



DIVISION OF  
CORPORATION FINANCE

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

April 4, 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 the International Brotherhood of Teamsters General Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated February 20, 2019. 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/corpfm/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: Cornish F. Hitchcock  
Hitchcock Law Firm PLLC  
conh@hitchlaw.com

April 4, 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 take the steps necessary to adopt a policy, with amendments to governing documents as needed, so that, to the extent feasible, the chairman shall be an independent director who has not previously served as an executive officer of the Company.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

Sincerely,

Kasey L. Robinson  
Special Counsel

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

**HITCHCOCK LAW FIRM** PLLC  
5614 CONNECTICUT AVENUE, N.W. • NO. 304  
WASHINGTON, D.C. 20015-2604  
(202) 489-4813 • FAX: (202) 315-3552

CORNISH F. HITCHCOCK  
E-MAIL: CONH@HITCHLAW.COM

20 February 2019

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

**By E-mail: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

Re: **Shareholder proposal to XPO Logistics, Inc., from the  
International Brotherhood of Teamsters General Fund**

Dear Counsel:

I write on behalf of the International Brotherhood of Teamsters General Fund (the "Fund"), in response to the letter from counsel for XPO Logistics, Inc. ("XPO" or the "Company") dated 29 January 2019, in which XPO advises that it intends to omit from its 2019 proxy materials a proposal submitted by the Fund (the "Fund"). For the reasons set forth below, we respectfully ask the Division to deny the requested no-action relief.

**The Proposal and XPO's Objection**

The Proposal is a straight-forward "independent chair" proposal similar to proposals that have been offered and voted at a number of companies in recent years. The Proposal states:

Shareholders of XPO Logistics, Inc. (the "Company") urge the Board of Directors (the "Board") to take the steps necessary to adopt a policy, with amendments to governing documents as needed, so that, to the extent feasible, the Chairman of the Board shall be an independent director who has not previously served as an executive officer of the Company. The policy should be implemented so as not to violate any contractual obligations and should specify the process for selecting a new independent chairman if the Chairman ceases to be independent between annual

meetings of shareholders or if no independent director is available and willing to serve as chairman.

XPO objects to this Proposal on the ground that it is so vague and indefinite that it rises to the level of being materially false and misleading within the meaning of Rule 14a-9, which thus allows the Proposal to be omitted from XPO's proxy under Rule 14a-8(i)(3). The objection is not well taken for the reasons set out below.

### Discussion

In STAFF LEGAL BULLETIN 14B (2004), the Division stated that a proposal may be excluded as “inherently vague and indefinite” if “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.” The point was re-affirmed in STAFF LEGAL BULLETIN 14G (2012). In various letters the Division has made it clear that the alleged defect must relate to a “central aspect” of the proposal. *General Electric Co.* (15 January 2015). That is plainly not the case here, and to understand why that is so, it may be useful to consider the formulations used in other resolutions seeking that a company have an independent board chairman.

- In some letters the Division has concurred with companies seeking omission of proposals that recommend an independent chairman, with the degree of independence defined by an external source that is mentioned, but not explained in the resolution or supporting statement. *E.g., Chevron Corp.* (15 March 2013) (referring to independence criteria in the listing standards of the New York Stock Exchange, but those standards are not explained); *Boeing Co.* (10 February 2004) (referring to independence standards of the Council of Institutional Investors).

- In other letters, however, the Division has denied relief and permitted reference to external standards, provided that the level of independence being recommended is clear from the proposal and supporting statement, taken as a whole. *E.g., Sears Holdings Corp.* (9 February 2018) (referring to NYSE standards of independence, but supporting statement makes clear the focus is on having a non-executive chairman);<sup>1</sup> *Allegheny Energy, Inc.* (12 February 2010) (same); *PepsiCo., Inc.* (2 February 2012) (seeking chairman who is independent under NYSE standards “who has not previously served as an executive officer”).

---

<sup>1</sup> The supporting statement contained statements such as: “Indeed, shareholders are best served by an independent Board Chair who can provide a balance of power between the company and its Board and support strong Board leadership. The primary duty of a Board of Directors is to oversee company management on behalf of its shareholders. We believe a non-independent Chairman position creates a conflict of interest, resulting in excessive influence by, and oversight of, management.”

· In still other letters, no-action relief has been denied when the proposal seeks simply an independent non-executive chairman with no reference to an external standard. *E.g., PNM Resources, Inc.* (23 March 2018) (referring to “an independent member of the board”); *Comcast Corp.* (8 February 2016); *Kohl’s Corp.* (8 February 2016).

In this case the Fund recommends that the chairman be “an independent director who has not previously served as an executive officer of the Company.” This formulation is well in line with prior formulations as to which the Division has denied relief. Nonetheless XPO argues that the Proposal may be excluded as too vague and indefinite because this language is allegedly subject to “multiple interpretations,” XPO Letter, p. 5, though only two readings are proffered.

XPO’s first reading is the most logical and obvious – and intended – reading of the phrase, namely, as a board member who “has no experience of serving as an executive officer of the Company.” XPO Letter, pp. 4-5. There are several reasons why this is the most natural reading of the words on the page.

The first reason is grammatical. The phrase “independent director” is immediately followed by and modified by an adjectival clause – “who has not previously served as an executive officer of the Company.”

The second reason is that the meaning of this phrase is made abundantly clear if one reviews the supporting statement, which contains statements such as:

· An independent director “who has not previously served as an executive” can provide ‘robust oversight and accountability of management’ and “facilitate effective deliberation of corporate strategy,” which oversight is said “to be difficult to accomplish when the CEO serves as Chairman.”

· The alternative of a lead independent director is inadequate when “ultimate responsibility for board leadership remains with the Chairman/CEO.”

· The need for an independent chair is “critical” at XPO at this time, in light of the front-page NEW YORK TIMES exposé of miscarriages and allegations of pregnancy discrimination at an XPO-owned facility in Memphis, which prompted calls for reform from a number of Members of Congress.

· In light of such scrutiny, “an independent chairman can be invaluable in ensuring XPO maintains good communications and credibility with stakeholders.”

· Independent board leadership “could strengthen board-management dialogue on corporate culture and compliance.”

Rather than accept the phrase at face value, however, XPO posits that the phrase “an independent director who has not previously served as an executive officer of the Company” could be read as containing two distinct and separate elements, namely, (a) a chairman who is “independent, and (2) a chairman who “in addition” has not “previously served as an executive officer of the company.

This parsing of the phrase into those two supposedly discrete elements allows XPO to focus on the first element – the call for an “independent” chairman – and to argue that the word “independent” is vague and indefinite. The problem with this argument is that it ignores letters of the sort cited above that make no reference to an external standard (such as exchange listing standards), but simply call for an “independent” chairman and are clear that the thrust of the proposal is having a non-executive chairman.

As for the second part of the phrase, XPO makes no claim that “who has not previously served as an executive officer of the Company” is vague or indefinite. Instead, XPO asserts that this supposedly independent requirement is in “direct conflict” with the requirement of independence, since under some listing standards or other criteria, “a director can be deemed non-independent for a variety of reasons, even if he or she has not previously served as an executive officer of the Company.” XPO Letter, p. 5. But what of it? XPO’s argument simply does not come to grips with the clarity of the words on the page and the clarity of the overall concept, as expressed in the resolution and supporting statement.

XPO does acknowledge that the Division denied relief in *Sohu.com, Inc.* (17 March 2014), where the proponent defined an “independent director” as a “director who has not served as an executive officer of [the] company.” XPO Letter, p. 5, n.1. We are told, however, that this letter is unpersuasive because the company did not argue that the phrase was vague and indefinite. This distinction is of no significance when, as here, XPO has not demonstrated a plausible alternative reading. Moreover, since the time XPO filed its letter, the Division rejected a “vague and indefinite” challenge to a proposal that the chairman, “whenever possible, [ ] be an independent member of the board.” *General Dynamics Corp.* (11 February 2019). The company in that case unsuccessfully argued that the proposal was using criteria for independence that constituted a “vague, atypical and incomplete definition of independence.”

### Conclusion

For these reasons, the Fund respectfully requests that the Division advise XPO that the Division cannot concur with XPO’s conclusion that the Proposal may be omitted from XPO’s proxy materials under Rule 14a-8(i)(3).

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.

Very truly yours,

A handwritten signature in black ink that reads "Cornish F. Hitchcock". The signature is written in a cursive style with a long horizontal flourish at the end.

Cornish F. Hitchcock

cc: Viktor Sapezhnikov  
(VSapezhnikov@wlrk.com)



WACHTELL, LIPTON, ROSEN & KATZ

MARTIN LIPTON  
HERBERT M. WACHTELL  
THEODORE N. MIRVIS  
EDWARD D. HERLIHY  
DANIEL A. NEFF  
ANDREW R. BROWNSTEIN  
MARC WOLINSKY  
STEVEN A. ROSENBLUM  
JOHN F. SAVARESE  
SCOTT K. CHARLES  
JODI J. SCHWARTZ  
ADAM O. EMMERICH  
RALPH M. LEVENE  
RICHARD G. MASON  
DAVID M. SILK  
ROBIN PANOVKA  
DAVID A. KATZ  
ILENE KNABLE GOTTS  
JEFFREY M. WINTNER  
TREVOR S. NORWITZ  
BEN M. GERMANA  
ANDREW J. NUSSBAUM

RACHELLE SILVERBERG  
STEVEN A. COHEN  
DEBORAH L. PAUL  
DAVID C. KARP  
RICHARD K. KIM  
JOSHUA R. CAMMAKER  
MARK GORDON  
JOSEPH D. LARSON  
JEANNEMARIE O'BRIEN  
WAYNE M. CARLIN  
STEPHEN R. DiPRIMA  
NICHOLAS G. DEMMO  
IGOR KIRMAN  
JONATHAN M. MOSES  
T. EIKO STANGE  
JOHN F. LYNCH  
WILLIAM SAVITT  
ERIC M. ROSOF  
GREGORY E. OSTLING  
DAVID B. ANDERS  
ANDREA K. WAHLQUIST

51 WEST 52ND STREET  
NEW YORK, N.Y. 10019-6150  
TELEPHONE: (212) 403-1000  
FACSIMILE: (212) 403-2000

GEORGE A. KATZ (1965-1999)  
JAMES H. FOGELSON (1967-1991)  
LEONARD M. ROSEN (1965-2014)

OF COUNSEL

WILLIAM T. ALLEN  
MARTIN J.E. ARMS  
MICHAEL H. BYOWITZ  
GEORGE T. CONWAY III  
KENNETH B. FORREST  
SELWYN B. GOLDBERG  
PETER C. HEIN  
MEYER G. KOPLOW  
LAWRENCE S. MAKOW  
DOUGLAS K. MAYER  
MARSHALL L. MILLER  
PHILIP MINDLIN  
ROBERT M. MORGENTHAU  
DAVID S. NEILL

HAROLD S. NOVIKOFF  
LAWRENCE B. PEDOWITZ  
ERIC S. ROBINSON  
PATRICIA A. ROBINSON\*  
ERIC M. ROTH  
PAUL K. ROWE  
DAVID A. SCHWARTZ  
MICHAEL J. SEGAL  
ELLIOTT V. STEIN  
WARREN R. STERN  
PAUL VIZCARRONDO, JR.  
PATRICIA A. VLAKAKIS  
AMY R. WOLF

\* ADMITTED IN THE DISTRICT OF COLUMBIA

COUNSEL

DAVID M. ADLERSTEIN  
AMANDA K. ALLEXON  
LOUIS J. BARASH  
FRANCO CASTELLI  
DIANNA CHEN  
ANDREW J.H. CHEUNG  
PAMELA EHRENKRANZ  
KATHRYN GETTLES-ATWA  
ADAM M. GOGOLAK

NANCY B. GREENBAUM  
MARK A. KOENIG  
LAUREN M. KOFKE  
J. AUSTIN LYONS  
ALICIA C. MCCARTHY  
PAULA N. RAMOS  
NEIL M. SNYDER  
S. CHRISTOPHER SZCZERBAN  
JEFFREY A. WATIKER

ADAM J. SHAPIRO  
NELSON O. FITTS  
JOSHUA M. HOLMES  
DAVID E. SHAPIRO  
DAMIAN G. DIDDEN  
IAN BOCZKO  
MATTHEW M. GUEST  
DAVID E. KAHAN  
DAVID K. LAM  
BENJAMIN M. ROTH  
JOSHUA A. FELTMAN  
ELAINE P. GOLIN  
EMIL A. KLEINHAUS  
KARESSA L. CAIN  
RONALD C. CHEN  
GORDON S. MOODIE  
DONGJU SONG  
BRADLEY R. WILSON  
GRAHAM W. MELI  
GREGORY E. PESSIN  
CARRIE M. REILLY

MARK F. VEBLEN  
VICTOR GOLDFELD  
EDWARD J. LEE  
BRANDON C. PRICE  
KEVIN S. SCHWARTZ  
MICHAEL S. BENN  
SABASTIAN V. NILES  
ALISON ZIESKE PREISS  
TIJANA J. DVORNIC  
JENNA E. LEVINE  
RYAN A. McLEOD  
ANITHA REDDY  
JOHN L. ROBINSON  
JOHN R. SOBOLEWSKI  
STEVEN WINTER  
EMILY D. JOHNSON  
JACOB A. KLING  
RAAJ S. NARAYAN  
VIKTOR SAPEZHNIKOV  
MICHAEL J. SCHOBEL  
ELINA TETELBAUM

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 the International Brotherhood of Teamsters General Fund*

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

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
January 29, 2019  
Page 2

stockholder proposal (the "Proposal") and the statement in support thereof (the "Supporting Statement") received from the International Brotherhood of Teamsters General Fund (the "Proponent") from XPO's proxy statement and form of proxy for its 2019 Annual General 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](mailto: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 it has 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.

### **THE PROPOSAL**

The Proposal, dated December 17, 2018, sets forth the following proposed resolution for the vote of the Company's stockholders at the Annual General Meeting of Stockholders in 2019:

Shareholders of **XPO Logistics, Inc.** ("the Company"), urge the Board of Directors (the "Board") to take the steps necessary to adopt a policy, with amendments to governing documents as needed, so that, to the extent feasible, the Chairman of the Board shall be an independent director who has not previously served as an executive officer of the Company. The policy should be implemented so as not to violate any contractual obligations and should specify the process for selecting a new independent chairman if the Chairman ceases to be independent between annual meetings of shareholders or if no independent director is available and willing to serve as chairman.

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
January 29, 2019  
Page 3

Copies of the Proposal and the Supporting Statement are attached to this letter as Exhibit A.

### **BASIS 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 Rule 14a-8(i)(3), because the Proposal is impermissibly vague and indefinite.

### **ANALYSIS**

#### **The Company May Exclude the Proposal Pursuant to Rule 14a-8(i)(3) Because the Proposal Is Impermissibly Vague and Indefinite.**

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

Rule 14a-8(i)(3) permits a company to exclude a shareholder 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 has consistently found 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 (Sep. 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

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
January 29, 2019  
Page 4

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.”).

The Staff has permitted the exclusion of stockholder proposals where the proposal failed to define key terms or otherwise failed to provide necessary guidance on its implementation. In such circumstances, because neither the company nor its stockholders would be able to determine with any reasonable certainty what actions or measures the proposal would require, the Staff concurred that such proposals were impermissibly vague, indefinite and therefore excludable under Rule 14a-8(i)(3). *See, e.g., General Electric Co.* (Jan. 15, 2015) (concurring in the exclusion of a proposal requesting that the board establish a rule of separating the roles of CEO and chairman of the board, giving the company an “opportunity to follow SEC Staff Legal Bulletin 14C to cure a [c]hairman’s non-independence”); *AT&T Inc.* (Feb. 21, 2014) (concurring in the exclusion of a proposal requesting that the board review the company’s policies and procedures relating to the “directors’ moral, ethical and legal fiduciary duties and opportunities” to ensure the protection of privacy rights, where the proposal did not describe or define the meaning of “moral, ethical and legal fiduciary”); *Moody’s Corp.* (Feb. 10, 2014) (concurring in the exclusion of a proposal requesting that the board report on its assessment of the feasibility and relevance of incorporating “ESG risk assessments” into all of the company’s credit rating methodologies, where the proposal did not define “ESG risk assessments”); and *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).

The Proposal suffers from a similar defect. The Proposal calls for the adoption of a policy that the Chairman of the Board will be an “independent director who has not previously served as an executive officer of the Company.” This portion of the Proposal is vague, indefinite and subject to multiple interpretations, providing no reasonable certainty as to what actions or measures the Proposal requires. One plausible interpretation of the Proposal would be that as long as the Chairman of the Board has no experience of serving as an executive officer of the

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
January 29, 2019  
Page 5

Company, the Chairman would be an “independent director” as requested by the Proposal.<sup>1</sup> An alternative interpretation of the Proposal would be that the Chairman of the Board is required to be “independent,” in addition to not having previously served as an executive officer of the Company. This alternative interpretation itself is subject to multiple interpretations, as what it means to be “independent” can be defined and interpreted differently. For example, the New York Stock Exchange, the Nasdaq Stock Market, and proxy advisory firms such as Institutional Shareholder Services Inc. and Glass, Lewis & Co., all have different definitions of what it means to be an “independent director,” with varying relationships and thresholds for certain transactions that render a director not independent. More importantly, these two interpretations are in direct conflict with each other, since a director can be deemed non-independent for a variety of reasons, even if he or she has not previously served as an executive officer of the Company. As such, the term “independent director,” which is a key concept in the Proposal, is vague, indefinite and subject to multiple interpretations.

The Proposal is different from precedents where the Staff did not concur in the exclusion of a proposal that calls for a company to adopt a policy requiring the chairman of the board to be an “independent member” of the board of directors, without providing any further guidance as to who qualifies as an “independent member” of the board. *E.g.*, *Xcel Energy Inc.* (Mar. 11, 2014); *Rayonier Inc.* (Mar. 11, 2014). Unlike the stockholder proposals in these precedents, the Proposal is subject to directly conflicting multiple interpretations that are all plausible. The Proposal is also distinguishable from precedents where the Staff did not permit the exclusion of a proposal that requests a company to adopt a policy that the chairman of the company should be a director who has not previously served as an executive officer of the company and who is independent of management. *E.g.*, *Wal-Mart Stores, Inc.* (Mar. 20, 2015); *The Goldman Sachs Group, Inc.* (Mar. 5, 2013). Unlike the Proposal, it is evident in these precedents that an “independent director” must be independent from management, as well as not having previously served as an executive officer.

In sum, the failure to clearly define a key term (*i.e.*, “independent director”) renders the Proposal vague, indefinite and subject to multiple interpretations to the extent that the Company’s stockholders would not be able to discern what exactly they would be voting on or what would be required to implement it. Accordingly, the Company believes that the Proposal may be excluded under Rule 14a-8(i)(3).

---

<sup>1</sup> In *Sohu.com Inc.* (Mar. 17, 2014), a proponent expressly defined an “independent director” as a “director who has not served as an executive officer of [the] company.” In this letter, the company did not seek no-action relief on the ground the proposal was vague and indefinite. The company requested no-action relief on the basis that the proposal or the portions of the supporting statement were materially false or misleading (Rule 14a-8(i)(3)) and it related to the redress of a personal claim or grievance against the company (Rule 14a-8(i)(4)), which was denied by the Staff.

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
January 29, 2019  
Page 6

**CONCLUSION**

Based on the foregoing analyses, we are of the view that 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 any enforcement action if the Company excludes the Proposal and the Supporting Statement from the 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](mailto:VSapezhnikov@wlrk.com).

Very truly yours,



Viktor Sapezhnikov

Enclosures

cc: Louis Malizia, the International Brotherhood of Teamsters General Fund

Karlis Kirsis, XPO Logistics, Inc.

**Exhibit A**

---

**From:** "Jhingory, Marcia" <[MJhingory@teamster.org](mailto:MJhingory@teamster.org)>  
**To:** "Karlis Kirsis" [Email Redacted]  
**Subject:** Teamsters General Fund Resolution - 2019

**[Caution: External sender, beware of phishing]**

Mr. Kirsis,



I am pleased to forward the attached shareholder resolution, cover letter and proof of shares, on behalf of the International Brotherhood of Teamsters General Fund, for consideration at XPO Logistics' 2019 Annual Meeting of Shareholders.

If you have any questions regarding this resolution, please contact Louis Malizia at: [Telephone # Redacted]

Kind regards,

**Marcia Jhingory**  
**Office Manager**  
**IBT Capital Strategies**  
**25 Louisiana Avenue, NW**  
**Washington, DC 20001**  
[Telephone # Redacted]  
**Fax: 202.624-6833**

**Notice:** This email is for the exclusive and confidential use of the addressee(s). If you are not the intended recipient of this communication, please do not read, distribute or take action in reliance upon this email and notify me immediately by return email or telephone. If you receive this message in error, promptly delete it entirely from your inbox/computer. Thank you.

[Do not open attachments or click links unless you can verify the sender. Never give anyone your XPO login password.]

# INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA  
General President

25 Louisiana Avenue, NW  
Washington, DC 20001



KEN HALL  
General Secretary-Treasurer

[Telephone # Redacted]

[www.teamster.org](http://www.teamster.org)

December 17, 2018

**BY Email:** [Email Redacted]

**BY UPS GROUND**

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

Dear Mr. Kirsis:

I hereby submit the enclosed resolution on behalf of the International Brotherhood of Teamsters General Fund, in accordance with SEC Rule 14a-8, to be presented at the Company's 2019 Annual Meeting.

The General Fund has owned 160 shares of XPO Logistics, Inc., continuously for at least one year and intends to continue to own at least this amount through the date of the annual meeting. Enclosed is relevant proof of ownership.

Any written communication should be sent to the above address via U.S. Postal Service, UPS, or DHL, as the Teamsters have a policy of accepting only union delivery. If you have any questions about this proposal, please direct them to Louis Malizia of the Capital Strategies Department at [Telephone # Redacted].

Sincerely,

A handwritten signature in black ink that reads "Ken Hall".

Ken Hall  
General Secretary-Treasurer

KH/Im  
Enclosures



Shareholders of **XPO Logistics, Inc.** (“the Company”), urge the Board of Directors (the “Board”) to take the steps necessary to adopt a policy, with amendments to governing documents as needed, so that, to the extent feasible, the Chairman of the Board shall be an independent director who has not previously served as an executive officer of the Company. The policy should be implemented so as not to violate any contractual obligations and should specify the process for selecting a new independent chairman if the Chairman ceases to be independent between annual meetings of shareholders or if no independent director is available and willing to serve as chairman.

XPO’s CEO currently serves as Board Chairman. In our view, the Chairman should be an independent director, who has not previously served as an executive, in order to provide robust oversight and accountability of management, and to facilitate effective deliberation of corporate strategy, which we believe, is difficult to accomplish when the CEO serves as Chairman. Even with robust responsibilities, we believe the position of a lead independent director is inadequate to this task because ultimate responsibility for board leadership remains with the Chairman/CEO.

In our opinion, these considerations are especially critical at XPO given the recent media and political scrutiny of the Company’s culture. On the heels of a front-page New York Times investigation into a spate of miscarriages and allegations of pregnancy discrimination at a Memphis facility owned by XPO and operated on behalf of Verizon, nine U.S. Senators wrote to XPO (and Verizon) calling for immediate changes to the “allegedly deleterious workplace practices.” Separately, 97 U.S. House representatives have called on the House Committee on Education and the Workforce to investigate allegations of pregnancy discrimination, sexual harassment and hazardous working conditions at the Company.

In the midst of such scrutiny, we believe an independent chairman can be invaluable in ensuring XPO maintains good communications and credibility with stakeholders. In addition, independent board leadership could strengthen board-management dialogue on corporate culture and compliance.

We urge fellow shareholders to vote FOR this proposal.



December 17, 2018

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

Re: XPO Logistics, Inc. - Cusip # 983793100

Dear Mr. Kirsis:

Amalgamated Bank is the record owner of 160 shares of common stock (the "Shares") of XPO Logistics, Inc, beneficially owned by the International Brotherhood of Teamsters General Fund. The shares are held by Amalgamated Bank at the Depository Trust Company in our participant account # 2352. The International Brotherhood of Teamsters General Fund has held the Shares since March 9, 2016 and will continue to hold the shares through the date of the shareholders annual meeting.

If you have any questions or need anything further, please do not hesitate to call me at  
[Telephone # Redacted]

Very truly yours,

A handwritten signature in blue ink that reads "Jerry Marchese".

Jerry Marchese  
Vice President

CC: Louis Maliza