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

DIVISION OF
CORPORATION FINANCE

August 2, 2021

Alana L. Griffin
FedEx Corporation
alana.griffin@fedex.com

Re: FedEx Corporation
Incoming letter dated May 20, 2021

Dear Ms. Griffin:

This letter is in response to your correspondence dated May 20, 2021 and June 24, 2021 concerning the shareholder proposal (the "Proposal") submitted to FedEx Corporation (the "Company") by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated June 18, 2021, June 28, 2021, July 6, 2021, July 12, 2021, and July 15, 2021. Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2020-2021-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

Enclosure

cc: John Chevedden
PII

August 2, 2021

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: FedEx Corporation
Incoming letter dated May 20, 2021

The Proposal requests the board to seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In our view, the Proposal does not micromanage as the Proposal relates to aspects of compensation available only to senior executives and does not seek to impose specific timeframes or methods for implementing complex policies. The Proposal addresses the basic issue of severance and termination payments (often called "parachute payments") for departing executives. It does not seek to prohibit such payments but instead provides that such payments above a certain threshold be subject to shareholder approval. The Proposal does not therefore probe 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. Accordingly, we do not concur that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Rule 14a-8 Review Team

JOHN CHEVEDDEN
PII
[redacted]

July 15, 2021

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

 # 6 Rule 14a-8 Proposal
FedEx Corporation (FDX)
Shareholder Ratification of Termination Pay
John Chevedden

Ladies and Gentlemen:

This is a counterpoint to the May 20, 2021 no-action request.

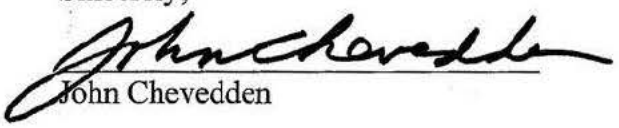
Management provided no precedent that a micromanagement claim was effectively used to exclude a rule 14a-8 proposal topic that previously won 65% shareholder support. Attached is evidence of Alcoa shareholders giving 65% support to a 2.99 rule 14a-8 proposal.

Management provided no precedent that a micromanagement claim was effectively used to exclude a rule 14a-8 proposal topic that was previously adopted by a number of major corporations. Attached is evidence of the 2.99 proposal topic adopted by HP, J. C. Penney Coca-Cola, McKesson and PNC.

The 65%-support sends a message that shareholders want to be heard on this topic.

There will be at least one more counterpoint to the May 20, 2021 no-action request.

Sincerely,



John Chevedden

cc: Alana Griffin <alana.griffin@fedex.com>

USWA Slams Alcoa for Ignoring Shareholders on “Golden Parachutes”

PUBLISHED **09-04-03**
SUBMITTED BY **ALCOA INC.**

PITTSBURGH, PA - The United Steelworkers of America (USWA) sent Alcoa (NYSE:AA) CEO Alain Belda a strongly-worded letter expressing concern about the company's apparent failure to heed the will of Alcoa shareholders expressed in a shareholder resolution requiring that any agreement on "golden parachutes" be submitted to them for approval, and strongly encouraging him to instruct Alcoa's Board of Directors to quit delaying on the matter.

Alcoa announced at its April 11 annual meeting that shareholders had approved a proposal relating to grossly excessive executive severance agreements, commonly known as golden parachutes. The proposal urged Alcoa's Board of

Directors to seek shareholder approval for future severance agreements with senior executives that provide benefits in an amount exceeding 2.99 times the sum of the executive's base salary plus bonus. Despite the company recommending a vote against the proposal, 65% of votes were cast in its favor.

"Basically, Alcoa shareholders decided that they cannot trust Alcoa's Board of Directors to look after their interests," said USWA Vice President Andrew Palm, who co-signed the letter to Belda on behalf of over 13,500 USWA members working for Alcoa. "Based on our dealings with this company, we believe that's a wise decision. Alcoa executives and directors clearly look out for each other, but they are often oblivious to the interests of employees and other stakeholders."

The letter to Belda cites recent Alcoa pay practices as a reason why shareholders voted to reign in the company's Board. For instance, a severance plan for senior executives adopted by Alcoa in 2002 provides the executives with a cash payment exceeding three times annual salary, continuation of benefits for three years, accelerated vesting of stock options and even reimbursement of taxes on plan proceeds. Also, Belda received $24.8 million in total compensation in 2002, despite Alcoa stock losing 34.6% of its value. This earned Alcoa and Belda mention in a Fortune Magazine cover story on excessive CEO pay titled "Have They No Shame?"

subject to the HP Severance Policy, either because they have been previously earned or accrued by the employee or because they are consistent with Company Practices: (a) compensation and benefits earned, accrued, deferred or otherwise provided for employment services rendered on or prior to the date of termination of employment pursuant to bonus, retirement, deferred compensation or other benefit plans, e.g., 401(k) plan distributions, payments pursuant to retirement plans, distributions under deferred compensation plans or payments for accrued benefits such as unused vacation days, and any amounts earned with respect to such compensation and benefits in accordance with the terms of the applicable plan; (b) payments of prorated portions of bonuses or prorated long-term incentive payments that are consistent with Company Practices; (c) acceleration of the vesting of stock options, stock appreciation rights, restricted stock, restricted stock units or long-term cash incentives that is consistent with Company Practices; (d) payments or benefits required to be provided by law; and (e) benefits and perquisites provided in accordance with the terms of any benefit plan, program or arrangement sponsored by HP or its affiliates that are consistent with Company Practices.

For purposes of the HP Severance Policy, future severance agreements include any severance agreements or employment agreements containing severance provisions that HP may enter into after the adoption of the HP Severance Policy by the Board, as well as agreements renewing, modifying or extending such agreements. Future severance agreements do not include retirement plans, deferred compensation plans, early retirement plans, workforce restructuring plans, retention plans in connection with extraordinary transactions or similar plans or agreements entered into in connection with any of the foregoing, provided that such plans or agreements are applicable to one or more groups of employees in addition to the Section 16 officers.

HP Severance Plan for Executive Officers

In October 2003, the Committee adopted a severance plan for executives who were Section 16 officers of HP within 90 days of their termination of HP employment. This plan provides for a lump-sum severance payment upon a qualifying termination that is a multiple of the sum of annual base salary and target cash bonus, as in effect prior to the employment termination. In July 2005, the Committee amended this plan to reduce the cash severance benefits payable to the CEO, executive vice presidents and senior vice presidents and to base payments upon a multiple of the sum of annual base salary and actual bonuses paid (averaged over the most recent three-year performance period) rather than a multiple of the sum of annual base salary and target cash bonuses. Under the amended plan, the multiple used is 2.0 for the position of CEO, 1.5 for executive vice presidents, and 1.0 for senior vice presidents and vice presidents. Any payments under the severance program will be reduced by any cash severance benefit payable to the participant under any other HP plan, program or agreement, including cash amounts payable for the uncompleted portion of employment agreements.

A participant will be deemed to have incurred a qualifying termination for purposes of this plan if he or she is involuntarily terminated without cause (as defined below) and executes a full release of claims in a form satisfactory to HP, promptly following termination. For purposes of the plan, "cause" means a participant's material neglect (other than as a result of illness or disability) of his or her duties or responsibilities to HP or conduct (including action or failure to act) that is not in the best interest of, or is injurious to, HP.

Notwithstanding the foregoing, the amount of severance benefits received by an executive under the plan will not exceed 2.99 times the sum of the executive's base salary plus target bonus as in effect immediately prior to separation from employment, unless such benefits are approved by HP's stockholders pursuant to the HP Severance Policy.

HP Retirement Arrangements

Upon retirement on or after age 55 with at least 15 years of service, HP employees in the United States receive full vesting of options granted under HP common stock plans with a three-year post-termination exercise period. Restricted stock and restricted stock units continue to vest in

J. C. Penney Company, Inc.
Executive Severance Arrangements Policy

It is the policy of the Board of Directors of J. C. Penney Company, Inc. (the "Company"), pursuant to resolution adopted by the Human Resources and Compensation Committee of the Board on October 23, 2008 (the "Adoption Date"), that the Company shall not enter into a Future Severance Agreement that provides for Severance Benefits to a Senior Executive in an amount exceeding the Severance Benefits Limitation, unless such Future Severance Agreement receives approval of the stockholders of the Company. For purposes of this Policy, the terms below shall have the following meanings:

"Severance Benefits" means: (i) lump sum cash payments (including payments in lieu of medical and other benefits), "gross-up" tax payments, new awards of stock or options and fringe benefits, (ii) the estimated present value of special retirement payments or benefits, and (iii) consulting fees (including reimbursable expenses). Notwithstanding the foregoing, the term **"Severance Benefits" does not include** (a) compensation and benefits earned, accrued or otherwise provided for services rendered through the date of termination of employment, including pro rata portions of bonus and other incentive awards for current performance periods, (b) payments or payouts of options, SARs, restricted shares and other compensation and benefits, the right to which vests prior to the date of termination of employment, (c) the value of accelerated vesting of, or payments with respect to, any outstanding equity-based award granted prior to termination of employment, (d) retirement benefits earned or accrued under qualified or non-qualified retirement plans, and (e) payments that the Human Resources and Compensation Committee of the Board of Directors determines are reasonable settlements of claims that could be made by the Senior Executive.

"Future Severance Agreement" means an employment agreement or severance agreement that is entered into or materially modified after the Adoption Date, but excluding any automatic extension or renewal made after the Adoption Date to an employment agreement or severance agreement that is in effect as of the Adoption Date.

"Senior Executive" means a person who is or becomes at the time of execution of the Future Severance Agreement an executive officer of the Company required to be identified in the Company's Annual Report on Form 10-K.

"Severance Benefits Limitation" means 2.99 times the sum of (a) the Senior Executive's annual base salary as in effect immediately prior to the date of the Senior Executive's termination of employment plus (b) the Senior Executive's target bonus for the fiscal year in which termination of employment occurs.

The Board delegates to the Human Resources and Compensation Committee full authority to make determinations regarding the interpretation of the provisions of this Policy, in its sole discretion, including, without limitation, the determination of the value of any non-cash items, as well as the present value of any cash or non-cash benefits payable over a period of time. In the event that a proposed Future Severance Agreement with a Senior Executive would require stockholder approval in accordance with this Policy, the Company may seek stockholder approval of the Future Severance Agreement after the material terms have been agreed upon with the Senior Executive, but the payment of any Severance Benefits in excess of the Severance Benefits Limitation will be contingent upon stockholder approval of the Future Severance Agreement.

The Board of Directors shall have the right to amend, waive or cancel this Policy at any time if it determines in its sole discretion that such action would be in the best interests of the Company, provided that any such action shall be promptly disclosed.

← SEC Posts Adopting Release for Accelerated Filer Definitions and Deadlines | Main | And Even More on the Internal Affairs Doctrine →

December 27, 2005

Coke Adopts "Shareholder Approval of Severance Arrangements" Policy

Late last week, it was reported that Coca-Cola has adopted a policy of obtaining shareholder approval for its severance arrangements with senior executives if the payout exceeds 2.99 times the sum of the executive's annual base salary and bonus. The topic of excessive severance pay angers investors more than any other compensation issue – and the recent House bill would require shareholder approval of all severance arrangements for officers.

According to this WSJ article, "Coke spokesman Charlie Sutlive said the company's board approved the policy in October. It was first publicized yesterday by the International Brotherhood of Teamsters General Fund, which, as a Coke shareholder, unsuccessfully proposed a similar policy at Coke's annual meeting in April.

Coke's board opposed the proposal at the time. However, the measure earned support of roughly 41% of shares cast, indicating strong interest among investors.

"We believe this new policy both responds to and is in the best interests of shareowners," Mr. Sutlive said. He said the board and its compensation committee adopted the policy after noting "the sentiment of many shareowners," including the Teamsters.

Mr. Sutlive said the new policy reflects the board's practice of reviewing corporate-governance policies and improving them where warranted. In this case, he said, the board's compensation committee recommended the policy as a way to add controls while continuing to allow the board to render "prudent judgments."

The move by Coke comes amid some criticism of executive pay. Steven Hall, a New York-based compensation consultant, said measures such as the one Coke adopted could serve to limit severance deals going forward.

Coke was criticized for the $17.7 million separation package it awarded to former Chief Executive M. Douglas Ivester, who stepped aside in early 2000 after about two years in the job. Steven J. Heyer, who left as Coke's No. 2 executive in 2004, received a severance package of at least $24 million after three years on the job.

Douglas Daft, who stepped down as Coke chairman and CEO in June 2004, received 200,000 restricted shares of Coke, valued at $8.8 million at the time."

In Sunday's NY Times, Gretchen Morgenson wrote about this development in her column, including quotes from NASPP Chair Jesse Brill and Mike Kesner of Deloitte Consulting, who have spoken on this topic at our annual compensation conferences. Learn more about how to handle severance pay in our "Severance Arrangements" Practice Area on CompensationStandards.com.

SEC Posts Proposing Release for Non-US Company Deregistration

On Friday, the SEC posted the proposing release, under which it would be easier for foreign private issuers to deregister and terminate their SEC reporting obligations. European organizations have been urging this response to a perceived "Hotel California" problem for several years.

PNC

Policy Regarding Shareholder Approval of Future Severance Arrangements

Policy Owner: Executive Compensation	Effective Date: 02/09/2011
Approver(s): Personnel and Compensation Committee of the Board of Directors	Date Approved: 05/16/2016

1. Applies To

The PNC Financial Services Group, Inc. ("PNC") and its subsidiaries.

2. Purpose

This Policy is intended to impose certain limitations on severance arrangements entered into between certain senior-level executives and PNC (or a subsidiary).

3. Policy

3.1. This Policy prohibits PNC from entering into or adopting a Future Severance Arrangement with a Senior Officer in an amount exceeding 2.99 times the sum of the Senior Officer's annual base salary and target annual incentive award (target bonus) for the year of termination (the "Severance Benefits Limitation") unless such Future Severance Arrangement is approved:

3.1.1. By affirmative vote of a majority of the votes cast on such matter at a duly convened meeting of the shareholders of PNC at which a quorum is present; or

3.1.2. As otherwise provided in this Policy pursuant to applicable laws or regulations on executive compensation or golden parachute arrangements consistent with Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

3.2. For the purposes of this Policy, the annual base salary and target bonus amount shall be determined without regard to whether any such amount is currently payable or is deferred, and without regard to the form of payment (e.g., in cash, equity, or other property).

3.3. For purposes of determining the Severance Benefits Limitation, if a target bonus has not been established for a Senior Officer for the year of termination, the target bonus shall be the target bonus

JOHN CHEVEDDEN
PII

July 12, 2021

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

 # 5 Rule 14a-8 Proposal
FedEx Corporation (FDX)
Shareholder Ratification of Termination Pay
John Chevedden

Ladies and Gentlemen:

This is a counterpoint to the May 20, 2021 no-action request.

Attached is a rule 14a-8 proposal from the 2015 General Electric annual meeting proxy that is similar to this proposal. The GE proposal received 40% support. This 40% support is also well above 40% support from shareholders who have access to independent proxy voting advice.

This 40% support sends a message that shareholders want to be heard on this topic.

Sincerely,

John Chevedden

cc: Alana Griffin <alana.griffin@fedex.com>

Shareowner Proposal No. 5 — Limit Equity Vesting Upon Change in Control

Kenneth Steiner has informed us that he intends to submit the following proposal at this year's meeting:

Proposal 5 — Limit Accelerated Executive Pay

Resolved: Shareholders ask our board of directors to adopt a policy that in the event of a change in control (as defined under any applicable employment agreement, equity incentive plan or other plan), there shall be no acceleration of vesting of any equity award granted to any senior executive, provided, however, that our board's executive pay committee may provide in an applicable grant or purchase agreement that any unvested award will vest on a partial, *pro rata* basis up to the time of the senior executive's termination, with such qualifications for an award as the committee may determine.

For purposes of this Policy, "equity award" means an award granted under an equity incentive plan as defined in Item 402 of the SEC's Regulation S-K, which addresses executive pay. This resolution shall be implemented so as not affect any contractual rights in existence on the date this proposal is adopted.

The vesting of equity pay over a period of time is intended to promote long-term improvements in performance. The link between executive pay and long-term performance can be broken if such pay is made on an accelerated schedule. Accelerated equity vesting allows executives to realize pay opportunities without necessarily having earned them through strong performance.

Other aspects of our clearly improvable executive pay (as reported in 2014) are an added incentive to vote for this proposal:

For Jeffrey Immelt there was $19 million in 2013 Total Summary Pay plus excessive perks and pension benefits. Mr. Immelt's annual incentives did not rise or fall in line with annual financial performance, reflecting a potential misalignment in the short-term incentive design according to GMI, an independent investment research firm.

Please vote to protect shareholder value:

Limit Accelerated Executive Pay — Proposal 5

Your Board recommends a vote AGAINST this proposal.

GE'S EQUITY COMPENSATION PLAN DOES NOT PROVIDE FOR ACCELERATED VESTING OF EQUITY AWARDS UPON A CHANGE IN CONTROL OF THE COMPANY. The Board has carefully considered the above proposal and believes that adoption of the requested policy is unnecessary. GE's equity compensation plan under which the MDCC grants equity awards to senior executives does not provide for accelerated vesting of those awards upon a change in control of the company. Likewise, in practice when granting equity awards to senior executives, the MDCC has not provided for acceleration of vesting upon a change in control of the company in the award agreements.

SHAREOWNERS WOULD BE ABLE TO VOTE ON CHANGE-IN-CONTROL COMPENSATION ARRANGEMENTS IN THE EVENT OF A CHANGE IN CONTROL OF THE COMPANY. In the unlikely event that GE experienced a change in control and the MDCC determined to accelerate the vesting of outstanding equity awards, shareowners voting on the change-in-control transaction would have the opportunity to vote on the change-in-control compensation arrangements pursuant to the requirements of the Dodd-Frank Act. Similarly, if the MDCC were to provide for accelerated vesting of equity awards upon a change in control, we would explain the basis for that determination in the proxy statement for the year in which those awards were granted, and our shareowners would have the opportunity to address that practice in context through their "say on pay" advisory vote on our executive compensation and through our annual engagement efforts.

ADOPTION OF A CHANGE-IN-CONTROL POLICY IS UNNECESSARY. In sum, the proposal seeks to address a practice that does not currently exist and that can be addressed in context if it were to arise in the future. We believe that adopting an abstract policy that has little current practical significance and would constrain the MDCC's judgment in structuring future awards, without addressing or considering the circumstances around any such awards, is unnecessary. In light of the foregoing, the Board recommends a vote AGAINST the proposal.

2016 Shareowner Proposals

Proposals for Inclusion in Next Year's Proxy Statement

SEC rules permit shareowners to submit proposals for inclusion in our proxy statement if the shareowner and the proposal meet the requirements specified in SEC Rule 14a-8.

- **When to send these proposals.** Any shareowner proposals submitted in accordance with SEC Rule 14a-8 must be received at our principal executive offices no later than the close of business on November 11, 2015.
- **Where to send these proposals.** Proposals should be addressed to Brackett B. Denniston III, Secretary, General Electric Company, 3135 Easton Turnpike, Fairfield, CT 06828.
- **What to include.** Proposals must conform to and include the information required by SEC Rule 14a-8.

Item 5.07. Submission of Matters to a Vote of Security Holders.

(a) General Electric Company (the "Company") held its annual meeting of shareowners on April 22, 2015.

(b) The shareowners elected all of the Company's nominees for director; approved our named executives' compensation; and ratified the appointment of KPMG LLP as the Company's independent auditor for 2015. The shareowners did not approve any of the shareowner proposals, which are listed below.

A. Election of Directors

	Shares For	Shares Against	Shares Abstain	Non-Votes
1.W. Geoffrey Beattie	5,572,186,802	91,433,926	26,335,823	2,070,343,674
2.John J. Brennan	5,487,166,064	176,888,895	25,901,591	2,070,343,675
3.James I. Cash, Jr.	5,443,819,685	219,526,965	26,609,900	2,070,343,675
4.Francisco D'Souza	5,575,841,325	87,387,606	26,727,615	2,070,343,679
5.Marijn E. Dekkers	5,493,077,019	170,901,544	25,977,987	2,070,343,676
6.Susan J. Hockfield	5,540,338,377	124,424,398	25,193,775	2,070,343,675
7.Jeffrey R. Immelt	5,358,112,055	280,227,307	51,617,186	2,070,343,677
8.Andrea Jung	5,157,326,289	507,110,733	25,519,527	2,070,343,676
9.Robert W. Lane	5,472,110,640	191,845,316	26,000,595	2,070,343,674
10.Rochelle B. Lazarus	5,488,765,061	169,734,669	31,456,820	2,070,343,675
11.James J. Mulva	5,581,337,114	81,822,433	26,797,003	2,070,343,675
12.James E. Rohr	5,562,668,793	100,686,251	26,601,506	2,070,343,675
13.Mary L. Schapiro	5,579,724,065	85,189,823	25,042,660	2,070,343,677
14.Robert J. Swieringa	5,530,932,956	132,516,799	26,506,796	2,070,343,674
15.James S. Tisch	5,137,168,212	526,596,787	26,191,550	2,070,343,675
16.Douglas A. Warner III	5,421,371,654	241,758,321	26,826,574	2,070,343,676

B. Management Proposals

	Shares For	Shares Against	Shares Abstain	Non-Votes
1.Advisory Approval of Our Named Executives' Compensation	5,147,978,144	481,082,106	60,896,297	2,070,343,678
2.Ratification of KPMG as Independent Auditor for 2015	7,367,435,271	178,830,448	214,034,506	0

C. Shareowner Proposals

	Shares For	Shares Against	Shares Abstain	Non-Votes
1.Cumulative Voting	636,160,283	5,000,011,731	53,784,530	2,070,343,681
2.Written Consent	711,569,404	4,919,278,084	59,109,056	2,070,343,681
3.One Director from Ranks of Retirees	180,480,123	5,436,160,176	73,316,250	2,070,343,677
4.Holy Land Principles	167,327,568	5,201,305,001	321,323,976	2,070,343,680
5.Limit Equity Vesting upon Change in Control	2,274,511,207	3,353,630,565	61,814,773	2,070,343,680

40%

JOHN CHEVEDDEN
PII

July 6, 2021

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

 # 4 Rule 14a-8 Proposal
FedEx Corporation (FDX)
Shareholder Ratification of Termination Pay
John Chevedden

Ladies and Gentlemen:

This is a counterpoint to the May 20, 2021 no-action request.

Management only cites *Republic Services, Inc.* (February 14, 2020) in regard to the 2.99 figure.

Attached is the counterpoint to *Republic Services, Inc.*
Republic Services may have been a close call and the counterpoint in *Republic Services* may lead to a different conclusion in hindsight and due to intervening events.

Sincerely,

John Chevedden

cc: Alana Griffin <alana.griffin@fedex.com>

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

24 January 2020

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

By electronic mail: shareholderproposals@sec.gov

Re: Shareholder proposal to Republic Services, Inc. from 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 a letter from counsel for Republic Services, Inc. ("Republic" or the "Company") dated December 30, 2019 ("Republic Letter") in which Republic advises that it intends to omit the Fund's proposal (the "Proposal") from the Company's 2020 proxy materials. For the reasons set forth below, we respectfully ask the Division to advise Republic that the Division does not concur with the Company's position that the Proposal may be excluded from Republic's proxy materials.

The Proposal

The Proposal seeks a revision of the Company's current policy with respect to "golden parachutes" for senior executives and recommends a policy that would seek shareholder approval for compensation packages providing for severance or termination packages exceeding a specified value, including the value of unearned equity as to which vesting is accelerated or performance conditions are waived. The resolution states:

> RESOLVED: That the shareholders of Republic Services, Inc. (the "Company"), urge the Board of Directors to seek shareholder approval of any senior executive officer's new or renewed compensation package

that provides for severance or termination payments with an estimated total value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

"Severance or termination payments" include: any cash, equity or other compensation that is paid out or vests due to a senior executive's termination for any reason. Such payments including those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans. Such payments do not include: life insurance, pension benefits, or other deferred compensation earned and vested prior to termination.

"Total value" of these payments includes: lumps-sum payments; payments offsetting tax liabilities; perquisites or benefits not vested under a plan generally available to management employees; post-employment consulting fees or office expense; and, equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

The Supporting Statement expresses a belief that a shareholder vote on golden parachute packages above the specified threshold "will provide valuable feedback, encourage restraint, and strengthen the hand of the Board's compensation committee." The Supporting Statement notes that according to Republic's last proxy statement, a change in control and termination would have garnered the Chief Executive Officer a severance package worth three times the sum of his base salary and annual cash and long-term incentive plan awards. Had the event occurred at the end of the year covered by that proxy statement, his payout would have been worth $54.6 million, $17.9 million of it in cash and the balance in equity and other compensation.

Discussion.

The Proposal does not relate to Republic's "ordinary business operations within the meaning of Rule 14a-8(i)(7).

Thirty years ago the Division abandoned its prior view that executive compensation issues constitute "ordinary business" matters that should be left to management and the board. The Division then concluded, as we discuss in more detail below, that executive compensation issues "instead possess the sort of policy significance that makes a shareholder vote on the topic entirely proper." The Proposal at issue here is a paradigmatic example . It deals with "excess golden

parachutes" and is similar or identical to a number of proposals that have been voted with strong shareholder support over the years. For example, in 2019 this resolution garnered 37 percent of the yes/no vote when presented at Verizon Communications, Inc.[1]

Nonetheless Republic argues in favor of exclusion, relying on Staff Legal Bulletins 14J and 14K for the proposition that executive compensation proposals may be excluded if they appear to be micromanaging the topic. What do those sources say?

Staff Legal Bulletin 14J states: "Historically, the Division has not agreed with the exclusion of proposals addressing senior executive and/or director compensation on the basis of micromanagement." However, upon further consideration, the Division concluded that in the future, it may concur with a company as to "proposals addressing senior executive and/or director compensation that seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies."

SLB 14J emphasized, however, that "micromanagement addresses the manner in which a proposal raises an issue, and not whether a proposal's subject matter itself is proper for a shareholder proposal under Rule 14a-8."

SLB 14K reiterated this points and, looking back on the 2019 no-action decisions, explained that when it concurred with a company's micromanagement, the focus was "the level of prescriptiveness of the proposal." Cited as an example was a proposal to adjust performance metrics to exclude legal or compliance costs, the theory being that it prohibits those adjustments without regard to special circumstances or reasonable exceptions. The Republic Letter notes cited letter, SLB 14K, Johnson & Johnson (14 February 2019) and a similar letter, AbbVie Inc. (15 February 2019). Republic also cites JPMorgan Chase & Co. (22 March 2019), which concurred with the exclusion of a proposal to bar equity-based awards to senior executives who resign to enter government service, the reason being that the proposal seeks "to impose specific methods for implementing complex policies."

---

[1]The vote on this "Severance Approval Policy resolution" is reported in Verison's Form 8-K filed on May 8, 2019 and available at https://www.sec.gov/Archives/edgar/data/732712/000119312519141213/d708606d8k.htm. We note that Verizon unsuccessfully sought to exclude that proposal in that case using arguments from Staff Legal Bulleting 14J other than micromanagement. Verizon Communications, Inc. (14 February 2019). We submit that the rationale for denying relief in that case are as compelling in this one.

The Republic Letter then makes a very generic, boilerplate argument that could be raised by any company, namely, that setting executive compensation levels is a very complex process. Republic asserts that the Proposal seeks to "supplement the judgement" of the compensation committee and that the Proposal is the "precise type of prescriptive approach to complex matters at the heart of" the micromanagement element" of the "ordinary business" exclusion. Republic Letter at 4.

Republic's discussion entirely misses the point.

What the Proposal recommends is a vote. Period. Full stop. Republic's compensation committee is free to design "golden parachute" packages for senior executives with whatever features the compensation committee deems appropriate and at whatever level. The Proposal does not in any way seek to "prescribe" anything in terms of what may be offered as compensation. The Proposal simply says that beyond a certain level, the board should put the matter to a vote – and even that requirement is hedged with an exception to provide flexibility, i.e., language that the board "shall retain the option to seek shareholder approval after material terms are agreed upon."

Does a shareholder vote "micromanage" the process in the ways specified in SLBs 14J and 14K? The answer is clearly "no." Consider the fact that shareholders already have a right to vote on golden parachute packages under section 951(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled "Shareholder Approval of Golden Parachute Compensation" (15 U.S.C. § 78n-1(b)). That provision mandates a vote on any agreements or understandings with named executive officers on "any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer." The Commission issued regulations implementing that provision in Shareholder Approval of Executive Compensation and Golden Parachute Compensation, Release No. 34-9178, 76 Fed. Reg. 6010 (2 February 2011).

This provision tells us two things. First, golden parachute severance agreements have enormous policy significance. It is exceedingly rare for Congress to require that state-chartered corporations, subject to state corporate laws on shareholder voting, must allow their shareholders to vote on a given topic. Nonetheless, Congress regarded the issues surrounding golden parachutes as important enough to require such a vote in this instance in to addition the say-on-pay vote mandated in section 951(a).

Second, even if the design of severance packages may be a complex task that

is best left to the compensation committee, an up-or-down vote on the end product of those deliberations is not too complex for shareholders to decide. When the concept of micromanagement was discussed in the 1998 rulemaking on Rule 14a-8, the Commission explained that this factor should be considered as a way to preventing shareholders from "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." Amendments to Rules on Shareholder Proposals, Release No. 34-40018, 63 Fed. Reg. 29106, 29108 (28 May 1998) (footnote omitted). Cited as an example of where this could happen was a proposal that involves "intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." Id. But if Congress could conclude that golden parachutes are not too "intricate" or "complex" for shareholders "as a group, to be in a position to make an informed judgment," how can Republic make such an argument here?

Thus it cannot be said that the Proposal involves a "level of prescriptiveness" that rises to the level of micromanagement. The Proposal simply asks for a vote on a topic on which they already have a statutory right to express themselves, and the board is given flexibility about when to schedule and hold the vote. The Proposal is about as un-prescriptive as one can imagine on a topic of unquestioned policy significance.

Republic's argument would seemingly place many standard compensation proposals off-limits. SLBs 14J and 14K seem to deny any such intent,[2] but offer little specific guidance in terms of identifying compensation proposals that would not be construed as micromanagement. Wherever the line may be drawn, however, the issues raised by this Proposal surely transcend Republic's "ordinary business."

The Proposal is similar to other compensation proposals that have been voted over the years and that ask a company's board to adopt or amend a policy on a particular topic (e.g., clawbacks) or to prohibit a certain practice (e.g., backdating stock options, executives' hedging or pledging their equity awards, accelerating vesting of unearned equity after a change in control). We do not read either Staff Legal Bulletin as requiring such an interpretation. After all, micromanagement cannot mean simply that a proposal that asks a company to do something

---

[2] SLB 14J states that granting relief on micromanagement grounds "does not necessarily mean that the subject matter raised by the proposal is improper for shareholder consideration"; rather "it is the manner in which a proposal seeks to address an issue that results in exclusion on micromanagement grounds." Similarly, SLB 14K states that a proposal to bar the exclusion of compliance costs when determining executive compensation was micromanagement because it prohibited "any such adjustments without regard to specific circumstances or the possibility of reasonable exceptions."

differently. All shareholder proposals are essentially a request that a company do things differently.

Where then does the Division draw the line in the compensation area? The key factors in the cited letters appear to be: (1) whether the subject matter of the proposal is itself not a matter of policy significance, (2) whether the subject matter is interconnected with a larger, more complex issue from which it cannot easily be severed, and (3) to the extent the issue can be severed, whether there is flexibility in implementing the policy.

These appear to be the objective factors with respect to proposals to prohibit the exclusion of legal or compliance costs from performance metrics (AbbVie and Johnson & Johnson), the inclusion of such costs in performance metrics has not drawn the same attention or policy concerns as excessive golden parachutes, and the proposals there did not seem to provide for exceptions. In JPMorgan Chase & Co., the proponent candidly admitted that although the proposal involved severance (in that case, paying an executive who leaves the company for government service), the proposal did not "not address the Company's provision of severance benefits following a change-in-control (traditionally known as a "golden parachute"). See file:///D:/Change%20to%20Win/IBT/RSG%2020_noact_JPMorgan.pdf at PDF p. 10.

This approach would appear to be consistent with the comment in SLB 14K that the Division denied no-action relief as to a climate change proposal asking "if and how" the company planned to align its operations and investments with the Paris Agreement. Anadarko Petroleum Corp. (4 March 2019). The proposal dealt with a topic of unquestioned policy significance, and the company was given flexibility on the "if and how" elements of executing the requested policy.[3]

In the same manner here, Republic's compensation committee and board are left with the freedom to choose "if and how" they will shape "golden parachute" packages for senior executives. The Proposal says simply that if the package exceeds a certain level, the shareholders should have a say.

We see no evidence that excess golden parachute provisions have lost any policy significance since Division issued the letter in Transamerica Corp. (10 January 1990) that reversed prior policy and opined that the "ordinary business" exception could not be invoked to bar a shareholder proposal that would deny

---

[3] In some cases, the level of flexibility may depend on the complexity of the subject matter. For a large petroleum company such as Anadarko, deciding how to factor climate change into company operations is a large and complex question. For compensation decisions, by contrast, the policy question on whether to offer a certain type of compensation is often far less complex

compensation to executives if the payment is contingent upon a merger or acquisition. The decision followed in the wake of investor concern about hostile takeover bids fueled by junk bond financing. As summarized in a HARVARD BUSINESS REVIEW by Professor Peer Fiss entitled Fiss, A Short History of Golden Parachutes (Oct. 2016), available at https://hbr.org/2016/10/a-short-history-of-golden-parachutes., the size of these severance packages prompted significant concern. He writes: "Investors began to see such large payments as rewards for failure, denouncing them as an unjustified waste of corporate assets or even fraud."

The significance of this issue was not lost on Congress, which responded by enacting a provision in the Deficit Reduction Act of 1984 that amended the Internal Revenue Code to add section 280G(a), which disallows in change-in-control situations any corporate deduction for "excess parachute payments," and section 4999(a), which imposes a 20 per cent excise tax on their recipients. The excise tax is not deductible by the payor for federal income tax purposes. Congress defined "excess" as amounts equal to or exceeding three times average annual taxable compensation during the base period prior to the date the change occurs.

(This law had a perverse effect, as was quickly recognized, however. The response was a rush to enact golden parachutes worth 2.99 times an executive's base compensation and also to include "other benefits such as stock grants, retirement benefits, and more exotic perks," not to mention gross-ups, under which the company assumed the departing executive's tax liability.)

Excess golden parachutes continue to garner extensive public and investor concern, most recently with respect to the anticipated eight-figure payout to the CEO of Boeing, who was ousted after two fatal air crashes resulted in the deaths of hundreds of passengers and crew.[4] There is no reason for the Commission to reverse its past policy in this case.

In sum: :

• The Proposal deals with an unquestioned issue of executive compensation, indeed the prototypical issue that prompted the Division to change policy in Transamerica letter 30 years ago.

---

[4] E.g., Boeing's CEO Has Made Millions. His Total Payout Could Be Worth More Than a 737 MAX Jet, Barron's (23 December 2019), available at https://www.barrons.com/articles/boeing-ceo-dennis-muilenburg-pay-51577136749; Tucker Cites Former Boeing CEO's Massive Golden Parachute As A Reason Why 'Americans Are Warming Up To Socialism, Daily Caller (3 January 2020), available at https://dailycaller.com/2020/01/03/tucker-carlson-boeing-dennis-muilenburg-socialism/

• The Proposal does not "seek intricate detail." Indeed, details are provided annually in the Company's Compensation Discussion and Analysis.

• The Proposal does not "seek to impose timeframes." In fact, the Proposal explicitly gives the board discretion on that score.

• The Proposal does not propose " methods for implementing complex policies." The Proposal acknowledges that the board has made its decision; the request is simply to let shareholders make their own decision.

Conclusion

For these reasons, we respectfully ask the Division to advise Republic that the Division does not concur that the Fund's Proposal may be omitted under Rule 14a-8(i)(7).

Thank you for your consideration of these points. Please feel free to contact me if any additional information would be helpful.

Very truly yours,

Cornish F. Hitchcock

cc: Kerry Shannon Burke.

JOHN CHEVEDDEN
PII
[redacted]

June 28, 2021

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

 # 3 Rule 14a-8 Proposal
FedEx Corporation (FDX)
Shareholder Ratification of Termination Pay
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 20, 2021 no-action request.

Management only cites *Republic Services, Inc.* (February 14, 2020) in regard to the 2.99 figure.

Perhaps *Republic Services* is the only instance of micromanagement excluding a 2.99 rule 14a-8 proposal.

In fact Verizon published this 2.99 proposal in its 2021 proxy:

Item 6: Shareholder Ratification of Annual Equity Awards

Jack K. and Ilene Cohen, owner of 954 shares of Verizon's common stock, propose the following:

Shareholder Ratification of Executive Severance Packages

RESOLVED: Verizon shareholders urge the Board to seek shareholder approval of any senior executive's new or renewed compensation package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

Source:
https://www.sec.gov/Archives/edgar/data/732712/000119312521098265/d15375ddef14a.htm#toc15375_41

And Verizon is no stranger to using the no action process with 3 no action requests submitted in December 2020.

This raises the issue of whether during the past 4-years the Staff has issued interpretations and Staff Legal Bulletins that are in contradiction with rule 14a-8.

Sincerely,

John Chevedden

cc: Alana Griffin <alana.griffin@fedex.com>

Alana L. Griffin
Staff Vice President
Securities & Corporate Law

942 South Shady Grove Road
Memphis, TN 38120
Telephone 901.818.6653
Fax 901.818.7170
alana.griffin@fedex.com

FedEx Corporation

VIA E-MAIL

June 24, 2021

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

Re: **FedEx Corporation—Omission of Shareholder Proposal Relating to Shareholder Ratification of Termination Pay**

Ladies and Gentlemen:

FedEx Corporation (the "Company" or "FedEx") refers to our letter dated May 20, 2021 (the "No-Action Request"), pursuant to which we requested the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with the Company that the shareholder proposal and supporting statement (the "Proposal") submitted by John Chevedden (the "Proponent") may be excluded from the proxy materials for the Company's 2021 annual meeting of its shareholders (the "2021 Proxy Materials").

We are responding to the letter submitted by the Proponent, dated June 18, 2021 (the "Proponent's Response"), and this letter supplements the No-Action Request. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934 (the "Exchange Act"), a copy of this letter is also being sent to the Proponent.

The cite to *Verizon Communications Inc.* (Feb. 15, 2019) in the Proponent's Response is not dispositive in this instance. While *Verizon Communications Inc.* involved a similar proposal that the Staff did not find excludable under Rule 14a-8(i)(7), the basis on which no-action relief was requested was not micromanagement. As discussed in our No-Action Request, in *Staff Legal Bulletin No. 14K* (Oct. 16, 2019) ("SLB 14K"), the Staff indicated that when it evaluates micromanagement arguments under Rule 14a-8(i)(7), it conducts an assessment of the level of prescriptiveness of the proposal and that "[w]hen a proposal prescribes specific actions that the company's management or the board must evaluate without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted." SLB 14K. The Proposal involves the precise type of prescriptive approach to

complex matters as the proposal in *Republic Services, Inc.* (Feb. 14, 2020), which was identical to the Proposal in all substantial respects, where the Staff granted relief under Rule 14a-8(i)(7) on the basis of micromanagement. Accordingly, as demonstrated in the No-Action Request, the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7).

Based on foregoing and the reasons stated in the No-Action Request, we respectfully request that the Staff will not recommend enforcement action to the Commission if FedEx omits the Proposal from our 2021 Proxy Materials.

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

Very truly yours,

FedEx Corporation

Alana L. Griffin

cc: John Chevedden
PII

Ning Chiu
Davis Polk & Wardwell
ning.chiu@davispolk.com

[1499806]

JOHN CHEVEDDEN
PII

June 18, 2021

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

 # 1 Rule 14a-8 Proposal
FedEx Corporation (FDX)
Shareholder Ratification of Termination Pay
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 20, 2021 no-action request.

The Staff has traditionally allowed leeway in shareholder proposals addressing executive compensation, to include some calculations and metrics that relate to existing law.

For instance, in *Verizon Inc.* (February 15, 2019) the Staff did not find a proposal excludable that requested that the board seek shareholder approval of any senior executive officer's new or renewed compensation package that provides for "severance or termination payments" with an estimated "total value" exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

Sincerely,

John Chevedden

cc: Alana Griffin <alana.griffin@fedex.com>

[FDX: Rule 14a-8 Proposal, April 9, 2021]
[This line and any line above it – *Not* for publication.]
Proposal 4 – Shareholder Ratification of Termination Pay

Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

"Severance or termination payments" include cash, equity or other compensation that is paid out or vests due to a senior executive's termination for any reason. Payments include those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans, but not life insurance, pension benefits, or deferred compensation earned and vested prior to termination.

"Estimated total value" includes: lump-sum payments; payments offsetting tax liabilities; perquisites or benefits not vested under a plan generally available to management employees; post-employment consulting fees or office expense; and equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

Generous performance-based pay can be good but shareholder ratification of "golden parachute" severance packages with a total cost exceeding 2.99 times base salary plus target bonus better aligns management pay with shareholder interests.

For instance at a company larger than FedEx if the CEO is terminated without cause, whether or not his termination follows a change in control, he will receive an estimated $39 million in termination payments, nearly 7-times his 2019 base salary plus short-term bonus.

A former CEO at this company received an estimated $27 million in separation payments due to his retirement, nearly 5-times his 2018 base salary plus short-term bonus. These payments represented the estimated value of performance-based equity grants covering periods as long as 2-years after his retirement.

It is in the best interest of FedEx shareholders to be protected from such lavish $39 million management termination packages for one person.

Please vote yes:
Shareholder Ratification of Termination Pay – Proposal 4
[The above line – *Is* for publication.]

Alana L. Griffin
Staff Vice President
Securities & Corporate Law

942 South Shady Grove Road
Memphis, TN 38120
Telephone 901 818.6653
Fax 901.818.7170
alana.griffin@fedex.com

FedEx Corporation

VIA E-MAIL

May 20, 2021

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

Re: **FedEx Corporation—Omission of Shareholder Proposal Relating to Shareholder Ratification of Termination Pay**

Ladies and Gentlemen:

The purpose of this letter is to inform you, pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that FedEx Corporation (the "Company" or "FedEx") intends to omit from its proxy statement and form of proxy for the 2021 annual meeting of its shareholders (the "2021 Proxy Materials") the shareholder proposal and supporting statement (the "Proposal") submitted by John Chevedden (the "Proponent") on April 9, 2021. The Proposal, together with related correspondence, is attached hereto as **Exhibit A**.

We hereby respectfully request confirmation that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") will not recommend any enforcement action if, in reliance on Rule 14a-8, we exclude the Proposal from our 2021 Proxy Materials. In accordance with Rule 14a-8(j), we are:

- submitting this letter not later than 80 days prior to the date on which the Company intends to file definitive 2021 Proxy Materials; and

- simultaneously providing a copy of this letter and its exhibits to the Proponent, thereby notifying the Proponent of our intention to exclude the Proposal from our 2021 Proxy Materials.

The Proposal

The Proposal states, in relevant part:

"Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

'Severance or termination payments' include cash, equity or other compensation that is paid out or vests due to a senior executive's termination for any reason. Payments include those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans, but not life insurance, pension benefits, or deferred compensation earned and vested prior to termination.

'Estimated total value' includes: lump-sum payments; payments offsetting tax liabilities; perquisites or benefits not vested under a plan generally available to management employees; post-employment consulting fees or office expense; and equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon."

We believe that the Proposal may be excluded from our 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because it micromanages the Company.

Legal Analysis

The Proposal may be excluded under Rule 14a-8(i)(7) because it micromanages the Company.

Rule 14a-8(i)(7) allows a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the release of the Commission accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" does not necessarily refer to business that is "'ordinary' in the common meaning of the word," but instead "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Exchange Act Release No. 40018* (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the 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," and identified two central considerations that underlie this policy: (1) the subject matter of the proposal (i.e., whether the subject matter involves a matter of ordinary business), provided the proposal does not raise significant social policy considerations that transcend ordinary business; and (2) the degree to which the proposal

attempts to micromanage a 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." *1998 Release* (citing *Exchange Act Release No. 12999* (Nov. 22, 1976)). A proposal may involve micromanagement if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *Id.* Determinations as to the excludability of proposals on the basis of micromanagement "will be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed." *Id.*

The consideration of the excludability of a proposal based on micromanagement "looks only to the degree to which a proposal seeks to micromanage" and does not focus on the subject matter of the proposal. *Staff Legal Bulletin No. 14J* (Oct. 23, 2018) ("SLB 14J"). The Staff has consistently permitted exclusion of shareholder proposals that attempt to micromanage a company by substituting shareholder judgment for that of management with respect to such complex day-to-day business operations. See *the 1998 Release*; see also *JPMorgan Chase & Co*. (Mar. 22, 2019); *Royal Caribbean Cruises Ltd*. (Mar. 14, 2019); *Eli Lilly and Company* (Mar. 1, 2019); *Walgreens Boots Alliance, Inc*. (Nov. 20, 2018); *RH* (May 11, 2018); *JPMorgan Chase & Co*. (Mar. 30, 2018); and *Amazon.com, Inc*. (Jan. 18, 2018). Additionally, the Staff has indicated that when it evaluates micromanagement arguments under Rule 14a-8(i)(7), it conducts an assessment of the level of prescriptiveness of the proposal. Specifically, the Staff's guidance states that "[w]hen a proposal prescribes specific actions that the company's management or the board must evaluate without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted." *Staff Legal Bulletin No. 14K* (Oct. 16, 2019) ("SLB 14K").

Although the Staff historically did not permit exclusion of proposals addressing senior executive compensation on the basis of micromanagement, the Staff stated in SLB 14J that, after further consideration, "we do not believe there is a basis for treating executive compensation proposals differently than other types of proposals" when analyzing a micromanagement argument. *Id.* The Staff recently has permitted exclusion of proposals under Rule 14a-8(i)(7) that involved matters related to senior executive compensation on the basis that the proposals sought to micromanage the company. For example, in *AbbVie Inc.* (Feb. 15, 2019) and *Johnson & Johnson* (Feb. 14, 2019), the Staff granted relief under Rule 14a-8(i)(7) for proposals in which the proponents requested the companies adopt a policy that legal or compliance costs not be excluded from financial performance metrics used to evaluate performance for determining the amount or vesting of senior executive incentive compensation awards. The Staff concluded that each proposal "micromanages the Company by seeking to impose specific methods for implementing complex policies. Specifically, the Proposal, if implemented, would prohibit any adjustment of the broad categories of expenses covered by the Proposal without regard to specific circumstances or the possibility of reasonable exceptions." Similarly, in *JPMorgan Chase & Co*. (Mar. 22, 2019), the Staff concurred in the exclusion of a proposal pursuant to Rule 14a-8(i)(7) that the board adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service. The Staff granted relief under Rule 14a-8(i)(7) on the

basis that the proposal "micromanages the Company by seeking to impose specific methods for implementing complex policies." *See also Johnson & Johnson* (Feb. 12, 2020) (permitting exclusion on the basis of micromanagement of a proposal that asked the company's Compensation & Benefits Committee to modify its annual cash incentive program to provide that certain short-term bonus awards would not be paid in full for some period following the award, noting the company's statement that "the [p]roposal's request to categorically prohibit immediate full payment of short-term bonus awards to senior executives would strip the Compensation & Benefits Committee of the discretion and flexibility it requires to properly exercise its business judgment"); *Rite-Aid Corporation* (Feb. 12, 2021) (relief under Rule 14a-8(i)(7) granted for a proposal where the proponent asked shareholders to recommend that the board adopt a policy restricting the grant of equity awards to a senior executive when the company's common stock has a market price lower than the grant date market price); *Gilead Sciences, Inc.* (Dec. 3, 2020) (relief under Rule 14a-8(i)(7) granted for a proposal where the proponent requested that the company reduce the CEO pay ratio by 5-10% each year until it reaches 20 to 1).

In *Republic Services, Inc.* (Feb. 14, 2020), the Staff granted relief under Rule 14a-8(i)(7) for a proposal that is identical to the Proposal in all substantial respects. The company argued that the proponent's proposal requiring that the company's board seek shareholder approval of any senior executive officer's new or renewed compensation package that provides for severance or termination payments with an estimated total value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus involved the exact type of prescriptive approach to complex matters at the heart of the micromanagement prong of Rule 14a-8(i)(7) and would "unduly limit the ability of the management and the [B]oard to manage complex matters with a level of flexibility necessary to fulfill its fiduciary duties to shareholders." *Republic Services, Inc.* (citing SLB 14K).

Consistent with the Staff's position in *Republic Services, Inc*. when the Proposal is considered within the framework set forth in SLB 14J and SLB 14K and the no-action letters cited above, it is clear that it seeks to micromanage the Company by prescribing specific methods for implementing complex policies. The Proposal seeks a shareholder vote of any new or renewed executive officer compensation package that provides for severance or termination payments that exceed a total value of 2.99 times the sum of the executive officer's base salary plus target short-term bonus and thus would set a prescribed limit on compensation that may be paid in connection with a termination of employment of an executive officer and require that the Company seek shareholder approval of compensation if it exceeded such limit.

Pursuant to the charter of the Compensation Committee (the "Compensation Committee") of the Company's board of directors (the "Board"), the Compensation Committee is tasked with assisting the Board in oversight of the Company's compensation of executive officers and administration of the Company's equity compensation plans, including reviewing, approving, and recommending Board approval of all equity incentive compensation plans and all plans, agreements, and arrangements that provide for payments to an executive officer at,

following, or in connection with the officer's termination.[1] As described in the Company's proxy statement for its 2020 annual meeting of shareholders (the "2020 Proxy Statement"), the Compensation Committee and Board have approved management retention agreements ("MRAs") for the Company's executive officers, pursuant to which each executive officer is entitled to receive certain lump-sum cash payments and post-employment health benefits upon a qualifying termination of the executive officer's employment after a change of control of the Company. *2020 Proxy Statement*, at pages 75-76. In addition, the Company's shareholder-approved 2019 Omnibus Stock Incentive Plan[2] provides for accelerated vesting of equity awards upon a change of a control of the Company, unless otherwise determined by the Compensation Committee. The MRAs, as well as the accelerated vesting of equity awards upon a change of control of the Company, are intended to secure the executives' continued services in the event of any threat or occurrence of a change of control, which further aligns their interests with those of FedEx's shareholders when evaluating any potential transaction. *Id.* Given the Compensation Committee's and Board's responsibility to administer the Company's executive compensation programs, including post-termination payments, the Proposal attempts to supplant the judgment of the Compensation Committee and Board with that of shareholders. The actions requested in the Proposal involve the precise type of prescriptive approach to complex matters at the heart of the micromanagement prong of Rule 14a-8(i)(7) and would "unduly limit the ability of management and the [B]oard to manage complex matters with a level of flexibility necessary to fulfill [its] fiduciary duties to shareholders." SLB 14K.

The Proposal's Supporting Statement reinforces the micromanagement conclusion. For example, the Supporting Statement provides that "shareholder ratification of 'golden parachute' severance packages with a total cost exceeding 2.99 times base salary plus target bonus better aligns management pay with shareholder interests" and "[i]t is in the best interest of FedEx shareholders to be protected from such lavish $39 million management termination packages for one person." By seeking a shareholder vote on a specific component of the Company's executive compensation program after a certain threshold is reached, and beyond what is already required by Rule 14a-21 of the Exchange Act, the Proponent is attempting to dictate the type, amount, and nature of compensation provided to the Company's executive officers under cover of a shareholder vote. Decisions related to post-employment compensation, including termination pay, fall squarely within the purview of the Compensation Committee and Board, not shareholders. If implemented, the Proposal would effectively impose specific methods for implementing complex policies by dictating the type, amount, and nature of executive compensation and, therefore, "prob[es] too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment." *1998 Release*. This is precisely the type of effort that Rule 14a-8(i)(7) is intended to prevent.

Finally, the Compensation Committee's and Board's decisions with respect to executive

---

[1] https://investors.fedex.com/esg/board-of-directors/committee-charters/compensation-committee-charter/default.aspx.

[2] https://www.sec.gov/ix?doc=/Archives/edgar/data/0001048911/000119312519252198/d766576d8k.htm.

compensation policies and programs involve complex determinations that are dependent on expertise and are informed by a myriad of factors. Similar to the *Republic Services, Inc.*, *AbbVie Inc.*, *Johnson & Johnson, JPMorgan Chase & Co.*, *Rite-Aid Corporation*, and *Gilead Sciences, Inc.* no-action letters cited above, the Proponent is attempting to impose specific conditions around the Company's implementation of intricate compensation policies and programs. The Proposal attempts to overtake the Compensation Committee's and Board's processes by dictating when and how severance and termination payments are payable to executive officers. Mandating that shareholders be given the ability to effectively determine the type and amount of severance and termination payments that may be payable to executive officers micromanages complex details of the Compensation Committee's and Board's decision-making processes surrounding a critical component of the Company's executive compensation program. Despite the Proposal's contrary suggestion, the Board and Compensation Committee remain in a better position than multitudinous and disparate shareholders to oversee executive officer severance and termination payments. As a result, the Proposal is precisely the type of proposal that the Commission has stated would limit the judgment and discretion of the Board and management and may be excluded under Rule 14a-8(i)(7).

Consistent with the Staff's guidance and the no-action letters cited above, the Proposal would impermissibly micromanage the Company and the Proposal, therefore, may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7).

Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff agree that we may omit the Proposal from our 2021 Proxy Materials.

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

Very truly yours,

FedEx Corporation

Alana L. Griffin

Attachments

cc: John Chevedden
PII

Ning Chiu
Davis Polk & Wardwell
ning.chiu@davispolk.com

[1490475]

Exhibit A

The Proposal and Related Correspondence

JOHN CHEVEDDEN
PII
[redacted]

Mr. Mark R. Allen
Corporate Secretary
FedEx Corporation (FDX)
942 S. Shady Grove Rd.
Memphis, TN 38120
PH: 901-818-7500
FX: 901 818-7590

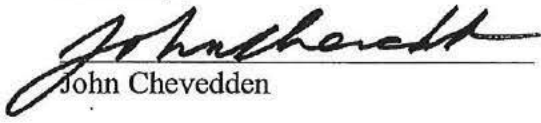
Dear Mr. Allen,

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

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

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

Sincerely,



John Chevedden

April 9, 2021

Date

cc: Alana Griffin <alana.griffin@fedex.com>
Edward Garitty <edward.garitty@fedex.com>
Kate Beukenkamp <kate.beukenkamp@fedex.com>
Eddie Klank <ceklank@fedex.com>
Megan Barnes <megan.barnes@fedex.com>
PH: 901-818-7029
FX: 901-818-7119
FX: 901-818-7170

[FDX: Rule 14a-8 Proposal, April 9, 2021]
[This line and any line above it – *Not* for publication.]
Proposal 4 – Shareholder Ratification of Termination Pay

Shareholders request that the Board seek shareholder approval of any senior manager's new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive's base salary plus target short-term bonus.

"Severance or termination payments" include cash, equity or other compensation that is paid out or vests due to a senior executive's termination for any reason. Payments include those provided under employment agreements, severance plans, and change-in-control clauses in long-term equity plans, but not life insurance, pension benefits, or deferred compensation earned and vested prior to termination.

"Estimated total value" includes: lump-sum payments; payments offsetting tax liabilities; perquisites or benefits not vested under a plan generally available to management employees; post-employment consulting fees or office expense; and equity awards if vesting is accelerated, or a performance condition waived, due to termination.

The Board shall retain the option to seek shareholder approval after material terms are agreed upon.

Generous performance-based pay can be good but shareholder ratification of "golden parachute" severance packages with a total cost exceeding 2.99 times base salary plus target bonus better aligns management pay with shareholder interests.

For instance at a company larger than FedEx if the CEO is terminated without cause, whether or not his termination follows a change in control, he will receive an estimated $39 million in termination payments, nearly 7-times his 2019 base salary plus short-term bonus.

A former CEO at this company received an estimated $27 million in separation payments due to his retirement, nearly 5-times his 2018 base salary plus short-term bonus. These payments represented the estimated value of performance-based equity grants covering periods as long as 2-years after his retirement.

It is in the best interest of FedEx shareholders to be protected from such lavish $39 million management termination packages for one person.

Please vote yes:
Shareholder Ratification of Termination Pay – Proposal 4
[The above line – *Is* for publication.]

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

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email [redacted] PII

The below graphic is to be published immediately after the bold title line of the proposal.
Will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:
No management graphic in connection with the proposal in the proxy or ballot.
No proxy or ballot text suggesting that the proposal will be moot due to lack of presentation.
No ballot text giving the management recommendation.
Management will give me advance notice if it does a special soliciation that mentions this proposal.

Personal Investing

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

April 09, 2021

John R. Chevedden
PII
[redacted]

To Whom It May Concern:

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

Please accept this letter as confirmation that as of market close on April 8, 2021, Mr. Chevedden has continuously owned no fewer than the shares quantities of the securities show in the table below, since September 1, 2019.

Security	Cusip	Symbol	Share Qty.
Allegiant Travel Co	01748X102	ALGT	25.000
FedEx Corp.	31428X106	FDX	25.000

I hope this information is helpful. For any other issues or general inquiries, please call your Private Client Group at 1-800-544-5704. Thank you for choosing Fidelity Investments.

Sincerely,

Kris Miner
Operations Specialist

Our File: W539393-01APR21

Kate Beukenkamp

From: Edward Garitty
Sent: Friday, April 9, 2021 1:44 PM
To: John Chevedden
Cc: Alana Griffin; Kate Beukenkamp; Eddie Klank
Subject: RE: [EXTERNAL] Rule 14a-8 Proposal (FDX)``

Mr. Chevedden,

Receipt confirmed.

Thanks,
Edward

Edward J. Garitty
Senior Attorney – Securities & Corporate Law

FedEx Corporation (NYSE: FDX)
942 South Shady Grove Road, Memphis, TN 38120
Office: 901.818.7311 | Mobile: 225.571.6431
E-mail: edward.garitty@fedex.com

From: John Chevedden [redacted PII]
Sent: Friday, April 9, 2021 1:25 PM
To: Edward Garitty <edward.garitty@fedex.com>
Cc: Alana Griffin <alana.griffin@fedex.com>; Kate Beukenkamp <kate.beukenkamp@fedex.com>; Eddie Klank <ceklank@fedex.com>
Subject: [EXTERNAL] Rule 14a-8 Proposal (FDX)``

Mr. Garitty,

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

Sincerely,
John Chevedden

Kate Beukenkamp

From:	Edward Garitty
Sent:	Friday, April 9, 2021 6:00 PM
To:	John Chevedden
Cc:	Alana Griffin; Kate Beukenkamp
Subject:	RE: [EXTERNAL] Rule 14a-8 Proposal (FDX)``
Attachments:	9 April 2021 Letter to John Chevedden.pdf

Mr. Chevedden:

Please find attached correspondence regarding the proposal. Please direct any correspondence regarding this matter to Alana Griffin, Kate Beukenkamp, and me.

Thanks,
Edward

Edward J. Garitty
Senior Attorney – Securities & Corporate Law

FedEx Corporation (NYSE: FDX)
942 South Shady Grove Road, Memphis, TN 38120
Office: 901.818.7311 | Mobile: 225.571.6431
E-mail: edward.garitty@fedex.com

From: John Chevedden [redacted] PII
Sent: Friday, April 9, 2021 1:25 PM
To: Edward Garitty <edward.garitty@fedex.com>
Cc: Alana Griffin <alana.griffin@fedex.com>; Kate Beukenkamp <kate.beukenkamp@fedex.com>; Eddie Klank <ceklank@fedex.com>
Subject: [EXTERNAL] Rule 14a-8 Proposal (FDX)``

Mr. Garitty,

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

Sincerely,
John Chevedden

Alana L. Griffin
Staff Vice President
Securities & Corporate Law

942 South Shady Grove Road
Memphis, TN 38120
Telephone 901.818.6653
Fax 901.818.7170
alana.griffin@fedex.com

FedEx Corporation

Via E-mail [redacted] PII

April 9, 2021

John R. Chevedden
[redacted] PII

Subject: **John Chevedden Stockholder Proposal – Shareholder Ratification of Termination Pay**

Dear Mr. Chevedden:

We received the stockholder proposal dated April 9, 2021 that you submitted to FedEx Corporation ("FedEx") on April 9, 2021 (the stockholder proposal and all correspondence included therewith, the "Stockholder Proposal Materials").

The proposal contains certain procedural deficiencies, which Securities and Exchange Commission ("SEC") regulations require us to bring to your attention. Rule 14a-8(b)(1) of the Securities Exchange Act of 1934, as amended, requires that in order to be eligible to submit a proposal for inclusion in FedEx's proxy statement, each stockholder proponent must, among other things, have continuously held at least $2,000 in market value, or 1%, of FedEx's common stock for at least one year by the date the proponent submits the proposal, and must continue to hold such common stock through the date of the FedEx annual meeting. Our stock records indicate that you are not currently the registered holder of any shares of FedEx common stock.

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

- a written statement from the "record" holder of the shares (usually a bank or broker) verifying that, at the time the proponent submitted the proposal (in your case, April 9, 2021), the proponent had continuously held at least $2,000 in market value, or 1%, of FedEx's common stock for at least the one-year period prior to and including the date the proposal was submitted, and that the proponent intends to continue to hold such common stock through the date of the FedEx annual meeting; or

- a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the proponent's ownership of shares as of or before the date on which the one-year eligibility period begins, the proponent's written statement that he or she continuously held the required number of shares for the one-year period as of the date of the statement and the proponent's written statement that

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

The letter from Fidelity Investments included in the Stockholder Proposal Materials, which is attached as **Exhibit A**, indicates that, as of market close on April 8, 2021, you continuously owned no fewer than 25 shares of FedEx common stock since September 1, 2019. As stated above, in order to satisfy the requirements of Rule 14a-8, you must submit an updated broker letter specifying that you had continuously held at least $2,000 in market value, or 1%, of FedEx's common stock for at least the one-year period prior to and including the date the proposal was submitted (April 9, 2021).

To help stockholders comply with the requirements when submitting proof of ownership to companies, the SEC's Division of Corporation Finance published Staff Legal Bulletin No. 14F ("SLB 14F"), dated October 18, 2011, and Staff Legal Bulletin No. 14G ("SLB 14G"), dated October 16, 2012, a copy of which are attached for your reference as **Exhibit B** and **Exhibit C**, respectively.

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

If you have any questions, please call me.

Sincerely,

FedEx Corporation

Alana L. Griffin

Attachments

[1465796]

Exhibit A

Personal Investing

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

April 09, 2021

John R. Chevedden
[redacted]

To Whom It May Concern:

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

Please accept this letter as confirmation that as of market close on April 8, 2021, Mr. Chevedden has continuously owned no fewer than the shares quantities of the securities show in the table below, since September 1, 2019.

Security	Cusip	Symbol	Share Qty.
Allegiant Travel Co	01748X102	ALGT	25.000
FedEx Corp.	31428X106	FDX	25.000

I hope this information is helpful. For any other issues or general inquiries, please call your Private Client Group at 1-800-544-5704. Thank you for choosing Fidelity Investments.

Sincerely,

Kris Miner
Operations Specialist

Our File: W539393-01APR21

Exhibit B

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to

accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

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

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

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

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

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

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

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

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

participant?

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

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

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

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

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

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

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

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

D. The submission of revised proposals

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

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

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

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

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

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

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

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

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

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act

on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

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

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

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

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

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

---

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

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

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

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

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

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

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

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

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

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

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

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

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

the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

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

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

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

http://www.sec.gov/interps/legal/cfslb14f.htm

Home | Previous Page Modified: 10/18/2011

Exhibit C

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

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

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

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

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

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

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

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

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

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

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

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

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

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to

correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

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

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

D. Use of website addresses in proposals and supporting statements

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

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

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

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

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the

exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. In evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks.

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

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

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

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

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

---

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

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

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

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

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

Home | Previous Page Modified: 10/16/2012

Exhibit D

information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

NOTE 1 TO §240.14A–7. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

NOTE 2 TO §240.14A–7 When providing the information required by §240.14a–7(a)(1)(ii), if the registrant has received affirmative written or implied consent to delivery of a single copy of proxy materials to a shared address in accordance with §240.14a–3(e)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.

[57 FR 48292, Oct. 22, 1992, as amended at 59 FR 63684, Dec. 8, 1994; 61 FR 24657, May 15, 1996; 65 FR 65750, Nov. 2, 2000; 72 FR 4167, Jan. 29, 2007; 72 FR 42238, Aug. 1, 2007]

§240.14a–8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d–101), Schedule 13G (§240.13d–102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this

chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10–Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a–8 and provide you with a copy under Question 10 below, § 240.14a–8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified

under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant

to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may

express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our antifraud rule, §240.14a–9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

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

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

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

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

§240.14a–9 False or misleading statements.

(a) 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 make the statements therein not false or misleading or necessary 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 fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

(c) No nominee, nominating shareholder or nominating shareholder group, or any member thereof, shall cause to be included in a registrant's proxy materials, either pursuant to the Federal proxy rules, an applicable state or foreign law provision, or a registrant's governing documents as they relate to including shareholder nominees for director in a registrant's proxy materials, include in a notice on Schedule 14N (§240.14n–101), or include in any other related communication, 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 make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to a solicitation for the same meeting or subject matter which has become false or misleading.

NOTE: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

a. Predictions as to specific future market values.

b. Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.

Kate Beukenkamp

From:	Edward Garitty
Sent:	Wednesday, April 14, 2021 10:32 PM
To:	John Chevedden
Cc:	Alana Griffin; Kate Beukenkamp
Subject:	RE: [EXTERNAL] Rule 14a-8 Proposal (FDX) blb

Receipt confirmed.

Thanks,
Edward

Edward J. Garitty
Senior Attorney – Securities & Corporate Law

FedEx Corporation (NYSE: FDX)
942 South Shady Grove Road, Memphis, TN 38120
Office: 901.818.7311 | Mobile: 225.571.6431
E-mail: edward.garitty@fedex.com

From: John Chevedden [redacted] PII
Sent: Wednesday, April 14, 2021 7:49 PM
To: Edward Garitty <edward.garitty@fedex.com>
Cc: Alana Griffin <alana.griffin@fedex.com>; Kate Beukenkamp <kate.beukenkamp@fedex.com>
Subject: [EXTERNAL] Rule 14a-8 Proposal (FDX) blb

Mr. Garitty,
Please see the attached broker letter.
Please confirm receipt.
Sincerely,
John Chevedden

Personal Investing

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

April 14, 2021

JOHN R CHEVEDDEN
PII
[redacted]

To Whom It May Concern:

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

Please accept this letter as confirmation that as of market close on April 13, 2021, Mr. Chevedden has continuously owned no fewer than the shares quantities of the securities show in the table below, since September 1, 2019.

Security	Cusip	Symbol:	Share Qty.
Allegiant Travel Co	01748X102	ALGT	25.000
FedEx Corp.	31428X106	FDX	25.000

These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary. Please note that this information is unaudited and not intended to replace your monthly statements or official tax documents.

I hope you find this information helpful. If you have any questions regarding this issue or general inquiries regarding your account, please contact your Fidelity Private Client Group at 800-544-5704 for assistance. We appreciate your business and thank you for choosing Fidelity Investments.

Sincerely,

Matthew Vasquez
Operations Specialist

Our File: W396417-14APR21