



DIVISION OF  
CORPORATION FINANCE

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

July 5, 2016

Clement Edward Klank III  
FedEx Corporation  
ceklank@fedex.com

Re: FedEx Corporation  
Incoming letter dated May 12, 2016

Dear Mr. Klank:

This is in response to your letters dated May 12, 2016 and May 24, 2016 concerning the shareholder proposal submitted to FedEx by Myra K. Young. We also have received letters on the proponent's behalf dated May 12, 2016 and May 30, 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: John Chevedden

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

July 5, 2016

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: FedEx Corporation  
Incoming letter dated May 12, 2016

The proposal relates to director nominations.

There appears to be some basis for your view that FedEx may exclude the proposal under rule 14a-8(f). We note that the proponent appears to have failed to supply, within 14 days of receipt of FedEx's request, documentary support sufficiently evidencing that she satisfied the minimum ownership requirement for the one-year period as required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if FedEx omits the proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

Sincerely,

Adam F. Turk  
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.

**JOHN CHEVEDDEN**

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

May 30, 2016

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

**# 2 Rule 14a-8 Proposal**  
**FedEx Corporation (FDX)**  
**Proxy Access**  
**Myra K. Young**

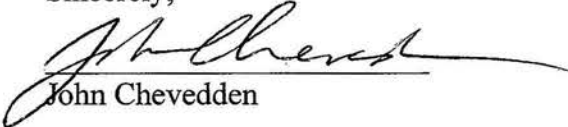
Ladies and Gentlemen:

This is in regard to the May 12, 2016 no-action request.

It is interesting that the company mentions eBay. In 2016 eBay was allowed to omit a rule 14a-8 proposal that was timely submitted to 3 eBay email addresses in use for years. Two of the 3 eBay email addresses were active eBay email addresses or were allowed to mimic active eBay email addresses. Nonetheless eBay was allowed to omit a 2016 rule 14a-8 proposal submitted by email to 3 eBay email addresses.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2016 proxy.

Sincerely,

  
John Chevedden

cc: Myra K. Young

Joseph Dudek <[joseph.dudek@fedex.com](mailto:joseph.dudek@fedex.com)>



**VIA E-MAIL**

May 24, 2016

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549  
[shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

**Re: FedEx Corporation – Omission of Stockholder Proposal of Myra K. Young**

Ladies and Gentlemen:

This letter is submitted by FedEx Corporation pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, in response to a letter dated May 12, 2016 from John Chevedden (attached hereto as **Exhibit A**; the “Proponent’s May 12 Letter”), on behalf of Myra K. Young (the “Proponent”), concerning the Stockholder Proposal submitted by the Proponent. A copy of this letter is being sent simultaneously to Mr. Chevedden as the Proponent’s agent.

The Proponent’s May 12 Letter was submitted after the Company filed a no-action letter request, also dated May 12, 2016 (the “Company’s May 12 Letter”). As discussed more fully in the Company’s May 12 Letter regarding the Proponent’s Stockholder Proposal, we intend to exclude the Stockholder Proposal from our 2016 Proxy Materials because the Proponent did not provide timely requisite proof of continuous ownership of Company stock in response to our proper request for such information.

Capitalized terms used but not otherwise defined in this letter shall have the same meanings given such terms in the Company’s May 12 Letter.

We fully describe and include in the Company’s May 12 Letter the Deficiency Notice sent to Mr. Chevedden via e-mail regarding the lack of proof of ownership in his original submission of the Stockholder Proposal. We sent the Deficiency Notice to Mr. Chevedden via e-mail in accordance with the Proponent’s specific instructions included with the Stockholder Proposal. Mr. Chevedden failed to timely respond to the Deficiency Notice. In the Company’s May 12 Letter, we included an excerpt from the Company e-mail server log as evidence of Mr. Chevedden’s receipt of the Deficiency Notice on April 15, 2016 (this excerpt also is attached hereto as **Exhibit B**).

In the Proponent's May 12 Letter, Mr. Chevedden states that "the company provided no precedent that the attached type of 'Excerpt' is considered proof of delivery of a company notice to a rule 14a-8 proponent."

In *eBay Inc.* (February 4, 2013), the Staff concurred with eBay that it could exclude from its proxy materials a stockholder proposal submitted by Mr. Chevedden because he did not provide documentary support showing he satisfied the minimum ownership requirement under Rule 14a-8(b). Similar to the current situation, in *eBay*, Mr. Chevedden did not include the requisite proof of stock ownership with the stockholder proposal he initially submitted to eBay. eBay's outside counsel then sent Mr. Chevedden a deficiency notice via e-mail. In its no-action letter to the Staff with regard to the lack of proof of ownership, eBay's outside counsel included "[e]vidence that the e-mail was received by [Mr. Chevedden's] e-mail server" — a report from eBay's outside counsel's e-mail server log. For ease of reference, we have attached a copy of this report (which was obtained from a copy of the *eBay* no-action letter found on the Securities and Exchange Commission's website, [www.sec.gov](http://www.sec.gov)) as **Exhibit C**. Like the report from *eBay*, the Company e-mail server log excerpt provided with this letter and the Company's May 12 Letter is proof that the Deficiency Notice was received by Mr. Chevedden.

Based upon the foregoing and the Company's May 12 Letter, we respectfully request that the Staff agree that we may omit the Stockholder Proposal from our 2016 Proxy Materials.

If you have any questions or would like any additional information, please feel free to call me. Thank you for your prompt attention to this request.

Very truly yours,

**FedEx Corporation**



Clement Edward Klank III

Attachments

cc: John Chevedden

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

[1167512]

**Exhibit A**

**Proponent's May 12 Letter**

## Joseph Dudek

---

**From:** \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*  
**Sent:** Thursday, May 12, 2016 10:25 PM  
**To:** Office of Chief Counsel  
**Cc:** Joseph Dudek  
**Subject:** #1 Rule 14a-8 Proposal (FDX)  
**Attachments:** CCE12052016\_3.pdf

Ladies and Gentlemen:

Please see the attached letter.

Sincerely,

John Chevedden



**JOHN CHEVEDDEN**

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

May 12, 2016

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

**# 1 Rule 14a-8 Proposal**  
**FedEx Corporation (FDX)**  
**Proxy Access**  
**Myra K. Young**

Ladies and Gentlemen:

This is in regard to the May 12, 2016 no-action request.

The company provided no precedent that the attached type of "Excerpt" is considered proof of delivery of a company notice to a rule 14a-8 proponent and likewise no precedent that such an "Excerpt" would be considered proof of delivery of a rule 14a-8 proposal to a company.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2016 proxy.

Sincerely,

  
John Chevedden

cc:

Joseph Dudek <[joseph.dudek@fedex.com](mailto:joseph.dudek@fedex.com)>

**Excerpt from Company E-mail Server Log Regarding Delivery of Company E-mail:**

Apr 15 15:09:13 mx27.ecelerity: 1460750953|cc870861-f797c6d0000041ba-3f-571145bd06de  
DELIVER|209.86.93.226|SMA & OMB Memorandum M-07-16 \*\*\*

(emphasis added)

**Exhibit B**

**Excerpt from Company E-mail Server Log Regarding Delivery of Deficiency Notice:**

Apr 15 15:09:13 mx27 ecelerity: 1460750953|cc870861-f797c6d0000041ba-3f-571145bd06de

**DELIVER|209.86.93.226:25**\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

(emphasis added)

**Exhibit C**

**E-mail Server Log Report from *eBay Inc.* No-Action Letter**

**Exhibit C**

**Proof of Delivery of Notice**

**From:** Miller, Kim  
**Sent:** Monday, November 26, 2012 10:33 AM  
**To:** Gerstman, Gary D.  
**Subject:** RE: Letter on behalf of eBay Inc.

Hi Gary,

It was delivered to the server, see report below:



[Home](#) | [Help?](#) | [Log out](#)

Welcome kim.miller@sidley.com

[Orgs and Users](#) | [Inbound Servers](#) | [Reports](#) | [Log Search](#)

Show filters

Choose Org: Sidley.com

Log Search Org: Sidley.com

Version: logsearch\_1.0-RC1

**Log Search** Custom date range: 2012/11/06 00:00 to 2012/11/08 00:00 America/Chicago

Log Source: SMTP Mail Flow

From: ggerstman@sidley.com

Direction: Outbound

\*\*\* FESMA & OMB Memorandum M-07-01 Disposition:

Subject: Letter on behalf of eBay Inc

[Search](#) | [More search criteria](#)

[Export Selected](#) | [Export All](#)

<input type="checkbox"/>	Message ID	SMTP Message ID	Direction	Date	From	Subject	Sender MTA	Log Source	To	Disposition	Recipient MTA
<input type="checkbox"/>	20407709343452	170820A5B050R4	Outbound	2012/11/07	ggerstman@sidley.com	Letter on behalf of eBay Inc	198.222.50.1	FESMA & OMB Memorandum M-07-01	ggerstman@sidley.com	Delivered	209.86.93.2

**Kim Miller** | Service Desk Analyst  
 Sidley Austin LLP | One South Dearborn Chicago, IL 60603  
 ☎: IT Service Desk ext. 34507 | 312.456.4284 | 1.888.SIDLEY9  
 ✉: [ITServiceDesk@sidley.com](mailto:ITServiceDesk@sidley.com)



Microsoft Office Excel 2007 Certified  
Microsoft Office Outlook 2007 Certified  
Microsoft Office Powerpoint 2007 Certified  
Microsoft Office Word 2007 Certified

**From:** Gerstman, Gary D.  
**Sent:** November 26, 2012 10:03 AM  
**To:** Miller, Kim  
**Subject:** FW: Letter on behalf of eBay Inc.

Kim: Please check that this e-mail was delivered to the recipient? Thanks, Gary

Gary D. Gerstman  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, Illinois 60603  
E-mail: [ggerstman@sidley.com](mailto:ggerstman@sidley.com)  
Tel: (312) 853-2060  
Fax: (312) 853-7036

**From:** Gerstman, Gary D.  
**Sent:** Wednesday, November 07, 2012 5:54 PM  
**To:** \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*  
**Cc:** 'mjacobson@ebay.com'  
**Subject:** Letter on behalf of eBay Inc.

Dear Mr. Chevedden.

Please see the attached letter to you on behalf of eBay Inc. Please let me know if you have any questions.

Best regards,  
Gary

Gary D. Gerstman  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, Illinois 60603  
E-mail: [ggerstman@sidley.com](mailto:ggerstman@sidley.com)  
Tel: (312) 853-2060  
Fax: (312) 853-7036

**JOHN CHEVEDDEN**

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

May 12, 2016

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

**# 1 Rule 14a-8 Proposal**  
**FedEx Corporation (FDX)**  
**Proxy Access**  
**Myra K. Young**

Ladies and Gentlemen:

This is in regard to the May 12, 2016 no-action request.

The company provided no precedent that the attached type of "Excerpt" is considered proof of delivery of a company notice to a rule14a-8 proponent and likewise no precedent that such an "Excerpt" would be considered proof of delivery of a rule 14a-8 proposal to a company.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2016 proxy.

Sincerely,



John Chevedden

cc:

Joseph Dudek <[joseph.dudek@fedex.com](mailto:joseph.dudek@fedex.com)>



**Excerpt from Company E-mail Server Log Regarding Delivery of Company E-mail:**

Apr 15 15:09:13 mx27 ecelerity: 1460750953|cc870861-f797c6d0000041ba-3f-571145bd06de  
|DELIVER|209.86.93.226:25|SMA & OMB Memorandum M-07-16 \*\*\*

(emphasis added)



**VIA E-MAIL**

May 12, 2016

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549  
[shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

**Re: FedEx Corporation — Omission of Stockholder Proposal of Myra K. Young**

Ladies and Gentlemen:

The purpose of this letter is to inform you, pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, that FedEx Corporation (the "Company") intends to omit from its proxy statement and form of proxy for the 2016 annual meeting of its stockholders (the "2016 Proxy Materials") the stockholder proposal and supporting statement attached hereto as **Exhibit A** (the "Stockholder Proposal"), which was submitted by Myra K. Young (the "Proponent") for inclusion in the 2016 Proxy Materials. The Proponent has appointed John Chevedden as her agent and has requested that all correspondence be directed to Mr. Chevedden.

The Stockholder Proposal may be excluded from our 2016 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14(a)-8(f)(1) because the Proponent did not provide timely requisite proof of continuous ownership of Company stock in response to the Company's proper request for such information. We hereby respectfully request confirmation that the staff of the Division of Corporation Finance (the "Staff") will not recommend any enforcement action if we exclude the Stockholder Proposal from our 2016 Proxy Materials.

In accordance with Rule 14a-8(j), we are:

- submitting this letter not later than 80 days prior to the date on which we intend to file definitive 2016 Proxy Materials; and
- simultaneously providing a copy of this letter and its exhibits to Mr. Chevedden, as agent for the Proponent, thereby notifying the Proponent of our intention to exclude the Stockholder Proposal from our 2016 Proxy Materials.

### **The Stockholder Proposal**

The Stockholder Proposal, in relevant part, requests the Company's Board of Directors "to adopt revisions to its 'Nominations of Directors Included in the Corporation's Proxy Materials' bylaw and other associated provisions, to ensure the following:

1. The number of shareholder-nominated candidates eligible to appear in proxy materials should be one quarter of the directors then serving or two, whichever is greater.
2. There should be no limitation on the number of shareholders that can aggregate their shares to achieve the 3% 'Minimum Number' of shares required to nominate."

### **Background**

Mr. Chevedden submitted the Stockholder Proposal, attached hereto as **Exhibit A**, to the Company on behalf of the Proponent in an email sent on April 8, 2016 that was received by the Company the same day. The submission did not include verification of the Proponent's ownership of the requisite number of Company shares from the record owner of those shares. The Company reviewed its stock records, which did not indicate that the Proponent was the record owner of any shares of the Company's common stock.

Accordingly, on April 15, 2016, which was within 14 days of the date that the Company received the Stockholder Proposal, the Company sent Mr. Chevedden a letter providing notice of the procedural deficiency as required by Rule 14a-8(f) (the "Deficiency Notice"). In the Deficiency Notice, attached hereto as **Exhibit B**, the Company informed the Proponent of the requirements of Rule 14a-8 and how the Proponent could cure the procedural deficiency. Among other things, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including the requirement for the statement to verify that the Proponent "continuously held the required number of Company shares for the one-year period preceding and including April 8, 2016"; and
- that any response to the Deficiency Notice had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Deficiency Notice was received.

The Deficiency Notice also included a copy of Rule 14a-8, Staff Legal Bulletin No. 14F, dated October 18, 2011 ("SLB 14F"), and Staff Legal Bulletin No. 14G, dated October 16, 2012. The Company e-mailed the Deficiency Notice to Mr. Chevedden on April 15, 2016 (see **Exhibit C** attached hereto, which includes an excerpt from the Company e-mail server log regarding

delivery of this e-mail). On May 3, 2016, 18 calendar days after receiving the Deficiency Notice, Mr. Chevedden faxed to the Company a letter from TD Ameritrade (the "First TD Ameritrade Letter") stating that the Proponent held 50 shares of Company common stock as of April 10, 2016 and that such shares had been held continuously for at least 13 months. On May 6, 2016, 21 calendar days after receiving the Deficiency Notice, Mr. Chevedden faxed to the Company a second letter from TD Ameritrade (the "Second TD Ameritrade Letter") stating that the Proponent held 50 shares of Company common stock as of April 21, 2016 and that such shares had been held continuously for at least 13 months. The faxes from Mr. Chevedden are attached hereto as **Exhibit D**.

### **Legal Analysis**

***The Stockholder Proposal may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to establish the requisite eligibility to submit the Stockholder Proposal in a timely manner***

Rule 14a-8(f)(1) clearly permits the Company to exclude the Stockholder Proposal from its 2016 Proxy Materials because the Proponent failed to substantiate the Proponent's eligibility to submit the Stockholder Proposal under Rule 14a-8(b) within 14 calendar days of receiving the Deficiency Notice. Rule 14a-8(b)(1) provides, in relevant part, that "[i]n order to be eligible to submit a proposal, [a stockholder] 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 [the stockholder] submit[s] the proposal." Staff Legal Bulletin No. 14, dated July 13, 2001 ("SLB 14"), specifies that when the stockholder is not the registered holder, the stockholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the stockholder may do by one of the two ways provided in Rule 14a-8(b)(2). See Section C.1.c of SLB 14. Further, the Staff has clarified that these proof of ownership letters must come from the "record" holder of the proponent's shares, and that only Depository Trust Company ("DTC") participants are viewed as record holders of securities that are deposited at DTC. See SLB 14F.

The Staff consistently has concurred in the exclusion of proposals where proponents have failed to include proof of beneficial ownership of the requisite amount of company shares for the required period and have failed, following a timely and proper request by a company, to provide evidence of eligibility under Rule 14a-8(b) and Rule 14a-8(f)(1) within 14 calendar days of receiving notice of the deficiency. See *ITC Holdings Corp.* (February 9, 2016) (concurring with the exclusion of a shareholder proposal under Rule 14a-8(b) and Rule 14a-8(f) and noting that "the proponents appear to have failed to supply, within 14 days of receipt of ITC Holding's request, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period as required by rule 14a-8(b)"); *General Electric Company* (January 29, 2016); *Medidata Solutions, Inc.* (Dec. 12, 2014); *PepsiCo, Inc.* (Jan. 11, 2013); *Cisco Systems, Inc.* (Jul. 11, 2011); *Amazon.com, Inc.* (Mar. 29, 2011); *Qwest Communications International, Inc.* (Feb. 28, 2008); *CSK Auto Corp.* (Jan. 29, 2007); *Johnson & Johnson* (Jan. 3, 2005); and *Agilent Technologies* (Nov. 19, 2004).

As in *ITC Holdings*, because the First TD Ameritrade Letter and Second TD Ameritrade Letter were not submitted to the Company until 18 calendar days and 21 calendar days, respectively, after Mr. Chevedden received the Deficiency Notice, the Proponent failed to provide sufficient proof of beneficial ownership within the 14-calendar-day timeframe for curing deficiencies set forth in Rule 14a-8(f)(1). Therefore, the Proponent has not demonstrated eligibility under Rule 14a-8 to submit the Stockholder Proposal. Accordingly, we ask that the Staff concur that the Company may exclude the Stockholder Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

**Conclusion**

Based upon the foregoing analysis, we respectfully request that the Staff agree that we may omit the Stockholder Proposal from our 2016 Proxy Materials.

If you have any questions or would like any additional information, please feel free to call me. Thank you for your prompt attention to this request.

Very truly yours,

**FedEx Corporation**



Clement Edward Klank III

Attachments

cc: John Chevedden

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

[1165734]

**Exhibit A**

The Stockholder Proposal and Related Correspondence

Ms. Christine P. Richards  
Corporate Secretary  
FedEx Corporation (FDX)  
942 S. Shady Grove Rd.  
Memphis, TN 38120  
PH: 901-818-7500  
Fax: 901 818-7590  
Via email: Eddie Klank <ceklink@fedex.com>  
Megan Barnes <megan.barnes@fedex.com>

Dear Ms. Richards,

April 8, 2016

Dear Corporate Secretary,

I am pleased to be a shareholder in FedEx Corporation (FDX) and appreciate the leadership our company has shown on numerous issues. Our company has unrealized potential that can be unlocked through low or no cost measures by making our corporate governance more competitive.

The attached shareholder proposal is submitted for a vote at the next annual shareholder meeting. The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year, and I pledge to continue to hold the required stock until after the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms I am delegating John Chevedden and/or his designee to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*  
at: FISMA & OMB Memorandum M-07-16 to

facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors are appreciated in responding to this proposal. Please acknowledge receipt of our proposal promptly by email to

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

Sincerely,

  
Myra K. Young

April 8, 2016

Date

cc: John Chevedden

[FDX – Rule 14a-8 Proposal, April 8, 2016]  
Proposal 4 - Shareholder Proxy Access Revisions

RESOLVED: Shareholders of FedEx Corporation (the “Company”) ask the board of directors (the “Board”) to adopt revisions to its “Nominations of Directors Included in the Corporation’s Proxy Materials” bylaw and other associated provisions, to ensure the following:

1. The number of shareholder-nominated candidates eligible to appear in proxy materials should be one quarter of the directors then serving or two, whichever is greater.
2. There should be no limitation on the number of shareholders that can aggregate their shares to achieve the 3% “Minimum Number” of shares required to nominate.

Supporting Statement:

Although the Company’s board adopted a proxy access bylaw, it contains troublesome provisions that significantly impair the ability of shareholders to use it, rendering it largely unworkable. Adoption of the suggested revisions would remedy that situation.

Having up to three nominees (given the current size of the Company Board) would help ensure that, if elected, shareholder-nominated directors can serve on each of the four current Company committees and bring an independent perspective to Board decisions.

Our Company’s current limitation of twenty on nominating groups provides proxy access in name only. As noted by the Council of Institutional Investors (CII), “without the ability to aggregate holdings even CII’s largest members would be unlikely to meet a 3% ownership requirement to nominate directors. Our review of current research found that even if the 20 largest public pension funds were able to aggregate their shares they would not meet the 3% criteria at most of the companies examined.”

Their publication, *Proxy Access: Best Practices*, highlights the most troublesome provisions” in recently implemented access bylaw or charter amendments.

([http://www.cii.org/files/publications/misc/08\\_05\\_15\\_Best%20Practices%20-%20Proxy%20Access.pdf](http://www.cii.org/files/publications/misc/08_05_15_Best%20Practices%20-%20Proxy%20Access.pdf)) CII is a nonprofit, nonpartisan association of corporate, public and union employee benefit funds and endowments – the types of funds most likely to use proxy access. The largest mainstream fund owners of the Company have never even submitted shareholder proposals. Given that history, they are highly unlikely to ever invoke proxy access, which would require considerably more effort.

The SEC’s universal proxy access Rule 14a-11 (<https://www.sec.gov/rules/final/2010/33-9136.pdf>) was vacated after a court decision regarding the SEC’s cost-benefit analysis. Therefore, proxy access rights must be established on a company-by-company basis.

Subsequently, *Proxy Access in the United States: Revisiting the Proposed SEC Rule* (<http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1>) a cost-benefit analysis by CFA Institute, found proxy access would “benefit both the markets and corporate boardrooms, with little cost or disruption,” raising US market capitalization by up to \$140.3 billion.

*Public Versus Private Provision of Governance: The Case of Proxy Access* (<http://ssrn.com/abstract=2635695>) found a 0.5 percent average increase in shareholder value for proxy access targeted firms.

Enhance shareholder value. Vote for Shareholder Proxy Access Revisions – Proposal 4



Notes:

Myra K. Young,

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

sponsored this proposal.

Please note the title of the proposal is part of the proposal. The title is intended for publication.

If the company thinks that any part of the above proposal, other than the first line in brackets, can be omitted from proxy publication based on its own discretion, please obtain a written agreement from the proponent.

This proposal is believed to conform with Staff Legal Bulletin No. 14 B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: Sun Microsystems, Inc. (July 21, 2005)

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting.

**Exhibit B**

Deficiency Notice

Clement Edward Klank III  
Staff Vice President  
Securities & Corporate Law

942 South Shady Grove Road  
Memphis, TN 38120

Telephone 901.818.7167  
Fax 901.492.7286  
ceklank@fedex.com



VIA E-MAIL FISMA & OMB Memorandum M-07-16 \*\*\*

April 15, 2016

John Chevedden

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

Subject: *Stockholder Proposal – Shareholder Proxy Access Revisions*

Dear Mr. Chevedden:

We received the stockholder proposal dated April 8, 2016 that you submitted to FedEx Corporation (the "Company") on April 8, 2016 the cover letter of which specifies that it was submitted on behalf of Myra K. Young. Ms. Young asked that all questions or correspondence regarding the proposal be directed to your attention.

The proposal contains certain procedural deficiencies, which the Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Rule 14a-8(b)(1) of the Securities Exchange Act of 1934, as amended, requires that in order to be eligible to submit a proposal for inclusion in the Company's proxy statement, each shareholder proponent must, among other things, have continuously held at least \$2,000 in market value of the Company's common stock, or 1%, of the company's securities entitled to vote on the proposal, at the meeting for at least one year by the date you submit the proposal. The Company's stock records indicate that Ms. Young is not currently the registered holder on the Company's books and records of any shares of the Company's common stock and Ms. Young has not provided proof of ownership.

Accordingly, you must submit to us a written statement from the "record" holders of the shares (usually a broker or bank) verifying that, at the time you submitted the proposal on Ms. Young's behalf (April 8, 2016), she had continuously held at least \$2,000 in market value, or 1%, of the Company's common stock for at least the one year period prior to and including April 8, 2016. Rule 14a-8(b) requires that a proponent of a proposal must prove eligibility as a shareholder of the company by submitting either:

- a written statement from the "record" holder of the securities verifying that at the time the proponent submitted the proposal, the proponent had continuously held the requisite amount of securities for at least one year; or
- a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the proponent's ownership of shares as of or before the date on which the one year eligibility period begins and the proponent's written statement that he or she continuously held the required number of shares for the one year period as of the date of the statement.

John Chevedden  
April 15, 2016  
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To help shareholders comply with the requirements when submitting proof of ownership to companies, the SEC's Division of Corporation Finance published Staff Legal Bulletin No. 14F ("SLB 14F"), dated October 18, 2011, and Staff Legal Bulletin No. 14G ("SLB 14G"), dated October 16, 2012, a copy of both of which are attached for your reference. SLB 14F and SLB 14G provide that for securities held through the Depository Trust Company ("DTC"), only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. Ms. Young can confirm whether her 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/downloads/membership/directories/dtc/alpha.pdf>. If Ms. Young holds shares through a bank or broker that is not a DTC participant, she will need to obtain proof of ownership from the DTC participant through which the bank or broker holds the shares. Ms. Young should be able to find out the name of the DTC participant by asking her broker or bank. If the DTC participant that holds Ms. Young's shares knows her broker or bank's holdings, but does not know her holdings, Ms. Young may satisfy the proof of ownership requirements by submitting two proof of ownership statements—one from her broker or bank confirming her ownership and the other from the DTC participant confirming the bank or broker's ownership. Please review SLB 14F carefully before submitting proof of ownership to ensure that it is compliant.

In order to meet the eligibility requirements for submitting a shareholder proposal, the SEC rules require that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Please address any response to me at the mailing address, e-mail address or fax number provided above. A copy of Rule 14a-8, which applies to shareholder proposals submitted for inclusion in proxy statements, is enclosed for your reference.

If you have any questions, please call me.

Sincerely,

FEDEX CORPORATION



Clement E. Klank III

CEK/jed1162793

Attachment

cc: Myra K. Young

#### 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 anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]

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## U.S. Securities and Exchange Commission

### 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](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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

**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.<sup>4</sup> 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.<sup>5</sup>

**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.<sup>6</sup> 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<sup>7</sup> 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,<sup>8</sup> 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.<sup>9</sup>

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).<sup>10</sup> 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]."<sup>11</sup>

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).<sup>12</sup> 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.<sup>13</sup>

##### **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,<sup>14</sup> 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.<sup>15</sup>

**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.<sup>16</sup>

**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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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> 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.").

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

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

<sup>7</sup> 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.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> 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.

<sup>10</sup> 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.

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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

<sup>15</sup> 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.

<sup>16</sup> 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/cfs1b14f.htm>

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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](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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

### **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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<sup>1</sup> 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.

<sup>2</sup> Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

<sup>3</sup> 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.

<sup>4</sup> 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>

**Exhibit C**

April 15, 2016 E-mail to Mr. Chevedden



## Joseph Dudek

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**From:** Joseph Dudek  
**Sent:** Friday, April 15, 2016 2:49 PM  
**To:** \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*  
**Cc:** Eddie Klank  
**Subject:** FedEx Corporation Stockholder Proposals  
**Attachments:** 20160415144043043.pdf; 20160415143953748.pdf

Mr. Chevedden:

Please find attached correspondence regarding stockholder proposals submitted to FedEx Corporation by Myra K. Young and you. Please direct any further correspondence on these matters to Eddie Klank and me.

Sincerely,

Joey Dudek



Joey Dudek, Attorney  
FedEx Corp. - Securities and Corporate Law  
942 S. Shady Grove Rd.  
Memphis, TN 38120  
Office - 901.818.7357  
Cell - 901.619-1961

**Excerpt from Company E-mail Server Log Regarding Delivery of Company E-mail:**

Apr 15 15:09:13 mx27 ecelerity: 1460750953|cc870861-f797c6d0000041ba-3f-571145bd06de

**DELIVER**

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

(emphasis added)

**Exhibit D**

May 3, 2016 and May 6, 2016 faxes from Mr. Chevedden



Post-it® Fax Note	7871	Date	# of pages ▶
To	Myra K Young	From	John Cheukler
Co./Dept.		Co.	
Phone #		Phone #	*** FISMA & OMB Memorandum M-07-16 ***
Fax #	921-492-7286	Fax #	

04/10/2016

Myra K Young

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

Re: Your TD Ameritrade Account Endorsement Memorandum M-07-16 \*\*\*

Dear Myra K Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held, and had held continuously for at least thirteen months, 50 shares of FedEx Corporation (FDX) common stock in her account ending in ~~XXXXXX~~ 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,

William Walker  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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Post-it® Fax Note	7671	Date	# of pages
To	Richard Frank	From	Wina Choukder
Co./Dept.		Co.	
Phone #		Phone #	
Fax #	402-492-7256	Fax #	

04/21/2016

Myra Young

\*\*\* FISA & OMB Memorandum M-07-16 \*\*\*

Re: Your TD Ameritrade Account Enrollment

Dear Myra Young,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held, and had held continuously for at least thirteen months, 50 shares of FedEx Corporation (FDX) common stock in her account opening 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,

Richard Freas  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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