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

DIVISION OF
CORPORATION FINANCE

March 20, 2023

Shelly A. Heyduk
O'Melveny & Myers LLP

Re: Alaska Air Group, Inc. (the "Company")
Incoming letter dated January 3, 2023

Dear Shelly A. Heyduk:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by John Chevedden for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board of directors take the steps necessary to permit written consent by the shareholders entitled to cast the minimum number of votes that would be necessary to authorize an action at a meeting at which all shareholders entitled to vote thereon were present and voting, and enable both street name and non-street name shareholders to formally participate in acting by written consent.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(2). We note that in the opinion of Delaware counsel, implementation of the Proposal would cause the Company to violate state law. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(2).

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/2022-2023-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

O'Melveny & Myers LLP
610 Newport Center Drive
17th Floor
Newport Beach, CA 92660-6429

T: +1 949 823 6900
F: +1 949 823 6994
omm.com

January 3, 2023

Shelly Heyduk
D: +1 949 823 7968
sheyduk@omm.com

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: ***Alaska Air Group, Inc.***
Shareholder Proposal of John Chevedden
Securities Exchange Act of 1934 Rule 14a-8

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client, Alaska Air Group, Inc., a Delaware corporation (the "Company"), which requests confirmation that the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company omits the enclosed shareholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") submitted by John Chevedden (the "Proponent"), from the Company's proxy materials for its 2023 Annual Meeting of Stockholders (the "2023 Proxy Materials").

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

A copy of the Proposal and Supporting Statement (as originally submitted and subsequently revised by the Proponent) and the Proponent's cover correspondence submitting the Proposal are attached hereto as Exhibit A. Copies of other correspondence with the Proponent regarding the Proposal are attached hereto as Exhibit B. The Company has not received any other correspondence relating to the Proposal.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (Oct. 18, 2011), we ask that the Staff provide any written response to this request to Shelly Heyduk, on behalf of the Company, at sheyduk@omm.com, and to the Proponent by email to John Chevedden, at [redacted].

I. THE PROPOSAL

The Proposal states as follows:

Shareholder Right to Act by Written Consent

Shareholders request that our board of directors take the steps necessary to permit written consent by the shareholders entitled to cast the minimum number of votes that would be necessary to authorize an action at a meeting at which all shareholders entitled to vote thereon were present and voting. This includes shareholder ability to initiate any appropriate topic for written consent. This includes enabling both street name and non street name shareholders to formally participate in acting by written consent.

This proposal is more important at Alaska Air because apparently only non street name shareholders can call for a special shareholder meeting. Calling for a special shareholder meeting is related to the right to act by written consent. Both rights empower shareholders to put important issues in front of management between annual meetings. Many or most companies allow street name shareholders and non street name shareholders an equal right to call for a special shareholder meeting, but Alaska Air does not.

With a shareholder ability to act by written consent, as proposed here, both street name shareholders and non street name shareholders can raise important issues between annual meetings and get the attention of management. Plus shareholders acting by written consent will save management the cost of a special shareholder meeting.

Action by written consent is hardly ever used by shareholders but the main point of the right act by written consent is that it gives shareholders at least significant standing to engage effectively with management.

Management will have an incentive to genuinely engage with shareholders, instead of stonewalling, if shareholders have a realistic Plan B option of acting by written consent. Management likes to claim that shareholders have multiple means to communicate with management but in most cases these means are as effective as mailing a post card to the CEO. A right to act by written consent is an important step for effective shareholder engagement with Alaska Air management.

See Exhibit A for a complete copy of the Proposal and Supporting Statement.

II. FACTUAL BACKGROUND

On November 2, 2022, the Company received an email from the Proponent containing a proposal and supporting statement for inclusion in the Company's 2023 Proxy Materials (the "Original Proposal").

On November 14, 2022, the Company sent a letter by email to the Proponent requesting that the Proponent provide (i) the requisite proof of his stock ownership in accordance with Rule

14a-8(b)(i) and (ii) the requisite written statement of availability for a meeting pursuant to Rule 14a-8(b)(iii). The Proponent emailed the Company later that day with two proposed dates and times for an "off the record telephone meeting," but noted that he had "no need for a meeting." The Company nevertheless requested a meeting to be held on one of the dates indicated by the Proponent. The Proponent provided the requisite proof of his stock ownership via email on November 17, 2022.

On November 25, 2022, the Company received a revised Proposal and Supporting Statement for inclusion in the Company's 2023 Proxy Materials from the Proponent. The substantive revisions made to the supporting statement in the Original Proposal are as follows, with revisions to the Original Proposal underlined:

> This proposal is more important at Alaska Air because apparently only non street name shareholders can call for a special shareholder meeting. Calling for a special shareholder meeting is related to the right to act by written consent. Both rights empower shareholders to put important issues in front of management between annual meetings. Many or most companies allow street name shareholders and non street name shareholders an equal right to call for a special shareholder meeting, but Alaska Air does not.
>
> With a shareholder ability to act by written consent, as proposed here, both street name shareholders and non street name shareholders can raise important issues between annual meetings and get the attention of management. Plus shareholders acting by written consent will save management the cost of a special shareholder meeting.

On November 29, 2022, representatives of the Company met with the Proponent via telephone to discuss the Proposal. One of the principal items the Company raised with the Proponent during the meeting was its view that the Proposal, if implemented, would violate Delaware corporate law by requiring that street name stockholders have the same right as non-street name (or record) stockholders to act by written consent. To confirm this was the Proponent's intent, the Company expressly asked the Proponent during the meeting whether the language of the Proposal was intended to require both street name and non-street name stockholders to have the right to act by written consent. The Proponent answered affirmatively. The Company subsequently explained to the Proponent that only record holders can execute written consents under Delaware law, describing for him language from Section 228 of the Delaware General Corporation Law and noting supporting Delaware case law. Throughout the call, the Proponent showed no interest in engaging with the Company on the topic and he also did not at any time request to revise the Proposal to address this critical shortcoming. In fact, the Proponent made clear his view that the Company could simply move forward with a no-action letter to the Staff (and incur the associated costs) despite his knowledge of the defect in the Proposal and Supporting Statement.

III. EXCLUSION OF THE PROPOSAL

The Company believes that it may properly exclude the Proposal from its 2023 Proxy Materials in reliance on Rule 14a-8(i)(2) because the Proposal would, if implemented, cause the

Company to violate applicable state law. The Company is a Delaware corporation and is therefore subject to the General Corporation Law of the state of Delaware (the "DGCL"). For the reasons set forth below and in the legal opinion regarding Delaware law from Richards, Layton & Finger, P.A., attached hereto as Exhibit C (the "Opinion Letter"), the Company believes that the Proposal, if implemented, would cause the Company to violate the DGCL. Accordingly, the Company believes that the Proposal may be excluded from the Company's 2023 Proxy Materials under Rule 14a-8(i)(2).

A. The Proposal would, if implemented, cause the Company to violate the DGCL.

The Proposal requests that the board of directors of the Company take the steps necessary to permit written consent by the Company's stockholders, including allowing stockholders "to initiate an appropriate topic for written consent" and "*enabling both street name and non street name shareholders to formally participate in acting by written consent*" (emphasis added).

The ability of both "street name" and "non-street name" stockholders to act by written consent is an essential element of the Proposal. In addition to the explicit language in the Proposal itself as excerpted above, the emphasis on this point throughout the Supporting Statement, including the Proponent's November 25, 2022 revisions to the Supporting Statement, indicate that this requirement is at the heart of the Proposal. For example, in the Supporting Statement the Proponent focuses specifically on a comparison of the Company's existing special meeting right and the written consent right requested by the Proposal, noting that the Proposal is "more important" at the Company as compared to other companies because "only non street name shareholders can call for a special shareholder meeting." And, significantly, in the Proposal, as revised by the Proponent, the Proponent expressly added the phrase "equal right" to describe his concern that the Company does not give street name and non-street name stockholders "an equal right to call for a special meeting." By implication, this language confirms the Proponent intends the Proposal to require that street name stockholders (in addition to non-street name (or record) stockholders) have an "equal right" to take action by written consent. Importantly, if the Proponent intended anything less, there would be no need to highlight what he perceives to be a deficiency in the Company's existing special meeting right or to otherwise ignore the fact that street name stockholders customarily exercise their rights through a company's record stockholders. Finally, as noted above, during the November 29, 2022 call with the Company, the Proponent expressly confirmed that the Proposal is intended to require that both street name and non-street name stockholders have the right to act by written consent.

As discussed in the Opinion Letter, Section 228 of the DGCL governs stockholders' ability to act by written consent in lieu of a stockholder meeting. Section 228(a) of the DGCL provides that stockholders may act by written consent "if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation . . . ." Section 228(c) of the DGCL further specifies that if a person executing a consent pursuant to Section 228 of the DGCL "is not a stockholder or member *of record* when the consent is executed, the consent shall not be valid unless the person is a stockholder or

member *of record* as of the record date for determining stockholders or members entitled to consent to the action" (emphasis added).

This restriction was added to Section 228(c) as part of certain amendments to the DGCL that became effective on August 1, 2022. The amendment made explicit the long-standing interpretation of the DGCL by the Delaware courts that a given signatory's consent cannot become effective unless that signatory is a record holder as of the consent's effective time. *See, e.g., Grynberg v. Burke,* 1891 WL 17034 (Del. Ch. Aug. 31, 1981) (holding that only record holders can execute written consents because both the DGCL and public policy support such a rule); *Olson v. Buffington,* 1985 WL 11575 (Del. Ch. July 17, 1985) (holding that all consents executed by brokerage houses were invalid, reasoning that even if it were simple for the corporation to quickly verify that signatories in fact beneficially held stock in the corporation, other corporations may not find it so easy); *Freeman v. Fabiniak,* 1985 WL 11583 (Del. Ch. Aug. 15, 1985) (holding that only persons whose names appear on the stock ledger as stockholders or hold proxies from a listed stockholder are qualified to act by written consent and invalidating consents executed by non-record holders); *Kurz v. Holbrook,* 989 A.2d 140 (Del. Ch.) *aff'd in part, rev'd in part on other grounds sub nom. Crown EMAK Partners, LLC v. Kurz,* 992 A.2d 377 (Del. 2010) (holding that DGCL Section 228 requires written consents to be executed by a stockholder of record and noting the public policy benefits of such an interpretation).

The Staff has consistently permitted the omission of a shareholder proposal under Rule 14a-8(i)(2) where the proposal, if implemented, would cause the company to violate the state law to which it is subject. *See, e.g.*, *Quotient Technology Inc.* (avail. May 6, 2022) (concurring with exclusion under Rule 14a-8(i)(2) of a shareholder proposal requesting that the board of directors disqualify all shares owned and/or controlled by both current and former named executive officers from voting to approve a proposed tax benefits preservation plan where Delaware law prohibited unilateral board actions that disenfranchised stockholders); *Anthem, Inc.* (avail. Mar. 21, 2022) (concurring with exclusion under Rule 14a-8(i)(2) of a shareholder proposal requesting that the board of directors take the necessary steps to permit written consent by shareholders entitled to cast the minimum number of votes necessary to authorize the action at a meeting where Indiana law prohibited action by less than unanimous written consent for corporations with a class of voting shares registered under Section 12 of the Exchange Act); *Goldman Sachs Group, Inc.* (avail. Feb. 1, 2016) (concurring with exclusion under Rule 14a-8(i)(2) of a shareholder proposal requesting that the company reform the Compensation Committee to include outside experts from the general public, besides members of the board of Directors, in violation of Delaware law). *See also, Dominion Resources, Inc.* (avail. Jan. 14, 2015); *Abbott Laboratories* (avail. Feb. 1, 2013); *IDACORP, Inc.* (avail. Mar. 13, 2012); and *Johnson & Johnson* (avail. Feb. 16, 2012).

Because "street name" stockholders are not stockholders of record, any written consents signed by such stockholders would be expressly invalid under DGCL Section 228(c). Any provision of the Company's governing documents purporting to permit such street name stockholders to formally take action by written consent on an equal basis with non-street name (or record) stockholders would be void as contrary to the DGCL, which governs in the event of a conflict with a company's governing documents. Therefore, implementing the Proposal would violate

Delaware law because it would purport to permit persons who are not stockholders of record to validly execute and deliver a written consent, in violation of the DGCL.

B. The Proponent should not be given the opportunity to revise the Proposal.

The Proponent should not be permitted to revise the Proposal and Supporting Statement. The Company recognizes that the Staff has a "long-standing practice of issuing no-action responses that permit stockholders to make revisions that are minor in nature and do not alter the substance of the proposal." *Staff Legal Bulletin No. 14* (CF) (July 13, 2001) ("SLB No. 14"). However, this guidance in SLB No. 14 is meant for proposals that "generally comply with the substantive requirements of the rule, but contain some relatively minor defects that are easily corrected." That is not the case here.

As described above, the ability of both street name and non-street name stockholders to act by written consent is an essential element of the Proposal. The Proposal, Supporting Statement and the revisions to the Original Proposal all demonstrate that equality between street name stockholders and non-street name stockholders is essential to the Proposal, and the Proponent confirmed this on his November 29 call with the Company. The Proponent has a long history of submitting Rule 14a-8 shareholder proposals requesting the right of stockholders to act by written consent, with more than 150 written consent proposals submitted by the Proponent to various companies since 2017. *See, e.g. Anthem, Inc.* (avail. Mar. 21, 2022); *Pfizer, Inc.* (avail. Jan. 20, 2022); *Linde PLC* (avail. Apr. 2, 2021); *CTS Corporation* (avail. Mar. 19, 2021); *Duke Energy Corporation* (avail. Mar. 2, 2021); *Annaly Capital Management, Inc.* (avail. Mar. 2, 2021); *Dana Holding Corporation* (avail. Feb. 5, 2021). Not one of these proposals focused on any distinction between street name or non-street name stockholders nor did they specify that non-record stockholders should be afforded such right. By making this topic a focal point of the Proposal and departing from the well-trodden path of his previous proposal submissions, the Proponent clearly intended this element of the Proposal to be an essential part of it. Permitting the Proponent to revise the Proposal and Supporting Statement in a manner that would correct its flaw under Delaware law would meaningfully alter the Proposal as submitted and fundamentally change its objective.

Lastly, we would also note that the purpose of the obligation in Rule 14a-8(b)(iii) to provide meeting dates is to foster and facilitate engagement between companies and stockholder-proponents, and to minimize unnecessary or avoidable no-action requests. SEC Release No. 34-89964 at 47. As described above, the Proponent initially resisted a meeting with the Company regarding the Proposal by first omitting proposed meeting dates from his shareholder proposal submission to the Company and then communicating to the Company that he had "no need for a meeting." The Company nevertheless requested the meeting to review its concerns regarding the Proposal and Supporting Statement in an attempt to avoid unnecessary expense for the Company and its stockholders. However, the Proponent refused to engage with the Company during the meeting, and when the Company explained the Delaware law conflict to the Proponent, the Proponent replied that the Company proceed with the Staff's no-action process. The Company was disheartened by the Proponent's cavalier attitude during the meeting and is troubled that it has resulted in unnecessary expenses and the diversion of Company resources. Accordingly and as a matter of public policy, the Company respectfully

believes that the Proponent should not be permitted to revise the Proposal and Supporting Statement.

IV. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2023 Proxy Materials in reliance on Rule 14a-8(i)(2). As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal and Supporting Statement from its 2023 Proxy Materials.

If we can be of further assistance in this matter, please do not hesitate to contact me at (949) 823-7968.

Sincerely,

Shelly A. Heyduk
of O'MELVENY & MYERS LLP

Attachments

cc: Mr. John Chevedden
Mr. Kyle Levine, Alaska Air Group, Inc.
Ms. Allie Wittenberger, Alaska Air Group, Inc.

Exhibit A

See attached.

Subject: FW: Rule 14a-8 Proposal (ALK) REVISED
Attachments: Scan2022-11-25_102653.pdf

From: John Chevedden [redacted]
Sent: Friday, November 25, 2022 10:30 AM
To: Allie Wittenberger <allie.wittenberger@alaskaair.com>; Kyle Levine <kyle.levine@alaskaair.com>; Howard Kuppler <Howard.Kuppler@alaskaair.com>
Subject: Rule 14a-8 Proposal (ALK) REVISED

[EXTERNAL SENDER]

Rule 14a-8 Proposal (ALK) REVISED

Dear Ms. Wittenberger,
Please see the attached rule 14a-8 proposal.
John Chevedden

JOHN CHEVEDDEN
PII
[redacted]

Mr. Kyle Levine
Corporate Secretary
Alaska Air Group, Inc. (ALK)
19300 International Blvd.
Seattle, WA 98188
PH: 206-392-5040

Revised November 25, 2022

Dear Mr. Levine,

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.

I intend to continue to hold through the date of the Company's 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

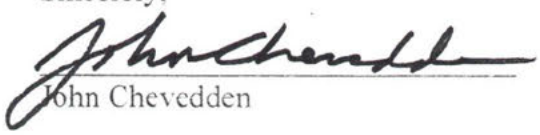
This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief. This is important because it is not infrequent that rule 14a-8 proposals have been within 1% of being approved by shareholders. The rule 14a-8 proposal title is a key part of the rule 14a-8 proposal submission.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from formally requesting a broker letter from me.

Sincerely,



John Chevedden

November 2, 2022

Date

cc: Allie Wittenberger <allie.wittenberger@alaskaair.com>
Jeanne Gammon <Jeanne.Gammon@alaskaair.com>

[ALK: Rule 14a-8 Proposal, November 2, 2022 | Revised November 25, 2022]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Shareholder Right to Act by Written Consent

Shareholders request that our board of directors take the steps necessary to permit written consent by the shareholders entitled to cast the minimum number of votes that would be necessary to authorize an action at a meeting at which all shareholders entitled to vote thereon were present and voting. This includes shareholder ability to initiate any appropriate topic for written consent. This includes enabling both street name and non street name shareholders to formally participate in acting by written consent.

This proposal is more important at Alaska Air because apparently only non street name shareholders can call for a special shareholder meeting. Calling for a special shareholder meeting is related to the right to act by written consent. Both rights empower shareholders to put important issues in front of management between annual meetings. Many or most companies allow street name shareholders and non street name shareholders an equal right to call for a special shareholder meeting, but Alaska Air does not.

With a shareholder ability to act by written consent, as proposed here, both street name shareholders and non street name shareholders can raise important issues between annual meetings and get the attention of management. Plus shareholders acting by written consent will save management the cost of a special shareholder meeting.

Action by written consent is hardly ever used by shareholders but the main point of the right act by written consent is that it gives shareholders at least significant standing to engage effectively with management.

Management will have an incentive to genuinely engage with shareholders, instead of stonewalling, if shareholders have a realistic Plan B option of acting by written consent. Management likes to claim that shareholders have multiple means to communicate with management but in most cases these means are as effective as mailing a post card to the CEO. A right to act by written consent is an important step for effective shareholder engagement with Alaska Air management.

Please vote yes:

Shareholder Right to Act by Written Consent – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

"Proposal 4" stands in for the final proposal number that management will assign.

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. **I intend to continue holding the same required amount of Company shares through the date of the Company's 2023 Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [redacted PII].

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).
Please alert the proxy editor.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

Subject: FW: Rule 14a-8 Proposal (ALK)
Attachments: 02112022_2.pdf

From: John Chevedden [redacted]
Sent: Wednesday, November 2, 2022 7:34 AM
To: Kyle Levine <kyle.levine@alaskaair.com>; Allie Wittenberger <allie.wittenberger@alaskaair.com>; Jeanne Gammon <Jeanne.Gammon@alaskaair.com>
Subject: Rule 14a-8 Proposal (ALK)

[EXTERNAL SENDER]

Dear Mr. Levine,
Please see the attached rule 14a-8 proposal.
Please confirm that this is the correct email address for rule 14a-8 proposals.
John Chevedden

JOHN CHEVEDDEN
PII
[redacted]

Mr. Kyle Levine
Corporate Secretary
Alaska Air Group, Inc. (ALK)
19300 International Blvd.
Seattle, WA 98188
PH: 206-392-5040

Dear Mr. Levine,

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.

I intend to continue to hold through the date of the Company's 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

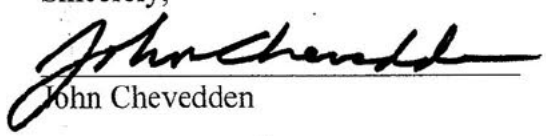
This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief. This is important because it is not infrequent that rule 14a-8 proposals have been within 1% of being approved by shareholders. The rule 14a-8 proposal title is a key part of the rule 14a-8 proposal submission.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from formally requesting a broker letter from me.

Sincerely,



John Chevedden

November 2, 2022

Date

cc: Allie Wittenberger <allie.wittenberger@alaskaair.com>
Jeanne Gammon <Jeanne.Gammon@alaskaair.com>

[ALK: Rule 14a-8 Proposal, November 2, 2022]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Shareholder Right to Act by Written Consent

Shareholders request that our board of directors take the steps necessary to permit written consent by the shareholders entitled to cast the minimum number of votes that would be necessary to authorize an action at a meeting at which all shareholders entitled to vote thereon were present and voting. This includes shareholder ability to initiate any appropriate topic for written consent. This includes enabling both street name and non street name shareholders to formally participate in acting by written consent.

This proposal is more important at Alaska Air because only non street name shareholders can call for a special shareholder meeting. Many or most companies allow street name shareholders and non street name shareholders to call for a special shareholder meeting.

With a shareholder ability to act by written consent both street name shareholders and non street name shareholders can raise important issues between annual meetings and get the attention of management.

Action by written consent is hardly ever used by shareholders but the main point of the right act by written consent is that it gives shareholders at least significant standing to engage effectively with management.

Management will have an incentive to genuinely engage with shareholders instead of stonewalling if shareholders have a realistic Plan B option of acting by written consent. Management likes to claim that shareholders have multiple means to communicate with management but in most cases these means are as effective as mailing a post card to the CEO. A right to act by written consent is an important step for effective shareholder engagement with management.

Please vote yes:

Shareholder Right to Act by Written Consent – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

Notes:
"Proposal 4" stands in for the final proposal number that management will assign.

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

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

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

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

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

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

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified.**

This proposal is not intended to be more than 500 words. Should it exceed 500 words after notification to the proponent then the words that exceed 500 words shall be taken out of the proposal starting with the last full sentence of the proposal and moving upwards as needed to omit full sentences.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.
If there is objection to the title please negotiate or seek no action relief.
Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.

Exhibit B

See attached.

From: Allie Wittenberger <allie.wittenberger@alaskaair.com>
Sent: Wednesday, November 2, 2022 8:35 AM
To: John Chevedden
Cc: Kyle Levine; Howard Kuppler
Subject: FW: Rule 14a-8 Proposal (ALK)
Attachments: 02112022_2.pdf

Dear Mr. Chevedden,

This confirms our receipt of your 14a-8 proposal "Shareholder Right to Act by Written Consent." We will review and advise if there are any procedural deficiencies before November 14, 2022.

Best regards,
Allie

From: John Chevedden [redacted]
Sent: Wednesday, November 2, 2022 7:34 AM
To: Kyle Levine <kyle.levine@alaskaair.com>; Allie Wittenberger <allie.wittenberger@alaskaair.com>; Jeanne Gammon <Jeanne.Gammon@alaskaair.com>
Subject: Rule 14a-8 Proposal (ALK)

[EXTERNAL SENDER]

Dear Mr. Levine,
Please see the attached rule 14a-8 proposal.
Please confirm that this is the correct email address for rule 14a-8 proposals.
John Chevedden

From: Allie Wittenberger
Sent: Monday, November 14, 2022 10:01 AM
To: [redacted] PII
Cc: Kyle Levine; Howard Kuppler
Subject: ALK: Rule 14a-8 Deficiency Letter
Attachments: ALK_-_2022_Rule_14a-8_Deficiency_Letter_(Chevedden_-_Written_Consent).pdf; SEC Rule 14a-8.pdf; Staff Legal Bulletin No. 14F.pdf; Staff Legal Bulletin No. 14G.pdf; Staff Legal Bulletin No. 14L.pdf

Mr. Chevedden:

Please find attached a letter regarding Rule 14a-8 procedural deficiencies.

Please confirm receipt of this email.

Sincerely,

Allie Wittenberger
MD Corp. Affairs and Assistance Corporate Secretary
206-392-5380

Allie Wittenberger
MD Corp Affairs & Compl & ACS
19300 International Blvd
Seattle, WA 98188
W – 206-392-5380

Alaska Air Group

November 14, 2022

Via Email

John Chevedden

PII

Re: *Rule 14a-8 Proposal (ALK)*

Dear Mr. Chevedden:

We received on November 2, 2022 the shareholder proposal titled "Proposal 4 – Shareholder Right to Act by Written Consent" (the "Proposal") submitted by you for inclusion in the proxy materials for the 2023 annual meeting of stockholders of Alaska Air Group, Inc. (the "Company").

Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), sets forth certain eligibility and procedural requirements that must be satisfied for a shareholder to submit a proposal for inclusion in a company's proxy materials. In accordance with Rule 14a-8(f) (Question 6), we hereby notify you of the following eligibility and procedural deficiencies relating to the Proposal, which we are required to bring to your attention.

1. *Proof of Ownership*. To be eligible to submit a proposal for inclusion in the Company's proxy materials, Rule 14a-8(b)(1)(i) requires that you must satisfy certain ownership requirements. Specifically, you must have continuously held:

(i) at least $2,000 in market value of the Company's securities entitled to vote on the proposal for at least three years year as of the date the shareholder proposal was submitted; or
(ii) at least $15,000 in market value of the Company's securities entitled to vote on the proposal for at least two years year as of the date the shareholder proposal was submitted; or
(iii) at least $25,000 in market value of the Company's securities entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted.

In accordance with Rule 14a-8(f) (Question 6), we hereby notify you that we are unable to confirm that the Proposal you submitted meets these requirements of Rule 14a-8 for inclusion in the Company's proxy materials because (i) the Company's stock records do not indicate that

you are the record owner of sufficient shares to satisfy Rule 14a-8's share ownership requirements, and (ii) the Company has not received verification from the "record" holder of the shares (usually a broker or bank) that you have held the requisite amount of shares of the Company's common stock for the applicable number of years (as described above).

To remedy the Rule 14a-8(b)(1)(i) defect, you must obtain a proof of ownership letter verifying your continuous ownership of the requisite amount of Company shares for the applicable number of years (as described above) preceding and including November 2, 2022 (the date the Proposal was submitted to the Company).

As explained in Rule 14a-8(b) and in guidance issued by the staff of the SEC's Division of Corporation Finance ("SEC Staff"), sufficient proof may be in one of the following forms:

- a written statement from the "record" holder of the shares (usually a broker or a bank) verifying that, as of the date the Proposal was submitted, you continuously held the requisite amount of the Company's common stock for the applicable number of years (as described above); or

- if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting ownership of the requisite amount of the Company's common stock as of or before the date on which the applicable eligibility period begins (as described above), a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the required amount of shares for the applicable number of years (as described above).

To help shareholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the shares, the SEC Staff has published guidance in Staff Legal Bulletins No. 14F ("SLB 14F"), No. 14G ("SLB 14G") and No. 14L ("SLB 14L"). In SLB 14F and SLB 14G, the SEC Staff stated that only brokers or banks that are Depository Trust Company ("DTC") participants or affiliates of DTC participants will be viewed as "record" holders for purposes of Rule 14a-8. Thus, you will need to obtain the required written statement from the DTC participant or the affiliate of the DTC participant through which your shares are held. If you are not certain whether your broker or bank is a DTC participant, you may ask your broker or bank or check the DTC's participant list, which is currently available on the Internet at https://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/DTC-Participant-in-Numerical-Sequence-1.pdf. If your broker or bank is not a DTC participant or a DTC participant affiliate, you will need to obtain proof of ownership from the DTC participant or DTC participant affiliate through which the broker or bank holds the Company's shares. You should be able to determine the name of this DTC participant or DTC participant affiliate by asking your broker or bank. If the DTC participant knows the holdings of your broker or bank, but does not know your holdings, you may satisfy the proof of ownership requirement 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 by you for the applicable number of years (as described above) —with one statement from your broker or bank confirming your ownership and the other statement from the DTC participant or DTC participant affiliate confirming the broker's or bank's ownership. In SLB 14L, the SEC Staff updated the suggested

format for shareholders and their brokers or banks to follow when supplying the required proof of ownership verification to reflect the revised ownership thresholds described above and set forth in Rule 14a-8(b)(1)(i) as amended by the SEC in 2020. The suggested format replaces the format previously suggested by the SEC Staff in Section C of SLB 14F.

2. *Availability for Meeting*. To be eligible to submit a proposal for inclusion in the Company's proxy materials, Rule 14a-8(b)(1)(iii) also requires you to provide the Company with a written statement of your ability to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. The written statement must include your contact information as well as the business days and specific times of availability to discuss the proposal with the Company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the Company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the Company's principal executive offices.

To remedy the Rule 14a-8(b)(1)(iii) defect, you must provide a written statement of your ability to meet with the Company in person or via telephone conference, which written statement must include your contact information and identify business days between November 12 and December 2, 2022 and specific times between 9 a.m. and 5:30 p.m. Pacific Time on which you are available to discuss the Proposal with the Company.

* * *

To be an eligible sponsor of the Proposal for inclusion in the Company's proxy materials for its 2023 annual meeting of stockholders, the rules of the SEC require that a response to this letter, correcting all procedural deficiencies described in this letter, be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me by email at allie.wittenberger@alaskaair.com.

Please note that the requests in this letter are without prejudice to any other rights that the Company may have to exclude the Proposal from its proxy materials on any other grounds permitted by Rule 14a-8.

For your reference, please find enclosed a copy of SEC Rule 14a-8, SLB 14F, SLB 14G and SLB 14L. If you have any questions with respect to the foregoing, please contact me.

Very truly yours,

Allie Wittenberger
Managing Director, Corporate Affairs & Compliance
& Assistant Corporate Secretary

Enclosures:
Rule 14a-8 under the Securities Exchange Act of 1934
Division of Corporation Finance Staff Legal Bulletin No. 14F
Division of Corporation Finance Staff Legal Bulletin No. 14G
Division of Corporation Finance Staff Legal Bulletin No. 14L

From: Allie Wittenberger
Sent: Tuesday, November 15, 2022 7:16 AM
To: John Chevedden; Kyle Levine; Howard Kuppler
Subject: RE: (ALK))

Thank you, Mr. Chevedden.

We will send a meeting invite for November 29 at 4:30 pm PST.

We look forward to speaking with you.

Regards,
Allie Wittenberger

From: John Chevedden [redacted]
Sent: Monday, November 14, 2022 8:24 PM
To: Allie Wittenberger <allie.wittenberger@alaskaair.com>; Kyle Levine <kyle.levine@alaskaair.com>; Howard Kuppler <Howard.Kuppler@alaskaair.com>
Subject: (ALK))

[EXTERNAL SENDER]

(ALK))
Available for an off the record telephone meeting:
Nov 28 4:30 pm PT
Nov 29 4:30 pm PT

I have no need for a meeting.

John Chevedden
[redacted]

From: Allie Wittenberger <allie.wittenberger@alaskaair.com>
Sent: Tuesday, November 15, 2022 4:40 PM
To: John Chevedden
Cc: Kyle Levine
Subject: Re: (ALK)

Thank you for confirming.

Would you please also confirm that you received the deficiency letter and related attachments I sent via email yesterday?

Thank you,
Allie Wittenberger

From: John Chevedden [redacted]
Sent: Tuesday, November 15, 2022 4:33 PM
To: Allie Wittenberger <allie.wittenberger@alaskaair.com>
Cc: Kyle Levine <kyle.levine@alaskaair.com>
Subject: (ALK)

[EXTERNAL SENDER]

Okay

Phone Number: +1 206-413-6918
Phone Conference ID: 686 797 416#

From: John Chevedden [redacted]
Sent: Tuesday, November 15, 2022 4:50 PM
To: Allie Wittenberger
Cc: Kyle Levine
Subject: (ALK)

[EXTERNAL SENDER]

Hard copy not needed

Subject: FW: Rule 14a-8 Broker Letter (ALK)
Attachments: 17112022_2.pdf

From: John Chevedden [redacted]
Sent: Thursday, November 17, 2022 11:41 PM
To: Allie Wittenberger <allie.wittenberger@alaskaair.com>; Kyle Levine <kyle.levine@alaskaair.com>; Howard Kuppler <Howard.Kuppler@alaskaair.com>
Subject: Rule 14a-8 Broker Letter (ALK)

[EXTERNAL SENDER]

Rule 14a-8 Broker Letter (ALK)

Personal Investing

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

JOHN R CHEVEDDEN
PII
[redacted]

November 17, 2022

Dear Mr. Chevedden,

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

Please accept this letter as confirmation that as of the close of business on November 16, 2022, Mr. Chevedden has continuously owned no fewer than the shares quantities of the securities shown on the table below, since market close of October 20, 2019:

Security	Number of Shares
Alaska Air Group, Inc. (ALK)	100.000
Pinnacle West Capital Corporation (PNW)	60.000
Sonoco Products Company (SON)	70.000
CHURCH &DWIGHT CO INC COM. (CHD)	65.000
Annaly Capital Management, Inc. (NLY)*	125.000
AMC Networks Inc. (AMCX)	60.000

*Please note on September 26, 2022, NLY- ANNALY CAPITAL MANAGEMENT INC., went through a Corporate Action.CUSIP 035710409 had a 1 for 4 reverse split into CUSIP 035710839, the symbol remains the same.

These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number 0226) a Fidelity Investments subsidiary. The DTC clearinghouse number for Fidelity is 0266.

I hope you find this information helpful. If you have any questions regarding this issue or general inquiries regarding the account, please contact John Chevedden directly. They may follow up with us directly if necessary. If you have any questions regarding Fidelity Investment's products and services please call us at 800-544-6666 for assistance.

Sincerely,

Eli Rodriguez

Eli Rodriguez
Operations Specialist

Our File: W820743-09NOV22

From: Allie Wittenberger <allie.wittenberger@alaskaair.com>
Sent: Sunday, November 27, 2022 4:22 AM
To: John Chevedden; Kyle Levine; Howard Kuppler
Subject: RE: Rule 14a-8 Proposal (ALK) REVISED

We have received this updated proposal.

Thank you,
Allie

From: John Chevedden [redacted]
Sent: Friday, November 25, 2022 10:30 AM
To: Allie Wittenberger <allie.wittenberger@alaskaair.com>; Kyle Levine <kyle.levine@alaskaair.com>; Howard Kuppler <Howard.Kuppler@alaskaair.com>
Subject: Rule 14a-8 Proposal (ALK) REVISED

[EXTERNAL SENDER]

Rule 14a-8 Proposal (ALK) REVISED

Dear Ms. Wittenberger,
Please see the attached rule 14a-8 proposal.
John Chevedden

Exhibit C

See attached.

RICHARDS LAYTON & FINGER

January 3, 2023

Alaska Air Group, Inc.
19300 International Boulevard
Seattle, WA 98188

Re: Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

We have acted as special Delaware counsel to Alaska Air Group, Inc., a Delaware corporation (the "Company"), in connection with a stockholder proposal (the "Proposal"), dated November 2, 2022, as revised on November 25, 2022, that has been submitted to the Company by John Chevedden (the "Proponent") for the 2023 annual meeting of stockholders of the Company (the "Annual Meeting"). In this connection, you have requested our opinion as to certain matters under the laws of the State of Delaware. For the purpose of rendering our opinion as expressed herein, we have been furnished with and have reviewed the following documents: (i) the Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on July 10, 2006, as amended by the Certificate of Amendment filed with the Secretary of State on May 19, 2014, as amended by the Certificate of Amendment filed with the Secretary of State on May 9, 2017; (the "Charter") (ii) the Amended and Restated Bylaws of the Company, as amended and restated on December 9, 2015 (the "Bylaws"); (iii) the Proposal; and (iv) a letter from O'Melveny & Myers LLP sent on behalf of the Company to the U.S. Securities and Exchange Commission dated January 3, 2023 regarding the Proposal (the "No-Action Letter").

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and the legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

THE PROPOSAL

The Proposal states the following:

Proposal 4 - Shareholder Right to Act by Written Consent

Shareholders request that our board of directors take the steps necessary to permit written consent by the shareholders entitled to cast the minimum number of votes that would be necessary to authorize an action at a meeting at which all shareholders entitled to vote thereon were present and voting. This includes shareholder ability to initiate any appropriate topic for written consent. This includes enabling both street name and non street name shareholders to formally participate in acting by written consent.

This proposal is more important at Alaska Air because apparently only non street name shareholders can call for a special shareholder meeting. Calling for a special shareholder meeting is related to the right to act by written consent. Both rights empower shareholders to put important issues in front of management between annual meetings. Many or most companies allow street name shareholders and non street name shareholders an equal right to call for a special shareholder meeting, but Alaska Air does not.

With a shareholder ability to act by written consent, as proposed here, both street name shareholders and non street name shareholders can raise important issues between annual meetings and get the attention of management. Plus shareholders acting by written consent will save management the cost of a special shareholder meeting.

Action by written consent is hardly ever used by shareholders but the main point of the right act by written consent is that it gives shareholders at least significant standing to engage effectively with management.

Management will have an incentive to genuinely engage with shareholders, instead of stonewalling, if shareholders have a realistic Plan B option of acting by written consent. Management likes to claim that shareholders have multiple means to communicate with management but in most cases these means are as effective as mailing a post card to the CEO. A right to act by written consent is an important step for effective shareholder engagement with Alaska Air management.[1]

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[1] We note that this reflects the language of the Proposal as revised by the Proponent on November 25, 2022. The substantive revisions made to the original version of the Proposal are reflected below, with added language underlined:

> This proposal is more important at Alaska Air because <u>apparently</u> only non street name shareholders can call for a special shareholder meeting. <u>Calling for a special shareholder meeting is related to the right to act by written consent. Both rights empower shareholders to put important issues in front of</u>

This opinion does not address the entire Proposal, which has three principal parts. The Proposal (i) proposes that the "board of directors take the steps necessary to permit written consent by the shareholders entitled to cast the minimum number of votes that would be necessary to authorize an action at a meeting at which all shareholders entitled to vote thereon were present and voting"; (ii) asserts that this "includes shareholder ability to initiate any appropriate topic for written consent"; and (iii) asserts that this also "includes enabling both street name and non street name shareholders to formally participate in acting by written consent." This opinion only addresses item (iii) (the "Street Name Proposal").

The Street Name Proposal would mandate that both record and "street name shareholders" be able to "formally participate in acting by written consent." For purposes of this opinion, we have assumed that "formally participate in acting by written consent," as used in the Street Name Proposal, means that a "street name shareholder" would be able to act by written consent itself, without requiring the "street name shareholder" to instruct the actual record holder of its shares to do so on its behalf or to obtain a proxy from the record holder to execute the consent for the record holder. That this is the Proponent's intent was made clear by the Proponent in a meeting with the Company on November 29, 2022 in which the Proponent confirmed that the Proposal was "intended to require both street name and non-street name stockholders to have the right to act by written consent."[2] For purposes of this opinion, we have further assumed that the term "street name shareholder," as used in the Street Name Proposal, means a person who beneficially owns stock through a broker, bank or other nominee, but does not itself appear on the Company's list of stockholders maintained in accordance with Section 219 of the General Corporation Law of the State of Delaware (the "General Corporation Law") as the record owner of such stock.[3]

> management between annual meetings. Many or most companies allow street name shareholders and non street name shareholders an equal right to call for a special shareholder meeting, but Alaska Air does not.
>
> With a shareholder ability to act by written consent, as proposed here, both street name shareholders and non street name shareholders can raise important issues between annual meetings and get the attention of management. Plus shareholders acting by written consent will save management the cost of a special shareholder meeting.

[2] No-Action Letter at 3. The Proposal itself further reflects that the Proponent intended street name holders to be treated the same as record holders when it comes to acting by written consent. The Proposal compares the ability to act by written consent to the ability of record and street name holders to call a special meeting of stockholders pursuant to a bylaw provision. In so doing, the Proponent emphasizes the importance of providing both record and street name holders with an "equal" ability to exercise the applicable right. Notably, the Proponent went so far as to submit a revised Proposal to the Company to add the phrase "equal right" to the language in the Proposal related to special meetings, which provides further evidence that the Proponent intended the phrase "formally participate in acting by written consent" to require that street name stockholders be able to execute a written consent themselves without the need to involve the record holder. *See id.* at 3–4, 6.

[3] Typically, such a "street name shareholder" would beneficially own their shares through the following chain of ownership: a depositary company (like the Depositary Trust Company or its nominee Cede & Co.) is the record owner of shares and appears on the corporation's stock ledger and stock list; the depositary holds shares on behalf of banks and brokers; and the banks and brokers, in turn, hold shares on behalf of their clients (the latter of whom are said to own in "street name" under this system). *See, e.g.*, *In re Appraisal of Dell Inc.*, 2015 WL 4313206, at *3–7 (Del. Ch. July 13, 2015) (explaining the history of the depositary system and why this chain of ownership system still prevails among United States public companies).

We have been advised that the Company is considering excluding the Proposal from the Company's proxy statement for the Annual Meeting under, among other reasons, Rule 14a-8(i)(2) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(2) provides that a registrant may omit a proposal from its proxy statement when "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." In this connection, you have requested our opinion as to whether, under Delaware law, the Street Name Proposal, if implemented, would violate Delaware law.

For the reasons set forth below, the Street Name Proposal, if implemented, would violate Delaware law—in particular, Section 228 of the General Corporation Law—because only stockholders of record may execute a consent in order to act by consent in lieu of a meeting under Delaware law. Relatedly, because Delaware corporations lack power and authority to undertake actions in violation of law, the Company lacks power and authority to implement the Street Name Proposal.

DISCUSSION

I. The Street Name Proposal, if Implemented, Would Violate the General Corporation Law

The Company is a Delaware corporation that is subject to the General Corporation Law.[4] Section 228 of the General Corporation Law governs stockholders' ability to act by consent in lieu of a meeting. Section 228(a) provides:

> Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation in the manner required by this section.[5]

In short, Section 228(a) provides that stockholders may, by default, act by consent in lieu of a meeting "unless otherwise provided in the certificate of incorporation." The Company's Charter does not prohibit stockholder action by consent. Rather, Article 8 of the Charter provides that stockholders may act by consent "if a written consent setting forth the action so taken is signed by all stockholders entitled to vote with respect to the subject matter thereof."[6]

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[4] *E.g.*, 8 *Del. C.* § 121(b) ("Every corporation shall be governed by the provisions and be subject to the restrictions and liabilities contained in this chapter."); *id.* § 394 ("This chapter and all amendments thereof shall be a part of the charter or certificate of incorporation of every corporation except so far as the same are inapplicable and inappropriate to the objects of the corporation.").

[5] *Id.* § 228(a).

[6] Charter Art. 8.

A. Section 228 Expressly Limits the Power to Execute Written Consents to Record Holders

The plain terms of Section 228 unambiguously prohibit beneficial holders of stock from executing consents to stockholder action, and thus acting by consent in lieu of a meeting. Section 228(c) provides:

> A consent must be set forth in writing or in an electronic transmission. No consent shall be effective to take the corporate action referred to therein unless consents signed by a sufficient number of holders or members to take action are delivered to the corporation in the manner required by this section within 60 days of the first date on which a consent is so delivered to the corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such consent will be effective at a future time, including a time determined upon the happening of an event, occurring not later than 60 days after such instruction is given or such provision is made, if evidence of the instruction or provision is provided to the corporation. *If the person is not a stockholder or member of record when the consent is executed, the consent shall not be valid unless the person is a stockholder or member of record as of the record date for determining stockholders or members entitled to consent to the action*. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective. All references to a "consent" in this section means a consent permitted by this section.[7]

In sum, Section 228(c) sets forth the technical and procedural requirements governing the validity of consents to stockholder action in lieu of a meeting, including a specification that, if the person executing the consent is not a holder of record when such person signs the consent, the consent will not be valid unless such person is a holder of record as of the consent's effective time (the "Record Holder Provision").

The Record Holder Provision was added to Section 228(c) as part of the amendments to the General Corporation Law that became effective on August 1, 2022.[8] The Record Holder Provision makes express that which was implicit in the statute prior to the 2022 amendments and has, as discussed in Part B below, been consistently and expressly recognized by the Delaware courts: a consent to stockholder action in lieu of a meeting cannot become effective unless the person executing the consent is a "stockholder . . . of record"[9] as of the consent's effective time. Because "street name shareholders" are not stockholders of record,[10] they may not act by consent because any consent they sign would be expressly invalid under Section 228(c). Any provision of the Company's governing documents purporting to provide otherwise would be void as contrary to the General Corporation

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[7] 8 *Del. C.* § 228(c) (emphasis added).

[8] 83 Del. Laws, ch. 377, § 8 (2022).

[9] 8 *Del. C.* § 228(c).

[10] *See supra* note 3.

Law.[11] Thus, implementing the Street Name Proposal would violate Delaware law because it would purport to treat as valid consents signed by persons who are not stockholders of record in violation of the plain, unambiguous requirements of the Record Holder Provision.

B. Delaware Common Law has Consistently Enforced the Record Holder Limitation

For over forty years, Delaware courts have consistently interpreted Section 228 as permitting only stockholders of record to execute written consents. In *Grynberg v. Burke*, plaintiffs executed and delivered a written stockholder consent that purported to remove all incumbent directors, amend the corporation's bylaws to reduce the size of the board to three directors, and fill all three resulting vacancies.[12] After taking such actions, the plaintiffs filed an application under Section 225 of the General Corporation Law to confirm that the consent had validly reconstituted the corporation's board.[13] The incumbents disputed the consent's validity on grounds that none of its signatories were holders of record of stock of the corporation.[14]

In its post-trial ruling, the Court of Chancery agreed with the incumbent directors, holding that only record holders can execute written consents and pointing to both the General Corporation Law and public policy to support that conclusion.[15] As for the former, the Court of Chancery reasoned that the text of Section 228 required the rule applicable to voting at in-person stockholder meetings—that is, that only record holders may vote—to apply to actions by written consent. In so concluding, the Court of Chancery noted that because Section 228 requires that the consent be signed by stockholders holding a number of votes necessary to approve a proposal *at a hypothetical stockholder meeting*,[16] "the signatories [to a written consent] must have such shareholder status as would enable them to vote at an annual or special meeting of shareholders."[17] The Court of Chancery also noted that because the corporation's stock ledger is "the only evidence as to who are the stockholders entitled . . . to vote"[18] at stockholder meetings under Section 219, only "stockholders of record" can sign consents.[19]

Next, the *Grynberg* Court observed that this rule promotes the policy goal of facilitating the efficient administration of corporate affairs. The Court of Chancery reasoned that

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[11] 8 *Del. C.* § 102(b)(1) (prohibiting the certificate of incorporation from containing any provision that is "contrary to the laws of [Delaware]"); *id.* § 109(b) (prohibiting the bylaws from containing any provision that is "inconsistent with law"). Relatedly, the Record Holder Provision of Section 228(c) does not permit modification by private ordering, *see infra* note 37, in part because it is not modified by the phrase "[u]nless otherwise provided in the certificate of incorporation" that appears in Section 228(a). 8 *Del. C.* § 228(a).

[12] 1891 WL 17034, at *1 (Del. Ch. Aug. 31, 1981).

[13] *Id.*

[14] *Id.* at *5.

[15] *Id.* at *5–7.

[16] 8 *Del. C.* § 228 (requiring the consent to be signed by "the holders of outstanding stock having not less than the minimum number of votes *that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted*") (emphasis added).

[17] *Grynberg*, 1981 WL 17034, at *6.

[18] 8 *Del. C.* § 219(c).

[19] *Grynberg*, 1981 WL 17034, at *6.

enabling a corporation to quickly and easily determine whether a consent is valid by referencing the stock ledger would lessen the "potential for corporate disruption," especially in heated control disputes that can turn on an "unnoticed, instantaneous action under § 228."[20] The Court of Chancery accordingly endorsed a narrow, bright-line rule that would limit an interested faction's ability to interpret a grey rule in its favor, stating that it is "only a matter of common sense that [Section 228] should be strictly construed so as to limit its power to record owners as opposed to non-record owners claiming various beneficial interests and voting rights."[21]

At least three subsequent Delaware cases have reaffirmed the holding in *Grynberg*. In *Olson v. Buffington*, plaintiffs argued that brokerage houses should be able to execute written consents as beneficial holders despite *Grynberg* because they held stock through a nominee (Cede & Co.) as a mere convenience such that brokerage houses "are, effectively, the record holders."[22] The Court of Chancery rejected this argument and held that all consents executed by brokerage houses were invalid, reasoning that even if it were simple for the corporation to quickly verify that signatories in fact beneficially held stock in the corporation through Cede & Co., other corporations may not find it so easy.[23] In *Freeman v. Fabiniak*, the Court of Chancery cited *Grynberg* and *Olson* for the proposition that "only persons whose names appear on the stock ledger as stockholders or hold proxies from a listed stockholder are qualified to act by written consent" before holding that consents executed by non-record holders were invalid.[24]

Most recently, in *Kurz v. Holbrook*, the Court of Chancery both reaffirmed the *Grynberg* holding and buttressed its reasoning with supplementary analysis.[25] First, the *Holbrook* Court held that "Section 228(a) incorporates the concept of record ownership that governs voting at a meeting of stockholders" and reaffirmed that "Section 228 is thus appropriately interpreted as requiring that a written consent be executed by a stockholder of record."[26] Second, the *Holbrook* Court observed that two additional statutory provisions aside from Section 228(a) reinforce the importance of the record holder requirement for both actions taken at stockholdeer meetings and actions taken by

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[20] *Id.*

[21] *Id.*

[22] 1985 WL 11575, at *3 (Del. Ch. July 17, 1985).

[23] *Id.* We note that the *Olson* Court stated in *dictum* that "[t]here well may be an exception to the *Grynberg* requirement that consents be executed by stockholders of record in cases where the consent is executed by a brokerage house and the record holder is a depository company" and the Court of Chancery later expressly applied that guidance to hold that written consents executed by brokerage houses were valid where the record holder was a depositary and had effectively granted the brokerage houses a proxy to vote the shares. *See Kurz v. Holbrook*, 989 A.2d 140, 164 (Del. 2010), *rev'd in part on other grounds sub nom*. *Crown EMAK Partners, LLC v. Kurz*, 992 A.2d 377 (Del. 2010). Neither the *Olson dictum* nor the *Kurz* holding affects our opinion for two reasons. First, the *Kurz* ruling was premised on the fact that the depositary had empowered the brokerage houses to vote its shares as proxy and did not, in so holding, purport to reverse the *Grynberg* rule. To the contrary, the *Kurz* Court expressly stated: "I continue to follow *Freeman* and *Grynberg* and hold that a written consent must be executed by a record holder." *Kurz*, 992 at 164–65. Second, because the foregoing authority speaks only to ownership at the brokerage house level rather than at the "street name" level, which is one level removed, none of it can be read to allow "street name shareholders" who hold through brokerage houses to sign consents as contemplated by the Street Name Proposal.

[24] 1985 WL 11583, at *7 (Del. Ch. Aug. 15, 1985).

[25] 989 A.2d 140 (Del. Ch.) *aff'd in part, rev'd in part on other grounds sub nom. Crown EMAK Partners, LLC v. Kurz*, 992 A.2d 377 (Del. 2010).

[26] *Kurz*, 989 A.2d at 164

written consent: Section 228(e), which requires the corporation to send notice of actions taken by written consent to stockholders who would have been entitled to notice of a hypothetical meeting (that is, record holders) and Section 212(b), which provides that stockholders acting at meetings or by written consent can authorize another to act as proxy.[27] Given multiple instances of parallel statutory treatment, the Court of Chancery reasoned that similar rules should govern both forms of stockholder action.[28] Third, the Court of Chancery offered additional authority for the notion that only record holders can vote at stockholder meetings, noting that this construct has been the law in Delaware for "over a half century."[29] Finally, while the *Grynberg* Court highlighted the policy benefits that a bright-line rule affording only stockholders of record the right to give consents in a control contest, the *Kurz* Court made clear that the rule also has utility in the ordinary course:

> As a matter of Delaware public policy, there is much to be said for requiring a written consent to be executed by a record holder, which allows the corporation or an inspector of elections to determine from readily available records whether the consent was valid. Certainty and efficiency are critical values when determining how stockholder voting rights have been exercised. This is particularly true for consents, which are effective upon delivery to the corporation of a sufficient number of valid consents.[30]

This logic is a fixture of Delaware corporate law. The general policy in favor of giving corporations an easy way to determine which stockholders are entitled to exercise rights appears throughout both Delaware common law and the General Corporation Law. As the *Kurz* Court observed, Delaware law features a "well-founded policy, developed decades before share immobilization, of limiting stockholder rights to record holders" such that "[i]n all but the rarest of instances, Delaware courts refuse to inquire into the relationship between the beneficial holder and record holder, which we regard as a matter for those parties and not a concern of the corporation."[31]

Indeed, the General Corporation Law reflects the public policy expressed by the *Kurz* Court by limiting most statutory rights attendant to stock ownership to record holders.[32] While the

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[27] *Id*.

[28] *See id.* at 164–65.

[29] *Id.* at 163 (internal citation omitted) (citing *Am. Hardware Corp. v. Savage Arms Corp.,* 136 A.2d 690, 692 (Del. 1957), *In re Giant Portland Cement Co.,* 21 A.2d 697, 701 (Del. Ch. 1941), and *Atterbury v. Consolidated Coppermines Corp.,* 20 A.2d 743, 749 (Del. Ch. 1941) for this proposition).

[30] *Id.* at 164.

[31] *Id*.; *see also Am. Hardware Corp. v. Savage Arms Corp.*, 136 A.2d 690, 692 (Del. 1957) ("If an owner of stock chooses to register his shares in the name of a nominee, he takes the risks attendant upon such an arrangement, including the risk that he may not receive notice of corporate proceedings, or be able to obtain a proxy from his nominee."); *Dell*, 2015 WL 4313206, at *8 ("If a holder transfers shares without notifying the corporation, the corporation is not required to discover that fact, nor need the corporation voluntarily treat the new holder as the legal owner. The corporation can rely on its records until a stockholder takes proper steps to transfer title to the shares."); *id.* at *10 (discussing the record holder requirement in the context of the Delaware appraisal statute and noting that, under current Delaware law, beneficial holders "assume the risks" attendant from holding in beneficial, rather than record name, including that they may not be able to exercise all of the rights of record holders and that the record holders of the shares may take actions adverse to their interests).

[32] *See, e.g.*, 8 *Del. C.* § 213(a) (generally providing that "stockholders of record" as of the record date determined in accordance with the terms of Section 213 shall be entitled to notice of and to vote at stockholder meetings and

General Corporation Law has been amended a number of times in recent years to permit beneficial holders to exercise limited statutory rights that were previously limited only to record holders, in each case such amendments have been coupled with requirements that the beneficial holder provide proof of ultimate record ownership of the shares to the corporation.[33] The General Assembly could have similarly extended Section 228's application to beneficial holders, but has not done so.[34]

C. Conclusion

Under Section 228 of the General Corporation Law, only stockholders of record are entitled to execute stockholder actions by written consent. This has been recognized by Delaware courts as the law of Delaware for over forty years, as established by *Grynberg* in 1981 and as reaffirmed by *Olson*, *Freeman*, and *Kurz*. Unlike other statutory provisions, Section 228 does not expressly permit beneficial holders to execute a consent and, in 2022, Section 228(c) was amended to expressly clarify that a stockholder action by written consent is invalid if its signatory is not a record holder as of its effective time.

For all of these reasons, there are no "necessary steps" the Company's Board can take to allow "street name shareholders" to execute stockholder actions by written consent. Any such action would violate Section 228 of the General Corporation Law.

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adjournments thereof); *id.* § 213(c) (providing ability for directors to set a record date for determining stockholders entitled to receive dividends); *see also Berlin v. Emerald Partners*, 552 A.2d 482, 494 (Del. 1988) ("Delaware law expressly recognizes the right of the corporation to rely upon record ownership, not beneficial ownership, in determining who is entitled to notice of and to vote at the meetings of stockholders."); *Shaw v. Agri-Mark, Inc.*, 663 A.2d 464, 469 (Del. 1995) (recognizing the "long-established rule that a corporation may rely on its stock ledger in determining which stockholders are eligible to vote"); *Gilliland v. Motorola, Inc.*, 859 A.2d 80, 85 (Del. Ch. 2004) (holding that the notice required under Section 262 of the General Corporation Law, which governs notice of the effective date of a merger and the availability of appraisal rights in connection therewith, need only be sent to stockholders of record, stating "the corporation satisfies its notice obligation under Section 262 by sending notice to the brokers or fiduciaries, and is *not* required to send notice to the beneficial owners") (emphasis in original).

[33] *See* 8 *Del. C.* § 220(a)–(b) (providing that any "stockholder" may demand to inspect the corporation's books and records and specifically defining "stockholder" to mean "a holder of record of stock in a stock corporation, or a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person"); *id.* § 220(b) (providing that, in the event a beneficial holder demands inspection, she must proffer "documentary evidence of beneficial ownership of the stock, and state [under oath] that such documentary evidence is a true and correct copy of what it purports to be" within the demand letter); *id.* § 262(d)(3) ("[A] beneficial owner may, in such person's name, demand in writing an appraisal of such beneficial owner's shares in accordance with either paragraph (d)(1) or (2) of this section, as applicable; provided that. . . the demand made by such beneficial owner reasonably identifies the holder of record of the shares for which the demand is made, is accompanied by documentary evidence of such beneficial owner's beneficial ownership of stock and a statement that such documentary evidence is a true and correct copy of what it purports to be, and provides an address at which such beneficial owner consents to receive notices . . . ."); *id.* § 262(e) ("Within 120 days after the effective date of the merger, consolidation or conversion, the surviving, resulting or converted entity, or any person who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders.").

[34] *See, e.g.*, *Hudson Farms, Inc. v. McGrellis*, 620 A.2d 215, 218 (Del. 1993) ("[I]t is presumed that the General Assembly is aware of existing law when it acts."); *State v. Cephas*, 637 A.2d 20, 28 n.43 (Del. 1994) ("The fact that the Delaware General Assembly could have adopted such express exclusions regarding mental injuries, but chose not to do so, lends further credence to our interpretation of the Act.").

II. The Street Name Proposal is Beyond the Power and Authority of the Company to Implement

A Delaware corporation only has power and authority to perform acts permitted by the General Corporation Law and its certificate of incorporation.[35] Both the General Corporation Law and the Charter forbid the Company from violating the law.[36] As set forth in Part I above, neither the Company nor the Board could implement the Street Name Proposal without violating Delaware law.[37] Therefore, the Company lacks the power and authority to implement the Street Name Proposal.

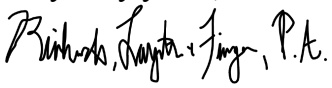
CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, it is our opinion that the Street Name Proposal, if implemented, would violate Delaware law.

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

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

Very truly yours,



NS/BTM

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[35] *See* 8 *Del. C.* § 121(a) ("In addition to the powers enumerated in § 122 of this title, every corporation, its officers, directors and stockholders shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its certificate of incorporation, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation."); *id.* § 121(b) ("Every corporation shall be governed by the provisions and be subject to the restrictions and liabilities contained in this chapter."); *id.* § 102(b) (requiring the corporation to set forth in its certificate of corporation a statement of purpose whose maximum bearth is "to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware," which permits the corporation to do "all lawful acts and activities, except for express limitations").

[36] *See supra* note 35; Charter Art. 3 ("The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.").

[37] *See, e.g.*, *Sterling v. Mayflower Hotel Corp.*, 93 A.2d 107, 313–14 ("[T]he stockholders of a Delaware corporation may by contract embody in the charter a provision departing from the rules of the common law, *provided that it does not transgress a statutory enactment or a public policy settled by the common law or implicit in the General Corporation Law itself*.") (emphasis added). The Street Name Proposal would contravene a mandatory provision of the General Corporation Law that cannot be modified by provision in the certificate of incorporation. *Compare Jones Apparel Grp., Inc. v. Maxwell Shoe Co.*, 883 A.2d 837 (Del. Ch. 2004) (upholding a charter provision eliminating the board of director's default authority, set forth in Section 213(b) of the General Corporation Law, to set a record date for action by written consent on grounds that Sections 102(b)(1) and 141(a) of the General Corporation Law allow corporations to eliminate, through a charter provision, board managerial authority where doing so is not contrary to mandatory provisions of the General Corporation Law or Delaware public policy).

January 15, 2023

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

 # 1 Rule 14a-8 Proposal
Alaska Air Group, Inc. (ALK)
Written Consent

John Chevedden

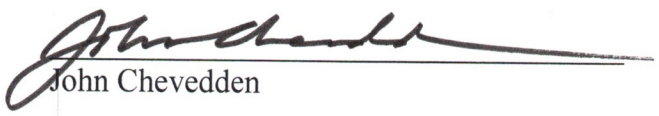
Ladies and Gentlemen:

This is a counterpoint to the January 3, 2023 no-action request.

"Unless otherwise provided in the certificate of incorporation," seems to indicate that management could initiate wording in the governing documents to enable street name shareholders to formally participate in acting by written consent.

"Unless otherwise provided in the certificate of incorporation," is on page 4 of the Richards, Layton & Finger opinion as illustrated on the attachment.

Sincerely,



John Chevedden

cc: Allie Wittenberger

DISCUSSION

I. The Street Name Proposal, if Implemented, Would Violate the General Corporation Law

The Company is a Delaware corporation that is subject to the General Corporation Law.[4] Section 228 of the General Corporation Law governs stockholders' ability to act by consent in lieu of a meeting. Section 228(a) provides:

> Unless otherwise provided in the certificate of incorporation,

[ALK: Rule 14a-8 Proposal, November 2, 2022 | Revised November 25, 2022]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Shareholder Right to Act by Written Consent

Shareholders request that our board of directors take the steps necessary to permit written consent by the shareholders entitled to cast the minimum number of votes that would be necessary to authorize an action at a meeting at which all shareholders entitled to vote thereon were present and voting. This includes shareholder ability to initiate any appropriate topic for written consent. This includes enabling both street name and non-street name shareholders to formally participate in acting by written consent.

This proposal is more important at Alaska Air because apparently only non-street name shareholders can call for a special shareholder meeting. Many or most companies allow street name shareholders and non-street name shareholders to call for a special shareholder meeting.

One of the main purposes of this proposal is to clear up any potential ambiguity and allow street name shareholders the same right to act by written consent as all other shareholders.

With a shareholder ability to act by written consent both street name shareholders and non-street name shareholders can raise important issues between annual meetings and get the attention of management. Plus shareholders acting by written consent will save management the cost of a special shareholder meeting.

Action by written consent is hardly ever used by shareholders but the main point of the right act by written consent is that it gives shareholders at least significant standing to engage effectively with management.

Management will have an incentive to genuinely engage with shareholders instead of stonewalling if shareholders have a realistic Plan B option of acting by written consent. Management likes to claim that shareholders have multiple means to communicate with management but in most cases these means are as effective as mailing a post card to the CEO. A right to act by written consent is an important step for effective shareholder engagement with management.

Please vote yes:

Shareholder Right to Act by Written Consent – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

O'Melveny & Myers LLP
610 Newport Center Drive
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Newport Beach, CA 92660-6429

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omm.com

February 7, 2023

Shelly Heyduk
D: +1 949 823 7968
sheyduk@omm.com

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: ***Alaska Air Group, Inc.***
Shareholder Proposal of John Chevedden
No-Action Letter Submitted January 3, 2023
Securities Exchange Act of 1934 Rule 14a-8

Dear Ladies and Gentlemen:

We are writing in response to a January 15, 2023 letter (the "Supplemental Letter") submitted to the staff of the Division of Corporation Finance (the "Staff") by John Chevedden (the "Proponent") related to the no-action letter (the "No-Action Request") we submitted on behalf of our client, Alaska Air Group, Inc., a Delaware corporation (the "Company"), on January 3, 2023 concerning a shareholder proposal (the "Proposal") submitted by the Proponent for the Company's 2023 Annual Meeting of Stockholders. A copy of the Supplemental Letter is attached hereto as Exhibit A. In accordance with Rule 14a-8(j), a copy of this response is also being sent to the Proponent.

As described in the No-Action Request, the Proposal requests that "our board of directors take the steps necessary to permit written consent by the shareholders . . . . [including] enabling both street name and non street name shareholders to formally participate in acting by written consent." The No-Action Request requests the Staff's concurrence that the Company may omit the Proposal from the proxy materials for its 2023 Annual Meeting of Stockholders (the "2023 Proxy Materials") in reliance on Rule 14a-8(i)(2) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") because the Proposal would, if implemented, cause the Company to violate applicable state law.

In the Supplemental Letter, the Proponent asserts that the Company could amend its governing documents to enable street name shareholders to formally participate in acting by written consent. On behalf of the Company, we respectfully advise the Staff that such action is not permitted by the Delaware General Corporation Law. This point was expressly addressed at the bottom of page 5 and in footnote 11 of the legal opinion of Richards, Layton & Finger, P.A.

attached as Exhibit C to the No-Action Request. Specifically, footnote 11 of the Opinion Letter states:

> "[T[he Record Holder Provision of Section 228(c) does not permit modification by private ordering, *see infra* note 37, in part because it is not modified by the phrase '[u]nless otherwise provided in the certificate of incorporation' that appears in Section 228(a)."

Section 228(c) of the Delaware General Corporation Law expressly provides that a written consent in lieu of a meeting cannot be effective unless "the person is a *stockholder or member of record* as of the record date for determining stockholders or members entitled to consent to the action." 8 *Del. C. § 228(c)* (emphasis added). Because street name holders are not stockholders of record, street name holders are not permitted to act by written consent because any such written consent would be expressly invalid under Section 228(c). As explained at the bottom of page 5 and in footnote 11 of the Opinion Letter, Section 228(c) is not modified by the phrase "[u]nless otherwise provided in the certificate of incorporation" and, therefore, any attempt to amend the Company's governing documents to enable street name holders to formally participate in acting by written consent would be void as contrary to the Delaware General Corporation Law.

Accordingly, for the reasons further detailed in the No-Action Request, the Company reiterates its request that the Staff concur with the Company's view that pursuant to Rule 14a-8(i)(2) under the Exchange Act, the Proposal may properly be excluded from the 2023 Proxy Materials.

If we can be of further assistance in this matter, please do not hesitate to contact me at (949) 823-7968.

Sincerely,

Shelly A. Heyduk
of O'MELVENY & MYERS LLP

Attachments

cc: Mr. John Chevedden
Mr. Kyle Levine, Alaska Air Group, Inc.
Ms. Allie Wittenberger, Alaska Air Group, Inc.

Exhibit A

See attached.

January 15, 2023

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

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Alaska Air Group, Inc. (ALK)
Written Consent

John Chevedden

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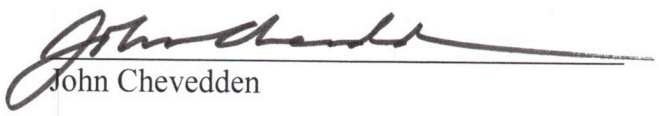

John Chevedden

cc: Allie Wittenberger

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[ALK: Rule 14a-8 Proposal, November 2, 2022 | Revised November 25, 2022]
[This line and any line above it – *Not* for publication.]

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Please vote yes:

Shareholder Right to Act by Written Consent – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

February 7, 2023

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

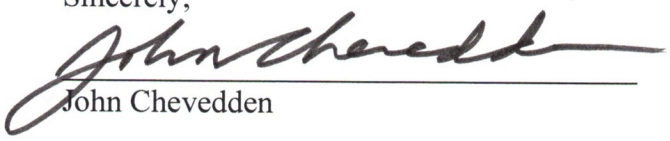
 # 2 Rule 14a-8 Proposal
Alaska Air Group, Inc. (ALK)
Written Consent
John Chevedden

Ladies and Gentlemen:

This is a counterpoint to the January 3, 2023 no-action request.

According to the "future time" part of Section 228(c) it at least appears street name shareholders can begin to act by written consent. The bylaws of the company do not make this clear.

Sincerely,



John Chevedden

cc: Allie Wittenberger

are unable to terminate this division; or

(3) The corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

(b) A custodian appointed under this section shall have all the powers and title of a receiver appointed under § 291 of this title, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the Court shall otherwise order and except in cases arising under paragraph (a)(3) of this section or § 352(a)(2) of this title.

(c) In the case of a charitable nonstock corporation, the applicant shall provide a copy of any application referred to in subsection (a) of this section to the Attorney General of the State of Delaware within 1 week of its filing with the Court of Chancery.

8 Del. C. 1953, § 226; 56 Del. Laws, c. 50 (https://legis.delaware.gov/SessionLaws?volume=56&chapter=50); 77 Del. Laws, c. 253, § 27 (https://legis.delaware.gov/SessionLaws?volume=77&chapter=253);

§ 227. Powers of Court in elections of directors.

(a) The Court of Chancery, in any proceeding instituted under § 211, § 215 or § 225 of this title may determine the right and power of persons claiming to own stock to vote at any meeting of the stockholders.

(b) The Court of Chancery may appoint a Master to hold any election provided for in § 211, § 215 or § 225 of this title under such orders and powers as it deems proper; and it may punish any officer or director for contempt in case of disobedience of any order made by the Court; and, in case of disobedience by a corporation of any order made by the Court, may enter a decree against such corporation for a penalty of not more than $5,000.

8 Del. C. 1953, § 227; 56 Del. Laws, c. 50 (https://legis.delaware.gov/SessionLaws?volume=56&chapter=50); 77 Del. Laws, c. 253, § 28 (https://legis.delaware.gov/SessionLaws?volume=77&chapter=253);

§ 228. Consent of stockholders or members in lieu of meeting [For application of section, see 81 Del. Laws, c. 86, § 40]

(a) Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation in the manner required by this section.

(b) Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation in the manner required by this section.

(c) A consent must be set forth in writing or in an electronic transmission. No consent shall be effective to take the corporate action referred to therein unless consents signed by a sufficient number of holders or members to take action are delivered to the corporation in the manner required by this section within 60 days of the first date on which a consent is so delivered to the corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such consent will be effective at a future time, including a time determined upon the happening of an event, occurring not later than 60 days after such instruction is given or such provision is made, if evidence of the instruction or provision is provided to the corporation. If the person is not a stockholder or member of record when the consent is executed, the consent shall not be valid unless the person is a stockholder or member of record as of the record date for determining stockholders or members entitled to consent to the action. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective. All references to a "consent" in this section means a consent permitted by this section.

(d) (1) A consent permitted by this section shall be delivered: (i) to the principal place of business of the corporation; (ii) to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded; (iii) to the registered office of the corporation in this State by hand or by certified or registered mail, return receipt requested; or (iv) subject to the next sentence, in accordance with § 116 of this title to an information processing system, if any, designated by the corporation for receiving such consents. In the case of delivery pursuant to the foregoing clause (iv), such consent must set forth or be delivered with information that enables the corporation to determine the date of delivery of such consent and the identity of the person giving such consent, and, if such consent is given by a person authorized to act for a stockholder or member as proxy, such consent must comply with the applicable provisions of § 212(c)(2) and (3) of this title.

(2) Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. A consent may be documented and signed in accordance with § 116 of this title, and when so documented or signed shall be deemed to be in writing for purposes of this title; provided that if such consent is delivered pursuant to clause (i), (ii) or (iii) of paragraph (d)(1) of this section, such consent must be reproduced and delivered in paper form.