

SEC Decides on Questions of Proof of Ownership Regarding DTC Participants for Shareholder Proposals

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The SEC Staff made several recent decisions on questions of proof of ownership for submission of shareholder proposals, in light of the requirement under Staff Legal Bulletin 14F, [which we previously discussed](#). SLB 14F makes clear that only DTC participants are viewed as record holders of securities that are deposited at DTC.

The Staff declined to grant no-action relief to companies that argued that the proof of ownership was not from a DTC participant when the brokers' letters were from TD Ameritrade, Inc. instead of TD Ameritrade Clearing, the entity named on the DTC participant list. The proponents in some of these situations provided an additional letter of support from TD Ameritrade in response to the company's no-action letter request, but the SEC Staff gave the same ruling even when proponents did not. The Staff noted that the proof of ownership from TD Ameritrade, Inc. was sufficient since it was provided by a broker that provides proof of ownership statements of behalf of affiliated DTC participants.

But even when the Staff agreed with Allergen that the proponent, John Chevedden, failed to provide a statement from the record holder evidencing appropriate documentary support of continuous beneficial ownership, the Staff gave Mr. Chevedden seven additional days to address the deficiency. Mr. Chevedden had provided proof of ownership only from Ram Trust and not the DTC participant. The Staff indicated in its response that the company failed to inform the proponent of what would constitute appropriate documentation in its request for additional information from the proponent, and noted SLB 14F states that they will grant no-action relief to a company on the basis that a proponent's proof of ownership is not from a DTC participant only if the company's deficiency letter describes the required proof. It appears from the filed correspondence that while the company clearly pointed out the problem to Mr. Chevedden in its notice, only a copy of Rule 14a-8, and not a copy of SLB 14F, was included with the letter. The Staff denied the company's request to reconsider its decision.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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