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

DIVISION OF
CORPORATION FINANCE

March 6, 2019

Viktor Sapezhnikov
Wachtell, Lipton, Rosen & Katz
vsapezhnikov@wlrk.com

Re: XPO Logistics, Inc.
Incoming letter dated January 29, 2019

Dear Mr. Sapezhnikov:

This letter is in response to your correspondence dated January 29, 2019 concerning the shareholder proposal (the "Proposal") submitted to XPO Logistics, Inc. (the "Company") by CtW Investment Group (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc: Richard Clayton
CtW Investment Group
richard.clayton@ctwinvestmentgroup.com

March 6, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: XPO Logistics, Inc.
Incoming letter dated January 29, 2019

The Proposal urges the board to adopt a policy that the Company will not engage in any "Inequitable Employment Practice," which the Proposal defines as mandatory arbitration of employment-related claims; non-compete agreements with employees; agreements with other companies not to recruit each others' employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any Company employee engaged in unlawful discrimination or harassment, unless such an NDA is requested by the person who was harassed or the victim of discrimination.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In this regard, we note that the Proposal relates generally to the Company's policies concerning its employees, and does not focus on an issue that transcends ordinary business matters. 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)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Jacqueline Kaufman
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.

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January 29, 2019

VIA EMAIL (SHAREHOLDERPROPOSALS@SEC.GOV)

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

Re: *Stockholder Proposal to XPO Logistics, Inc. by CtW Investment Group*

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we are writing on behalf of our client, XPO Logistics, Inc., a Delaware corporation ("XPO" or the "Company"), to request that the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") concur with XPO's view that, for the reasons stated below, it may exclude the stockholder proposal (the "Proposal") and the statement in support thereof (the "Supporting Statement") received from CtW Investment Group (the "Proponent") from XPO's proxy

statement and form of proxy for its 2019 Annual Meeting of Stockholders (collectively, the "2019 Proxy Materials").

Pursuant to Rule 14a-8(j) under the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), we have:

- transmitted this letter by email to the Staff at shareholderproposals@sec.gov no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and

- concurrently sent copies of this letter, together with its attachments, to the Proponent at the email addresses they have provided as notice of the Company's intent to exclude the Proposal and the Supporting Statement from the 2019 Proxy Materials.

Rule 14a-8(k) and SLB 14D provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

BACKGROUND OF THE PROPOSAL

The Proponent, CtW Investment Group, per its website, "works with pension funds sponsored by unions affiliated with Change to Win." Change to Win, a federation of labor unions, is chaired by James Hoffa, General President of the International Brotherhood of Teamsters. The Teamsters have previously resolved, at their 2016 International Convention, that they are "committed to develop a coordinated strategic plan . . . to organize XPO Logistics as broadly and as quickly as possible." In April 2018, an attorney with Change to Win filed multiple charges with the Equal Employment Opportunity Commission (the "EEOC") as the legal representative of former and current employees and a contractor of XPO. The Teamsters, in turn, organized rallies to coincide with the filing of the charges, with Teamsters President James Hoffa quoted in one news outlet as saying, "There's only one hope, the union, the Teamsters union. Hope is on the way. . . . We will organize XPO."

With this background, the Proponent has submitted the Proposal, dated December 18, 2018, setting forth the following proposed resolution for the vote of the Company's stockholders at the Annual Meeting of Stockholders in 2019:

> RESOLVED that shareholders of XPO Logistics Inc. ("XPO") urge the Board of Directors to adopt a policy that XPO will not engage in any Inequitable Employment Practice. "Inequitable Employment Practices" are mandatory arbitration of employment-related claims; non-compete agreements with employees; agreements with other companies not to recruit each others' employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any XPO employee engaged in unlawful discrimination or harassment, unless such an NDA is requested by the person who was harassed or the victim of discrimination.

Copies of the Proposal and the Supporting Statement are attached to this letter as Exhibit A. In addition, pursuant to Staff Legal Bulletin No. 14C (June 28, 2005), relevant correspondence exchanged with the Proponent is attached as Exhibit B hereto.

BASES FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal and the Supporting Statement may be excluded from the 2019 Proxy Materials pursuant to (i) Rule 14a-8(i)(7), because the Proposal involves matters that relate to the ordinary business operations of the Company, and/or (ii) Rule 14a-8(i)(3), because the Proposal is inherently vague and indefinite in violation of Rule 14a-9 under the Exchange Act.

ANALYSIS

I. The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(7) Because the Proposal Involves Matters that Relate to XPO's Ordinary Business Operations.

A. Rule 14a-8(i)(7) Background.

Rule 14a-8(i)(7) permits a company to exclude a stockholder proposal from its proxy materials "[i]f the proposal deals with a matter relating to the company's ordinary business operations." The "general underlying policy" of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is

impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Exchange Act Release No. 34-418 (May 21, 1998) (the "1998 Release"). The Commission has identified two central considerations that underlie this policy: First, that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight," and second, "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

B. The Proposal Is Excludable Because It Relates to the Ordinary Business Matter of Managing the Company's Workforce.

The Proposal is excludable under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations because it addresses the Company's management of its workforce, a core function of management's day-to-day business operations, which cannot, as a practical matter, be subject to direct stockholder oversight. In fact, the 1998 Release explains that "the management of the workforce, such as the hiring, promotion, and termination of employees" is a matter that is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." Similarly, in *United Technologies Corporation* (Feb. 19, 1993), the Staff stated:

> As a general rule the staff views proposals directed at a company's employment policies and practices with respect to its non-executive workforce to be uniquely matters relating to the conduct of the company's ordinary business operations. Examples of the categories of proposals that have been deemed to be excludable on this basis are: employee health benefits, general compensation issues not focused on senior executives, management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation.

The Staff has consistently concurred with exclusion of proposals relating to management of the workforce, including those related to hiring and terminating employees. *See, e.g., Apple, Inc.* (Nov. 16, 2015) (concurring in the exclusion of a proposal to adopt new compensation principles responsive to the "general economy, such as unemployment, working hour[s] and wage inequality"); *Merck & Co. Inc.* (Mar. 6, 2015) (proposal to fill entry level

positions only with outside candidates, where the Staff noted that "Proposals concerning a company's management of its workforce are generally excludable under rule 14a-8(i)(7)"); *Starwood Hotels & Resorts Worldwide, Inc.* (Feb. 14, 2012) (proposal asking management to verify United States citizenship for certain workers); *National Instruments Corp.* (Mar. 5, 2009) (proposal to adopt detailed succession planning policy); *Wilshire Enterprises, Inc.* (Mar. 27, 2008) (proposal to replace the chief executive officer); *Wells Fargo & Company* (Feb. 22, 2008) (proposal to prohibit employing individuals who had been employed by a credit rating agency during the previous year); and *Consolidated Edison, Inc.* (Feb. 24, 2005) (proposal to terminate certain supervisors).

Additionally, the Staff has long recognized that proposals that attempt to manage internal operating policies and practices, such as benefit plans, ethics policies and conflict of interest policies, may be excluded pursuant to Rule 14a-8(i)(7) because they infringe on management's core functions in overseeing the day-to-day ordinary business operations of a company. *See, e.g., FedEx Corp.* (Jul. 7, 2016) (concurring in the exclusion of a proposal relating to the terms of the company's employee retirement plans); *PG&E Corp.* (Jan. 15, 2016) (proposal to adopt anti-discrimination policy relating to hiring vendor contracts and customer relations); *PG&E Corp.* (Feb. 27, 2015) (proposal to include in all employment policies the right of employees to freely express their personal religious and political thoughts); *Costco Wholesale Corp.* (Sept. 26, 2014) (proposal relating to the terms of the company's Code of Conduct and anti-discrimination policy); *Willis Group Holdings Public Limited Co.* (Jan. 18, 2011) (proposal relating to the terms of the company's ethics policy); *Honeywell International Inc.* (Feb. 1, 2008) (proposal relating to the terms of the company's conflicts of interest policy).

The Proposal seeks to override management's core function of managing the Company's workforce by requiring the adoption of a blanket prohibition on certain lawful employment practices related to employee hiring and firing, conditions of employment and labor-management relations. Specifically, the Proposal would require the Board of Directors of the Company (the "Board") to adopt a policy that the Company will not: (i) require mandatory arbitration of any employment-related claims; (ii) enter into non-compete agreements with employees; (iii) enter into agreements with other companies not to recruit each other's employees; and (iv) enter into any non-disclosure agreements in connection with the arbitration or settlement of claims related to employee discrimination or harassment, unless requested by the person who was harassed or discriminated against. Furthermore, the Proponent does not specify whether the policy contained in the Proposal would apply to all levels of employees or all global locations of XPO's varied operations.

Similar to the proposals described above in which the Staff concurred in exclusion from proxy materials, the types of arrangements outlined in the Proposal are inextricably linked to the Company's policies for hiring and terminating employees, and, more generally, the way the Company manages its workforce. If implemented, the Proposal would prevent management of all levels at XPO's operational locations around the world from making the tailored employment-related decisions that are a fundamental part of the Company's day-to-day business operations. XPO is a global logistics company with a highly integrated network of people, technology and physical assets in 32 countries, with 1,529 locations and more than 98,000 employees. XPO uses its network to help more than 50,000 customers manage their goods most efficiently throughout their supply chains. XPO explains in its Proxy Statement for its 2018 Annual Meeting of Stockholders that its business model relies on its strong customer service culture, which is deeply interconnected with the engagement and satisfaction of all of its employees. XPO is intensely committed to maintaining its superior work environment, and management of all levels are focused on best workforce practices. While XPO is continually working to harmonize best workforce practices across its global operations, it also purposefully tailors the policies and procedures governing its workforce to the specific type of operation and labor force at each operating location, including careful consideration of the local laws and customary practices of each jurisdiction.

For example, the Company believes that mandatory arbitration, which remains lawful and enforceable in the United States, *see, e.g.*, *Epic Sys. Corp.* v. *Lewis*, 138 S. Ct. 1612 (2018) (holding that arbitration agreements in employment contracts were valid and enforceable), is efficient, economical and beneficial to its U.S. corporate employees because it provides for timely resolution as compared with litigation and is more cost effective for employees, rather than lengthy discovery, trials and appeals. Further, arbitrators are often experienced in the area and scope of the disputes they hear, aiding in the achievement of equitable and sensible resolutions. Contrary to the Supporting Statement's suggestion that mandatory arbitration "undermine[s] public policy by limiting remedies for wrongdoing," arbitration provides a more efficient means for employees to seek the remedies that otherwise would only be available through a lengthy and expensive litigation process. If the Company determines that arbitration is not the best resolution method for a particular dispute, the Company's typical employment agreements with its named executive officers provide the Company flexibility to elect whether any dispute with the applicable executive is resolved in arbitration or in state or federal court in Delaware. Moreover, the Company's arbitration policy with respect to its U.S. corporate employees is just one component of the Company's internal dispute resolution process for addressing employment-related concerns, which management has carefully and purposefully crafted to best address day-to-day employment-related issues that arise in the ordinary course of business.

Additionally, with respect to non-compete agreements, while the Supporting Statement somewhat implies that the Proponent is focused on non-compete agreements with entry-level workers rather than with higher-level workers who likely have learned valuable business know-how from their training and experience with the Company, the Proposal indiscriminately applies to all employees. The Company's employment agreements with its U.S. corporate-level, skilled employees often include non-competition and non-solicitation provisions to protect the Company's know-how, trade secrets and confidential information. The Company's practices with respect to hiring its skilled workforce are not appropriate subjects of a blanket policy with no room for the circumstance-specific determinations or the experience and judgment of management. Additionally, the Company believes that it, rather than stockholders voting at an annual meeting, should retain full flexibility to enter into appropriate non-compete arrangements with employees at any level of the organization if circumstances warrant.

Moreover, the Company ordinarily considers and enters into agreements with other companies not to recruit each other's employees in the context of mergers, acquisitions, divestitures, investments and other strategic transactions, where appropriate. As the Company discloses in its most recent Annual Report on Form 10-K filed on February 12, 2018, the Company regularly considers strategic opportunities and has grown substantially over the prior years by making acquisitions. When considering a strategic opportunity, the Company's management ordinarily considers agreeing to certain restrictions on the counterparty and/or XPO with respect to soliciting the employees of the other company in exchange for receiving certain information essential to evaluating the benefits of the transaction. Such restrictions are heavily negotiated and often narrowly tailored to cover only key employees with whom the counterparty or XPO, respectively, has had interaction with in connection with its evaluation of the potential transaction. Without agreeing or insisting (as the case may be) to such non-solicitation provisions with other companies, XPO's growth and strategic plan and ability to consider strategic opportunities that are in the best interests of the Company, its stockholders and its employees would be significantly hindered. Furthermore, the negotiation and determination of whether to agree to such non-solicitation provisions is precisely the kind of day-to-day business matter that requires the experience and judgment of the Company's management and is inappropriate for stockholder oversight.

XPO's management team is particularly focused on human capital management, led by the innovative efforts of XPO's Chief Human Resources Officer Meghan Henson, who has over 15 years of senior experience inside notable companies directing domestic and international human resources operations. With respect to workforce practices and other human-capital related matters, XPO's management team operates with transparency and open communication to the Board. When appropriate, the Board invites the Chief Human Resources

Officer to attend and speak at board meetings, and XPO's directors have opportunities to attend and participate in executive leadership meetings with XPO's mid- and senior-level operating executives. XPO's management strives to implement and maintain workforce practices that are not only in line with the legal and customary practices of each jurisdiction in which the Company operates, but that treat employees equitably and with respect, and contribute to a superior work environment. The day-to-day decisions that management makes in managing its workforce are precisely the types of core business functions that the Staff has long recognized are not appropriate for direct stockholder oversight. The overbroad nature of the Proposal's policy and its lack of flexibility to tailor the employment practices to the level or location of employees proves not only that the Proposal's policy would not be in the best interests of XPO's multi-faceted, global workforce, but also that stockholders are not best suited to implement such core functions that are fundamental to management's ordinary business operations.

C. The Proposal Does Not Focus on a Significant Policy Issue That Transcends the Company's Day-To-Day Business.

The 1998 Release provides that a stockholder proposal may not be excluded under Rule 14a-8(i)(7) if it focuses on "significant policy issues" that "transcend" the day-to-day business matters of a company. There is no "bright-line test" for determining whether a stockholder proposal raises significant policy issues; rather, it is a "case-by-case" determination. In Staff Legal Bulletin No. 14H (Oct. 22, 2015), the Commission clarified its approach to determining whether a proposal falls within the ordinary business exclusion, explaining that "the analysis should focus on the underlying subject matter of a proposal's request for board or committee review regardless of how the proposal is framed." Additionally, the Staff has suggested that a significant policy issue will be "a consistent topic of widespread public debate." *See AT&T Inc.* (Feb. 2, 2011, recon. denied Mar. 4, 2011); *see also Comcast Corp.* (Feb. 15, 2011) (concurring in the exclusion of the proposal under Rule 14a-8(i)(7), noting that it is not sufficient that the topic of the proposal may have "recently attracted increasing levels of public attention," but instead it must have "emerged as a consistent topic of widespread public debate").

Where a proposal has sought to apply employment practices across a wide cross-section of employees, the Staff has consistently found that the proposal did not relate to sufficiently significant social policy issues. *See CVS Health Corp.* (Mar. 1, 2017) (permitting exclusion of the proponent's proposal advocating for minimum wage reform); *CVS Health Corp.* (Feb. 27, 2015) (concurring in the exclusion of a proposal requesting the company "to amend its policies to explicitly prohibit discrimination based on political ideology, affiliation or activity," finding that it did not focus on a significant social policy issue, as it related to the company's policies "concerning its employees") (emphasis added); *see also The Walt Disney Co.* (Nov. 24,

2014); *Deere & Co.* (Nov. 14, 2014); *Costco Wholesale Corp.* (Nov. 14, 2014); *Bristol-Myers Squibb Co.* (Jan. 7, 2015). Rather, the key issue underlying proposals relating to employment practices is the relationship between the company and its employees, which is not a significant policy issue, but a basic component of the day-to-day operations of the company.

The underlying subject matter of the Proposal is the relationship between the Company and its employees. Specifically, the Proposal focuses on a handful of employment practices commonly used by management of public (and private) corporations in managing a large, global workforce on a day-to-day basis. The Proposal lumps the suite of contractual arrangements together to refer to them pejoratively as "Inequitable Employment Practices"—without providing any support that such practices are in fact inequitable—in an effort to characterize them as a "significant social policy issue." Though the Supporting Statement makes passing references to certain policy issues such as burdening the economy, impeding labor mobility, stifling innovation and entrepreneurship, and preventing the discovery and redress of misconduct, these are broad issues marginally implicated by certain of these workplace arrangements in specific factual settings. In reality, the employment practices set forth in the Proposal are unrelated contractual arrangements used in various aspects of the Company's business with respect to varying levels of employees in a wide range of jurisdictions. There is no one significant policy issue that is the subject of widespread public debate that ties these contractual arrangements together—the only common theme is employment-related issues, which is too general and vague to be considered the type of significant social policy issue that would render an ordinary business matter appropriate for direct stockholder input. Rather, the relationship between the Company and its employees is a key component of its day-to-day ordinary business operations, and the Proposal's policy, if implemented, would inappropriately override management's experience and judgment in how best to address a wide-range of workforce practices and cultivate a positive work environment for its employees at various levels and locations. Therefore, the Proposal does not "transcend the day-to-day business matters," and we respectfully request that the Staff concur in our view that it is excludable under Rule 14a-8(i)(7).

D. The Proposal Is Excludable Because It Seeks to Micromanage the Company by Mandating Specific, Intricate Changes with Regard to Complex Policies.

In considering whether a proposal falls within the scope of Rule 14a-8(i)(7), the 1998 Release stated that the Staff would consider "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The Staff further clarified that a proposal could "probe too deeply" where "the proposal involves

intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *See* 1998 Release. The Staff recently reiterated its view and application of this standard of assessing whether a proposal micromanages in Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("SLB No. 14J").

The Staff has consistently concurred that proposals that seek to impose specific methods for implementing complex policies are excludable under Rule 14a-8(i)(7) as they interfere with management's core functions of overseeing ordinary business operations. *See, e.g.*, *RH* (May 11, 2018) (concurring in the exclusion of a proposal broadly mandating that the luxury retailer in home furnishings offering a wide-range of products sell no down products because the proposal sought to impose specific methods for implementing complex policies); *EOG Resources, Inc.* (Feb. 26, 2018) (concurring in the exclusion of a proposal seeking company-wide, quantitative, time-bound targets for reducing greenhouse gas emissions as excludable because the Proposal sought to micromanage the company by "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment"); *Chevron Corp.* (Mar. 19, 2013) (concurring in the exclusion of a proposal as relating to the company's ordinary business operations (i.e., litigation strategy) where the proposal requested that the company review its "legal initiatives against investors"); *CMS Energy Corp.* (Feb. 23, 2004) (concurring in the exclusion of a proposal requiring the company to void any agreements with two former members of management and initiate action to recover all amounts paid to them, where the Staff noted that the proposal related to complex policy of the "conduct of litigation").

The Proposal attempts to micromanage the Company's business by mandating specific, intricate changes with respect to the Company's complex employment practices with no regard to the various types, levels or jurisdictions of employees. With operations in 32 countries spread over 1,529 locations and more than 98,000 employees, the relationship between the Company and its employees in multiple and varied jurisdictions is a complicated and critical component of its day-to-day management. Decisions concerning employee relations and workplace conditions, such as decisions regarding the strategies the Company may deploy with respect to terms of employment and addressing employment-related claims (including by former employees), are multi-faceted, complex and based on a range of factors. These are fundamental business matters for the Company's management and require an understanding of the business implications that could result from changes made to workforce policies.

The decisions the Company makes with respect to establishing and modifying employment practices are made at a local, national, regional and organization-wide level. These decisions are complex and nuanced, taking into account local law, national and regional norms,

industry best practices and the values and culture of the Company. The Company would not indiscriminately institute a wide-ranging policy change such as the one demanded in the Proposal without reviewing the impact of the change and potential alternatives. Specifically, the Company would consult with local and regional experts both inside and outside the Company and, in some instances, seek the input of its employees. Ultimately, any broad-based policy change would have varied application, including, potentially, exceptions mandated by local law, established practices or other requirements, across the numerous business lines, employee classifications and geographies represented by the Company's workforce. The complexity of this type of assessment is simply beyond the knowledge and expertise of the stockholders of the Company.

The Proposal seeks to micromanage the relationship between the Company and its employees by asking the Company to end certain employment practices that are generally lawful and well-accepted practices in most jurisdictions. Accordingly, the Proposal falls squarely within the Company's day-to-day business operations, and we respectfully request that the Staff concur in our view that it is therefore excludable under Rule 14a-8(i)(7).

II. The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(3) Because the Proposal and Supporting Statement Are Inherently Vague and Indefinite in Violation of Rule 14a-9.

A. Rule 14a-8(i)(3) Background.

Rule 14a-8(i)(3) under the Exchange Act permits a company to exclude a stockholder proposal if such proposal is contrary to the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy solicitation materials. Rule 14a-9 provides: "No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading."

B. The Proposal Is Impermissibly Vague and Indefinite in Violation of Rule 14a-8(i)(3).

The Staff consistently has taken the position that a stockholder proposal is excludable under Rule 14a-8(i)(3) when it is vague and indefinite so that "neither the stockholders 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." Staff Legal Bulletin No. 14B (Sept. 15, 2004). Additionally, the Staff has determined that a stockholder proposal may be excludable as materially misleading where "any action ultimately taken by the Company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (Mar. 12, 1991) (concurring in the exclusion of a proposal requesting that the board prohibit "any major shareholder . . . which currently owns 25% of the [c]ompany and has three [b]oard seats from compromising the ownership of the other stockholders"); *see also Walgreens Boots Alliance, Inc.* (Oct. 7, 2016) (concurring in the exclusion of a proposal requesting that before the board takes any action "whose primary purpose is to prevent the effectiveness of shareholder vote," it will determine whether there is a "compelling justification"); *Morgan Stanley* (Mar. 12, 2013) (concurring in the exclusion of a proposal that requested the appointment of a committee to explore "extraordinary transactions" as vague and indefinite); *NYC Employees' Retirement System* v. *Brunswick Corporation*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992) ("NYCERS") (finding that a proposal was rightfully excluded because "the [p]roposal as drafted lacks the clarity required of a proper shareholder proposal. Shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote.").

Further, the Staff consistently has permitted the exclusion of stockholder proposals when such proposals have failed to define certain terms necessary to implement them or where the meaning and application of key terms or standards under the proposal could be subject to differing interpretations. *See, e.g., AT&T Inc.* (Feb. 21, 2014) (concurring in the exclusion of a proposal requesting the board review the company's policies and procedures relating to director's moral, ethical and legal fiduciary duties and opportunities to ensure the company protects the privacy rights of American citizens as vague and indefinite because neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires); *Moody's Corp.* (Feb. 10, 2014) (concurring in the exclusion of a proposal that the company provide a report on its assessment of the feasibility and relevance of incorporating ESG risk assessments qualitatively and quantitatively into all of its credit rating methodologies because neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires); *Morgan Stanley* (Mar. 12, 2013) (concurring in the omission of a proposal that requested the appointment of a

committee to explore "extraordinary transactions" as vague and indefinite); *The Boeing Company* (Mar. 2, 2011) (allowing exclusion of a proposal requesting, among other things, that senior executives relinquish certain "executive pay rights" without explaining the meaning of the phrase); *General Motors Corp.* (Mar. 26, 2009) (concurring in the exclusion of a proposal to "eliminate all incentives for the CEO and the Board of Directors" that did not define "incentives"); *Verizon Communications Inc.* (Feb. 21, 2008) (proposal prohibiting certain compensation unless Verizon's returns to stockholders exceeded those of its undefined "Industry Peer Group" was excludable).

The Proposal violates Rule 14a-8(i)(3) because it is vague and indefinite with respect to the scope of the proposed policy's application, the timing and methodology of the policy's implementation and the definition of key terms necessary for stockholders to understand the action they are voting on. The Proposal urges the Board to adopt a policy to end "Inequitable Employment Practices" and the Supporting Statement provides that "Inequitable Employment Practices . . . burden the economy, impede labor mobility and prevent the discovery and redress of misconduct." The Proposal then proceeds to support these statements by references to proposed federal and state legislation and other matters arising in the United States. The Proposal does not, however, specify whether the requested policy and impact of the "Inequitable Employment Practices" applies only to the members of the Company's workforce in the United States or to its entire global workforce. It is impossible for the Company or the stockholders to comprehend precisely the depth and scope of the Proposal. *See NYCERS* ("Shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote."). This would be particularly important for the Company's stockholders to clearly understand the geographic scope of the policy change since the Company's workforce is employed across 32 countries. Stockholders would not be able to assess the operational and financial cost and the diversion of resources necessary to implement this policy unless they understood the employees to which the policy would apply. *See Fuqua Industries, Inc.* (Mar. 12, 1991); *see also Occidental Petroleum Corp.* (Feb. 11, 1991) ("The staff, therefore, believes that the proposal may be misleading because any action(s) ultimately taken by the [c]ompany upon implementation of this proposal could be significantly different from the action(s) envisioned by shareholders voting on the proposal.").

In addition, the Proposal fails to specify whether the requested policy should be implemented on a prospective basis only or whether it should also apply to existing agreements. If the Proposal is meant to cover existing agreements, the Proposal does not address how the Company should handle agreements or arrangements that are in place through negotiated contracts. The Company would need to evaluate all existing employment-related agreements, across 32 countries, and potentially renegotiate or terminate—or worse, breach—the terms of such

agreements in order to comply with the Proposal if the policy is to be followed as written. The Proposal also does not state by when this policy change should be implemented.

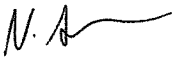
Furthermore, certain terms of the Proposal are not defined and are so vague and indefinite that the stockholders and the Company would not be able to determine with reasonable certainty what actions or measures the Proposal requires. The Proposal urges the Board to adopt a policy that the Company will not enter into, without exception, any "non-compete agreements," but then proceeds to discuss in the supporting statement the impact of "non-compete restrictions" and "non-compete provisions." Without further explanation, it is unclear whether the Proponent is advocating for a prohibition of "non-compete agreements" or any agreement that may contain so-called "non-compete restrictions" or "non-compete provisions." Even more problematic, the Proposal even fails to sufficiently define or explain what it means by "non-compete," a term which is susceptible to many interpretations, some fairly narrow and specific and others quite expansive. Similarly, the Proposal fails to define what are "employment-related claims" and what it means "not to recruit" and other important words in the Proposal – all these terms could be interpreted in many ways. The vagueness related to the scope and application of the Proposal's requested policy and failure to define key terms of the policy make it impossible for stockholders to be certain as to what action they are voting on and, further, for the Company and stockholders to ascertain whether any policy subsequently adopted is in compliance with the Proposal. Such qualities render the Proposal vague and indefinite, and we respectfully request that the Staff concur in our view that it is excludable under Rule 14a-8(i)(3).

CONCLUSION

Based on the foregoing analyses, we are of the view that (1) the Proposal relates to ordinary business operations and (2) the Proposal is impermissibly vague and indefinite in violation of Rule 14a-9. Therefore, on behalf of the Company, we respectfully request that the Staff confirm that it will not recommend enforcement action if the Company excludes the Proposal and the Supporting Statement from its 2019 Proxy Materials.

If we can be of any further assistance in this matter, please do not hesitate to call the undersigned at (212) 403-1122. If the Staff is unable to concur with the Company's conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please send your response to this letter by email to VSapezhnikov@wlrk.com.

Very truly yours,



Viktor Sapezhnikov

Enclosures

cc: Karlis Kirsis, XPO Logistics, Inc.

Richard Clayton, CtW Investment Group

Exhibit A

RESOLVED that shareholders of XPO Logistics Inc. ("XPO") urge the Board of Directors to adopt a policy that XPO will not engage in any Inequitable Employment Practice. "Inequitable Employment Practices" are mandatory arbitration of employment-related claims; non-compete agreements with employees; agreements with other companies not to recruit each others' employees; and non-disclosure agreements ("NDAs") entered into in connection with arbitration or settlement of claims that any XPO employee engaged in unlawful discrimination or harassment, unless such an NDA is requested by the person who was harassed or the victim of discrimination.

SUPPORTING STATEMENT

In recent years, companies have increasingly relied on a suite of contractual arrangements involving their employees, Inequitable Employment Practices, that burden the economy, impede labor mobility and prevent the discovery and redress of misconduct. As a result, there is a robust public debate over their use, including responses by legislators, regulators and state attorneys general.

Companies increasingly seek to impose non-compete restrictions, originally designed for higher-level knowledge workers, on entry-level workers. The Obama Administration opposed this expansion, and measures to curb it have been introduced in Congress and many states. Non-compete provisions stifle innovation and entrepreneurship, harming the broader economy. XPO has sued former sales employees for violating contractual non-competition and non-solicitation provisions.

Mandatory arbitration and NDAs undermine public policy by limiting remedies for wrongdoing and keeping misconduct secret. Mandatory arbitration precludes employees from suing in court for wrongs like wage theft, discrimination and harassment, and requires them to submit to private arbitration, which has been found to favor companies and discourage claims. XPO has attempted to compel arbitration in cases brought by employees for misclassifying them as independent contractors and failing to pay overtime.

Recent high-profile sexual harassment cases involving Fox News and Uber highlighted the impact of arbitration clauses. In December 2017, a bill to end mandatory arbitration of sexual harassment claims bill was introduced in Congress. All 56 state and territorial attorneys general urged Congressional leaders to support it.

The secrecy NDAs provide can allow a toxic culture to flourish, increasing the severity of eventual consequences and harming employee morale. NDAs were allegedly used to keep sexual harassment by Harvey Weinstein and Bill O'Reilly secret.

Washington state recently banned the use of NDAs in sexual harassment cases and similar legislation has been proposed in New York, California and Pennsylvania. Federal legislation has been introduced to limit employers' ability to secure NDAs upfront and require employers to disclose information about sexual harassment claims.

Our Proposal asks XPO to commit not to use any of the Inequitable Employment Practices, which we believe will encourage focus on human capital management and improve accountability. We urge shareholders to vote for this Proposal.

Exhibit B

CtW Investment Group

December 18, 2018

Secretary
XPO Logistics, Inc.
Five American Lane
Greenwich, CT 06831

Dear Corporate Secretary,

We hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in XPO Logistics, Inc.'s ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

CtW is the beneficial owner of approximately 30 shares of the Company's common stock, which been held continuously for more than a year prior to this date of submission. The Proposal requests that the Board adopt a policy that in will not engage in any inequitable employment practices, which are:

- Mandatory arbitration of employment-related claims,
- Non-compete agreements with employees,
- No poach agreements with another company, and
- Non-disclosure agreements entered into in connection with arbitration or settlement of claims that any Citigroup employee engaged in unlawful discrimination or harassment.

CtW intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Richard Clayton, Director of Research, at [Telephone # Redacted] or richard.clayton@ctwinvestmentgroup.com. Copies of correspondence or a request for a "no-action" letter should be forwarded to Mr. Clayton in care of the CtW Investment Group, 1900 L St. NW, Suite 900, Washington, DC 20036.

Sincerely,

Dieter Waizenegger
Executive Director, CtW Investment Group

amalgamated bank

December 18, 2018

Karlis Kirsis
Senior Vice President, Corporate Counsel
XPO Logistics, Inc.,
Five American Lane,
Greenwich, Connecticut 06831
Email: [Email Redacted]

Dear Mr. Kirsis:

Please be advised that Amalgamated Bank holds 38 shares of XPO Logistics, Inc. ("Company") common stock beneficially for the CTW Investment Group (CTW), the proponent of a shareholder proposal submitted to the Company on December 18, 2018, in accordance with Rule 14(a)-8 of the Securities and Exchange Act of 1934. The requisite shares of the Company's stock held by CTW have been held for at least one year from the date of submission of the proposal on December 18, 2018, shares having been held continuously for more than a year. CTW intends to hold those shares through the date of the Company's 2019 annual shareholders' meeting.

Amalgamated Bank serves as custodian and record holder for CTW Investment Group. The above-mentioned shares are registered in a nominee name of Amalgamated Bank. The shares are held by the Bank through DTC Account #2352.

Sincerely,

Chuck Hutton

Chuck Hutton
First Vice President
Investment Management Division, Client Service

275 Seventh Avenue
New York, NY 10001
amalgamatedbank.com

XPO Logistics

Karlis P. Kirsis
Senior Vice President,
Corporate Counsel
XPO Logistics, Inc.
Five American Lane
Greenwich, CT 06831

December 28, 2018

VIA E-MAIL & MAIL

CtW Investment Group
1900 L Street NW, Suite 900
Washington, D.C. 20036
Attention: Mr. Richard Clayton, Director of Research

Re: Shareholder Proposal for XPO Logistics, Inc.'s 2019 Annual Meeting of Stockholders

Dear Mr. Clayton:

We received CtW Investment Group's ("you" or "your") shareholder proposal (the "Proposal"), submitted on December 19, 2018 for inclusion in XPO Logistics, Inc.'s (the "Company") proxy materials for its 2019 Annual Meeting of Stockholders.

As you know, the Proposal is governed by Rule 14a-8 under the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), which sets forth the eligibility and procedural requirements for submitting stockholder proposals, as well as various substantive bases under which companies may exclude such proposals. To assist you in complying with Rule 14a-8 requirements, we have included a complete copy of Rule 14a-8 (addressing, among other things, eligibility and procedural requirements) as well as excerpts from Staff Legal Bulletin No. 14 (addressing, among other things, proof of ownership procedures) with this letter for your reference which includes the requirements and materials that are required in order to demonstrate procedural compliance, including as to the concern raised in this letter.

Based on our review of the information provided, our records and regulatory materials, we are unable to conclude that the Proposal meets the requirements of Rule 14a-8, and we wanted to alert you to the procedural deficiencies that were identified in case you wish to provide us with additional information for us to consider within the required timeframe for doing so (and without waiving any of the Company's rights or remedies in any regards), which timeframe is no later than 14 days from the date you receive this notification.

The Proposal appears to fail to properly demonstrate your eligibility to submit a shareholder proposal under Rule 14a-8. Rule 14a-8(b) requires shareholder proponents to submit sufficient proof of their continuous ownership of the requisite amount of company securities (at least $2,000 in market value, or 1%, of the company's shares entitled to vote on the proposal) for at least one year as of the date on which the proposal was submitted. The Company's stock records do not indicate that you are a record owner who satisfies this

requirement. In addition, to date we have not received adequate proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company. The December 18, 2018 letter from Amalgamated Bank you provided is insufficient because it verifies ownership for at least one year from December 18, 2018 (and incorrectly states that the Proposal was submitted on December 18, 2018), but the letter does not address your ownership as of December 19, 2018, the date the Proposal was actually submitted to the Company.

To remedy this defect, you must obtain, and provide to the Company, a new proof of ownership letter verifying your continuous ownership of the requisite number of Company securities for the one-year period preceding and including December 19, 2019, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

> (1) a written statement from the "record" holder of your shares verifying that you continuously held the requisite number of Company securities for the one-year period preceding and including the date the Proposal was submitted; or
>
> (2) if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the requisite number of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite number of Company securities for the one-year period.

Since you have not made the requisite Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 filings (or amendments to those documents or updated forms) as of or before the date on which the one-year eligibility period began, you must obtain, and provide to the Company, proof of ownership from the DTC participant through which the securities are held, as follows:

> (1) if your broker or bank is a DTC participant, then you must submit a written statement from your broker or bank verifying that you continuously held the requisite number of Company securities for the one-year period preceding and including the date the Proposal was submitted; or
>
> (2) if your broker or bank is not a DTC participant, then you must submit proof of ownership from the DTC participant through which the shares are held, verifying that you continuously held the requisite number of Company securities for the one-year period preceding and including the date the Proposal was submitted.

In short, if you hold shares through a bank, broker or other securities intermediary that is not a DTC participant, you will need to obtain proof of ownership from the DTC participant (or an affiliate thereof) through which the bank, broker or other securities intermediary holds the shares. This may require you to provide two proofs of ownership statements: (1) from your bank, broker or other securities intermediary confirming your ownership, and (2) the other from the DTC participant (or affiliate thereof) confirming the bank's, broker's or other securities intermediary's ownership, in each case for the requisite one-year period and in sufficient amount.

Pursuant to Rule 14a-8(f), if you wish to cure this deficiency, you are required to provide the Company with the responsive materials and other information requested hereby no later than 14 calendar days from the date that you receive this letter.

This letter does not waive or nullify any rights the Company may have regarding this matter, all of which the Company hereby expressly reserves as a matter of course. Additionally, the Company does not relinquish legal rights to later object to including any proposal of yours, including the Proposal, on related or different grounds pursuant to applicable SEC rules, and the Company continues to consider all of its available options.

If you have any comments or questions, you may send your response to me at the address on the letterhead of this letter and by e-mail to Karlis Kirsis [Email Redacted]. We thank you for your interest in the Company.

Sincerely,

Karlis Kirsis

Senior Vice President, Corporate Counsel

Rule 14a-8 - Proposals of Security Holders

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: 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.

* * *

Division of Corporation Finance: Staff Legal Bulletin No. 14

Shareholder Proposals

Action: Publication of CF Staff Legal Bulletin

Date: July 13, 2001

Summary: This staff legal bulletin provides information for companies and shareholders on rule 14a-8 of the Securities Exchange Act of 1934.

[EXCERPT]

Rule 14a-8 contains eligibility and procedural requirements for shareholders who wish to include a proposal in a company's proxy materials. Below, we address some of the common questions that arise regarding these requirements.

1. To be eligible to submit a proposal, rule 14a-8(b) requires the shareholder to 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 of submitting the proposal. Also, the shareholder must continue to hold those securities through the date of the meeting. The following questions and answers address issues regarding shareholder eligibility.

a. How do you calculate the market value of the shareholder's securities?

Due to market fluctuations, the value of a shareholder's investment in the company may vary throughout the year before he or she submits the proposal. In order to determine whether the shareholder satisfies the $2,000 threshold, we look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at $2,000 or greater, based on the average of the bid and ask prices. Depending on where the company is listed, bid and ask prices may not always be available. For example, bid and ask prices are not provided for companies listed on the New York Stock Exchange. Under these circumstances, companies and shareholders should determine the market value by multiplying the number of securities the shareholder held for the one-year period by the highest *selling* price during the 60 calendar days before the shareholder submitted the proposal. For purposes of this calculation, it is important to note that a security's highest selling price is not necessarily the same as its highest closing price.

...

c. How should a shareholder's ownership be substantiated?

Under rule 14a-8(b), there are several ways to determine whether a shareholder has owned the minimum amount of company securities entitled to be voted on the proposal at the meeting for the required time period. If the shareholder appears in the company's records as a registered holder, the company can verify the shareholder's eligibility independently. However, many shareholders hold their securities indirectly through a broker or bank. In the event that the shareholder is not the registered holder, the shareholder is responsible for proving his or her eligibility to submit a proposal to the company. To do so, the shareholder must do one of two things. He or she can submit a written statement from the record holder of the securities verifying that the shareholder has owned the securities continuously for one

year as of the time the shareholder submits the proposal. Alternatively, a shareholder who has filed a Schedule 13D, Schedule 13G, Form 4 or Form 5 reflecting ownership of the securities as of or before the date on which the one-year eligibility period begins may submit copies of these forms and any subsequent amendments reporting a change in ownership level, along with a written statement that he or she has owned the required number of securities continuously for one year as of the time the shareholder submits the proposal.

(1) Does a written statement from the shareholder's investment adviser verifying that the shareholder held the securities continuously for at least one year before submitting the proposal demonstrate sufficiently continuous ownership of the securities?

The written statement must be from the record holder of the shareholder's securities, which is usually a broker or bank. Therefore, unless the investment adviser is also the record holder, the statement would be insufficient under the rule.

(2) Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?

No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities *continuously* for a period of one year as of the time of submitting the proposal.

(3) If a shareholder submits his or her proposal to the company on June 1, does a statement from the record holder verifying that the shareholder owned the securities continuously for one year as of May 30 of the same year demonstrate sufficiently continuous ownership of the securities as of the time he or she submitted the proposal?

No. A shareholder must submit proof from the record holder that the shareholder continuously owned the securities for a period of one year as of the time the shareholder submits the proposal.

d. Should a shareholder provide the company with a written statement that he or she intends to continue holding the securities through the date of the shareholder meeting?

Yes. The shareholder must provide this written statement regardless of the method the shareholder uses to prove that he or she continuously owned the securities for a period of one year as of the time the shareholder submits the proposal.

....

c. Are there any circumstances under which a company does not have to provide the shareholder with a notice of defect(s)? For example, what should the company do if the shareholder indicates that he or she does not own at least $2,000 in market value, or 1%, of the company's securities?

The company does not need to provide the shareholder with a notice of defect(s) if the defect(s) cannot be remedied. In the example provided in the question, because the shareholder cannot remedy this defect after the fact, no notice of the defect would be required. The same would apply, for example, if

- the shareholder indicated that he or she had owned securities entitled to be voted on the proposal for a period of less than one year before submitting the proposal;

- the shareholder indicated that he or she did not own securities entitled to be voted on the proposal at the meeting;

- the shareholder failed to submit a proposal by the company's properly determined deadline; or

- the shareholder, or his or her qualified representative, failed to attend the meeting or present one of the shareholder's proposals that was included in the company's proxy materials during the past two calendar years.

In all of these circumstances, the company must still submit its reasons regarding exclusion of the proposal to us and the shareholder. The shareholder may, but is not required to, submit a reply to us with a copy to the company.

CtW Investment Group

Mr. Karlis P. Kirsis
Senior Vice President,
Corporate Counsel
XPO Logistics, Inc.
Five American Lane
Greenwich, CT 06831

Dear Mr. Kirsis:

I acknowledge receipt of your letter dated December 28, 2018 in which you assert that the CtW Investment Group has failed to establish its eligibility to submit a shareholder proposal under SEC Rule 14a-8. As we now explain, your objection lacks merit.

CtW Investment Group sent its proposal to XPO Logistics on December 18, 2018, as evidenced by a cover letter bearing that date. Also submitted was a letter from Amalgamated Bank bearing the same date that attested to ownership of the "requisite shares."

Your letter argues that the date of submission is the date that XPO Logistics received the letter, *i.e.,* December 19, 2018, and you therefore ask CtW Investment Group to submit an additional letter from Amalgamated Bank attesting to ownership of the requisite number of shares on December 19, 2018. Your argument lacks merit.

In the first place, SEC Rule 14a-8(b)(2) states that the bank/broker letter should be submitted "at the time you submit your proposal." Logic alone dictates that a shareholder cannot mail a proposal on the 18th along with a bank letter attesting to the shareholder's holdings on whatever date in the future the company receives the letter. There is no way that a shareholder or its bank can know the date upon which a letter dated the 18th will actually be received by the company.

Moreover, your argument is flatly contradicted by the guidance from the Securities and Exchange Commission's Division of Corporation Finance in *Staff Legal Bulletin 14G,* which sought to clarify the requirements in this area. In part C of that Bulletin, available at https://www.sec.gov/interps/legal/cfslb14g.htm, the Division clearly stated:

> We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically.

Given that the December 18th date on CtW Investment Group's cover letter matches the date on the Bank's letter, there is no need for an additional letter from Amalgamated Bank.

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202-721-6060
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Nonetheless, in order to put the matter behind us, we are submitting a letter from Amalgamated Bank attesting to ownership of the requisite number of shares for more than one year prior to December 19, 2018. *Staff Legal Bulletin 14A* makes it clear that CtW Investment Group has satisfied the $2,000 holding requirement on the basis of the 22 shares held continuously for more than a year prior to submission of the proposal. *Staff Legal Bulletin 14A* provides guidance on this point by acknowledging that, because of fluctuations in a stock's price, a proponent need not hold $2,000 worth of shares every day in the one year period preceding the submission of a proposal. Specifically:

> In order to determine whether the shareholder satisfies the $2,000 threshold, we look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at $2,000 or greater, based on the average of the bid and ask prices. Depending on where the company is listed, bid and ask prices may not always be available. For example, bid and ask prices are not provided for companies listed on the New York Stock Exchange. Under these circumstances, companies and shareholders should determine the market value by multiplying the number of securities the shareholder held for the one-year period by the highest selling price during the 60 calendar days before the shareholder submitted the proposal.

Thus, as long as the selling price of XPO stock exceeded $90.91 on "any date" within the 60 days prior to the date of submission ($2000 divided by 22), CtW Investment Group has held the requisite number of shares to satisfy eligibility requirements of Rule 14a-8. In fact, this condition was met on October 22, 2018, when the sale price of XPO stock was $93.59.

Attached is a letter from Amalgamated Bank attesting to our ownership. Should you require further assistance, please contact my colleague Emma Bayes, emma.bayes@ctwinvestmentgroup.com.

Sincerely,

Richard W Clayton III

Richard Clayton
Research Director
CtW Investment Group

amalgamated bank

January 4, 2019

Mr. Karlis P. Kirsis
Senior Vice President,
Corporate Counsel
XPO Logistics, Inc.
Five American Lane
Greenwich, CT 06831

Dear Mr. Kirlis:

By letter dated December 18, 2018 Amalgamated Bank submitted a letter to you attesting to CtW Investment Group's ownership of the "requisite shares" necessary to submit a shareholder proposal for one year prior to December 18, 2018.

This will confirm that CtW Investment Group owned the requisite shares for more than one year prior to December 19, 2018 as well. Specifically, CtW Investment Group held 22 shares continuously from March 2017 through December 19, 2018 and an additional 16 shares continuously from January 12, 2018 through December 19, 2018, for a total of 38 shares owned on the date the proposal was submitted.

.

Sincerely,

K. McGarvey

Kyle Mc Garvey
First Vice President
Investment Management Division, Client Service

From: Tejal Patel <tejal.patel@ctwinvestmentgroup.com>
Date: Monday, January 7, 2019 at 1:47 PM
To: Karlis Kirsis [Email Redacted]
Cc: Emma Bayes <emma.bayes@ctwinvestmentgroup.com>, Richard Clayton <richard.clayton@ctwinvestmentgroup.com>, Con Hitchcock [Email Redacted]
Subject: RE: Shareholder Proposal and Meeting

[Caution: External sender, beware of phishing]

Karlis,

On behalf of Richard Clayton and Emma Bayes, please find attached our response to XPO's letter that was emailed to us on December 28, 2018 regarding CTW's shareholder proposal. Also attached is an updated ownership confirmation letter from Amalgamated Bank. Should you have further questions, please let us know.

Best,
Tejal

Tejal K. Patel
CtW Investment Group
[Telephone # Redacted]
[Telephone # Redacted]

From: Karlis Kirsis [Email Redacted]
Sent: Tuesday, January 8, 2019 12:40 PM
To: Emma Bayes
Subject: Re: Shareholder Proposal and Meeting

Hi Emma,

Happy New Year!

Thank you for the response to our letter sent by Tejal. We are reviewing and will come back to you with any questions.

On a meeting – we are currently discussing appropriate participants for this and will follow up with a proposal to fix a time for a discussion.

Best,

Karlis Kirsis
Senior Vice President, Corporate Counsel

XPOLogistics
Five American Lane
Greenwich, CT 06831 USA
[Telephone # Redacted]

From: Emma Bayes <emma.bayes@ctwinvestmentgroup.com>
Date: Friday, December 28, 2018 at 11:50 AM
To: Karlis Kirsis [Email Redacted]
Subject: RE: Shareholder Proposal and Meeting

[Caution: External sender, beware of phishing]

Hi Karlis,

The cover letter was dated the 18th because it was the date we mailed the proposal via overnight to the Corporate Secretary per the instructions in the proxy. We are happy to provide proof that we also owned the shares on December 19th, however, and will work with our broker to have the revised proof of ownership sent prior to the two week deadline. The date discrepancy is the only deficiency you are identifying, correct? Is there an email to the Corporate Secretary that we can send proposal correspondence to in the future?

In the meantime, can we schedule a call or meeting with Gena Ashe and Oren Shaffer to discuss our concerns outlined in our recent letters?

Sincerely,
Emma

From: Karlis Kirsis [Email Redacted]
Sent: Friday, December 28, 2018 11:04 AM
To: Emma Bayes <emma.bayes@ctwinvestmentgroup.com>
Subject: Re: Shareholder Proposal and Meeting

Dear Emma,

Thank you for reaching out.

Please find attached correspondence from the Company in connection with your proposal.

Best,

Karlis Kirsis
Senior Vice President, Corporate Counsel

XPOLogistics
Five American Lane
Greenwich, CT 06831 USA
[Telephone # Redacted]

From: Emma Bayes <emma.bayes@ctwinvestmentgroup.com>
Date: Wednesday, December 19, 2018 at 10:45 AM
To: Karlis Kirsis [Email Redacted]
Subject: Shareholder Proposal and Meeting

[Caution: External sender, beware of phishing]

Mr. Kirsis:

I am writing to submit a shareholder proposal for inclusion in XPO's 2019 Definitive Proxy Statement. We also mailed a copy to the Secretary as instructed in last year's proxy statement. The cover letter and proposal are attached. The proof of ownership is being sent separately by our broker.

I also wanted to follow-up on our last email exchange about scheduling a meeting with Gena Ashe and Oren Shaffer. Would mid-January work?

Thanks,
Emma

Emma Bayes
CtW Investment Group
[Telephone # Redacted]

ctwinvestmentgroup.com

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