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

DIVISION OF
CORPORATION FINANCE

April 13, 2018

Jennifer L. Kraft
United Continental Holdings, Inc.
jennifer.kraft@united.com

Re: United Continental Holdings, Inc.
Incoming letter dated February 2, 2018

Dear Ms. Kraft:

This letter is in response to your correspondence dated February 2, 2018 and February 26, 2018 concerning the shareholder proposal (the "Proposal") submitted to United Continental Holdings, Inc. (the "Company") by the New York City Employees' Retirement System et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponents' behalf dated February 28, 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: Kathryn E. Diaz
The City of New York
Office of the Comptroller
kdiaz@comptroller.nyc.gov

April 13, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: United Continental Holdings, Inc.
Incoming letter dated February 2, 2018

The Proposal urges the compensation committee to adopt an incentive-pay recoupment policy in the manner set forth in the Proposal.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's policies, practices and procedures compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Lisa Krestynick
Attorney-Adviser

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.

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

KATHRYN E. DIAZ
GENERAL COUNSEL

OFFICE OF THE GENERAL COUNSEL

February 28, 2018

By electronic mail: shareholderproposals@sec.gov

Office of the Chief Counsel
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder proposal to United Continental Holdings, Inc. from the New York City Employees' Retirement System, the New York City Fire Pension Fund, the New York City Teachers' Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System

Dear Counsel:

I write on behalf of the New York City Employees' Retirement System, the New York City Fire Pension Fund, the New York City Teachers' Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (collectively the "Systems") in response to the letter from counsel for United Continental Holdings, Inc. ("United" or the "Company") dated February 2, 2018 ("United Letter") in which United advises that its intends to omit from its 2018 proxy materials a proposal submitted by the Systems (the "Proposal"). For the reasons set forth below, we respectfully ask the Division to deny the requested no-action relief.

The Proposal and United's Objections

The Systems' Proposal is a straight-forward "clawback" proposal of the sort that has been submitted to a number of companies in recent years. It states:

> RESOLVED, that shareholders of United Continental Holdings, Inc. ("United") urge the Compensation Committee of the Board of Directors (the "Committee") to adopt a policy to provide that the Committee will (a) review, and determine whether to seek recoupment of, incentive compensation paid, granted or awarded to a senior executive if, in the Committee's judgment, (i) there has been misconduct resulting in a violation of law or United policy that causes significant financial or reputational harm to United and (ii) the senior executive either

DAVID N. DINKINS MUNICIPAL BUILDING • ONE CENTRE STREET, SUITE 602N • NEW YORK, NY 10007
PHONE: (212) 669-2065 • FAX: (212) 669-2884 • kdiaz@comptroller.nyc.gov
WWW.COMPTROLLER.NYC.GOV

> committed the misconduct or failed in his or her responsibility to manage or monitor conduct or risks; and (b) disclose the circumstances of any recoupment if the circumstances of the underlying misconduct are public. Disclosure under the Policy is intended to supplement, not supplant, any disclosure of recoupment required by law or regulation, and to not require disclosure prohibited by law.
>
> "Recoupment" includes (a) recovery of compensation already paid and (b) forfeiture, recapture, reduction or cancellation of amounts awarded or granted to an executive over which United retains control. These amendments should operate prospectively and be implemented in a way that does not violate any contract, compensation plan or regulation.

The supporting statement cites current reputational and financial risks facing United, noting an incident in which United violently removed a 69-year-old Asian-American passenger from a flight, an episode that was filmed and "went viral," causing public outrage and a drop in the Company's stock price. The supporting statement notes as well that United was fined $2.75 million for its treatment of disabled passengers and for stranding passengers on delays flights for over three hours.

United seeks no-action relief on the sole ground that the proposal has been substantially implemented and may thus be omitted under Rule 14a-8(i)(10).

Discussion

United's possible new policy does not "substantially implement" the Proposal.

The United Letter states that the board's compensation committee anticipates adopting a new clawback policy at the end of February, and that potential new policy forms the basis for United's objections. Since the (i)(10) exclusion only applies if a company "has already substantially implemented" a shareholder proposal, we reserve the right to supplement these comments should the new policy not be adopted or if it is adopted with modifications.

United pads its letter with a page of citations to no-action decisions that establish the basic framework for deciding (i)(10) claims, namely, that the company must have addressed the "essential objective" of the proposal and that the company policy must "compare favorably" with the shareholder proposal. United Letter, at p. 3. As we now demonstrate, the potential new policy and the Systems' Proposal do not compare favorably.

Triggering events.

United claims that the triggering events are essentially the same, but a comparison of the alternative texts reveals substantial differences. We highlight the key wording differences in italics and discuss those differences below.

Systems' Proposal trigger:

". . . (i) there has been misconduct resulting in a violation of law or United policy that causes *significant* financial or reputational harm to United, and (ii) the senior executive either committed the misconduct or *failed in his or her responsibility to manage or monitor conduct or risks*.

United's policy trigger:

". . . an executive officer has (i) committed a *material* violation of federal or state law that caused a *material adverse impact* on the Company's financial statements or reputation, or (ii) committed a *material* violation of the Company's Code of Ethics and Business Conduct (the "Code of Ethics" that caused a *material adverse impact* on the Company's financial statements or reputation."

There are significant differences between these two standards.

First, the Systems' Proposal requires "significant" financial or reputational harm, which gives the board flexibility to act in situations that fall far short of United's standard, which uses terms of art that have a specified meaning in corporate and securities law.

United's proposal would require a "material" violation of federal or state law, and not only that, the "material violation" would have to have a "material adverse impact" on the Company's financial statements or reputation. The phrase "material adverse impact" is a relatively clear concept in the mergers and acquisitions context, but it deals with a far more limited set of events than events that have a "significant" impact on a company. A "material adverse impact" is generally the result of an event that has materially and adversely affected or could reasonably be expected to materially and adversely affect the results of operations, financial condition, assets, liabilities, business or prospects of an individual company – in other words, a change drastic enough to call off a deal. See generally *IBP, Inc. v. Tyson Foods, Inc.*, 789 A.2d 14 (Del. Ch. 2001) (Strine, J.).

United defends its language choice (at p. 5) as being "more specific" and thus providing "better guidance" to determine when a clawback is appropriate. A more apt description would "more restrictive," as United's policy would drastically limit the possibility of a clawback.

Second, the Systems' Proposal focuses on "financial or reputational harm," whereas the Company's policy focuses on material adverse impacts to "financial statements or reputation." "Financial harm" is a broader concept than an adverse impact on "financial statements."

Third, United correctly notes that its potential new policy does not "specifically address" a key element in the Systems' Proposal, namely, situations involving supervisory failure. United Letter, at p. 5. United does make a half-hearted attempt to say that supervisory failure might be

covered by United's corporate Code of Ethics, which we are told means leading by example, encouraging open and construction communication, taking appropriate correcting action, and supporting employees. United provides no example of what kind of failure to abide by such standards could cause a "material adverse impact" on the Company's financial statements or reputation.

The omission of an explicit policy on supervisory failure is significant, particularly as to senior executives who may have important responsibilities for many of a company's operations. When something bad happens to harm a company and its shareholders, it is critically important to ask questions such as, "Who was in charge? How did this happen? What controls were in place to present this from happening?" A robust clawback policy can give senior executives a strong financial incentive to supervise properly. In fact, the absence of such a policy can create a perverse incentive system under which a senior executive may benefit financially from the misconduct of a subordinate, for example, if the subordinate's misconduct boosted sales or earnings in the short term, even if the misconduct ultimately caused significant financial or reputational harm to the company.

Several recent examples illustrate the significance of supervisory failures to any clawback policy worthy of the name.

The Wells Fargo scandal of 2016-2017 may have lopped billions of dollars off the stock price and generated fines and penalties of $185 million. Rather than limit its response to simply firing 5,300 lower-level employees for unlawful sales practices, the Wells Fargo board looked at the issue more systemically. Because Wells Fargo had a strong clawback policy in place, the board could recover $60 million from two top executives. Cowley, *Wells Fargo to Claw Back $41 Million of Chief's Pay Over Scandal*, The New York Times (Apr. 10, 2016), available at https://www.nytimes.com/2016/09/28/business/dealbook/wells-fargo-john-stumpf-compensation.html.[1]

That a supervisory failure can have significant consequences for a company and its investors is illustrated by another recent scandal, this one involving Equifax. Equifax knew of the computer fix that was needed, yet an Equifax employee failed to act in a timely fashion, and the company's system was hacked. Bernard and Cowley, *Equifax Breach Caused by Lone Employee's Error, Former CEO Says*, The New York Times (Oct. 3, 2017), available at https://www.nytimes.com/2017/10/03/business/equifax-congress-data-breach.html. Should an event that harmful to United occur, it is difficult to see how a clawback would be possible based on a violation of United's Code of Ethics. There is thus a serious discrepancy between the

---

The Board subsequently recovered an additional $75 million from the two executives, some of which we believe was only made possible by the Board's decision to retroactively terminate one of the executives for cause. See Wells Fargo's April 10, 2017 news release, entitled "Wells Fargo Board Releases Findings of Independent Investigation of Retail Banking Sales Practices and Related Matters" and available at https://newsroom.wf.com/press-release/community-banking-and-small-business/wells-fargo-board-releases-findings-independent. No such determination was required for the initial $60 million in clawbacks under Wells Fargo's clawback policy, which is similar to the policy requested in the Proposal.

Systems' Proposal and what the Company may adopt as policy.

These discrepancies underscore the most fundamental difference between the Systems' Proposal and United's potential new policy. The *scope* of the two proposals is so dissimilar that any perceived similarities (or even what United touts as enhancements) are simply not important. The point is illustrated as we proceed to examine the remaining areas in which United claims that the two policies overlap.

Number of Executives Covered by the Systems' Proposal.

United correctly notes that the Systems' Proposal is limited to "senior executives," which is generally understood in the context of Rule 14a-8 to be Named Executive Officers. By contrast, United's potential new policy would apply to an "executive officer" within the meaning of Rule 3b-7. United Letter, at p. 5. United does not specify how many "executive officers" would be covered by the potential new policy, but we are willing to assume that the number is larger than five. Be that as it may, a clawback policy so stringent that it is unlikely to be utilized cannot be said to have achieved the "essential objective" of the Systems' Proposal, regardless of whether the policy applies on paper to five or fifty or 150 executives.

Compensation Covered.

United notes (at p. 5) that the Proposal would cover "incentive compensation," as would United's potential new policy. The issue, however, is not the type of compensation at risk; it is the situation or situations in which that compensation could be at risk. The fact that both proposals involve the same subject matter hardly means that they both have the same (or a similar) scope.

Public Disclosure.

United contends that the public disclosure element of the Systems' Proposal has been substantially implemented because the Company is required to make disclosures under Item 402(b)(2)(viii) of Regulations S-K, which covers "policies and decisions regarding the adjustment or recovery of awards or payments if the relevant performance measures upon which they are based are restated or otherwise adjusted in a manner that could reduce the size of an award of payment." United Letter, at pp. 5-6.

Of course, that requirement covers only clawbacks triggered by financial restatements and does not apply explicitly to other situations in the Systems' Proposal. Moreover, the "Resolved" clause of the Systems' Proposal states: "Disclosure under the [Systems' recommended] Policy is intended to supplement, not supplant, any disclosure of recoupment required by law or regulation, and to not require disclosure prohibited by law." In short, the fact that United is not willing to adopt a policy as broad as that recommended by the Systems' Proposal means disclosure will inevitably be more limited.[2]

[2] United cites footnote 83 in *Executive Compensation and Related Person Disclosure*, Release No. 33-8732A (Nov. 7, 2007), which addressed a public comment urging the

Forward-Looking Application.

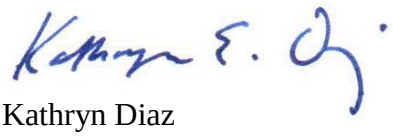
The Systems' Proposal would apply prospectively only, while United's potential new policy would include a three-year lookback. United Letter, at p. 6. Of course, given the limited scope of United's potential new policy, this distinction does not support United's argument.

Conclusion

For the foregoing reasons the Systems respectfully request that United's request for no-action relief be denied.

Thank you for your consideration of these points. Please do not hesitate to contact me if there is any further information that we can provide.

Respectfully submitted,



Kathryn Diaz
General Counsel

cc: Jennifer B. Kraft, Esq.

Commission require disclosure of clawback policies. The Commission responded by citing section 304 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7243), which deals with adjustments to compensation for a chief executive officer and chief financial officer in the event of a material non-compliance, as a result of misconduct, with any financial reporting requirement. The Commission then stated: "This example would not necessarily be limited to policies covering to compensation for a chief executive officer and chief financial officer in the event of a material non-compliance, as a result of misconduct, with any financial reporting requirement. The Commission then stated: "This example would not necessarily be limited to policies covering only situations contemplated by Section 304." It is unclear what policies a company must disclose under this "not necessarily" language, and in any event, United admits that its new policy does not reach the scope of the potential clawback situations sought by the Proposal.

February 26, 2018

Via Electronic Mail

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

Re: United Continental Holdings, Inc. – Shareholder Proposal submitted by Comptroller of the City of New York

Ladies and Gentlemen:

On February 2, 2018, United Continental Holdings, Inc., a Delaware corporation (the "Company"), submitted a letter (the "No-Action Request") notifying the staff of the Division of Corporation Finance (the "Staff") that the Company intends to omit from its proxy materials for its 2018 Annual Meeting of Shareholders (the "2018 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof submitted by the Comptroller of the City of New York, Scott M. Stringer, as custodian and trustee of the New York City Employees' Retirement System, the New York City Fire Pension Fund, the New York City Teachers' Retirement System, the New York City Police Pension Fund, and as custodian of the New York City Board of Education Retirement System, and co-sponsored by the UAW Retiree Medical Benefits Trust (collectively, the "Proponent"). Capitalized terms used in this letter but not otherwise defined have the meanings ascribed to them in the No-Action Request. The Proposal requested that the Compensation Committee (the "Compensation Committee") of the Board of Directors of the Company adopt a policy for the recoupment of executive compensation within the parameters set forth in the Proposal.

In accordance with *Staff Legal Bulletin 14D* ("SLB 14D"), this letter and its exhibits are being submitted via email. A copy of this letter and its exhibits will also be sent to the Proponent. Pursuant to Rule 14a-8(k) and SLB 14D, the Company requests that the Proponent copy the undersigned on any correspondence that it elects to submit to the Staff in response to this letter.

Basis for Supplemental Letter

The No-Action Request indicated the Company's belief that the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) as substantially implemented because the Company expected that the Compensation Committee would adopt a

recoupment policy covering incentive compensation of the Company's executive officers at its February 2018 meeting. The Company submitted the No-Action Request prior to the adoption of such policy in order to address the timing requirements of Rule 14a-8(j). This supplemental letter confirms that, at a February 22, 2018 meeting, the Compensation Committee approved and adopted the United Continental Holdings, Inc. Policy on Recoupment of Incentive Compensation (the "Company Policy"). A copy of the Company Policy is attached hereto as Exhibit A.

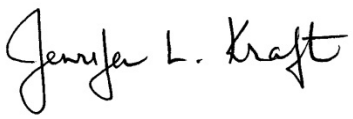
Analysis

The elements of the Company Policy were described in detail in the No-Action Request, together with a comparison against the terms requested for such policy as set forth in the Proposal. The Company reiterates its analysis as set forth in the No-Action Request regarding the exclusion of the Proposal. By adopting the Company Policy, the Company believes that it has satisfied the Proposal's essential objective. Accordingly, the Company believes that it has substantially implemented the Proposal and therefore the Proposal is excludable pursuant to Rule 14a-8(i)(10).

Conclusion

Based on the foregoing, I respectfully request your concurrence that the Proposal may be excluded from the Company's 2018 Proxy Materials. If you have any questions regarding this request or desire additional information, please contact the undersigned by phone at (872) 825-7667 or by email at jennifer.kraft@united.com.

Very truly yours,



Jennifer L. Kraft
Vice President and Corporate Secretary
United Continental Holdings, Inc.

Attachments

cc: Michael Garland, Assistant Comptroller, City of New York
Meredith Miller, Chief Corporate Governance Officer, UAW Retiree Medical Benefits Trust

Exhibit A

United Continental Holdings, Inc. Policy on Recoupment of Incentive Compensation

Effective as of February 22, 2018

The Compensation Committee of the Board of Directors (the "Committee") of United Continental Holdings, Inc. (the "Company") has the discretion in all appropriate circumstances, and to the extent legally permitted, to require the return, repayment or forfeiture of any annual or long-term incentive compensation payment or award made or granted to any current Executive Officer (as defined below) during the 3-year period preceding one of the following events:

(1) the Committee determines that the Executive Officer engaged in misconduct that resulted in a material violation of federal or state law that caused a material adverse impact to the Company's financial statements or reputation; or

(2) the Committee determines that the Executive Officer engaged in misconduct that resulted in a material violation of the Company's Code of Ethics that caused a material adverse impact to the Company's financial statements or reputation.

In each such instance, the amount required to be returned, repaid or forfeited shall be the amount deemed appropriate by the Committee in its discretion. This Policy shall be effective only with regard to payments and awards made after the adoption of this Policy. Decisions made pursuant to this Policy may be made in conjunction with, or separate and apart from, other recoupment programs of the Company.

For purposes of this Policy, the term "Executive Officer" has the meaning set forth in Rule 3b-7 under the Securities Exchange Act of 1934, as amended.

The Committee shall make all determinations regarding the application and operation of this Policy in its sole discretion, and all such determinations shall be final and binding. Notwithstanding the foregoing, the Committee may amend or change the terms of this Policy at any time for any reason, including as required to comply with the rules of the Securities Exchange Commission and the New York Stock Exchange implementing Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Further, the exercise by the Committee of any rights pursuant to this Policy shall be without prejudice to any other rights that the Company or the Committee may have with respect to any Executive Officer subject to this Policy. The right of the Committee to assert a recoupment claim under this Policy shall not survive the occurrence of a change in control of the Company as defined in the relevant incentive compensation plan.

February 2, 2018

Via Electronic Mail

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

Re: United Continental Holdings, Inc. – Shareholder Proposal submitted by the Comptroller of the City of New York

Ladies and Gentlemen:

This letter and the materials enclosed herewith are submitted by United Continental Holdings, Inc. (the "Company"), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the Securities and Exchange Commission (the "Commission") of its intention to exclude from its proxy materials for its 2018 Annual Meeting of Stockholders (the "2018 Annual Meeting" and such materials, the "2018 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof submitted by the Comptroller of the City of New York, Scott M. Stringer, as custodian and trustee of the New York City Employees' Retirement System, the New York City Fire Pension Fund, the New York City Teachers' Retirement System, the New York City Police Pension Fund, and as custodian of the New York City Board of Education Retirement System (collectively, the "Proponent").

The Company intends to file its definitive proxy materials for the 2018 Annual Meeting on or about April 23, 2018. The Company is submitting this letter no later than eighty calendar days before the Company intends to file its definitive 2018 Proxy Materials. Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its exhibits are being submitted via email to *shareholderproposals@sec.gov*. A copy of this letter and its exhibits will also be sent to the Proponent as notice of the Company's intent to exclude the Proposal from the 2018 Proxy Materials.

The Company intends to omit the Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) of the Exchange Act and respectfully requests confirmation that the staff of the Division of Corporation Finance (the "Staff") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2018 Proxy Materials for the reasons set forth below.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by the Company's shareholders at the 2018 Annual Meeting:

> RESOLVED, that shareholders of United Continental Holdings, Inc. ("United") urge the Compensation Committee of the Board of Directors (the "Committee") to adopt a policy to provide that the Committee will (a) review, and determine whether to seek recoupment of, incentive compensation paid, granted or awarded to a senior executive if, in the Committee's judgment, (i) there has been misconduct resulting in a violation of law or United policy that causes significant financial or reputational harm to United and (ii) the senior executive either committed the misconduct or failed in his or her responsibility to manage or monitor conduct or risks; and (b) disclose the circumstances of any recoupment if the circumstances of the underlying misconduct are public. Disclosure under the Policy is intended to supplement, not supplant, any disclosure of recoupment required by law or regulation, and to not require disclosure prohibited by law.
>
> "Recoupment" includes (a) recovery of compensation already paid and (b) forfeiture, recapture, reduction or cancellation of amounts awarded or granted to an executive over which United retains control. These amendments should operate prospectively and be implemented in a way that does not violate any contract, compensation plan, law or regulation.

A copy of the Proposal, including its supporting statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal may be properly excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) as substantially implemented because the Compensation Committee (the "Compensation Committee") of the Board of Directors of the Company (the "Board") is expected to take action to implement the essential objectives of the Proposal. The Company currently expects that the Compensation Committee, during its February 2018 meeting, will adopt a recoupment policy covering incentive compensation of the Company's executive officers (the "Company Policy"). The elements of the Company Policy and a comparison to the elements of the Proposal are provided in the discussion below.

The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal

A. Rule 14a-8(i)(10) Background

Under Rule 14a-8(i)(10), a shareholder proposal may be excluded from a company's proxy materials if the proposal has already been substantially implemented by the company. The

Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by management." *See* Release No. 20091 (Aug. 16, 1983) and Release No. 12598 (Sept. 7, 1976).

The Staff has consistently permitted the exclusion of proposals under the substantially implemented exclusion when it has determined that the company's policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal or where the company had addressed the underlying concerns and satisfied the "essential objective" of the proposal, even if the company (i) did not implement every detail of the proposal or (ii) exercised discretion in determining how to implement the proposal. Determination that the company has substantially implemented the proposal depends upon whether particular policies, practices and procedures compare favorably with the guidelines of the proposal. For example, in *Wal-Mart Stores, Inc.* (Mar. 30, 2010), the proposal requested that the company adopt six principles for national and international action to stop global warming. The company argued that its Global Sustainability Report, which was available on the company's website, substantially implemented the proposal. Although the Global Sustainability Report set forth only four principles that covered most, but not all, of the issues raised by the proposal, the Staff concluded that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal and that [the company] has, therefore, substantially implemented the proposal." *See also Applied Materials* (Jan. 17, 2018) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company "improve the method to disclose the Company's executive compensation information with their actual information," on the basis that the company's "public disclosures compare favorably with the guidelines of the proposal," where the company argued that its current disclosures follow requirements under applicable securities laws for disclosing executive compensation); *Northrop Grumman Corporation* (Feb. 17, 2017), *General Dynamics Corporation* (Feb. 10, 2017) and *The Dun & Bradstreet Corporation* (Feb. 10, 2017) (permitting, in each case, exclusion under Rule 14a-8(i)(10) of a proposal that up to 50 shareholders be allowed to aggregate their shares for purposes of satisfying a proxy access nomination threshold, on the basis that each company's "policies, practices and procedures compare favorably with the guidelines of the proposal," where each company's bylaw had a 20-shareholder threshold); *Oshkosh Corp.* (Nov. 4, 2016) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting six changes to the company's proxy access bylaw, on the basis that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal," where the company amended its proxy access bylaw to implement three of six requested changes); *Alcoa Inc.* (Feb. 3, 2009) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report describing how the company's actions to reduce its impact on global climate change may have altered the current and future global climate, where the company published general reports on climate change, sustainability and emissions data on its website that did not discuss all topics requested in the proposal); and *Texaco, Inc.* (Mar. 6, 1991, *recon. granted* Mar. 28, 1991) (proposal requesting the company to implement a specific set of environmental guidelines was excluded as substantially implemented because the company had established a compliance and disclosure program related to its environmental program, even though the

company's guidelines did not satisfy the specific inspection, public disclosure or substantive commitments that the proposal sought).

B. The Compensation Committee is Expected to Approve the Company Policy, Thereby Substantially Implementing the Proposal.

Here, as in the precedent described, the Company Policy compares favorably to the Proposal and, while not identical to the language in the Proposal, the Company Policy satisfies the Proposal's essential objective—the adoption of a policy that provides for the recoupment of a senior executive's incentive compensation in the event of his or her misconduct that causes significant harm to the Company. The Company carefully reviewed and considered each element contained in the Proposal. As a result of such consideration, the Company formulated the Company Policy that, in the Company's belief, is robust and accomplishes the essential objectives set out in the Proposal. Further, the Company Policy balances the interests of shareholders by disincentivizing executives to engage in any misconduct while also giving them an acceptable level of certainty in their incentive compensation, which is crucial to the Company's ability to recruit and retain key executives. Notably, the Company would be the first among its airline peer companies to adopt a recoupment policy of this nature. The analysis below considers certain elements of the Proposal and the Company Policy in direct comparison.

Triggering Events

The Proposal provides that the recoupment of incentive compensation may be appropriate if the Compensation Committee determines that "(i) there has been misconduct resulting in a violation of law or United policy that causes significant financial or reputational harm to United and (ii) the senior executive either committed the misconduct or failed in his or her responsibility to manage or monitor conduct or risks."

The proposed Company Policy also gives the Compensation Committee discretion to recoup executive compensation, if the Committee determines that an executive officer has (i) committed a material violation of federal or state law that caused a material adverse impact on the Company's financial statements or reputation, or (ii) committed a material violation of the Company's Code of Ethics and Business Conduct (the "Code of Ethics") that caused a material adverse impact on the Company's financial statements or reputation. The Company believes that these triggering events accomplish the essential objective of the Proposal while also giving executives and the Compensation Committee clear parameters regarding what kind of "misconduct" rises to the level of triggering a recoupment action.

Although the Company Proposal does not specifically address the executives' failure "in his or her responsibility to manage or monitor conduct or risks," the Company believes that the standard of misconduct set forth in the Company Policy would adequately provide accountability for misconduct which can be reasonably attributable to the executive in question. In fact, the Code of Ethics includes some supervisory elements, by setting forth that "[l]eaders, managers and supervisors must ensure their teams understand our Code, lead by example, encourage open and constructive communication, take appropriate corrective action and support our employees."

According to the Proposal's formulation, the misconduct must have caused "significant financial or reputational harm to United" before recoupment would be appropriate. The Company considered this language and implemented a similar but more exact standard by requiring that the misconduct must have caused a material adverse impact on the Company's financial statement or reputation. This more specific language provides better guidance to the Compensation Committee in determining when a recoupment action is appropriate, while still fulfilling the Proposal's goal to require recoupment whenever the misconduct caused significant harm to the Company. Importantly, consistent with the Proposal, both financial and reputational harm are covered.

Persons Covered

The Proposal suggests that "senior executives" should be covered by the policy. The Company Policy will cover each "executive officer" as defined in Rule 3b-7 under the Exchange Act. The Company believes that linking the scope of the executive officer definition in the Company Policy to the existing regulatory standard achieves the essential purpose of the Proposal to focus on "senior" leadership of the Company and eliminates ambiguity regarding which employees of the Company are subject to the Company Policy. By using the proposed "executive officer" definition, the Company Policy achieves the purpose of disincentivizing executives in these key roles from engaging in misconduct while providing clarity regarding the scope of the Company Policy, which is crucial to the Company's ability to recruit and retain management talent.

Compensation Covered

The Proposal uses the term "incentive compensation" to describe the compensation intended to be at risk under the Proposal. The Company Policy will apply to any annual or long-term incentive compensation, which the Company believes is directly in line with the Proponent's intent.

Public Disclosure

With respect to the Proposal's request for disclosure, the Company is already required under the Commission's rules to disclose the circumstances of any recoupment and of any decision not to pursue recoupment under the Company Policy. In particular, Item 402(b)(2)(viii) of Regulation S-K provides that the compensation discussion and analysis section of the Company's annual proxy statement should discuss the "policies *and* decisions regarding the adjustment or recovery of awards or payments if the relevant [company] performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment." (Emphasis added.) While that disclosure item was originally adopted to address recoupments under Section 304 of the Sarbanes-Oxley Act of 2002, the Commission specifically noted that the disclosure obligation was not limited to Section 304-related policies and decisions. *See* Exchange Act Release No. 34-54302A (Nov. 7, 2007) at footnote 83. Consistent with that obligation, the Company intends to describe in its annual proxy statement the Company Policy, including the circumstances in which incentive compensation will be recouped, as well as any recoupment decisions that are made under the Company Policy.

The Company intends to disclose any recoupment under the Company Policy, regardless of whether the executive officer impacted by the recoupment is a named executive officer, in the proxy statement.

Forward-Looking Application

The Proposal states that the recoupment policy should "operate prospectively and be implemented in a way that does not violate any contract, compensation plan, law or regulation." Consistent with the Proposal, the Company Policy is only intended to apply on a going-forward basis after the date of adoption and would not apply to any payments, grants or awards made prior to the date of adoption. Going forward, the Company Policy will include a three-year look back.

Summary

By adopting the Company Policy, the Company believes that it will satisfy the Proposal's essential objective. Accordingly, it is in the Company's view that it has substantially implemented the Proposal and that the Proposal is thus excludable under Rule 14a-8(i)(10).

C. Supplemental Notification Following Board Action

The Company submits this no-action request at this time to address the timing requirements of Rule 14a-8(j). The Company will supplementally notify the Staff after the Compensation Committee formally approves the Company Policy. The Staff has consistently granted no-action relief under Rule 14a-8(i)(10) where a company has notified the Staff that it expects that its board of directors will take certain action that will substantially implement the proposal and then supplements its request for no-action relief by notifying the Staff after that action has been taken by the board of directors. *See, e.g., Windstream Holdings, Inc.* (Feb. 14, 2017); *Windstream Holdings, Inc*. (Mar. 5, 2015); *Visa Inc*. (Nov. 14, 2014); *Hewlett-Packard Co.* (Dec. 19, 2013); *Hewlett-Packard Co*. (Dec. 18, 2013); *Starbucks Corp.* (Nov. 27, 2012); *DIRECTV* (Feb. 22, 2011); *General Dynamics Corp*. (Feb. 6, 2009) (each granting no-action relief where the company notified the Staff of its intention to omit a shareholder proposal under Rule 14a-8(i)(10) because the board of directors was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of the board action).

CONCLUSION

Based on the foregoing, I respectfully request your concurrence that the Proposal may be excluded from the Company's 2018 Proxy Materials. If you have any questions regarding this request or desire additional information, please contact the undersigned by phone at (872) 825-7667 or by email at jennifer.kraft@united.com.

Very truly yours,

Jennifer L. Kraft
Vice President and Corporate Secretary
United Continental Holdings, Inc.

Attachments

cc: Michael Garland, Assistant Comptroller, City of New York

Exhibit A

Copy of the Proposal and Related Correspondence

CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

MUNICIPAL BUILDING
ONE CENTRE STREET, 8TH FLOOR NORTH
NEW YORK, N.Y. 10007-2341
TEL: (212) 669-2517
FAX: (212) 669-4072
MGARLAN@COMPTROLLER.NYC.GOV

Michael Garland
ASSISTANT COMPTROLLER
CORPORATE GOVERNANCE AND
RESPONSIBLE INVESTMENT

December 5, 2017

Jennifer L. Kraft
Deputy General Counsel and Secretary
United Continental Holdings, Inc.
233 S. Wacker Drive
Chicago, IL 60606

Dear Ms. Kraft:

I write to you on behalf of the Comptroller of the City of New York, Scott M. Stringer. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System, the New York City Fire Pension Fund, The New York City Teachers' Retirement System, and the New York City Police Pension Fund, and custodian of the New York City Board of Education Retirement System (the "Systems"). The Systems' boards of trustees have authorized the Comptroller to inform you of their intention to present the enclosed proposal for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Letters from State Street Bank and Trust Company certifying the Systems' ownership, for over a year, of shares of United Continental Holdings, Inc. common stock are enclosed. Each System intends to continue to hold at least $2,000 worth of these securities through the date of the Company's next annual meeting.

We would welcome the opportunity to discuss the proposal with you. Should the Board of Directors adopt a clawback policy that we consider responsive to the proposal, we will withdraw the proposal from consideration at the annual meeting.

Please feel free to contact me at (212) 669-2517 if you would like to discuss this matter.

Sincerely,

Michael Garland
Enclosures

RESOLVED, that shareholders of United Continental Holdings, Inc. ("United") urge the Compensation Committee of the Board of Directors (the "Committee") to adopt a policy to provide that the Committee will (a) review, and determine whether to seek recoupment of, incentive compensation paid, granted or awarded to a senior executive if, in the Committee's judgment, (i) there has been misconduct resulting in a violation of law or United policy that causes significant financial or reputational harm to United and (ii) the senior executive either committed the misconduct or failed in his or her responsibility to manage or monitor conduct or risks; and (b) disclose the circumstances of any recoupment if the circumstances of the underlying misconduct are public. Disclosure under the Policy is intended to supplement, not supplant, any disclosure of recoupment required by law or regulation, and to not require disclosure prohibited by law.

"Recoupment" includes (a) recovery of compensation already paid and (b) forfeiture, recapture, reduction or cancellation of amounts awarded or granted to an executive over which United retains control. These amendments should operate prospectively and be implemented in a way that does not violate any contract, compensation plan, law or regulation.

SUPPORTING STATEMENT:

In April 2017, an incident in which a 69-year-old Asian American passenger was violently removed from United Flight 3411 sparked public outrage around the world and a 4% decline United's share price over the following week after reports of the incident went "viral" on social media. The Company settled with the passenger for an undisclosed amount later that month.

In January 2016, the U.S. Department of Transportation fined United $2.75 million for its treatment of disabled passengers and for stranding passengers on delayed flights for more than three hours. (https://www.transportation.gov/briefing-room/united-fined-violating-airline-disability-tarmac-delay-rules)

Such circumstances cause both financial and reputational harm.

As long-term shareholders, we believe compensation policies should promote sustainable value creation. We agree with former GE general counsel Ben Heineman Jr. that recoupment policies with business-related misconduct triggers are "a powerful mechanism for holding senior leadership accountable to the fundamental mission of the corporation: proper risk taking balanced with proper risk management and the robust fusion of high performance with high integrity." (http://blogs.law.harvard.edu/corpgov/2010/08/13/making-sense-out-of-clawbacks/)

Currently, United's compensation programs, and award agreements under the 2017 Incentive Compensation Plan, provide for recoupment of incentive compensation in "certain financial restatement situations."

In our view, significant damage can be caused by misconduct that does not necessitate a financial restatement, and it may be appropriate to hold accountable senior executives who did not commit misconduct but who failed in their management or monitoring responsibility. Our proposal gives the Committee discretion to decide whether recoupment is appropriate in particular circumstances.

Finally, shareholders cannot monitor enforcement without disclosure. We are sensitive to privacy concerns and urge United to adopt a policy that does not violate privacy expectations (subject to laws requiring fuller disclosure).

We urge shareholder to vote FOR this proposal.

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
Public Funds Services
1200 Crown Colony Drive 5th Floor
Quincy, MA, 02169
Telephone: (617) 784-6378
Facsimile: (617) 786-2211

dfarrell@statestreet.com

December 5, 2017

Re: New York City Board of Education Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Board of Education Retirement System, the below position from November 30, 2016 through today as noted below:

Security: United Continental Holdings, Inc.

Cusip: 910047109

Shares: **19,263**

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
Public Funds Services
1200 Crown Colony Drive 5th Floor
Quincy, MA, 02169
Telephone: (617) 784-6378
Facsimile: (617) 786-2211

dfarrell@statestreet.com

December 5, 2017

Re: New York City Teachers' Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Teachers' Retirement System, the below position from November 30, 2016 through today as noted below:

Security: United Continental Holdings, Inc.

Cusip: 910047109

Shares: **214,622**

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
Public Funds Services
1200 Crown Colony Drive 5th Floor
Quincy, MA, 02169
Telephone: (617) 784-6378
Facsimile: (617) 786-2211

dfarrell@statestreet.com

December 5, 2017

Re: New York City Employee's Retirement System

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Employee's Retirement System, the below position from November 30, 2016 through today as noted below:

Security: United Continental Holdings, Inc.

Cusip: 910047109

Shares: **214,281**

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
Public Funds Services
1200 Crown Colony Drive 5th Floor
Quincy, MA, 02169
Telephone: (617) 784-6378
Facsimile: (617) 786-2211

dfarrell@statestreet.com

December 5, 2017

Re: New York City Fire Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Fire Pension Fund, the below position from November 30, 2016 through today as noted below:

Security: United Continental Holdings, Inc.

Cusip: 910047109

Shares: **14,670**

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President

STATE STREET.

Derek A. Farrell
Asst. Vice President, Client Services

State Street Bank and Trust Company
Public Funds Services
1200 Crown Colony Drive 5th Floor
Quincy, MA, 02169
Telephone: (617) 784-6378
Facsimile: (617) 786-2211

dfarrell@statestreet.com

December 5, 2017

Re: New York City Police Pension Fund

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Police Pension Fund, the below position from November 30, 2016 through today as noted below:

Security: United Continental Holdings, Inc.

Cusip: 910047109

Shares: **58,717**

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell
Assistant Vice President