



## Staff Considers “Enantiomeric” Proposal And Reaches Opposite Conclusion

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Have you ever noticed that your right hand and left hand are the same, but you can't superimpose one hand perfectly on top of the other? Your thumbs always end up on opposite sides. Your hands are “enantiomers”, that is non-superposable mirror images of each other. Each hand has the same composition as the other hand (*i.e.*, four fingers, a palm, and a thumb) and yet your hands are not the same. I'll never forget an organic chemistry final in which we were required to identify not one, but several, different mirror images of the same compound.

In this March 14, 2011 [posting](#), I wrote about Oak Valley Bancorp's unsuccessful attempt to exclude a shareholder proposal requesting that the bank's board of directors take the necessary steps to provide cumulative voting in the election of directors. The bank argued that it could exclude the proposal under Rule 14a-8(i)(2) because adoption of the proposal would cause the company to violate state law. The bank reasoned that because it had adopted a majority vote standard for board elections pursuant to Corporations Code § 708.5 and the shareholder was not proposing elimination of that standard, the bank would be required to violate state law.

On March 10, 2011, the Securities and Exchange Commission staff responded favorably to a request involving essentially the mirror image of Oak Valley Bancorp's request. Reliance Steel & Aluminum Co. received a proposal from the prolific John Chevedden asking that the company adopt a majority of the votes cast standard for election of directors. In its [request](#), Reliance Steel submitted an opinion of counsel that because the company has not eliminated cumulative voting, the California Corporations Code prohibits it from adopting majority voting pursuant to Corporations Code § 708.5.

As usual, the staff provided no explanation for its conclusions other than to attach the the correspondence.

Please contact [Keith Paul Bishop](#) at Allen Matkins for more information [kbishop@allenmatkins.com](mailto:kbishop@allenmatkins.com)

P.S. – It must be acknowledged that the two proposals discussed above not true enantiomers. They differed in some respects which don't appear to detract from the fact that the requests were essentially mirror image circumstances.

Please contact **Keith Paul Bishop** at Allen Matkins for more information [kbishop@allenmatkins.com](mailto:kbishop@allenmatkins.com)

<http://www.calcorporatelaw.com/>