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

DIVISION OF
CORPORATION FINANCE

July 3, 2018

Clement Edward Klank III
FedEx Corporation
ceklank@fedex.com

Re: FedEx Corporation
Incoming letter dated May 8, 2018

Dear Mr. Klank:

This letter is in response to your correspondence dated May 8, 2018 and May 31, 2018 concerning the shareholder proposal (the "Proposal") submitted to FedEx Corporation (the "Company") by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated May 20, 2018, May 29, 2018, June 3, 2018, June 20, 2018, June 24, 2018 and July 1, 2018. 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 3, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: FedEx Corporation
Incoming letter dated May 8, 2018

The Proposal requests that the board take the steps necessary to include text in the Company's bylaws that states that each bylaw amendment that is adopted by the board shall not become effective until approved by shareholders.

We are unable to concur in your view that the Company may exclude the Proposal under rules 14a-8(i)(1), 14a-8(i)(2) or 14a-8(i)(6). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rules 14a-8(i)(1), 14a-8(i)(2) or 14a-8(i)(6).

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters 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 proposal 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 and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate 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 adversarial procedure.

It is important to note that the staff'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 shareholder 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 company's management omit the proposal from the company's proxy materials.

JOHN CHEVEDDEN

*** ***

July 1, 2018

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

 # 6 Rule 14a-8 Proposal
FedEx Corporation (FDX)
Shareholder Approval of Bylaw Changes
John Chevedden

Ladies and Gentlemen:

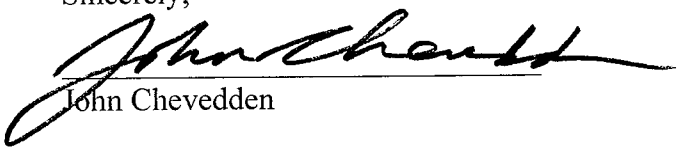
This is in regard to the May 8, 2018 no-action request.

The attached similar rule 14a-8 proposal was submitted to H&R Block Inc. (HRB) just prior to the rule 14a-8 proposal submitted to FedEx. H&R Block did not submit a no action request and HRB is no stranger to hiring an outside law firm to submit a no action request.

Recently HRB supplied its management position statement in regard to the rule 14a-8 proposal. The management position statement said that Missouri corporate statues, like Delaware, permit the article of incorporation of a company to give authority to the board of directors to amend the company's bylaws without shareholder approval. However it said that to adopt the rule 14a-8 proposal it would be necessary to amendment the HRB Articles. This would require Board action and additional shareholder approval.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Edward Klank <ceklank@fedex.com>

[HRB: Rule 14a-8 Proposal, April 4, 2018]4-4

[This line and any line above it – *Not* for publication.]

Proposal [4] – Shareholder Approval of Bylaw Changes

Shareholders request that each bylaw amendment that is adopted by the Board of Directors shall not become effective until approved by shareholders.

Adoption of this proposal is timely since many companies highlight their shareholder engagement efforts in their annual meeting proxies. An opportunity to vote is one way to engage with shareholders that can be measured objectively.

Please vote to enhance management engagement with shareholders:

Shareholder Approval of Bylaw Changes

[The line above – *Is* for publication.]

*** **JOHN CHEVEDDEN** ***

June 24, 2018

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

 # 5 Rule 14a-8 Proposal
FedEx Corporation (FDX)
Shareholder Approval of Bylaw Changes
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 8, 2018 no-action request.

The company does not cite any text in the rule 14a-8 proposal that would force the company to proceed in a reverse order to adopt this proposal.

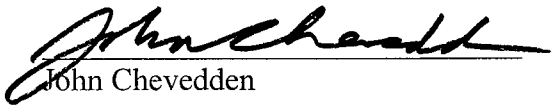
The company dos not address whether text in the bylaws can temporarily be inconsistent with text in the certificate or vice versa during a period of change.

The May 31, 2018 outside opinion did not cite any excluded rule 14a-8 proposal that contained the words "take the steps unnecessary" in the resolved statement after SLB 14D was finalized on November 8, 2008. SLB 14D directed the use of the words, "take the steps unnecessary."

The company did not state the number of 2018 failed no action requests that were supported by an opinion from this firm.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Edward Klank <ceklank@fedex.com>

*** **JOHN CHEVEDDEN** ***

June 20, 2018

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

 # 4 Rule 14a-8 Proposal
FedEx Corporation (FDX)
Shareholder Approval of Bylaw Changes
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 8, 2018 no-action request.

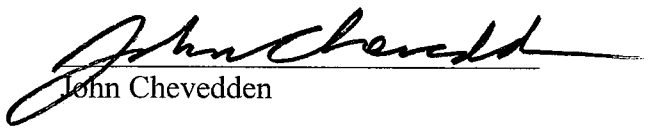
The May 31, 2018 company letter states that it is only a "current" power that allows the Board to amend the Bylaws without stockholder approval.

A "current" power would seem to be subject to a change in accordance with state law.

The company has not stated that there is a principle that holds that a "current" power is a permanent power under state law.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Edward Klank <ceklank@fedex.com>

the current power of the Board to amend the Bylaws without stockholder approval

JOHN CHEVEDDEN

*** ***

June 3, 2018

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

 # 3 Rule 14a-8 Proposal
FedEx Corporation (FDX)
Shareholder Approval of Bylaw Changes
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 8, 2018 no-action request.

The fact that Delaware law includes the word "may" undercuts the company claim.
"May" means might or could.

The fact that Delaware law does not include "irrevocably" further undercuts the company claim.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

John Chevedden

cc: Edward Klank <ceklank@fedex.com>

, Delaware law provides that a corporation may confer upon its board of directors in its certificate of incorporation the power to adopt, amend or repeal bylaws.

[FDX: Rule 14a-8 Proposal, April 15, 2018]4-16
[This line and any line above it – *Not* for publication.]

Proposal [4] – Shareholder Approval of Bylaw Changes

Shareholders request that the Board of Directors take the steps necessary to include text in the company bylaws that states that each bylaw amendment that is adopted by the Board of Directors shall not become effective until approved by shareholders.

Adoption of this proposal is timely since many companies highlight their shareholder engagement efforts in their annual meeting proxies. This included FedEx. A shareholder vote is one way to engage with shareholders that can be measured objectively.

It is important to address this low hanging fruit to improve the corporate governance of FedEx especially when there is higher hanging fruit that needs addressing. For instance 5 FedEx directors each had 15 to 47 years long-tenure. Long-tenure can impair the independence of a director no matter how well qualified. And independence is an all-important qualification for a Director. And these long-tenured directors controlled 40% of the FedEx Audit Committee and Executive Pay Committee.

Directors Susan Schwab and Shirley Jackson were also potentially overextended with 4 directorships at 4 companies each. Plus these 2 directors had extra director duties at FedEx. Marvin Ellison, with 4-years to accumulate FedEx shares as a director, was reported as owning no stock. And Mr. Ellison was assigned to 2 of the most most important FedEx board committees.

Please vote to enhance management engagement with shareholders:
Shareholder Approval of Bylaw Changes
[The line above – *Is* for publication.]

Clement Edward Klank III
Corporate Vice President
Securities & Corporate Law

942 South Shady Grove Road
Memphis, TN 38120
Telephone 901.818.7167
Fax 901.818.7170
ceklank@fedex.com

FedEx Corporation

VIA E-MAIL

May 31, 2018

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

Re: **FedEx Corporation – Omission of Stockholder Proposal of John Chevedden**

Ladies and Gentlemen:

This letter is submitted by FedEx Corporation (the "Company") pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, in response to a letter dated May 20, 2018 from John Chevedden (attached hereto as **Exhibit A**; the Proponent's "May 20 Letter") and a letter dated May 29, 2018 from John Chevedden (attached hereto as **Exhibit B**; the Proponent's "May 29 Letter," and together with the Proponent's May 20 Letter, the Proponent's "Supplemental Letters").

The Proponent's Supplemental Letters concern the request dated May 8, 2018 submitted by the Company to the Staff (the "Initial Request Letter") requesting confirmation that the Staff will not recommend any enforcement action if the Company excludes the Stockholder Proposal from our 2018 Proxy Materials.

Capitalized terms used but not otherwise defined in this letter shall have the same meanings given such terms in the Initial Request Letter.

The Proponent's Supplemental Letters assert the Stockholder Proposal should be included in our 2018 Proxy Materials. We are submitting this letter to supplement our Initial Request Letter and renew our request for confirmation that the Staff will not recommend any enforcement action if we exclude the Stockholder Proposal from our 2018 Proxy Materials.

There are no steps that can be taken by the Board to implement the Stockholder Proposal without violating Delaware law.

The proposed amendment to the Bylaws is inconsistent with the Certificate of Incorporation and would violate Delaware law if implemented.

As further discussed in the Initial Request Letter and the opinion of our special Delaware counsel, Richards, Layton & Finger, P.A., dated May 31, 2018, which is attached hereto as **Exhibit C** (the "May 31 RLF Opinion"), Delaware law provides that a corporation may confer upon its board of directors in its certificate of incorporation the power to adopt, amend or repeal bylaws. DGCL § 109(a). In accordance with Section 109(a) of the DGCL, the Certificate of Incorporation provides the Board with this power. Section 109(b) of the DGCL expressly subordinates the provisions of a company's bylaws to the provisions of its certificate of incorporation, codifying the well-settled Delaware law that a provision of the bylaws that conflicts with a provision of the certificate of incorporation is invalid or a nullity.

The Stockholder Proposal, if implemented, would take away the current power of the Board to amend the Bylaws without stockholder approval and, thus, would directly conflict with the Certificate of Incorporation. Therefore, the Stockholder Proposal, if implemented, would violate the requirement under Section 109(b) of the DGCL that the Bylaws not be inconsistent with the Certificate of Incorporation and therefore would be void.

Taking the steps necessary to amend the Certificate of Incorporation to condition the effectiveness of any Board-adopted Bylaw on stockholder approval would violate Delaware law.

As further discussed in the May 31 RLF Opinion, to the extent the Stockholder Proposal purports to require the Board to approve and declare advisable an amendment to the Certificate of Incorporation in order to eliminate the Board's ability to amend the Bylaws without stockholder approval, it would commit the directors to subordinate their fiduciary duties to act in the best interests of the Company. Such a result would violate Delaware law.

As a result, the Stockholder Proposal may be excluded from our 2018 Proxy Materials pursuant to Rule 14a-8(i)(2) because there is no way for the Company to implement the Stockholder Proposal without violating the DGCL, and pursuant to Rule 14a-8(i)(1) and Rule 14a-8(i)(6) because, to the extent that its implementation would violate Delaware law, the Stockholder Proposal is not a proper subject for stockholder action and the Company lacks the power and authority to implement the Stockholder Proposal.

Staff Legal Bulletin No. 14D does not suggest that the Staff should or would interpret the Proposal in the manner requested by the Proponent.

The Proponent's May 29 Letter asserts that the Company did not address Staff Legal Bulletin No. 14D ("SLB 14D"), dated November 7, 2008. SLB 14D provides that in certain instances the Staff may permit a proponent who submitted a proposal recommending, requesting,

or requiring the board of directors to amend the company's charter to revise the proposal to request that the board of directors "take the steps necessary" to amend the company's charter. SLB 14D goes on to list specific examples of revisions the Staff has previously permitted in response to no-action requests related to this type of proposal.

The Proponent is not asking the Staff to interpret the Proposal to include the phrase "take the steps necessary," as this language is included in the plain text of the Proposal. Instead, the Proponent's May 29 Letter suggests that the Proposal should be interpreted to include a reference to amending the Certificate of Incorporation, which would be required to prevent the requested Bylaw amendment from violating Delaware law.

Nothing in SLB 14D suggests that the Staff should or would interpret the Proposal in this manner, which would be a significantly greater departure from the plain text of the Proposal than the amendments permitted by the Staff in the examples set forth in SLB 14D.

Conclusion

Based upon the foregoing analysis and our Initial Request Letter, we respectfully request that the Staff agree that we may omit the Stockholder Proposal from our 2018 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 ***

[1280063]

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

Exhibit A

The Proponent's May 20 Letter

JOHN CHEVEDDEN

*** ***

May 20, 2018

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)
Shareholder Approval of Bylaw Changes
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 8, 2018 no-action request.

The company failed to address the words "take the steps unnecessary" highlighted in the brief resolved statement on the next page.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

John Chevedden

cc: Edward Klank <ceklank@fedex.com>

[FDX: Rule 14a-8 Proposal, April 15, 2018]4-16
[This line and any line above it – *Not* for publication.]

Proposal [4] – Shareholder Approval of Bylaw Changes

Shareholders request that the Board of Directors take the steps necessary to include text in the company bylaws that states that each bylaw amendment that is adopted by the Board of Directors shall not become effective until approved by shareholders.

Adoption of this proposal is timely since many companies highlight their shareholder engagement efforts in their annual meeting proxies. This included FedEx. A shareholder vote is one way to engage with shareholders that can be measured objectively.

It is important to address this low hanging fruit to improve the corporate governance of FedEx especially when there is higher hanging fruit that needs addressing. For instance 5 FedEx directors each had 15 to 47 years long-tenure. Long-tenure can impair the independence of a director no matter how well qualified. And independence is an all-important qualification for a Director. And these long-tenured directors controlled 40% of the FedEx Audit Committee and Executive Pay Committee.

Directors Susan Schwab and Shirley Jackson were also potentially overextended with 4 directorships at 4 companies each. Plus these 2 directors had extra director duties at FedEx. Marvin Ellison, with 4-years to accumulate FedEx shares as a director, was reported as owning no stock. And Mr. Ellison was assigned to 2 of the most most important FedEx board committees.

Please vote to enhance management engagement with shareholders:
Shareholder Approval of Bylaw Changes
[The line above – *Is* for publication.]

Eddie Klank

From:	***
Sent:	20 May, 2018 12:17
To:	Office of Chief Counsel
Cc:	Eddie Klank
Subject:	#1 Rule 14a-8 Proposal - Shareholder Approval of Bylaw Changes `(FDX)
Attachments:	CCE20052018.pdf

Ladies and Gentlemen:
Please see the attached letter.
Sincerely,
John Chevedden

Exhibit B

The Proponent's May 29 Letter

JOHN CHEVEDDEN

*** ***

May 29, 2018

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)
Shareholder Approval of Bylaw Changes
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 8, 2018 no-action request.

The company failed to address the words "take the steps unnecessary" in the brief resolved statement. The company did not say that the board is powerless to make a change that involves revising text in both the bylaws and the certificate of incorporation.

The company did not address the attached SLB 14D in regard to the use of "take the steps unnecessary."

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

John Chevedden

cc: Edward Klank <ceklank@fedex.com>

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14D (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 7, 2008

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 legal bulletin represent the views of the Division of Corporation Finance. This bulletin is not a rule, regulation, or statement of the Securities and Exchange Commission. Further, the Commission has neither approved nor disapproved its content. The references to "we," "our," and "us" are to the Division of Corporation Finance.

Contacts: For further information, please contact the Office of Chief Counsel in the Division of Corporation Finance at (202) 551-3500.

A. What is the purpose of this bulletin?

This bulletin is part of a continuing effort by the Division of Corporation Finance to identify and provide guidance on issues that commonly arise under rule 14a-8. Specifically, this bulletin contains information regarding:

- shareholder proposals that recommend, request, or require a board of directors to unilaterally amend the company's articles or certificate of incorporation;
- a new e-mail address established for the receipt of rule 14a-8 no-action requests and related correspondence;
- whether a company must send a notice of defect if the company's records indicate that the proponent has not owned the minimum amount of securities for the required period of time as set forth in rule 14a-8(b); and
- the requirement that a proponent send copies of correspondence to the company and the manner in which the company and a proponent should provide additional correspondence to us and to each other.

The following additional guidance regarding rule 14a-8 is available on the Commission's web site:

- SLB No. 14, which explains the rule 14a-8 no-action process and addresses matters of interest to companies and proponents;

- SLB No. 14A, which clarifies our position on shareholder proposals related to equity compensation plans;

- SLB No. 14B, which clarifies and updates some of the guidance contained in SLB No. 14; and

- SLB No. 14C, which addresses additional matters of interest to companies and proponents, and clarifies and updates some of the guidance contained in SLB No. 14 and SLB No. 14B.

B. A shareholder proposal recommends, requests, or requires that the board of directors amend the company's charter. If, under applicable state law, the charter can be amended only if the amendment is initiated by the board and subsequently approved by the shareholders, may a company exclude a proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6) based solely on the argument that the board does not have the unilateral authority or power under state law to amend the charter?

If a proposal recommends, requests, or requires the board of directors to amend the company's charter, we may concur that there is some basis for the company to omit the proposal in reliance on rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6) if the company meets its burden of establishing that applicable state law requires any such amendment to be initiated by the board and then approved by shareholders in order for the charter to be amended as a matter of law. In accordance with longstanding staff practice, however, our response may permit the proponent to revise the proposal to provide that the board of directors "take the steps necessary" to amend the company's charter. If the proponent revises the proposal in this manner within the time frame specified in our response letter, we do not believe there would be a basis for the company to exclude the proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6). The chart below includes examples of revisions that we have previously permitted in response to no-action requests similar to those discussed in this question and answer.

Company	Proposal	Date of our response	Our response
SBC Communications Inc.	Resolved that as of December 31, 2005 the number of SBC Board of Director seats will be reduced from twenty one (21) to fourteen (14).	Jan. 11, 2004	We concurred in the company's view that the proposal could be excluded under rules 14a-8(i)(2) and 14a-8(i)(6), unless the proponent revised the proposal as a recommendation or request that the board of directors take the steps necessary to implement the proposal.
Gyrodyne Co. of	It is proposed that	Aug. 18,	We concurred in the

Eddie Klank

From:	***
Sent:	29 May, 2018 08:13
To:	Office of Chief Counsel
Cc:	Eddie Klank
Subject:	#2 Rule 14a-8 Proposal - Shareholder Approval of Bylaw Changes `(FDX)
Attachments:	CCE29052018_2.pdf

Ladies and Gentlemen:
Please see the attached letter.
Sincerely,
John Chevedden

Exhibit C

May 31 RLF Opinion

RICHARDS LAYTON & FINGER
Attorneys at Law

May 31, 2018

FedEx Corporation
942 South Shady Grove Road
Memphis, Tennessee 38120

Re: Stockholder Proposal Submitted By John Chevedden

Ladies and Gentlemen:

We have acted as special Delaware counsel to FedEx Corporation, a Delaware corporation (the "Company"), in connection with the proposal (the "Proposal") submitted by John Chevedden (the "Proponent") which the Proponent states that he intends to present at the Company's 2018 annual meeting of stockholders. In this connection, you have requested our opinion as to a certain matter under the General Corporation Law of the State of Delaware (the "General Corporation Law").

For purposes of rendering our opinion as expressed herein, we have been furnished and have reviewed the following documents:

(i) the Third Amended and Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware on September 26, 2011 (the "Certificate of Incorporation");

(ii) the Amended and Restated Bylaws of the Company (the "Bylaws");

(iii) the Proposal;

(iv) the Letter from the Proponent to the Securities and Exchange Commission (the "SEC") dated May 20, 2018 in response to the Company's No-action Letter (the "No-action Letter") with respect to the Proposal submitted to the SEC on May 8, 2018 (the "May 20 Response Letter"); and

(v) the Letter from the Proponent to the SEC dated May 29, 2018 in response to the No-action Letter (the "May 29 Response Letter" and, together with the May 20 Response Letter, the "Response Letters").

With respect to the foregoing documents, we have assumed: (a) the genuineness of all signatures, and the incumbency, authority, legal right and power and legal capacity under all applicable laws and regulations, of each of the officers and other persons and entities signing or whose signatures appear upon each of said documents as or on behalf of the parties thereto;

(b) the conformity to authentic originals of all documents submitted to us as certified, conformed, photostatic, electronic or other copies; and (c) that the foregoing documents, in the forms submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. For the purpose of rendering our opinion as expressed herein, we have not reviewed any document other than the documents set forth above, and, except as set forth in this opinion, we assume there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. We have conducted no independent factual investigation of our own, but rather have relied solely upon the foregoing documents, the statements and information set forth therein, and the additional matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

The Proposal

The Proposal reads as follows:

> Shareholders request that the Board of Directors take the steps necessary to include text in the company bylaws that states that each bylaw amendment that is adopted by the Board of Directors shall not become effective until approved by shareholders.

The Proposal requests that the Board of Directors of the Company (the "Board") adopt a bylaw provision (the "Proposed Bylaw") that would condition the effectiveness of any future bylaw amendment adopted by the Board on subsequent stockholder approval, thus effectively eliminating the power of the Board under the Certificate of Incorporation to amend, modify, alter or repeal the Bylaws without stockholder approval.

No-Action Letter and the Response Letters

On May 7, 2018, at your request, we provided an opinion that, because the Proposed Bylaw would be inconsistent with the provisions of the Certificate of Incorporation, the Proposed Bylaw is improper under, and would violate, the General Corporation Law and thus the Proposal is improper under, and would violate, Delaware law (the "May 7 Opinion"). The May 7 Opinion was submitted to the SEC as an exhibit to the No-action Letter.

The May 20 Response Letter submitted to the SEC by the Proponent in response to the No-action Letter reads as follows:

> This is in regard to the May 8, 2018 no-action request.

> The company failed to address the words "take the steps unnecessary" [*sic*][1] highlighted in the brief resolved statement on the next page.
>
> This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

The May 29 Response Letter submitted to the SEC by the Proponent in response to the No-action Letter reads as follows:

> This is in regard to the May 8, 2018 no-action request.
>
> The company failed to address the words "take the steps unnecessary" [*sic*] in the brief resolved statement. The company did not say that the board is powerless to make a change that involves revising text in both the bylaws and the certificate of incorporation.
>
> The company did not address the attached SLB 14D in regard to the use of "take the steps unnecessary." [*sic*]
>
> This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

In the Response Letters, the Proponent appears to now be claiming incorrectly that the May 7 Opinion does not address the "take the steps necessary" portion of his Proposal. To the contrary, the May 7 Opinion clearly states that there are no "steps" that can be taken by the Board to implement the Proposal because any "text in the company bylaws that states that each bylaw amendment that is adopted by the Board of Directors shall not become effective until approved by shareholders" would directly conflict with Article EIGHTH of the Certificate of Incorporation and thus violate Section 109 of the General Corporation Law.

The Proponent's cryptic responses do not elucidate exactly what steps he thinks the Board could lawfully take to implement the Proposed Bylaw. To the extent the Proponent is suggesting that he can rewrite the Proposal to delete the portion relating to amending the Bylaws and to substitute that the Board take the steps necessary to amend any of the Corporation's governing documents that would need to be amended (in this case the Certificate of Incorporation) to condition the effectiveness of any Board-adopted Bylaw on stockholder

[1] The Proponent attached a copy of the Proposal to the May 20 Response Letter. On the copy of the Proposal he circled the words "take the steps necessary."

approval (the "Proposed Charter Amendment"),[2] the Proponent's tardy attempt to substantively revise the Proposal should not be permitted.[3]

You have requested our opinion whether (i) if the Proposal is approved by the stockholders, the Proposed Bylaw would be valid under the General Corporation Law and (ii) if the Proposal could be interpreted to also request the Proposed Charter Amendment and the Proposal is approved by the stockholders, the Proposed Charter Amendment would be valid under the General Corporation Law. For the reasons set forth below, in our opinion (a) the Proposed Bylaw is improper under, and would violate, the General Corporation Law and thus the

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[2] We note that the inclusion of the language "take the steps necessary" in the Proposal does not change the fact that implementation of the Proposal would cause the Company to violate Delaware law. The SEC has previously taken a no-action position with respect to requests under Rule 14a-8(i)(2) to exclude proposals that the board take steps necessary (or take similar action) to amend the corporation's governing instruments, where the implementation of the proposal would cause the corporation to violate state law. See Bank of America Corporation, SEC No-Action letter (Feb. 2, 2005) (stockholder proposal requesting that the board take the "necessary steps" to amend the company's governing instruments excludable under Rule 14a-8(i)(2) because implementation would violate state law); SBC Communications Inc., SEC No-Action letter (Dec. 16, 2004) (stockholder proposal requesting that the board take the "necessary steps" to amend the company's governing instruments excludable under Rule 14a-8(i)(2) because implementation of the proposal would cause the company to violate state law); The Allstate Corporation, SEC No-Action letter (Feb. 3, 2005) (stockholder proposal requesting that the board "take the necessary steps" to amend the company's governing instruments excludable under Rule 14a-8(i)(2) because implementation of the proposal would cause the company to violate state law).

[3] Unlike the proposals referenced in the no-action letters cited in footnote 2 above, the Proposal specifically refers to amending "the Bylaws," not the Company's "governing instruments," which would include both the Certificate of Incorporation and the Bylaws. A request to amend the Company's "governing instruments" is substantively different from the request to amend the Bylaws contained in the Proposal. Staff Legal Bulletin No. 14D ("SLB 14D") cited by the Proponent in the May 29 Response Letter does not provide any support for Proponent to belatedly change his Proposal from one that requests an amendment to the Bylaws to one that requests an amendment to the Certificate of Incorporation. Rather, SLB 14D relates to stockholder proposals that, unlike the Proposal, actually request that the Board amend the company's certificate of incorporation. SLB 14D ("If a proposal recommends, requests, or requires the board of directors to *amend the company's charter*, we may concur that there is some basis for the company to omit the proposal ... however, our response may permit the proponent to revise the proposal to provide that the board of directors 'take the steps necessary' *to amend the company's charter*.") (emphasis added). SLB 14D, however, does not give stockholder proponents the ability to subsequently amend proposals to substantively change them into something other than what the proposal requested.

Proposal is improper under, and would violate, Delaware law and (b) the Proposed Charter Amendment is improper under, and would violate, the General Corporation Law and thus the Proposal (if interpreted to also request the Proposed Charter Amendment) is improper under, and would violate, Delaware law.

Discussion

I. The Proposal would violate Delaware law if implemented.

A. The Proposed Bylaw is Inconsistent with the Provisions of the Certificate of Incorporation and, if implemented, would Violate Delaware Law.

Section 109(a) of the General Corporation Law provides, in relevant part, that

> "the power to adopt, amend or repeal bylaws shall be in the stockholders entitled to vote . . . . Notwithstanding the foregoing, any corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors."

8 Del. C. § 109(a) (emphasis added).

In accordance with Section 109(a) of the General Corporation Law, Article EIGHTH of the Certificate of Incorporation provides, in relevant part, that "[t]he Board of Directors shall have power to make, alter, amend and repeal the By-laws (except so far as the By-laws adopted by the stockholders shall otherwise provide)[4]." Thus, pursuant to Section 109 of the General Corporation Law and the Certificate of Incorporation, the Bylaws currently may be amended by either the Board or the stockholders of the Company, in each case acting unilaterally without the consent of the other.[5]

Section 109(b) of the General Corporation Law expressly subordinates the provisions of the bylaws to the provisions of the certificate of incorporation. In that regard, Section 109(b) provides that

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[4] The language contained in parentheses in Article EIGHTH of the Certificate of Incorporation, which suggests that the stockholders may adopt new bylaw provisions that may not be further amended by the Board, is not implicated by the Proposal because the Proposal is not limited to amendments by the Board of stockholder-adopted bylaws.

[5] The General Corporation Law limits the ability of the Board to amend stockholder-adopted bylaws in two narrow instances not implicated here.

> "[t]he bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees."

8 Del. C. § 109(b) (emphasis added). Section 109(b) codifies the well-settled Delaware law that a provision of the bylaws that conflicts with a provision of the certificate of incorporation is invalid or a nullity. See Oberly v. Kirby, 592 A.2d 445, 458 n.6 (Del. 1991) ("a corporation's by-laws may never contradict its certificate of incorporation"); Brooks v. State ex. rel. Richards, 79 A. 790, 800-01 (Del. 1911) ("A by-law that restricts or alters the voting power of stock of a corporation as established by the law of its [certificate of incorporation] is, of course void."). The Proposed Bylaw would eliminate the current power of the Board to amend the Bylaws without stockholder approval and, thus, would directly conflict with Article EIGHTH of the Certificate of Incorporation, which confers upon the Board the unilateral power to amend the Bylaws. The Proposed Bylaw therefore violates the requirement under Section 109(b) that the Bylaws not be inconsistent with the Certificate of Incorporation and therefore would be void.

Delaware case law is very clear that, "[w]here a by-law provision is in conflict with a provision of the charter, the by-law provision is a 'nullity.'" Centaur Partners, IV v. National Intergroup, Inc., 582 A.2d 923, 929 (Del. 1990) (quoting Burr, 291 A.2d 409); see also Airgas, Inc. v. Air Products & Chemicals, Inc., 8 A.3d 1182, 1194 (Del. 2010) (invalidating a bylaw provision that materially shortened directors' three-year terms because it was inconsistent with the certificate of incorporation that provided for three-year terms for directors), Oberly, 592 A.2d at 461 (invalidating an amendment to the bylaws of a nonstock corporation that provided that the members of the board were to be the only members of the corporation because it was inconsistent with the certificate of incorporation which provided that the members (and not the board) have the power to elect new members of the corporation), Essential Enterprises Corp. v. Automated Steel Products, 159 A.2d 288 (Del. Ch. 1960) (invalidating a bylaw that authorized the removal of directors by stockholders without cause because it was inconsistent with the certificate of incorporation which provided for a staggered board of directors), and Gaskill v. Gladys Belle Oil Co., 146 A. 337, 340 (Del. Ch. 1929) (holding that a bylaw unanimously adopted by stockholders which granted broader rights to the holders of the corporation's preferred stock than the rights defined in the certificate of incorporation was void). Most recently, in Airgas, the Delaware Supreme Court invalidated a stockholder adopted bylaw that purported to schedule Airgas's 2011 annual meeting just four months after its 2010 annual meeting as inconsistent with Airgas's certificate of incorporation. 8 A.3d 1182, 1194. The Court found that the staggered board provision in Airgas's certificate of incorporation intended a term of three years for its directors. Id. Because the bylaw proposed by Air Products materially shortened the directors' three-year term by eight months, it was inconsistent with Airgas's certificate of incorporation and was thus invalid under Section 109(b). Id. In Centaur Partners, the Delaware Supreme Court determined that a bylaw proposed to be adopted by stockholders that provided that it "is not subject to amendment, alteration or repeal by the Board of Directors" was in conflict with the board's authority as provided for in the certificate of incorporation to

amend the bylaws and hence would be invalid even if adopted by the stockholders. Centaur Partners, 582 A.2d at 929. Similarly, in Prickett v. Am. Steel & Pump Corp., the corporation's certificate of incorporation provided for a classified board of directors with directors elected for three-year terms. 253 A.2d 86, 88 (Del. Ch. 1969). The board of directors adopted a bylaw amendment to provide that all directors would be elected for one-year terms, but the certificate of incorporation was never amended. Id. At three consecutive annual meetings directors were elected to one-year terms. Id. The court held that the bylaw provision was inconsistent with the certificate of incorporation and therefore void. Id.

The Proposed Bylaw is plainly inconsistent with Article EIGHTH of the Certificate of Incorporation. Article EIGHTH of the Certificate of Incorporation grants the Board the power to amend, alter or repeal the Bylaws without stockholder approval. The Proposed Bylaw would condition the effectiveness of any amendment to the Bylaws adopted by the Board on stockholder approval, thus taking away the power currently conferred by Article EIGHTH on the Board to amend, alter or repeal the Bylaws without stockholder approval. The Proposal would eliminate the ability of the Board to unilaterally amend the Bylaws, and effectively requires that the Board go to the time and expense of calling a stockholder meeting if it wants to amend the Bylaws, effectively subjecting an amendment to the Bylaws proposed by the Board to the same procedure required to amend the Certificate of Incorporation, (i.e. a Board recommendation followed by stockholder approval). In the words of one commentator, such a requirement "renders granting of the right to (unilaterally) amend bylaws to the directors somewhat useless." Choi, Albert H. and Min, Geeyoung, Director Activism and Corporate Contract, Virginia Law and Economics Research Paper No. 2017-21; U of Penn, Inst. for Law & Econ. Research Paper No. 17-37 at 28 (February 23, 2018). Because the Proposed Bylaw would impose a material limitation upon the unconditional grant of power to amend the Bylaws provided to the Board in Article EIGHTH of the Certificate of Incorporation, the Proposed Bylaw is directly inconsistent with the Certificate of Incorporation. Therefore, the Proposed Bylaw would be a "nullity" and would violate Delaware law.

B. The Proposed Charter Amendment Would Violate Delaware Law.

Even if the Proposal could be rewritten to eliminate the reference to amending the Bylaws and instead be read as a proposal to require the Board to initiate an amendment to the Certificate of Incorporation to eliminate the Board's power under the Certificate of Incorporation to amend the Bylaws without stockholder approval, the Proposal would nonetheless violate Delaware law.

Under Delaware law, in general, neither the Board nor the stockholders have the unilateral power to amend the Certificate of Incorporation.[6] Instead, under Section 242 of the

[6] There are a few limited circumstances not implicated here where the board of directors of a Delaware corporation may amend the certificate of incorporation without approval of the stockholders.

General Corporation Law, to become effective, an amendment to the Certificate of Incorporation must be "declared advisable" by the Board and, only after such declaration of advisability, submitted to stockholders for adoption. Only if both the Board and the stockholders adopt the amendment has it been properly authorized and become effective.

The requirement that the Board first declare an amendment advisable is a board decision, not a stockholder decision. In making the decision whether to recommend an amendment, the board has independent responsibility which cannot be delegated to stockholders. This was made clear by the Delaware Supreme Court in Smith v. Van Gorkom, where the Court found the analogous declaration of advisability requirement in the merger statutes to prohibit the board from submitting to stockholders for approval a merger agreement without an affirmative recommendation. See Smith v. Van Gorkom, 488 A.2d 858, 888 (Del. 1985) (The board could not "take a neutral position and delegate to the stockholders the unadvised decision as to whether to accept or reject the merger.").

Following Van Gorkom, Section 251 of the General Corporation Law was amended to permit a merger agreement to be submitted to stockholders if the board changed its recommendation after its initial recommendation which made clear that an initial recommendation is required. Notably, no similar amendment was made to the amendment provisions of Section 242, so an amendment to the certificate of incorporation may not legally be submitted to stockholders without the Board's declaration of advisability.

With respect to the decision whether to submit the Proposed Charter Amendment to stockholders for consideration, the Delaware courts have been clear that stockholders may not direct or commit the Board with respect to matters for which they have statutory responsibility and fiduciary duties to make their best judgment. Directors cannot be required to delegate or abdicate their decision-making authority to the stockholders with respect to matters which they are expressly required under the General Corporation Law to approve before stockholder action can be taken. See Rosenblatt v. Getty Oil Co., 1983 WL 8936, at *18-19 (Del. Ch. Sept. 19, 1983) aff'd 493 A.2d 929 (Del. 1985) ("[D]irectors cannot lawfully agree to surrender to others the duties of corporate management which the statutes impose upon them."); Abercrombie v. Davies, 123 A.2d 893, 899-900 (Del. Ch. 1956) rev'd on other grounds, 130 A.2d 338 (Del. 1957) ("So long as the corporate form is used as presently provided by our statutes this Court cannot give legal sanction to agreements which have the effect of removing from directors in a very substantial way their duty to use their own best judgment on management matters. . . . [Stockholders] cannot under the present law commit the directors to a procedure which might force them to vote contrary to their own best judgment."); see also Paramount Commc'ns Inc. v. Time, Inc., 1989 WL 79880, at *30 (Del. Ch. July 14, 1989) aff'd 571 A.2d 1140 (Del. 1989) ("The corporation law does not operate on the theory that directors, in exercising their powers to manage the firm, are obligated to follow the wishes of a majority of shares."); Air Prods. & Chems., Inc. v. Airgas, Inc., 16 A.3d 48, 124 (Del. Ch. 2011) ("[T]he fiduciary duty to manage a corporate enterprise includes the selection of a time frame for achievement of corporate goals. That duty may not be delegated to the stockholders.") (quoting Paramount Commc'ns, Inc. v. Time, Inc., 571 A.2d 1140, 1154 (Del. 1990)). To the extent the Proposal purports to require

the Board to take the steps necessary to amend the Certificate of Incorporation to eliminate the Board's power to the amend the Bylaws without stockholder approval, it purports to require the Board to defer to the views of a majority of the Corporation's stockholders regardless of whether the Board's own business judgment would counsel against amending the Certificate of Incorporation in that manner. See, e.g., Nagy v. Bistricer, 770 A.2d 43, 62, 64 (Del. Ch. 2000) (holding that directors breached their fiduciary duties to the corporation by abdicating their duty to determine a fair merger price and noting that "[t]his abdication is inconsistent with the [Company] board's non-delegable duty to approve the [m]erger only if the [m]erger was in the best interests of [the Company] and its stockholders.").

Through the Proposal, the Proponent apparently seeks to require the Board to declare the advisability of the Proposed Charter Amendment to stockholders based solely upon a majority stockholder vote on the Proposal without regard to its fiduciary duties. In a similar situation, the Delaware Supreme Court invalidated a proposed bylaw that would have impermissibly infringed on the directors' exercise of their fiduciary duties. CA, Inc. v. AFSCME Employees Pension Plan, 953 A.2d 227, 237 (Del. 2008). In CA, the Court held that a proposed bylaw, which would have required the board to pay a dissident stockholder's proxy expenses for running a successful "short slate," impermissibly infringed on the directors' exercise of their fiduciary duties because it would have required the board to expend corporate funds even in cases where the board of directors believed doing so would not be in the best interests of the corporation and its stockholders. Id. at 240. Like the proposed bylaw in CA, to the extent the Proposal purports to require the Board to approve and declare advisable the Proposed Charter Amendment in order to eliminate the Board's ability to amend the Bylaws without stockholder approval, it would purport to commit the directors to subordinate their fiduciary duties to act in the best interests of the Company. Such a result would violate Delaware law. See, e.g., Spiegel v. Buntrock, 571 A.2d 767, 772-73 (Del. 1990) ("A basic principle of the General Corporation Law of the State of Delaware is that directors, rather than shareholders, manage the business and affairs of the corporation."); Pogostin v. Rice, 480 A.2d 619, 624 (Del. 1984) ("[T]he bedrock of the General Corporation Law of the state of Delaware is the rule that the business and affairs of a corporation are managed by and under the direction of its board.").

II. The Proposal is beyond the power and authority of the Company to implement.

As set forth in Section I above, the Proposal, if implemented, would violate Delaware law. Therefore, in our opinion, the Company lacks the power and authority to implement the Proposal.

III. The Proposal is not a proper matter for stockholder action under Delaware law.

As set forth in Sections I and II above, the Proposal, if implemented, would violate Delaware law and the Company lacks the power and authority to implement the Proposal.

Accordingly, the Proposal, in our opinion, is an improper subject for stockholder action under Delaware law.

CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, it is our opinion that the Proposal, if implemented, would violate Delaware law, that the Company lacks the power and authority to implement the Proposal and that the Proposal is not a proper subject for action by the stockholders of the Company under Delaware law.

The foregoing opinion is limited to the General Corporation Law. We have not considered and express no opinion on any other laws or the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the SEC and the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

CSB/JJV

*** JOHN CHEVEDDEN ***

May 29, 2018

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)
Shareholder Approval of Bylaw Changes
John Chevedden

Ladies and Gentlemen:

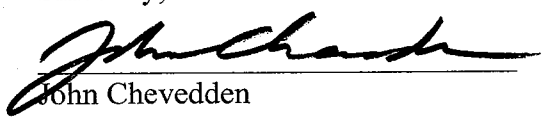
This is in regard to the May 8, 2018 no-action request.

The company failed to address the words "take the steps unnecessary" in the brief resolved statement. The company did not say that the board is powerless to make a change that involves revising text in both the bylaws and the certificate of incorporation.

The company did not address the attached SLB 14D in regard to the use of "take the steps unnecessary."

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Edward Klank <ceklank@fedex.com>

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14D (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 7, 2008

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 legal bulletin represent the views of the Division of Corporation Finance. This bulletin is not a rule, regulation, or statement of the Securities and Exchange Commission. Further, the Commission has neither approved nor disapproved its content. The references to "we," "our," and "us" are to the Division of Corporation Finance.

Contacts: For further information, please contact the Office of Chief Counsel in the Division of Corporation Finance at (202) 551-3500.

A. What is the purpose of this bulletin?

This bulletin is part of a continuing effort by the Division of Corporation Finance to identify and provide guidance on issues that commonly arise under rule 14a-8. Specifically, this bulletin contains information regarding:

- shareholder proposals that recommend, request, or require a board of directors to unilaterally amend the company's articles or certificate of incorporation;
- a new e-mail address established for the receipt of rule 14a-8 no-action requests and related correspondence;
- whether a company must send a notice of defect if the company's records indicate that the proponent has not owned the minimum amount of securities for the required period of time as set forth in rule 14a-8(b); and
- the requirement that a proponent send copies of correspondence to the company and the manner in which the company and a proponent should provide additional correspondence to us and to each other.

The following additional guidance regarding rule 14a-8 is available on the Commission's web site:

- SLB No. 14, which explains the rule 14a-8 no-action process and addresses matters of interest to companies and proponents;

- SLB No. 14A, which clarifies our position on shareholder proposals related to equity compensation plans;

- SLB No. 14B, which clarifies and updates some of the guidance contained in SLB No. 14; and

- SLB No. 14C, which addresses additional matters of interest to companies and proponents, and clarifies and updates some of the guidance contained in SLB No. 14 and SLB No. 14B.

B. A shareholder proposal recommends, requests, or requires that the board of directors amend the company's charter. If, under applicable state law, the charter can be amended only if the amendment is initiated by the board and subsequently approved by the shareholders, may a company exclude a proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6) based solely on the argument that the board does not have the unilateral authority or power under state law to amend the charter?

If a proposal recommends, requests, or requires the board of directors to amend the company's charter, we may concur that there is some basis for the company to omit the proposal in reliance on rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6) if the company meets its burden of establishing that applicable state law requires any such amendment to be initiated by the board and then approved by shareholders in order for the charter to be amended as a matter of law. In accordance with longstanding staff practice, however, our response may permit the proponent to revise the proposal to provide that the board of directors "take the steps necessary" to amend the company's charter. If the proponent revises the proposal in this manner within the time frame specified in our response letter, we do not believe there would be a basis for the company to exclude the proposal under rule 14a-8(i)(1), rule 14a-8(i)(2), or rule 14a-8(i)(6). The chart below includes examples of revisions that we have previously permitted in response to no-action requests similar to those discussed in this question and answer.

Company	Proposal	Date of our response	Our response
SBC Communications Inc.	Resolved that as of December 31, 2005 the number of SBC Board of Director seats will be reduced from twenty one (21) to fourteen (14).	Jan. 11, 2004	We concurred in the company's view that the proposal could be excluded under rules 14a-8(i)(2) and 14a-8(i)(6), unless the proponent revised the proposal as a recommendation or request that the board of directors take the steps necessary to implement the proposal.
Gyrodyne Co. of	It is proposed that	Aug. 18,	We concurred in the

JOHN CHEVEDDEN

*** ***

May 20, 2018

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)
Shareholder Approval of Bylaw Changes
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 8, 2018 no-action request.

The company failed to address the words "take the steps unnecessary" highlighted in the brief resolved statement on the next page.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

John Chevedden

cc: Edward Klank <ceklank@fedex.com>

[FDX: Rule 14a-8 Proposal, April 15, 2018]4-16
[This line and any line above it – *Not* for publication.]

Proposal [4] – Shareholder Approval of Bylaw Changes

Shareholders request that the Board of Directors take the steps necessary to include text in the company bylaws that states that each bylaw amendment that is adopted by the Board of Directors shall not become effective until approved by shareholders.

Adoption of this proposal is timely since many companies highlight their shareholder engagement efforts in their annual meeting proxies. This included FedEx. A shareholder vote is one way to engage with shareholders that can be measured objectively.

It is important to address this low hanging fruit to improve the corporate governance of FedEx especially when there is higher hanging fruit that needs addressing. For instance 5 FedEx directors each had 15 to 47 years long-tenure. Long-tenure can impair the independence of a director no matter how well qualified. And independence is an all-important qualification for a Director. And these long-tenured directors controlled 40% of the FedEx Audit Committee and Executive Pay Committee.

Directors Susan Schwab and Shirley Jackson were also potentially overextended with 4 directorships at 4 companies each. Plus these 2 directors had extra director duties at FedEx. Marvin Ellison, with 4-years to accumulate FedEx shares as a director, was reported as owning no stock. And Mr. Ellison was assigned to 2 of the most most important FedEx board committees.

Please vote to enhance management engagement with shareholders:
Shareholder Approval of Bylaw Changes
[The line above – *Is* for publication.]

Clement Edward Klank III
Corporate Vice President
Securities & Corporate Law

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Memphis, TN 38120
Telephone 901.818.7167
Fax 901.818.7170
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FedEx Corporation

VIA E-MAIL

May 8, 2018

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

Re: **FedEx Corporation — Omission of Stockholder Proposal of John Chevedden**

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 2018 annual meeting of its stockholders (the "2018 Proxy Materials") the stockholder proposal and supporting statement attached hereto as **Exhibit A** (the "Stockholder Proposal"), which was submitted by John Chevedden (the "Proponent") for inclusion in the 2018 Proxy Materials.

The Stockholder Proposal may be excluded from our 2018 Proxy Materials pursuant to Rule 14a-8(i)(2) because the Stockholder Proposal, if implemented, would cause the Company to violate Delaware law, and Rule 14a-8(i)(1) and Rule 14a-8(i)(6) because, to the extent that its implementation would violate Delaware law, the Stockholder Proposal is not a proper subject for stockholder action and the Company lacks the power and authority to implement the Stockholder Proposal. 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 2018 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 2018 Proxy Materials; and

- simultaneously providing a copy of this letter and its exhibits to the Proponent, thereby notifying the Proponent of our intention to exclude the Stockholder Proposal from our 2018 Proxy Materials.

The Stockholder Proposal

The Stockholder Proposal, in relevant part, requests the Company's Board of Directors (the "Board") to "take the steps necessary to include text in the company bylaws that states that each bylaw amendment that is adopted by the Board of Directors shall not become effective until approved by shareholders."

We received the Stockholder Proposal on April 15, 2018.

Legal Analysis

1. ***The Stockholder Proposal may be excluded under Rule 14a-8(i)(2) because its implementation would cause the Company to violate Delaware law***

Rule 14a-8(i)(2) permits a company to exclude a stockholder proposal from its proxy materials if "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." The Company is a Delaware corporation subject to the General Corporation Law of the State of Delaware (the "DGCL"). As further discussed in the opinion of our special Delaware counsel, Richards, Layton & Finger, P.A., which is attached hereto as **Exhibit B** (the "RLF Opinion"), the implementation of the Stockholder Proposal would cause the Company to violate Delaware law.

On numerous occasions the Staff has concurred with the exclusion of a stockholder proposal under Rule 14a-8(i)(2) where the proposal, if implemented, would conflict with state law, according to a legal opinion signed by counsel. *See The Goldman Sachs Group, Inc.* (Feb. 1, 2016); *Johnson & Johnson* (Feb. 16, 2012); *AT&T Inc.* (Feb. 12, 2010); and *Marathon Oil Corporation* (Feb. 6, 2009).

As discussed in the RLF Opinion, Delaware law provides that a corporation may confer upon its board of directors in its certificate of incorporation the power to adopt, amend or repeal bylaws. DGCL § 109(a). In accordance with Section 109(a) of the DGCL, the Company's Third Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") provides the Board with this power. Section 109(b) of the DGCL expressly subordinates the provisions of a company's bylaws to the provisions of its certificate of incorporation, codifying the well-settled Delaware law that a provision of the bylaws that conflicts with a provision of the certificate of incorporation is invalid or a nullity. The Stockholder Proposal, if implemented, would take away the current power of the Board to amend the Company's Amended and Restated Bylaws (the "Bylaws") without stockholder approval and, thus, would directly conflict with the Certificate of Incorporation. Therefore, the Stockholder Proposal, if implemented, would violate the requirement under Section 109(b) of the DGCL that the Bylaws not be inconsistent with the Certificate of Incorporation and therefore would be void. There is no way for the Company to implement the Stockholder Proposal without violating the DGCL.

The purported precatory nature of the Stockholder Proposal (in that the Stockholder Proposal requests the Board to take action) does not preclude its exclusion if the implementation

of the Stockholder Proposal would violate state law. The Staff has permitted exclusions of precatory or advisory stockholder proposals pursuant to Rule 14a-8(i)(2) if the action called for in the proposal would violate state law. *See Sigma Designs, Inc.* (June 9, 2015) and *Dominion Resources, Inc.* (Jan. 14, 2015).

The Stockholder Proposal, if implemented, would cause the Company to violate Delaware law and we respectfully request that the Staff concur that the Stockholder Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(2).

2. ***The Stockholder Proposal may be excluded under each of Rule 14a-8(i)(1) and Rule 14a-8(i)(6) because, to the extent that its implementation would violate Delaware law, the Stockholder Proposal is not a proper subject for stockholder action and the Company lacks the power and authority to implement the Stockholder Proposal***

a. The Stockholder Proposal may be excluded under Rule 14a-8(i)(1)

Rule 14a-8(i)(1) permits a company to exclude a stockholder proposal "[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." As discussed more fully above and in the RLF Opinion, implementation of the Stockholder Proposal would render the Bylaws inconsistent with the Certificate of Incorporation, thereby causing the Company to violate the DGCL. As such, and as further discussed in the RLF Opinion, the Company believes that the Stockholder Proposal is an improper subject for stockholder action under Delaware law and properly may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(1).

b. The Stockholder Proposal may be excluded under Rule 14a-8(i)(6)

Rule 14a-8(i)(6) permits a company to exclude a stockholder proposal "[i]f the company would lack the power or authority to implement the proposal." The Company believes that this exclusion applies to the Stockholder Proposal given the Company lacks the authority to implement a proposal that would violate the DGCL. The Staff has concurred in previous occasions that a company may exclude a proposal pursuant to both Rule 14a-8(i)(2) and Rule 14a-8(i)(6) if the proposal's adoption would cause the company to violate state law. *See RTI Biologics, Inc.* (Feb. 6, 2012) and *NiSource Inc.* (Mar. 22, 2010). As discussed more fully above and in the RLF Opinion, implementation of the Stockholder Proposal would render the Bylaws inconsistent with the Certificate of Incorporation, thereby causing the Company to violate the DGCL. Therefore, the Company lacks the power and authority under the DGCL to implement the Stockholder Proposal.

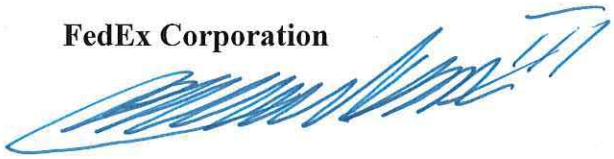
Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff agree that we may omit the Stockholder Proposal from our 2018 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



*
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Clement Edward Klank III

Attachments

cc (via email and FedEx Express): John Chevedden
***

[1274181]

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

Exhibit A

The Stockholder Proposal and Related Correspondence

*** **JOHN CHEVEDDEN** ***

Ms. Christine P. Richards
Corporate Secretary
FedEx Corporation (FDX)
942 S. Shady Grove Rd.
Memphis, TN 38120
PH: 901-818-7500
FX: 901 818-7590

Dear Ms. Richards,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial captializtion of our company.

This proposal is for the annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to ***

Sincerely,

John Chevedden

April 15, 2018
Date

cc: Robert Molinet <rtmolinet@fedex.com>
Corporate Vice President – Securities & Corporate Law
PH: 901-818-7029
FX: 901-818-7119
Eddie Klank <ceklank@fedex.com>
Megan Barnes <megan.barnes@fedex.com>

[FDX: Rule 14a-8 Proposal, April 15, 2018]4-16
[This line and any line above it – *Not* for publication.]

Proposal [4] – Shareholder Approval of Bylaw Changes

Shareholders request that the Board of Directors take the steps necessary to include text in the company bylaws that states that each bylaw amendment that is adopted by the Board of Directors shall not become effective until approved by shareholders.

Adoption of this proposal is timely since many companies highlight their shareholder engagement efforts in their annual meeting proxies. This included FedEx. A shareholder vote is one way to engage with shareholders that can be measured objectively.

It is important to address this low hanging fruit to improve the corporate governance of FedEx especially when there is higher hanging fruit that needs addressing. For instance 5 FedEx directors each had 15 to 47 years long-tenure. Long-tenure can impair the independence of a director no matter how well qualified. And independence is an all-important qualification for a Director. And these long-tenured directors controlled 40% of the FedEx Audit Committee and Executive Pay Committee.

Directors Susan Schwab and Shirley Jackson were also potentially overextended with 4 directorships at 4 companies each. Plus these 2 directors had extra director duties at FedEx. Marvin Ellison, with 4-years to accumulate FedEx shares as a director, was reported as owning no stock. And Mr. Ellison was assigned to 2 of the most most important FedEx board committees.

Please vote to enhance management engagement with shareholders:
Shareholder Approval of Bylaw Changes
[The line above – *Is* for publication.]

***

John Chevedden, sponsors this proposal.

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

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(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. Please acknowledge this proposal promptly by email
***

Edward Garitty

From: Eddie Klank
Sent: Sunday, April 15, 2018 2:37 PM
To: ***
Cc: Megan Barnes; Edward Garitty
Subject: RE: Rule 14a-8 Proposal (FDX)``

Mr. Chevedden,

Good afternoon.

Receipt acknowledged.

Please note Rob Molinet has a different role in the company, so please direct any stockholder proposals to my, Ms. Barnes's, and Mr. Garitty's attention.

Many thanks.

Respectfully yours,

Eddie Klank

From: *** ***
Sent: 15 April, 2018 12:29
To: Robert Molinet <rtmolinet@fedex.com>
Cc: Eddie Klank <ceklank@fedex.com>; Megan Barnes <megan.barnes@fedex.com>
Subject: Rule 14a-8 Proposal (FDX)``

Mr. Molinet,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.
Sincerely,
John Chevedden

Edward Garitty

From: Edward Garitty
Sent: Monday, April 16, 2018 12:45 PM
To: ***
Cc: Eddie Klank; Megan Barnes
Subject: FW: Rule 14a-8 Proposal (FDX)``
Attachments: Chevedden Stockholder Proposal.pdf

Mr. Chevedden:

Please find attached correspondence regarding the stockholder proposal related to shareholder approval of bylaw changes. Please direct any correspondence regarding this matter to Eddie Klank, Megan Barnes and me.

Sincerely,
Edward Garitty

Edward Garitty
Securities and Corporate Law
FedEx Corporation
942 S. Shady Grove Road
Memphis, Tennessee 38120
901-818-7311
edward.garitty@fedex.com

From: *** ***
Sent: 15 April, 2018 12:29
To: Robert Molinet <rtmolinet@fedex.com>
Cc: Eddie Klank <ceklank@fedex.com>; Megan Barnes <megan.barnes@fedex.com>
Subject: Rule 14a-8 Proposal (FDX)``

Mr. Molinet,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.
Sincerely,
John Chevedden

Clement Edward Klank III
Corporate Vice President
Securities & Corporate Law

942 South Shady Grove Road
Memphis, TN 38120
Telephone 901.818.7167
Fax 901.492.7286
ceklank@fedex.com

FedEx Corporation

***

Via E-mail

April 16, 2018

John Chevedden
***

Subject: **John Chevedden Stockholder Proposal – Shareholder Approval of Bylaw Changes**

Dear Mr. Chevedden:

We received the stockholder proposal dated April 15, 2018 that you submitted to FedEx Corporation ("FedEx") on April 15, 2018.

The proposal contains certain procedural deficiencies, which 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 FedEx's proxy statement, each stockholder proponent must, among other things, have continuously held at least $2,000 in market value, or 1%, of FedEx's common stock for at least one year by the date you submit the proposal, and must continue to hold such common stock through the date of the FedEx annual meeting. Our stock records indicate that you are not currently the registered holder of any shares of FedEx common stock, and you have not provided proof of ownership.

Accordingly, Rule 14a-8(b) requires that a proponent of a proposal prove eligibility as a beneficial stockholder of the company by submitting either:

- a written statement from the "record" holder of the shares (usually a bank or broker) verifying that, at the time the proponent submitted the proposal (in your case, April 15, 2018), the proponent had continuously held at least $2,000 in market value, or 1%, of FedEx's common stock for at least the one-year period prior to and including the date the proposal was submitted, and that he or she intends to continue to hold such common stock through the date of the FedEx annual meeting; 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, 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 and the proponent's written statement that

he or she intends to continue ownership of the shares through the date of the FedEx annual meeting.

To help stockholders 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. You can confirm whether your bank or broker 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/%20client-center/DTC/alpha.pdf?la=en.*

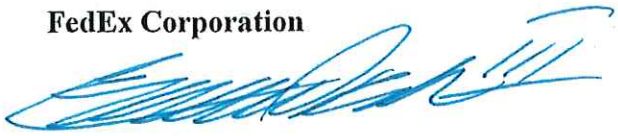
If you hold shares through a bank or broker that is not a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds the shares, or an affiliate of such DTC participant. You should be able to find the name of the DTC participant by asking your bank or broker. If the DTC participant that holds your shares knows your bank's or broker's holdings, but does not know your holdings, you may satisfy the proof of ownership requirements by submitting two proof of ownership statements — one from your bank or broker confirming your ownership and the other from the DTC participant confirming the bank's 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 stockholder 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 stockholder 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

Attachments

[1271412]

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]

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://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of

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

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

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

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

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

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

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

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

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

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

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

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

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

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

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

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of

the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

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

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

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

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

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

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

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

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

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

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

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

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

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

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the

company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

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

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

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

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

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

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

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

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

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

http://www.sec.gov/interps/legal/cfslb14f.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://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

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

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

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

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)...."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.[1] By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.[2] If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the

date the proposal was submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8 (d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the

website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.[4]

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become

operational at, or prior to, the time the company files its definitive proxy materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

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[1] An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

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

[3] Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

[4] A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

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

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Edward Garitty

From: ***
Sent: Tuesday, April 17, 2018 6:25 PM
To: Eddie Klank
Cc: Edward Garitty; Megan Barnes
Subject: Rule 14a-8 Proposal (FDX) blb
Attachments: CCE17042018_6.pdf

Mr. Klank,
Please see the attached broker letter.
Sincerely,
John Chevedden

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

April 17, 2018

John R. Chevedden
***

FOX Post-it® Fax Note 7671	Date 4-17-18 # of pages ▶
To Edward Klonk	From John Chevedden
Co./Dept.	Co. ***
Phone #	Phone
Fax # 901-492-7256	Fax #

To Whom It May Concern:

This letter is provided at the request of Mr. John R. Chevedden, a customer of Fidelity Investments.

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than 200 shares of QEP Resources, Inc. (trading symbol: QEP, CUSIP: 74733V100) and no fewer than 50 shares of Fedex Corp. (trading symbol: FDX, CUSIP: 31428X106) since January 1, 2017.

These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-397-9945 between the hours of 8:30 a.m. and 5:00 p.m. Central Time (Monday through Friday) and entering my extension 15838 when prompted.

Sincerely,

George Stasinopoulos
Personal Investing Operations

Our File: W061747-16APR18

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

Exhibit B

RLF Opinion

RICHARDS LAYTON & FINGER

May 7, 2018

FedEx Corporation
942 South Shady Grove Road
Memphis, Tennessee 38120

Re: Stockholder Proposal Submitted By John Chevedden

Ladies and Gentlemen:

We have acted as special Delaware counsel to FedEx Corporation, a Delaware corporation (the "Company"), in connection with the proposal (the "Proposal") submitted by John Chevedden (the "Proponent") which the Proponent states that he intends to present at the Company's 2018 annual meeting of stockholders. In this connection, you have requested our opinion as to a certain matter under the General Corporation Law of the State of Delaware (the "General Corporation Law").

For purposes of rendering our opinion as expressed herein, we have been furnished and have reviewed the following documents:

(i) the Third Amended and Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware on September 26, 2011 (the "Certificate of Incorporation");

(ii) the Amended and Restated Bylaws of the Company (the "Bylaws"); and

(iii) the Proposal.

With respect to the foregoing documents, we have assumed: (a) the genuineness of all signatures, and the incumbency, authority, legal right and power and legal capacity under all applicable laws and regulations, of each of the officers and other persons and entities signing or whose signatures appear upon each of said documents as or on behalf of the parties thereto; (b) the conformity to authentic originals of all documents submitted to us as certified, conformed, photostatic, electronic or other copies; and (c) that the foregoing documents, in the forms submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. For the purpose of rendering our opinion as expressed herein, we have not reviewed any document other than the documents set forth above, and, except as set forth in this opinion, we assume there exists no provision of any such other

document that bears upon or is inconsistent with our opinion as expressed herein. We have conducted no independent factual investigation of our own, but rather have relied solely upon the foregoing documents, the statements and information set forth therein, and the additional matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

The Proposal

The Proposal reads as follows:

> Shareholders request that the Board of Directors take the steps necessary to include text in the company bylaws that states that each bylaw amendment that is adopted by the Board of Directors shall not become effective until approved by shareholders.

The Proposal requests that the Board of Directors of the Company (the "Board") adopt a bylaw provision (the "Proposed Bylaw") that would condition the effectiveness of any future bylaw amendment adopted by the Board on subsequent stockholder approval, thus effectively eliminating the power of the Board under the Certificate of Incorporation to amend, modify, alter or repeal the Bylaws without stockholder approval.

You have requested our opinion whether, if the Proposal is approved by the stockholders, the Proposed Bylaw would be valid under the General Corporation Law. For the reasons set forth below, in our opinion the Proposed Bylaw is improper under, and would violate, the General Corporation Law and thus the Proposal is improper under, and would violate, Delaware law.

Discussion

I. The Proposal would violate Delaware law if implemented.

Section 109(a) of the General Corporation Law provides, in relevant part, that

> "the power to adopt, amend or repeal bylaws shall be in the stockholders entitled to vote . . . . Notwithstanding the foregoing, any corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors."

8 Del. C. § 109(a) (emphasis added).

In accordance with Section 109(a) of the General Corporation Law, Article EIGHTH of the Certificate of Incorporation provides, in relevant part, that "[t]he Board of Directors shall have power to make, alter, amend and repeal the By-laws (except so far as the By-laws adopted

by the stockholders shall otherwise provide)[1]." Thus, pursuant to Section 109 of the General Corporation Law and the Certificate of Incorporation, the Bylaws currently may be amended by either the Board or the stockholders of the Company, in each case acting unilaterally without the consent of the other.[2]

Section 109(b) of the General Corporation Law expressly subordinates the provisions of the bylaws to the provisions of the certificate of incorporation. In that regard, Section 109(b) provides that

> "[t]he bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees."

8 Del. C. § 109(b) (emphasis added). Section 109(b) codifies the well-settled Delaware law that a provision of the bylaws that conflicts with a provision of the certificate of incorporation is invalid or a nullity. See Oberly v. Kirby, 592 A.2d 445, 458 n.6 (Del. 1991) ("a corporation's by-laws may never contradict its certificate of incorporation"); Brooks v. State ex. rel. Richards, 79 A. 790, 800-01 (Del. 1911) ("A by-law that restricts or alters the voting power of stock of a corporation as established by the law of its [certificate of incorporation] is, of course void."). The Proposed Bylaw would take away the current power of the Board to amend the Bylaws without stockholder approval and, thus, would directly conflict with Article EIGHTH of the Certificate of Incorporation, which confers upon the Board the unilateral power to amend the Bylaws. The Proposed Bylaw therefore violates the requirement under Section 109(b) that the Bylaws not be inconsistent with the Certificate of Incorporation and therefore would be void.

Delaware case law is very clear that, "[w]here a by-law provision is in conflict with a provision of the charter, the by-law provision is a 'nullity.'" Centaur Partners, IV v. National Intergroup, Inc., 582 A.2d 923, 929 (Del. 1990) (quoting Burr, 291 A.2d 409); see also Airgas, Inc. v. Air Products & Chemicals, Inc., 8 A.3d 1182, 1194 (Del. 2010) (invalidating a bylaw provision that materially shortened directors' three-year terms because it was inconsistent with the certificate of incorporation that provided for three-year terms for directors), Oberly, 592 A.2d at 461 (invalidating an amendment to the bylaws of a nonstock corporation that provided that the members of the board were to be the only members of the corporation because it was inconsistent with the certificate of incorporation which provided that the members (and not the

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[1] The language contained in parentheses in Article EIGHTH of the Certificate of Incorporation, which suggests that the stockholders may adopt new bylaw provisions that may not be further amended by the Board, is not implicated by the Proposal because the Proposal is not limited to amendments by the Board of stockholder-adopted bylaws.

[2] The General Corporation Law limits the ability of the Board to amend stockholder-adopted bylaws in two narrow instances not implicated here.

board) have the power to elect new members of the corporation), Essential Enterprises Corp. v. Automated Steel Products, 159 A.2d 288 (Del. Ch. 1960) (invalidating a bylaw that authorized the removal of directors by stockholders without cause because it was inconsistent with the certificate of incorporation which provided for a staggered board of directors), and Gaskill v. Gladys Belle Oil Co., 146 A. 337, 340 (Del. Ch. 1929) (holding that a bylaw unanimously adopted by stockholders which granted broader rights to the holders of the corporation's preferred stock than the rights defined in the certificate of incorporation was void). Most recently, in Airgas, the Delaware Supreme Court invalidated a stockholder adopted bylaw that purported to schedule Airgas's 2011 annual meeting just four months after its 2010 annual meeting as inconsistent with Airgas's certificate of incorporation. 8 A.3d 1182, 1194. The Court found that the staggered board provision in Airgas's certificate of incorporation intended a term of three years for its directors. Id. Because the bylaw proposed by Air Products materially shortened the directors' three-year term by eight months, it was inconsistent with Airgas's certificate of incorporation and was thus invalid under Section 109(b). Id. In Centaur Partners, the Delaware Supreme Court determined that a bylaw proposed to be adopted by stockholders that provided that it "is not subject to amendment, alteration or repeal by the Board of Directors" was in conflict with the board's authority as provided for in the certificate of incorporation to amend the bylaws and hence would be invalid even if adopted by the stockholders. Centaur Partners, 582 A.2d at 929. Similarly, in Prickett v. Am. Steel & Pump Corp., the corporation's certificate of incorporation provided for a classified board of directors with directors elected for three-year terms. 253 A.2d 86, 88 (Del. Ch. 1969). The board of directors adopted a bylaw amendment to provide that all directors would be elected for one-year terms, but the certificate of incorporation was never amended. Id. At three consecutive annual meetings directors were elected to one-year terms. Id. The court held that the bylaw provision was inconsistent with the certificate of incorporation and therefore void. Id.

The Proposed Bylaw is plainly inconsistent with Article EIGHTH of the Certificate of Incorporation. Article EIGHTH of the Certificate of Incorporation grants the Board the power to amend, alter or repeal the Bylaws without stockholder approval. The Proposed Bylaw would condition the effectiveness of any amendment to the Bylaws adopted by the Board on stockholder approval, thus taking away the power currently conferred by Article EIGHTH on the Board to amend, alter or repeal the Bylaws without stockholder approval. The Proposal would eliminate the ability of the Board to unilaterally amend the Bylaws, and effectively requires that the Board go to the time and expense of calling a stockholder meeting if it wants to amend the Bylaws, effectively subjecting an amendment to the Bylaws proposed by the Board to the same procedure required to amend the Certificate of Incorporation, (i.e. a Board recommendation followed by stockholder approval). In the words of one commentator, such a requirement "renders granting of the right to (unilaterally) amend bylaws to the directors somewhat useless." Choi, Albert H. and Min, Geeyoung, Director Activism and Corporate Contract, Virginia Law and Economics Research Paper No. 2017-21; U of Penn, Inst. for Law & Econ. Research Paper No. 17-37 at 28 (February 23, 2018). Because the Proposed Bylaw would impose a material limitation upon the unconditional grant of power to amend the Bylaws provided to the Board in Article EIGHTH of the Certificate of Incorporation, the Proposed

Bylaw is directly inconsistent with the Certificate of Incorporation. Therefore, the Proposed Bylaw would be a "nullity" and would violate Delaware law.

II. The Proposal is beyond the power and authority of the Company to implement.

As set forth in Section I above, the Proposal, if implemented, would violate Delaware law. Therefore, in our opinion, the Company lacks the power and authority to implement the Proposal.

III. The Proposal is not a proper matter for stockholder action under Delaware law.

As set forth in Sections I and II above, the Proposal, if implemented, would violate Delaware law and the Company lacks the power and authority to implement the Proposal. Accordingly, the Proposal, in our opinion, is an improper subject for stockholder action under Delaware law.

CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, it is our opinion that the Proposal, if implemented, would violate Delaware law, that the Company lacks the power and authority to implement the Proposal and that the Proposal is not a proper subject for action by the stockholders of the Company under Delaware law.

The foregoing opinion is limited to the General Corporation Law. We have not considered and express no opinion on any other laws or the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the SEC and the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

CSB/JJV