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

DIVISION OF
CORPORATION FINANCE

January 12, 2016

McDara P. Folan, III
Reynolds American Inc.
folanm@rjrt.com

Re: Reynolds American Inc.
Incoming letter dated December 23, 2015

Dear Mr. Folan:

This is in response to your letter dated December 23, 2015 concerning the shareholder proposal submitted to RAI by Jonathan Kalodimos. We also have received a letter from the proponent dated January 3, 2016. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Jonathan Kalodimos
*** FISMA & OMB Memorandum M-07-16 ***

January 12, 2016

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Reynolds American Inc.
Incoming letter dated December 23, 2015

The proposal asks the board to adopt and issue a general payout policy that gives preference to share repurchases (relative to cash dividends) as a method to return capital to shareholders.

We are unable to concur in your view that RAI may exclude the proposal under rule 14a-8(i)(3). We are unable to conclude that the proposal is so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company in implementing the proposal, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Accordingly, we do not believe that RAI may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that RAI may exclude the proposal under rule 14a-8(i)(7). Accordingly, we do not believe that RAI may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

We are unable to concur in your view that RAI may exclude the proposal under rule 14a-8(i)(13). Accordingly, we do not believe that RAI may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(13).

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matter under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholders proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

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

RE: *Reynolds American Inc. Stockholder Proposal of Jonathan Kalodimos Exchange Act of 1934 – Rule 14a-8*

Ladies and Gentlemen:

This correspondence is in response to the letter sent by McDara P. Folan, III on behalf of Reynolds American Inc. (the "Company") on 12/23/2015 requesting that your office of the Securities and Exchange Commission (the "Commission") confirm that it will not recommend any enforcement action if the Company omits the shareholder proposal (the "Proposal") submitted by Jonathan Kalodimos, PhD from its 2016 proxy solicitation materials for its 2016 annual meeting.

The Company believes that the Proposal may be properly omitted from its proxy solicitation materials for its 2016 annual meeting under Rule 14a-8(i)(13) because the Proposal relates to specific amounts of dividends, Rule 14a-8(i)(7) because the Proposal deals with ordinary business operations, and Rule 14a-8(i)(3) because the Proposal is inherently vague and indefinite. I assert that the Company has read considerably past the plain language interpretation of the Proposal in order to concoct a straw man, and the Proposal should not be excludable pursuant to Rule 14a-8.

The Proposal is as follows:

"*Resolved:* Shareholders of Reynolds American Inc. ask the board of directors to adopt and issue a general payout policy that gives preference to share repurchases (relative to cash dividends) as a method to return capital to shareholders. If a general payout policy currently exists, we ask that it be amended appropriately."

Exclusion under Rule 14a-8(i)(13)

The Proposal requests the Company to adopt a policy that gives preference to one thing relative to another. According to Black's Law Dictionary (Abridged Eighth Edition) "preference" is "The act of favoring one person or thing over another; the person or thing so favored."[1] The Company has read past this plain language definition of "preference" and instead characterizes the Proposal as "on its face, it could be read to require share repurchases instead of cash dividends, and thus setting a specific amount of cash dividends — zero" (page 3, paragraph 3).

[1] It could be argued that Black's Law Dictionary (Abridged Eighth Edition) does not characterize the understanding of the word "preference" by the general investing public. A Google search of "definition of preference" results in Google providing the definition "a greater liking for one alternative over another or others." This definition is substantially similar to Black's Law Dictionary (Abridged Eighth Edition).

Making explicit the Company's mischaracterization of the Proposal is important. The act of favoring one thing relative to another (i.e. the definition of preference) does not create a mechanical link between those two things. In other words, having preference for one thing does not require a wholesale cessation of the other thing not having preference. The Company uses this mischaracterization to argue that the Proposal would require a specific amount of dividends, namely zero. I argue that the Company is reading past the plain language of the Proposal in order to develop a specific amount of acceptable dividends under a general payout policy that gives preference to share repurchases (relative to cash dividends) so the Company can in turn misattribute that specific amount of acceptable dividends to the Proposal.

I would further note, that the act of favoring one thing relative to another (which is the plain language definition of preference) does not create a mechanical link between share repurchases and cash dividends, and as such, does not propose a specific amount, range, or de facto equation. For example, I have a preference for hiking in the forest (relative to writing in my office). Despite having a preference for hiking in the forest, I spend considerably more time writing in my office than hiking in the forest; preferring to hike in the forest does not dictate the amount of time I spend writing in my office.[2] I evidence my preference for hiking in the forest (relative to writing in my office) by, after weighing the costs and benefits of each option, if I deem the two equivalent then I choose to go hiking in the forest.[3] Once again, I reiterate that I strongly disagree that the Proposal is excludable under Rule 14a-8(i)(13) because the Proposal does not seek a mechanical link between share repurchases and cash dividends and thus does not propose a specific amount, range or de facto equation.

Exclusion under Rule 14a-8(i)(7)

The Company asserts that under one characterization[4] of the Proposal (that is advantageous to the Company's no action request), the Proposal is excludable under Rule 14a-8(i)(7) because the Proposal deals with matters relating to "ordinary business." I assert that this argument is moot for two reasons. The first reason is, in response to a no action request from Sonoma West Holdings, Inc. (August 17, 2000) the staff at the Commission wrote:

> "We note that the proposal relates to the payments of dividends generally. The Division has found that the issue of whether to pay dividends does not involve "ordinary" business matters because the issue is extremely important to most security holders, and involves significant economic and policy considerations."

[2] By the Company's argument I should spend zero time writing in my office.
[3] If someone observes that I spend more time writing in my office than hiking in the forest and questions my preference for hiking in the forest, I could explain the facts and circumstances I face and explain how in light of those facts and circumstances my decisions are internally consistent with my preference for hiking in the forest.
[4] Page 4, interpretation number 2.

While the Proposal does not request the initiation of a dividend, like the proponent in Sonoma West Holdings, Inc., the Proposal subsumes the general issue, which I argue is an issue that is extremely important to most security holders and transcends the day to day operations of the Company; thus the Proposal should not be excludable under Rule 14a-8(i)(7). Further, the Proposal does not seek to micro-manage the inherently complex capital management and financing activities of the Company. While the actual process of returning a specified amount of capital may be complex in nature, the Proposal seeks a general payout policy and requests that the general payout policy have a certain feature, namely preference for share repurchases relative to cash dividends. Thus the Proposal relates to a complex issue but the Proposal should hardly be considered as probing too deeply into matters of a complex nature.

The second reason the Proposal should not be excludable under Rule 14a-8(i)(7) is that a reasonable person could consider general payout policy a significant social issue.[5] This is evidenced by two prominent Democratic presidential candidates expressly making share repurchases a part of their campaigns.[6] In analyzing this presidential campaign issue in the context of Hillary Clinton's campaign, Andrew Ross Sorkin[7] writes in The New York Times:

> "On its face, the issue may seem like a nonstarter. But a growing debate has emerged around the topic of buybacks that increasingly has Wall Street and corporate America worried."

and

> "[Hillary Clinton's] point tiptoes around a more explosive claim from Senator Elizabeth Warren and Senator Tammy Baldwin that buybacks might be a form of market manipulation. Both senators have urged the Securities and Exchange Commission to investigate the practice."

I assert that the topic of share repurchases, and by virtue general payout policy, is a significant social issue that has garnered substantial attention through national media outlets (The New York Times, The Wall Street Journal, Reuters, Forbes, The Harvard Business Review to name few) and is a topic of great importance to the general public as evidenced by prominent political figures urging the Commission to investigate the practice, and leading presidential candidates making the issue part of their campaigns. While the Proposal may be in disagreement with these prominent political figures on the role of share repurchases, it does not make the issue any less socially significant. As such, I believe the Proposal should not be excludable under Rule 14a-8(i)(7).

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[5] I am unaware of a strict, widely accepted definition of "social issue" but as a proxy for the widely accepted understanding of "social issue" I put forth Wikipedia's definition of social issue, which is "A social issue (also called a social problem or a social illness or even a social conflict) refers to an issue that influences and is opposed by a considerable number of individuals within a society."

[6] Examples of the issue being addressed by presidential candidates are available at https://www.bostonglobe.com/opinion/2015/06/12/bernie-sanders-the-war-middle-class/hAJUTAjWgupBLx4zAMh7nN/story.html and http://www.nytimes.com/2015/08/11/business/stock-buybacks-draw-scrutiny-from-politicians.html

[7] http://www.nytimes.com/2015/08/11/business/stock-buybacks-draw-scrutiny-from-politicians.html

Exclusion under Rule 14a-8(i)(3)

The Company argues that "preference" is inherently vague and indefinite so as to be inherently misleading. I argue that the Company's argument is meritless because:

1. The action the Proposal is seeking is clear. The action the Proposal is seeking is for the Company to adopt and issue a policy with a certain feature. This is an observable and concrete action.
2. The certain feature in the policy that the Proposal is seeking is described in a plain language fashion, using a well defined term that precisely describes the feature in the policy the Proposal is seeking.

To emphasize the second point, "prefer" is the 1,728th most frequently used word in the English corpus, right after "traffic", "notion", and "capture"; and "preference" is the 3,049th most frequently used word in the English corpus, right after "OK", "trace", and "appointment."[8] In effect, the Company is arguing that the shareholder base does not have an adequate command of the English language because the shareholder base does not understand how the Company is redefining the English language. This argument is troubling, and if it is permissible it sets a precedent for companies to redefine the English language as they see fit.

Further, the Company argues that because the Proposal does not dictate how the policy should be implemented, and leaves the implementation of the policy to the board's discretion, that the Proposal is inherently vague and indefinite. If the staff at the Commission concurs with this line of reasoning, it would place an impossible burden on all future proponents because a proposal is excludable under 14a-8(i)(7) if it attempts to micro-manage the implementation of a policy and is excludable under 14a-8(i)(3) if it leaves the implementation of a policy to the board. For example, if the Proposal is vague and indefinite because "[t]he Proposal is not clear as to whether such preference is dependent on certain conditions being met" (as the Company argues on page 4, item number 2), this defect could only be remedied by specifying a decision making framework for management that dictates what management is and is not allowed to consider in returning capital to shareholders. Such a proposal would almost certainly be excludable under 14a-8(i)(7).

Moreover, as argued above the action the Proposal seeks is observable and concrete; and the certain feature of the policy the Proposal is requesting is well defined. While the details of the implementation of the Proposal are necessarily left to the board, I believe that shareholders would have reasonable certainty as to the action the Proposal is requesting the Company to take even though the board is necessarily left discretion in the implementation.[9]

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[8] According to www.wordfrequency.info (affiliated with Brigham Young University) which is based on a corpus of 450 million words.

[9] To put the Company's argument in another context, suppose a proponent requests that a company adopts a bylaw that would allow shareholders who meet certain ownership thresholds to nominate candidates for directorships on a company's proxy materials. The proponent requests that the bylaw have certain general features such as ownership thresholds that require a shareholder to hold 3 percent of the company's stock for three years in order to qualify to nominate candidates. Under the argument put forth by the Company, because the proposal did not spell out every detail of the implementation of the proposal, including a technical definition of "3 percent" then the proposal is inherently vague and indefinite. For example, 3 percent of a company's common stock could be interpreted as (i) 3 percent of the common stock when the

Conclusion

In conclusion, the Company believes it can appropriately exclude the Proposal under Rule 14a-8(i)(13) because the Proposal relates to specific amounts of dividends, Rule 14a-8(i)(7) because the Proposal deals with ordinary business operations, and Rule 14a-8(i)(3) because the Proposal is inherently vague and indefinite. This response has systematically addressed each basis for exclusion and explained why I believe it would be inappropriate for the Company to omit the Proposal under each exclusion. Further, I believe that if the staff at the Commission concurs with the Company appropriately excluding the Proposal under the vague and indefinite argument put forth, the Commission would be placing an impossible burden on future proponents and would discourage the active participation of all shareholders, thereby discouraging shareholders to invest in capital markets. This may adversely affect the efficiency, competition, and capital formation (ECCF) of the financial markets, which I believe would not be in concurrence with the Commission's stated mission "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[10]

directors are nominated, (ii) 3 percent of the common stock over the entire three years, or (iii) 3 percent of the common stock at any point in a three year window. This could matter for companies that actively issue or repurchase common stock. Despite leaving this implementation decision to the board, the proposal should not be considered inherently vague or indefinite.

[10] https://www.sec.gov/about/whatwedo.shtml

McDara P. Folan, III
Senior Vice President, Deputy General
Counsel and Secretary

336-741-5162
336-728-4495 Fax
folanm@rjrt.com

December 23, 2015

VIA EMAIL AND OVERNIGHT COURIER

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

Re: *Reynolds American Inc.*
Stockholder Proposal of Jonathan Kalodimos
Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

Reynolds American Inc. (the "Company") intends to omit from its proxy statement and form of proxy for its 2016 annual meeting of shareholders (the "definitive Proxy Materials"), the proposal and supporting statement (the "Supporting Statement" and together with the proposal, the "Proposal") submitted to the Company by Jonathan Kalodimos (the "Proponent") on October 23, 2015 and received on October 27, 2015.

Pursuant to Rule 14a-8(j) under the Securities and Exchange Act of 1934, as amended (the "Exchange Act") and Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), the Company has submitted this letter to the Staff of the Securities and Exchange Commission (the "Commission") Division of Corporation Finance (the "Staff") no later than eighty (80) calendar days before it intends to file its definitive Proxy Materials with the Commission. The Company has made this submission via email at shareholderproposals@sec.gov. The Company is concurrently forwarding by email a copy of this letter (including all attachments thereto) to the Proponent as notice of the Company's intent to omit the Proposal from the definitive Proxy Materials. In addition, the Company will overnight paper copies of this letter (including all attachments thereto) both to the Commission and to the Proponent. The undersigned has included his name, email address and telephone number in this letter.

Pursuant to Rule 14a-8(k) under the Exchange Act, a shareholder proponent is required to send copies of any correspondence that he or she elects to submit to the Commission or the Staff to the company to which the proponent submitted the proposal. This letter serves to inform the Proponent that if he elects to submit any correspondence relating to the Proposal to the Commission or the Staff, a copy of such correspondence should be concurrently furnished to the undersigned.

The Company respectfully requests that the Staff confirm that it will not recommend any enforcement action to the Commission if the Company omits the Proposal from its definitive Proxy Materials. The basis for this request is set forth below.

I. Summary of the Proposal

The "Resolved" clause of the Proposal states:

> "Shareholders of Reynolds American Inc. ask the board of directors to adopt and issue a general payout policy that gives preference to share repurchases (relative to cash dividends) as a method to return capital to shareholders. If a general payout policy currently exists, we ask that it be amended appropriately."

A copy of the Proposal and related correspondence with the Proponent are attached to this letter as Exhibit A.

II. Basis for Exclusion of the Proposal

The Company intends to omit the Proposal from the definitive Proxy Material pursuant to the following provisions of Rule 14a-8 promulgated under the Exchange Act:

1. Rule 14a-8(i)(13), because the Proposal relates to a specific amount of cash dividends; and

2. Rule 14a-8(i)(3), because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

We note that the rules promulgated under the Exchange Act provide that, for purposes of exclusion under Rule 14a-8, the proposal and supporting statement included in shareholder proposals should be read together. Rule 14a-8a states, "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)."

The Proposal may be properly omitted from the definitive Proxy Materials for the reasons discussed below.

III. Analysis

I. Omit under Rule 14a-8(i)(13): The Proposal relates to a specific amount of cash dividends

Rule 14a-8(i)(13) provides that a proposal is excludable if it "relates to specific amounts of cash or stock dividends." The Staff has historically taken the position that proposals that effectively set dividends to zero are excludable under Rule 14a-8(i)(13). Here, on its face, the Proposal, taken as a whole, appears to require the Board to undertake share repurchases instead of cash dividends. Therefore, the Proposal, on its face, relates to a specific amount of cash dividends – zero – and thus, violates Rule 14a-8(i)(13).

The Staff has consistently taken the position that shareholder proposals that require specific amounts of dividends may be omitted, as well as those proposals that provide for formulas or ranges for computing dividend payments. In *Eastman Chemical Company* (March 8, 2000), the proposal directed the board to declare stock dividends approximating the value of cash dividends then being paid by the company. Although it was not explicitly stated in the proposal, it was clear that upon the proposal's

implementation, no cash dividends would be paid. Instead, the board would declare, and the company would pay, only stock dividends. The company argued that the proposal related to a specific amount of cash dividends – namely, zero dividends. The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(13). In *National Mine Service Co.* (September 3, 1981), a shareholder proposal requested the registrant to eliminate all dividends for a given fiscal year. The registrant sought to exclude the proposal under Rule 14a-8(c)(13) (predecessor to Rule 14a-8(i)(13)) based on its view that a proposal calling for the board of directors to pay no dividends involves at least as specific an amount of dividends (zero) as proposals relating to formulas and ranges for computing dividend amounts, which the Staff has consistently permitted to be excluded under Rule 14a-8(c)(13). The Staff, in concurring with the exclusion of the proposal, stated: "[s]ince the proposal seeks the cessation of all dividend distributions for fiscal year 1982, it is our view that it is excludable under subparagraph (c)(13) as a proposal relating to 'specific amounts of cash or stock dividends'."

Other similar proposals looked to the amount of dividends paid out relative to the amount of money spent by the companies on their share repurchase programs, and, in those cases, the Staff concurred in the utilization of Rule 14a-8(i)(13) to exclude proposals that linked the amount of dividends to share repurchase programs. In *Honeywell International, Inc.* (September 28, 2001), the proposal directed the board to buy back its shares with its excess earnings rather than payout dividends to shareholders of common stock. The company argued that the proposal required that a stock repurchase program be substituted for the company's current practice of paying cash dividends, which, in effect, would reduce the company's then-current cash dividend to zero and eliminate the Company's future cash dividends. There, the Staff found basis to exclude the proposal under Rule 14a-8(i)(13). *See also AT&T* (January 2, 2001), *Ford Motor Co.* (January 24, 2001) and *Minnesota Mining & Manufacturing Company* (February 10, 2001).

As with the proposals above, the Proposal is impermissible under Rule 14a-8(i)(13) because, on its face, it could be read to require share repurchases instead of cash dividends, and thus setting a specific amount of cash dividends – zero. Like in *Eastman Chemical Company* (March 8, 2000), under this reading of the Proposal, upon the policy's implementation, no further cash dividends would be declared by the Board and paid by the Company. Though the Company talked to the Proponent and he articulated that his intent with respect to the meaning of "preference" was different, the reading of the Proposal as articulated above is consistent with the language of the Proposal and the reasoning cited in the Proposal, that share repurchases are preferable to cash dividends as a method to return capital to shareholders. Specifically, the Supporting Statement quotes a study where executives have said they "would pass up some positive net present value (NPV) investment projects before cutting dividends." The Supporting Statement states that "[t]he creation of long-term value is of paramount importance; [the Proponent] believe[s] that repurchases have the distinct advantage that they do not create an incentive to forgo long-term value enhancing projects in order to preserve a historic dividend level." Combined, a shareholder voting on this Proposal could infer that the Proposal's "preference" is substitution of share repurchases for cash dividends. This reading of the Proposal is further supported by the Supporting Statement's assertion that "[the Proponent] believe[s] this study provides evidence that there is market acceptance that repurchases are valid substitutes for dividends."

Thus, because the Proposal, on its face, suggests that "preference" means substitution of share repurchases for cash dividends, the restrictive nature of the Proposal would be substantially the same as that of the proposals in the no-action letter requests cited above. Therefore, the Proposal should be excluded from the definitive Proxy Materials under Rule 14a-8(i)(13) because it relates to a specific amount of dividends.

2. Omit under Rule 14a-8(i)(3): The Proposal is impermissibly vague and indefinite so as to be inherently misleading

The Company believes that Rule 14a-8(i)(13) provides a fully adequate basis for the exclusion of the entire Proposal. In addition, Rule 14a-8(i)(3) provides another adequate basis for exclusion. Rule 14a-8(i)(3) permits the omission of a proposal and associated supporting statements that are contrary to the Commission's proxy rules, including Rule 14a-9, which prohibits false or misleading statements in proxy materials. Rule 14a-9(a) provides that "[n]o solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading." The Staff has consistently agreed that vague and indefinite shareholder proposals are inherently misleading and thus excludable under Rule 14a-8(i)(3) where "neither the stockholders 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." *Staff Legal Bulletin No. 14B* (September 15, 2004). *See also Dyer v. SEC*, 287 f.2D 773, 781 (8th Cir. 1961). Additionally, the Staff has concurred that a proposal may be excluded where "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (March 12, 1991).

The Proposal would require the Board to "...adopt and issue a general payout policy that gives ***preference*** to share repurchases (relative to cash dividends) as a method to return capital to shareholders." (emphasis added). The meaning of the word "preference" is not clear. As a result, it is not clear what the Proposal is asking from the Company; therefore, it is not clear what shareholders are being asked to vote on.

This lack of clarity leaves the meaning of the word "preference" open to interpretation. There are at least two alternative interpretations of the word "preference" in the Proposal:

1) Interpretation #1: "preference" means that instead of returning excess cash to shareholders via cash dividends, the Company must choose to undertake share repurchases. Under this reading, the Proposal would be effectively setting dividends to zero, which would violate Rule 14a-8(i)(13); or

2) Interpretation #2: "preference" means that the Company may have flexibility to pay out cash dividends, but must first consider share repurchases. The Proposal is not clear as to whether such preference is dependent on certain conditions being met. Under this reading, the Proposal would interfere with the Company's ordinary business operations and would violate Rule 14a-8(i)(7).

If "preference" means the Company must undertake share repurchases instead of cash dividends, the Proposal violates 14a-8(i)(13).

As stated in the Section III(1) above, the Proposal, on its face, supports Interpretation #1. Thus, the Proposal violates Rule 14a-8(i)(13).

If "preference" means anything other than a requirement that the Company undertake share repurchases instead of cash dividends, the Proposal violates Rule 14a-8(i)(7).

However, even if "preference" should be interpreted under Interpretation #2 above (anything other than a requirement that the Company undertake share repurchases instead of cash dividends), the Proposal relates directly to the Company's ordinary business operations. Thus, the Proposal would violate Rule 14a-8(i)(7) and should therefore be excluded from the definitive Proxy Materials.

Rule 14a-8(i)(7) provides that a proposal is excludable if the proposal deals with a matter relating to the registrant's ordinary business operations. Here, the Proposal directly deals with such a matter, as it asks the Company's Board of Directors (the "Board") to adopt and implement a policy that gives preference to share repurchases relative to cash dividends as a method to return capital to shareholders.

The term "ordinary business" "is rooted in the corporate law concept [of] providing management with flexibility in directing core matters involving the company's business and operations." *Exchange Act Release No. 40018* (May 21, 1998) (the "1998 Release"). As the Commission stated in the 1998 Release, the general policy underlying this exclusion is to "confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." In the 1998 Release, the Commission explained that the ordinary business exclusion rests on two central considerations:

1. The subject matter of the proposal. 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; and

2. 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. The Commission had earlier explained in 1976 that shareholders, as a group, are not qualified to make an informed judgment on ordinary business matters due to their lack of business expertise and their lack of intimate knowledge of the issuer's business. *See Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 12999 (November 22, 1976).*

Here, the Proposal runs afoul of both considerations. The Proposal delves into an area reserved to management and the board of directors: the implementation of a share repurchase program.

The decision to repurchase shares, pay dividends, or both is an integral part of managing the Company's overall capital structure, and as such is a matter relating to the Company's ordinary business operations. The repurchase of shares, including whether and when to repurchase shares and the amount of shares to repurchase in any given quarter, implicates fundamental aspects of the business and affairs of the Company, which are managed by highly trained corporate finance personnel in the Company's Treasury group, acting under the direction of the Company's Board of Directors and Audit and Finance Committee. It requires detailed, confidential knowledge about the Company's financial forecasts, acquisition plans and financing strategy; such information is not available to the Proponent or the Company's shareholders at large. Further, it directly affects decisions relating to the Company's allocation of financial resources, compliance with financial covenants, and ability to grow through acquisitions. Since the Proposal would impermissibly micro-manage the Company by dictating the method of returning capital (implementing a share repurchase program) or, at the very least, the priority

given among methods of capital return, it would be inappropriate for the Company's shareholders to be asked to take action on this ordinary business matter. Share repurchases simply are not a substitute for cash dividends, and thus a policy that requires preference for share repurchases over cash dividends does not appropriately balance the nuances and effects of one form of capital return compared to the other.

The Company itself balances these nuances and effects and carefully evaluates methods of returning capital to its shareholders. The Company's decision to return capital to its shareholders involves many mechanisms, including, among other things, cash dividends and share repurchases. The Company has historically paid quarterly cash dividends and, currently, has a dividend policy to pay out approximately 75% of annual consolidated net income. On December 2, 2015, the Company announced its 46th consecutive quarterly cash dividend since the Company became public on July 30, 2004. Though, the Company currently does not have an outstanding share repurchase program, the Company has undertaken share repurchases in recent years. As stated in the Company's recent Investor Day presentation, following its recent acquisitions and divestitures, one of the Company's priorities is de-leveraging with an overarching goal of consistent operating income, earnings per share and dividend growth. With this goal in mind, the Company currently intends to continue to target the return of approximately 75% of its annual consolidated net income to shareholders in the form of quarterly cash dividends. Additionally, the Company intends to evaluate share repurchases and its dividend target levels after de-leveraging.

The Proposal interferes with these plans by requiring that preference be given to share repurchases over cash dividends. Though the Proposal is unclear whether "preference" means absolute substitution of share repurchases for cash dividends, it is clear that for the Proponent's payout policy to have any effect, at the very least, the Proposal must be requiring that, under certain circumstances, share repurchases be undertaken instead of cash dividends. For share repurchases to be undertaken instead of cash dividends, a share repurchase program must be implemented or in effect; thus, the Proposal is effectively asking the Company to institute a share repurchase program. This ask is impermissible under Rule 14a-8(i)(7).

The Staff has repeatedly taken the position that the implementation, terms and conditions of share repurchase programs, including the relation of such programs to a company's dividend policies, are matters that relate to ordinary business operations and, therefore, are excludable under Rule 14a-8(i)(7). For example, in *Food Lion, Inc.* (February 22, 1996), the Staff concurred that a proposal mandating an amendment to a stock repurchase plan to, among other things, expand the amount of stock repurchased and suspend dividend payments during the term of the plan could be excluded from Food Lion's proxy statement under Rule 14a-8(c)(7) (predecessor to Rule 14a-8(i)(7)) as a matter relating to the registrant's ordinary business operations. For more examples of proposals excludable as relating to a company's ordinary business operations, see also, *International Business Machines Corporation* (January 4, 2011) (proposal requiring implementation of a special dividend equal to the total value of the expenditure to the share repurchase program for the quarter); *Concurrent Computer Corporation* (July 13, 2011) (proposal relating to the implementation and particular terms of a share repurchase program); *Reyerson, Inc.* (April 6, 2007) (proposal seeking to implement a stock repurchase program); *Apple Computer, Inc.* (March 3, 2003) (proposal that contained specific procedures for the design and implementation of a share repurchase program, including how to set the purchase price, excluded because "implementing a share repurchase program" relates to the conduct of ordinary business operations); *American Recreation Centers, Inc.* (December 18, 1996) (proposal seeking to implement a stock repurchase program); *M&F Worldwide Corp.* (March 29, 2000) (proposal requiring special committee of the board of directors to consider and implement actions relating to matters such as the repurchase of shares and dividends); *Clothestime Inc.* (March 13, 1991) (proposal to repurchase common stock in open market under specified terms and conditions); *Chevron Corporation* (February 15, 1990) (same as *Clothestime*); *Pfizer Inc.*

(February 4, 2005) (proposal that would have Pfizer increase its dividend rather than repurchase $5 billion of Pfizer's shares in 2005); *Lucent Technologies* (November 16, 2000) (proposal to implement a share repurchase program); *Ford Motor Company* (March 28, 2000) (proposal to implement a share repurchase program); *Research Cottrell, Inc.* (December 31, 1986) (proposal to repurchase common stock in open market or block transactions); *but cf Exxon Mobil Corporation* (January 18, 2007) (proposal to consider providing, in times of above-average cash flow, a more equal ratio of the amounts spent on stock repurchases relative to the amounts paid out as dividends not excluded) and *Ford Motor Company* (March 29, 2000) (proposal to obtain shareholder approval prior to the implementation of a stock repurchase program not excluded).

In one matter, *Exxon Mobil Corp.* (March 19, 2007), the Staff did not concur in the exclusion of a proposal that requested that the board "consider, in times of above average free cash flow, providing a more equal ratio of the dollars paid to repurchase stock relative to the dollars paid in dividends by utilizing such devices as special or extra dividends." Here, in contrast, the Proposal does not ask that the Board consider, but rather that it adopt, a policy where share repurchases are preferred over cash dividends. Furthermore, unlike in *Exxon Mobil Corp.* where the proposal asked for consideration "in times of above average free cash flow," the Proposal does not provide any guidance at all for when share repurchases would receive preference over cash dividends. Finally, in *Exxon Mobil Corp.*, the proposal asked for consideration of a more equal ratio spent on stock repurchases relative to dividends; here, the Proposal mandates preference of one over the other, thus effectively requiring a share repurchase program.

Therefore, for the reasons described above, the Proposal is excludable pursuant to Rule 14a-8(i)(7) as relating to the conduct of the Company's ordinary business operations.

The meaning of the word "preference" is unclear and therefore the Proposal violates Rule 14a-8(i)(13).

As highlighted above, given the multiple interpretations of the word "preference," the meaning of the Proposal is not clear. Requiring the Company and our shareholders to divine the intent of the Proponent is impermissible. If shareholders were to vote on the Proposal, they would have no way of knowing what it was they were being asked to approve, specifically what type of "preference" the Company should give to share repurchases over cash dividends. Similarly, were the Proposal to pass, the Company would have no way of knowing which "preference" the shareholders voted for and therefore what it was required to do in order to implement the Proposal. Were the Company to attempt to implement the Proposal by selecting one of several possible interpretations, any actions taken in attempting to implement that interpretation could be significantly different from the actions envisioned by shareholders voting on the Proposal. This is precisely what Rule 14a-8(i)(3) is trying to avoid, and why exclusion of the Proposal should be permitted. Furthermore, under either interpretation of "preference," the Proposal violates either Rule 14a-8(i)(13) or Rule 14a-8(i)(7), and therefore should be excluded.

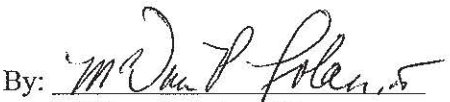
IV. Conclusion

On the basis of the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from the definitive Proxy Materials pursuant to Rules 14a-8(i)(13) and 14a-8(i)(3). To meet the Company's printing and mailing schedule for its 2016 annual meeting of shareholders, a response from the Staff by the end of February 2016 would be of great assistance. In addition, the Company agrees to promptly forward to the Proponent a copy of any response from the Staff to this no-action request that the Staff transmits by facsimile or e-mail to the Company only.

If you have any questions or require additional information concerning this matter, please contact the undersigned at (336) 741-5162; via fax at (336) 728-4495; or via e-mail at folanm@rjrt.com.

Very truly yours,

REYNOLDS AMERICAN INC.

By: 

McDara P. Folan, III
Senior Vice President, Deputy General Counsel and Secretary

Enclosure

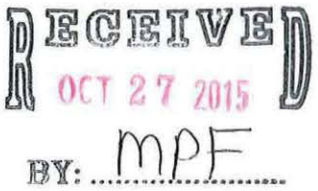
Exhibit A

Dr. Jonathan Kalodimos Shareholder Proposal and

Correspondence between the Company and Dr. Jonathan Kalodimos

10/23/2015

Corporate Secretary
Reynolds American Inc.
P.O. Box 2990
Winston-Salem, NC 27102-2990



Corporate Secretary-

I am submitting a shareholder proposal in accordance with Rule 14a-8 to be voted upon at the next annual meeting of shareholders. As part of this submission I have included the proposal to appear in the next definitive proxy statement as well as a letter of ownership from TD Ameritrade confirming that I have continuously held a sufficient number of shares for more than one year to qualify for a proposal to be placed on the definitive proxy statement. I also hereby give notice that I intend to hold the aforementioned shares until after the date of the next annual meeting of shareholders and intend to have the proposal properly presented at the meeting.

If for any reason you need further information from me or would like to discuss my proposal, please contact me using the following information.

Jonathan Kalodimos, PhD

*** FISMA & OMB Memorandum M-07-16 ***

Sincerely,

Jonathan Kalodimos, PhD

Resolved: Shareholders of Reynolds American Inc. ask the board of directors to adopt and issue a general payout policy that gives preference to share repurchases (relative to cash dividends) as a method to return capital to shareholders. If a general payout policy currently exists, we ask that it be amended appropriately.

Supporting statement: Share repurchases as a method to return capital to shareholders have distinct advantages relative to dividends. Share repurchases should be preferred for the following reasons:

1) Financial flexibility. Four professors from Duke University and Cornell University studied executives' decisions to pay dividends or make repurchases by surveying hundreds of executives of public companies. They found that "maintaining the dividend level is on par with investment decisions, while repurchases are made out of the residual cash flow after investment spending."[1] Further, in follow up interviews as part of the study, executives "state[d] that they would pass up some positive net present value (NPV) investment projects before cutting dividends." The creation of long-term value is of paramount importance; I believe that repurchases have the distinct advantage that they do not create an incentive to forgo long-term value enhancing projects in order to preserve a historic dividend level.
2) Tax efficiency. Share repurchases have been described in the Wall Street Journal[2] as "akin to dividends, but without the tax bite for shareholders." The distribution of a dividend may automatically trigger a tax liability for some shareholders. The repurchase of shares does not necessarily trigger that automatic tax liability and therefore gives a shareholder the flexibility to choose when the tax liability is incurred. Shareholders who desire cash flow can choose to sell shares and pay taxes as appropriate. (This proposal does not constitute tax advice.)
3) Market acceptance. Some may believe that slowing the growth rate or reducing the level of dividends would result in a negative stock market reaction. However, a study published in the Journal of Finance finds that the market response to cutting dividends by companies that were also share repurchasers was not statistically distinguishable from zero.[3] I believe this study provides evidence that there is market acceptance that repurchases are valid substitutes for dividends.

Some may worry that share repurchases could be used to prop up metrics that factor into the compensation of executives. I believe that any such concern should not interfere with the choice of optimal payout mechanism because compensation packages can be designed such that metrics are adjusted to account for share repurchases.

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[1]http://www.sciencedirect.com/science/article/pii/S0304405X05000528
[2]http://www.wsj.com/articles/companies-stock-buybacks-help-buoy-the-market-1410823441
[3]http://www.afajof.org/details/journalArticle/2893861/Dividends-Share-Repurchases-and-the-Substitution-Hypothesis.html

In summary, I strongly believe that adopting a general payout policy that gives preference to share repurchases would enhance long-term value creation. I urge shareholders to vote FOR this proposal.

TD Ameritrade

10/20/2015

Jonathan Kalodimos

*** FISMA & OMB Memorandum M-07-16 ***

Re: Your TD Ameritrade Account Ending in *** FISMA & OMB Memorandum M-07-16 ***

Dear Jonathan Kalodimos,

Thank you for allowing me to assist you today. This letter is to confirm that as of the date of this letter, Jonathan Kalodimos has held continuously for at least one year, 82 shares of Reynolds American common stock in his account ending in *** FISMA & OMB Memorandum M-07-16 *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Brandon Schifferdecker
Resource Specialist
TD Ameritrade

RAI Shareholder Proposal
Tsipis, Constantine (Dean) E
to:
*** FISMA & OMB Memorandum M-07-16 ***
11/09/2015 03:08 PM
Cc:
"Folan, McDara (Dara) III"
Hide Details
From: "Tsipis, Constantine (Dean) E" <tsipisc@rjrt.com>
*** FISMA & OMB Memorandum M-07-16 ***
Cc: "Folan, McDara (Dara) III" <FOLANM@RJRT.com>
Please respond to "Tsipis, Constantine (Dean) E" <tsipisc@rjrt.com>

1 Attachment

Response to Kalodimos Proposal 11-9-15.pdf

Dear Dr. Kalodimos,
Thank you for your letter to Reynolds American Inc. dated October 23, 2015 containing a shareholder proposal. Your letter was received on October 27, 2015. Unfortunately, we identified a deficiency that unless corrected will render your proposal ineligible for consideration at our 2016 annual meeting of shareholders. The attached letter describes that deficiency and explains how you can correct it. We also have sent this letter to you in hardcopy via overnight courier. Feel free to reach out to me with any questions.
Sincerely,
Dean Tsipis

Dean E. Tsipis
Managing Counsel - Corporate and Securities
Director - Office of Ethics and Compliance

RAI Services Company
an affiliate of Reynolds American Inc.

401 N. Main Street
Winston-Salem, NC 27101
(336) 741-3655
(336) 728-4311 (fax)
tsipisc@rjrt.com

Constantine E. Tsipis
Assistant Secretary

336-741-3655
336-728-4311 Fax
tsipisc@rjrt.com

November 9, 2015

VIA EMAIL AND OVERNIGHT COURIER

Jonathan Kalodimos, PhD

*** FISMA & OMB Memorandum M-07-16 ***

Re: Shareholder Proposal

Dear Dr. Kalodimos:

I am writing on behalf of Reynolds American Inc. ("RAI" or the "Company") to inform you that on October 27, 2015, the Company received your letter dated October 23, 2015, submitting a shareholder proposal (the "Proposal"), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), for inclusion in the Company's definitive proxy statement for the 2016 annual meeting (the "Annual Meeting"). For your reference, a copy of Rule 14a-8 is attached to this letter as Exhibit A.

The Proposal contains a procedural eligibility deficiency, which Rule 14a-8 requires us to bring to your attention. Under Rule 14a-8, shareholder proponents must submit sufficient proof of their continuous ownership of 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 as of the date the shareholder proposal was submitted. In addition, the shareholder proponent must continue to hold those securities through the date of the meeting.

The Company's stock records do not indicate that you are the "registered" holder of shares to satisfy this requirement, and the proof of ownership that you submitted does not establish that you have satisfied the Rule 14a-8 ownership requirements. In particular, your cover letter indicates that the included letter of ownership from TD Ameritrade confirms that you have continuously held a sufficient number of shares for more than one year to qualify for the proposal to be placed in the Company's definitive proxy statement for the Annual Meeting. However, the actual included letter from TD Ameritrade, dated October 20, 2015 (the "TD Ameritrade Letter"), does not satisfy the Rule 14a-8(b) ownership requirements because it is dated three days *prior* to the date the proposal was submitted to the Company, and therefore does not verify that, at the time you submitted the proposal on October 23, 2015, you had continuously held the requisite number of RAI shares for more than one year. Rather, the TD Ameritrade Letter only shows that you held the requisite number of shares for at least a year prior to October 20, 2015. As a result,

there is a gap in the period of ownership covered by the letters you submitted; the letters establish a continuous one-year period of ownership preceding and including October 20, 2015, rather than preceding and including October 23, 2015.

As explained in more detail below and in Rule 14a-8(b) and Rule 14a-8(f), to remedy this defect, you must submit sufficient proof (in this case, a new written ownership statement) from the "record" holder of your shares and a participant in the DTC, or an affiliate of a DTC participant, verifying that, at the time you submitted the Proposal (October 23, 2015), you had beneficially held the requisite number of RAI shares continuously for at least the one-year period preceding and including October 23, 2015. This ownership documentation must be postmarked, or transmitted electronically, no later than 14 calendar days from the date you receive this letter. For additional information regarding the acceptable methods of proving your ownership of the requisite number of RAI shares, please see below and see Rule 14a-8(b)(2) in Exhibit A.

As explained in Rule 14a-8(b) and in Securities and Exchange Commission ("SEC") guidance, you must prove your eligibility by submitting either:

1. a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that you continuously held the requisite number of RAI shares for the one-year period preceding and including October 23, 2015; or

2. If you have filed with the Securities and Exchange Commission a Schedule 13D, 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the requisite number of RAI shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite number of RAI shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC") a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Bulletins No. 14F and 14G (enclosed with this letter as Exhibits B and C, respectively), only DTC participants are viewed as record holders of securities that are deposited at DTC, and proof of ownership for purposes of Rule 14a-8 of such securities can be provided only by the applicable DTC participant or an affiliate of such participant. You can confirm whether your broker or bank is a DTC participant by asking you broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx.

In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

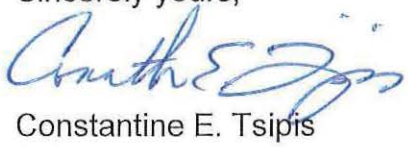
1. If the broker or bank is a DTC participant, then you need to submit a written statement from the broker or bank verifying that you continuously held the requisite number of RAI shares for the one-year period preceding and including October 23, 2015.

2. If the broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the requisite number of Company shares for the one-year period preceding and including October 23, 2015. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitted two proof of ownership statements verifying that, for the one-year period preceding and including October 23, 2015, the requisite number of Company shares were continuously held: (i) one from your broker or bank confirming your ownership and (ii) the other from the DTC participant confirming the broker or bank's ownership.

As stated above, Rule 14a-8 requires that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Once we receive this documentation, we will be in a position to determine whether the Proposal is eligible for inclusion in the Company's definitive proxy statement for the Annual Meeting. In asking you to provide the foregoing information, the Company does not relinquish its right to later object to including the proposal in the Company's proxy materials on related or different grounds pursuant to applicable SEC rules.

If you have any questions with respect to the foregoing, please feel free to contact me at (336) 741-3655. Please address any response to my attention at the address, fax number or email address provided above. Additionally, please confirm your receipt of this letter by reply message to me at tsipisc@rjrt.com.

Sincerely yours,



Constantine E. Tsipis

Enclosure

cc: McDara P. Folan, III, Esq. (w/ attachment)

§ 240.14a–8 Shareholder proposals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media,

then you may appear through electronic media rather than traveling to the meeting to appear in person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) *Duplication:* If the proposal substantially duplicates another proposal

previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

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

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

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

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

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

(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 antifraud 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]

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

http://www.sec.gov/interps/legal/cfslb14f.htm

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

http://www.sec.gov/interps/legal/cfslb14g.htm

Sent: Monday, November 9, 2015 4:15 PM
To: Tsipis, Constantine (Dean) E <tsipisc@rjrt.com>
Cc: Folan, McDara (Dara) III <FOLANM@RJRT.com>
Subject: Re: RAI Shareholder Proposal

Dean-

Thank you for leaving me a voicemail about the procedural defect in the shareholder proposal I submitted. I have attached a letter from TD Ameritrade documenting my continuous ownership of a sufficient number of shares of Reynolds American Inc. as of October 23, 2015. The letter contains the exact language of Staff Legal Bulletin No. 14F and should cure the procedural defect you brought to my attention.

-Jon

On Mon, Nov 9, 2015 at 1:07 PM Tsipis, Constantine (Dean) E <tsipisc@rjrt.com> wrote:

> Dear Dr. Kalodimos,
> Thank you for your letter to Reynolds American Inc. dated October 23, 2015 containing a shareholder proposal. Your letter was received on October 27, 2015. Unfortunately, we identified a deficiency that unless corrected will render your proposal ineligible for consideration at our 2016 annual meeting of shareholders. The attached letter describes that deficiency and explains how you can correct it. We also have sent this letter to you in hardcopy via overnight courier. Feel free to reach out to me with any questions.
> Sincerely,
> Dean Tsipis
>
> ***Dean E. Tsipis***
> *Managing Counsel - Corporate and Securities*
> *Director - Office of Ethics and Compliance*
>
> RAI Services Company
> *an affiliate of Reynolds American Inc.*
>
> *401 N. Main Street*
> *Winston-Salem, NC 27101*

October 29, 2015

Jonathan Anthony Kalodimos

*** FISMA & OMB Memorandum M-07-16 ***

Re: Your TD Ameritrade account ending in *** FISMA & OMB Memorandum M-07-16 ***

Dear Jonathan Anthony Kalodimos,

Thank you for allowing me to assist you today. As you requested, I am writing to provide you an ownership letter.

As of October 23, 2015, Jonathan Kalodimos held, and has held continuously for at least one year, 82 shares of Reynolds American Inc. common stock in his account ending in *** FISMA & OMB Memorandum M-07-16 *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Michael Poole
Resource Specialist
TD Ameritrade