dell Technologies Inc. (the "Company") 2026 proxy statement to be circulated to Company shareholders in conjunction with the Company's 2026 annual meeting of shareholders. The Proposal is submitted under Rule 14a-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations (17 CFR § 240.14a-8). The proposal at issue relates to the subject described below.

Proponent:	OneAscent
Company:	Dell Technologies Inc.
Subject:	Report on Employee Gift Match

I submit the Proposal on behalf of, and with the permission of, OneAscent ("Proponent"), which has continuously held at least $25,000 worth of the Company's securities entitled to vote on the proposal, for at least for one year up to and including the date of submission and intends to continue holding the requisite amount of securities through the date of the Company's 2026 annual meeting of shareholders.

Under SEC staff interpretations of Rule 14a-8, Proponent initially proposes the following times for a teleconference meeting to discuss this proposal:

Meeting Time 1: Monday, February 16, 1 pm CT
Meeting Time 2: Tuesday, February 17, 130 pm CT

If these times are inconvenient, please suggest some other times to speak. Feel free to contact the proponent at amanton@oneascent.com and cc me at piads@iwpcapital.com so that we can determine the mode and method of that discussion.

A statement authorizing me to act on the Proponent's behalf and providing other supplemental information is attached. A proof of ownership letter attesting to the Proponent's ownership of the shares as of the date of this proposal's submission is forthcoming. Copies of correspondence or any request for a "no-action" letter may be sent to Pia de Solenni at 201 Main Street, Suite 1198, Fort Worth, TX 76102 or emailed to me at piads@iwpcapital.com.

Sincerely,

Pia de Solenni, SThD
Vice President, Corporate Engagement

Report on Employee Charitable Giving Match

Supporting Statement:

Respecting diverse religious views allows Dell Technologies ("Dell") to attract the most qualified talent, promote an inclusive business culture and fully engage its employees. One proven way to do that is by supporting employee philanthropy to a wide variety of charities that reflect employees' diverse interests. 60% of employees say that this gives them a greater sense of purpose at work.[1] Ninety-seven percent of employees want flexibility in where and how they give to causes they care about.[2] Yet 30% of employee donors say they do not give through workplace programs because the causes they care about are not made available by the employer.[3]

Excluding some religious charities from gift-match programs is driving much of this deficit. 37% of Americans give to religious organizations. They are among the largest recipients of donations.[4] Religious charities serve every vulnerable population, from prisoners to orphans and the homeless, have large footprints in healthcare and education, and provide all kinds of humanitarian relief both domestically and abroad.

Yet the 2025 edition of the Viewpoint Diversity Score Business Index found that 58% of scored companies exclude or threaten to exclude religious organizations from their employee-match programs.[5] This includes Dell, which uses a third-party platform, Benevity, to process donations for its employee gift-match program.[6] While not a blanket ban on donations to all religious charities, Benevity engages in discrimination by using the discredited Southern Poverty Law Center's hate map to screen out mainstream charities such as Alliance Defending Freedom, Focus on the Family, Turning Point USA, Moms For Liberty, and other Christian organizations.[7]

Recent Supreme Court decisions in *Groff v. DeJoy* and *Muldrow v. City of St. Louis*, as well as EEOC guidance[8] make clear that religious protections extend to all terms, conditions, and privileges of employment, including benefit programs. A

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[1] https://www.fidelitycharitable.org/about-us/news/86-percent-of-employees-say-employer-values-should-align-with-their-own.html#:~:text=60%25%20say%20that%20being%20a%20part%20of%20the%20program%20gives%20them%20a%20greater%20sense%20of%20purpose%20at%20work.

[2] https://doublethedonation.com/matching-gift-statistics/

[3] https://www.charities.org/facts-statistics-workplace-giving-matching-gifts-and-volunteer-programs/

[4] https://apnews.com/article/poll-charity-donations-philanthropy-giving-disaster-relief-4e20584934af6953a701960a85e2863c

[5] https://storage.googleapis.com/vds_storage/document/2025%20Business-Index.pdf

[6] https://www.dailysignal.com/2025/10/17/sneaky-way-corporate-america-blacklists-conservatives-how-some-fighting-back/; https://dell.benevity.org/useru/login.

[7] https://1792exchange.com/wp-content/uploads/2025/10/An-Open-Letter-to-Benevity.pdf; "Goodness Matters" (on file with Alliance Defending Freedom)

[8] https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work

recent memo from the White House Office of Personnel Management on religious liberty in the workforce[9] also signals a growing awareness of the need for employers to take affirmative steps to robustly protect and promote religious liberty in the workplace.

Some companies are responding to this shift. In January 2025 for example, Verizon updated its gift-match policy to allow employee donations to religious institutions to be matched on equal terms.[10] Morgan Stanley also recently disclosed similar gift-match policies.[11] Dell should review its gift-match policy, including the screening functions utilized by Benevity, to ensure that the SPLC's discriminatory hate map is no longer relied on, and Dell's gift-match program supports religious freedom and expression in its workforce.

Resolved: Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary and confidential information, evaluating the reputational, human capital, operational, legal, and other relevant risks of using Benevity for its employee-gift match program.

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[9] https://www.opm.gov/chcoc/latest-memos/protecting-religious-expression-in-the-federal-workplace.pdf

[10] https://x.com/Jeremy_Tedesco/status/1889443347548320185; https://www.verizon.com/about/responsibility/grant-requirements

[11] https://x.com/Jeremy_Tedesco/status/1889443347548320185

Exhibit B

Deficiency Notice

February 6, 2026

Via Email and Federal Express

Pia de Solenni, SThD
IWP Capital, LLC
201 Main Street
Suite 1198
Fort Worth, TX 76102
[redacted]

Dear Ms. de Solenni:

Dell Technologies Inc. (the "***Company***") has received your letter dated January 23, 2026, on behalf of OneAscent ("***OneAscent***"), including the shareholder proposal for inclusion in the proxy statement for the Company's 2026 Annual Meeting of Stockholders (the "***Submission***"). The Submission requests that the Company issue a report evaluating the reputational, human capital, operational, legal, and other relevant risks of using Benevity for its employee-gift match program. The purpose of this letter is to inform you that the Submission does not comply with the requirements of Rule 14a-8 under the Securities Exchange Act of 1934 and therefore is ineligible for inclusion in our proxy materials for our 2026 Annual Meeting of Stockholders. U.S. Securities and Exchange Commission ("***SEC***") regulations require us to bring the following deficiencies to your attention.

Failure to Establish Ownership for Requisite Period

In accordance with Rule 14a-8(f), we hereby notify you of the failure of OneAscent to comply with the eligibility and procedural requirements of Rule 14a-8 pertaining to ownership of shares of the Company's common stock.

As you know, Rule 14a-8(b) under the Securities Exchange Act of 1934 currently provides that to be eligible to submit a shareholder proposal, a proponent must submit sufficient proof of its continuous ownership of company shares. Thus, with respect to a proposal, Rule 14a-8 requires that a proponent demonstrate that it has continuously owned at least:

1) $2,000 in market value of the company's shares entitled to vote on the proposal for at least three years preceding and including the submission date;

2) $15,000 in market value of the company's shares entitled to vote on the proposal for at least two years preceding and including the submission date; or

3) $25,000 in market value of the company's shares entitled to vote on the proposal for at least one year preceding and including the submission date.

Our records do not list OneAscent as a registered holder of shares of the Company's common stock.

To comply with the requirement, please provide proof of beneficial ownership of the Company's common stock by either:

1. providing a written statement from the record holder(s) (which may be a DTC participant or an affiliate of a DTC participant) of the securities verifying that at least one of the ownership requirements listed above has been satisfied; or

2. providing a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or any amendments to those documents or updated forms, reflecting ownership of the requisite number or value of shares of the Company's common stock in satisfaction of at least one of the ownership requirements listed above.

The staff of the Division of Corporation Finance of the SEC has provided guidance to assist companies and investors with complying with Rule 14a-8(b)'s eligibility criteria. This guidance, contained in Staff Legal Bulletin No. 14F (October 18, 2011) and Staff Legal Bulletin No. 14G (October 16, 2012), clarifies that proof of ownership for Rule 14a-8(b) purposes must be provided by the "record holder" of the securities, which is either the person or entity listed on the company's stock records as the owner of the securities or a DTC participant (or an affiliate of a DTC participant). Thus, you will need to obtain the required written statement(s) from the DTC participant(s) through which the shares of Company common stock are held by OneAscent. If you are not certain whether a broker or bank is a DTC participant, you may check the DTC's participant list, which is currently available on the Internet at https://www.dtcc.com/client-center/dtc-directories.

If the broker or bank that holds OneAscent's securities is not on DTC's participant list, you will need to obtain proof of ownership from the DTC participant through which the securities are held. If the DTC participant knows the holdings of a broker or bank, but does not know the holdings of any of the Co-Filers, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, a Co-Filer satisfied at least one of the ownership requirements listed above - with one statement from the broker or bank confirming the required ownership, and the other statement from the DTC participant confirming the broker or bank's ownership. Please see the enclosed copies of Staff Legal Bulletin Nos. 14F and 14G for further information.

* * *

Please note that your response to cure the deficiencies noted above must be postmarked or transmitted no later than 14 calendar days from the date you receive this notice. Kindly provide the requested information to me via e-mail at James.Williamson@dell.com.

In accordance with SEC Staff Legal Bulletin Nos. 14 and 14B, a copy of Rule 14a-8, including Rule 14a-8(b), is enclosed for your reference. Also enclosed for your reference are the Submission along with copies of Staff Legal Bulletin Nos. 14F and 14G.

Please do not hesitate to call me at [redacted] if you have any questions.

Sincerely,

James Williamson
Vice President
Dell Technologies Inc.

Enclosures

cc: Dell Technologies Inc.
Richard J. Rothberg
Christopher A. Garcia

Hogan Lovells US LLP
Kevin K. Greenslade
Weston J. Gaines

§ 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 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) [*Expired* January 1, 2023; See SEC Release No. 34-89964; September 23, 2020.]

(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;

Note to paragraph (i)(2):

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

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

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

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

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

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

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

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

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

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

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

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

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

Note to paragraph (i)(9):

A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

Note to paragraph (i)(10):

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

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

(12) ***Resubmissions.*** If the proposal 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 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]

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

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

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

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks

that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

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

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

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

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

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

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

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

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

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

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

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

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

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement

that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

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

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

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

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

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

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

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

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

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the

Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Modified: Oct. 18, 2011

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.

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[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.

Modified: Oct. 16, 2012