January 24, 2024

Re:

## **VIA INTERNET SUBMISSION**

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

Amgen Inc.

Stockholder Proposal Submitted by John Chevedden Securities Exchange Act of 1934 – Rule 14a-8

To the addressee set forth above:

This letter is submitted pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. Amgen Inc. (the "Company") has received a stockholder proposal, attached hereto as Exhibit A (the "Proposal"), from John Chevedden (the "Proponent") for inclusion in the Company's proxy statement for its 2024 annual meeting of stockholders. The Company hereby advises the staff (the "Staff") of the Division of Corporation Finance that it intends to exclude the Proposal from its proxy statement for the 2024 annual meeting (the "Proxy Materials"). The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the "Commission") if the Company excludes the Proposal pursuant to Rule 14a-8(i)(10), as the Company has already substantially implemented the Proposal.

By copy of this letter, we are advising the Proponent of the Company's intention to exclude the Proposal. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), we are submitting electronically to the Staff:

- this letter, which sets forth our reasons for excluding the Proposal; and
- the Proponent's letter submitting the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter not less than eighty (80) calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

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## **The Proposal**

The Proposal, entitled "Improve Clawback Policy for Unearned Executive Pay," states:

Shareholders ask the Board of Directors to amend the Company Policy on recoupment of incentive pay to apply to the each Named Executive Officer and to state that conduct or negligence – not merely misconduct – shall trigger mandatory application of that policy. Also the Board shall report to shareholders in each annual meeting proxy the results of any deliberations regarding the policy, including the Board's reasons for not applying the policy after specific deliberations conclude, about whether or not to cancel or seek recoupment of unearned compensation paid, granted or awarded to NEOs under this policy. There shall at least be the full web address of the complete Clawback Policy in each annual meeting proxy.

In the Proposal's supporting statement, the Proponent acknowledges that "[a] 2022 rule from the Securities and Exchange Commission requires a clawback of erroneously awarded incentive pay – even with no misconduct – if a company restates its financial statements owing to material errors."

A copy of the Proposal and related correspondence with the Proponent is attached to this letter as Exhibit A.

#### **Basis for Exclusion**

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

A. Background of the Company's Clawback Policy

Prior to October 2, 2023, Amgen maintained the "Amgen Policy on Executive Compensation in Restatement Situations," adopted on March 6, 2007, which is referred to as the "Clawback Policy" in the Company's proxy statement for the 2023 annual meeting (the "2023 Proxy Materials") and referred to herein as the "Prior Clawback Policy." In the Proposal, the Proponent describes its concerns with the Prior Clawback Policy as follows:

"The Amgen Clawback Policy, described by 57-words in the 2023 AMGN annual meeting proxy, seems to apply only to misconduct and is entirely optional. Thus an executive bonus due to negligence would be exempt. And the clawback only applies to an executive who was involved with misconduct. Thus if the misconduct of one executive resulted in a bonus for 5 executives then only one executive bonus would be recoverable. Plus there is no web address in the proxy for the complete Clawback Policy."

The referenced disclosure from the Company's 2023 Proxy Materials states:

"Clawback Policy. We have a Clawback Policy that requires our Board to consider recapturing past cash or equity compensation payouts awarded to

our executive officers, including our NEOs, if it is subsequently determined that the amounts of such compensation were based on financial results that are later restated and the executive officer's misconduct caused or partially caused such restatement."

Subsequent to the Company's 2023 annual meeting of stockholders, the Company's Board of Directors (the "Board") adopted a new "Amgen Policy on Recovery of Erroneously Awarded Compensation" (the "Updated Clawback Policy") that, per its terms, "supersedes and replaces in its entirety the Policy on Executive Compensation in Restatement Situations adopted on March 6, 2007" discussed above. The Updated Clawback Policy became effective as of October 2, 2023.

## B. Background of Rule 14a-8(i)(10)

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has "substantially implemented" the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and concurred with the exclusion of a proposal only when proposals were "'fully' effected" by the company. See Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, however, the Commission recognized that the "previous formalistic application of [the rule] defeated its purpose" because proponents were successfully avoiding exclusion by submitting proposals that differed from existing company policy in minor respects. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the "1983 Release"). Therefore, in the 1983 Release, the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented," and the Commission later codified this revised interpretation in Exchange Act Release No. 40018, at n.30 (May 21, 1998).

Accordingly, the actions requested by a proposal need not be "fully effected" by the company to be excluded; rather, to be excluded, they need only have been "substantially implemented" by the company. See 1983 Release. Thus, when a company can demonstrate that it has already taken actions to address the underlying concerns and essential objectives of a stockholder proposal, the Staff has concurred that the proposal has been "substantially implemented" and may be excluded as moot. See, e.g., Exelon Corp. (avail. Feb. 26, 2010); Exxon Mobil Corp. (Burt) (avail. Mar. 23, 2009); Exxon Mobil Corp. (avail. Jan. 24, 2001); Masco Corp. (avail. Mar. 29, 1999); The Gap, Inc. (avail. Mar. 8, 1996).

Applying this standard, the Staff has noted that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (*Recon.*) (avail. Mar. 28, 1991). Even if a company's actions do not go as far as those requested by the stockholder proposal, however, they nonetheless may be deemed to "compare favorably" with the requested actions. *See, e.g., Walgreen Co.* (avail. Sept. 26, 2013) (permitting exclusion of a proposal requesting elimination of supermajority voting requirements in the company's governing documents where the company had eliminated all but one of the supermajority voting requirements); *Johnson & Johnson* (avail. Feb. 17, 2006) (permitting

exclusion of a proposal that requested the company to confirm the legitimacy of all current and future U.S. employees because the company had verified the legitimacy of 91% of its domestic workforce); and *Masco Corp*. (avail. Mar. 29, 1999) (permitting exclusion of a proposal seeking adoption of a standard for independence of the company's outside directors because the company had adopted a standard that, unlike the one specified in the proposal, added the qualification that only material relationships with affiliates would affect a director's independence). Thus, differences between a company's actions and a stockholder proposal are permitted as long as the company's actions satisfactorily address the proposal's essential objectives. *See, e.g., Exxon Mobil Corp.* (avail. Mar. 19, 2010).

# C. The Updated Clawback Policy Substantially Implements the Proposal

The Proposal's essential objective has five prongs. The Proposal requests that: (1) the policy "apply to the [sic] each Named Executive Officer"; (2) the policy be triggered by "conduct or negligence – not merely misconduct"; (3) such conduct "shall trigger mandatory application of that policy"; (4) the Board shall "report to shareholders in each annual meeting proxy the results of any deliberations regarding the policy, including the Board's reasons for not applying the policy after specific deliberations conclude, about whether or not to cancel or seek recoupment" of any unearned compensation; and (5) the full web address of the policy shall be in each proxy statement. As discussed below, by adopting the Updated Clawback Policy, the Company has already addressed these requested amendments and accordingly, the Proposal's essential objective and guidelines have been satisfied.

The Updated Clawback Policy is intended to comply with the requirements of Rule 5608 of the Nasdaq Stock Market Corporate Governance Requirements ("Rule 5608"). Rule 5608 was adopted by Nasdaq pursuant to Rule 10D-1 under the Exchange Act, which directed national securities exchanges to establish listing standards that require each listed company to adopt and comply with a written executive compensation recovery policy and to provide the disclosures required by Rule 10D-1 (the "Clawback Listing Standard"). Under the Clawback Listing Standard, listed companies must recover from current and former executive officers incentive-based compensation received during the three completed fiscal years preceding the date on which the company is required to prepare an accounting restatement. *See* Exchange Act Release No. 96159, 87 FR 73076 (Nov. 28, 2022). The Updated Clawback Policy is posted on the Company's website 1 and the Company intends to include this website address in its future proxy statements.

As detailed below, by adopting the Updated Clawback Policy and by posting the Updated Clawback Policy on its website, the Company has acted favorably on each of the five prongs of the Proposal's amendment request. Therefore, the Proposal may be excluded as moot.

1. The Updated Clawback Policy Covers Each Named Executive Officer

The first prong of the Proposal requests that the policy apply to "each Named Executive Officer." The Updated Clawback Policy applies to the Company's "executive officers," which is

<sup>&</sup>lt;sup>1</sup> <u>https://www.amgen.com/about/how-we-operate/corporate-governance/amgen-policy-on-recovery-of-erroneously-awarded-compensation</u>

defined as the Company's "officers" under Rule 16a-1(f) of the Exchange Act (hereinafter referred to as "Section 16 Officers"). Named Executive Officers, as described in the Proposal and as defined in Regulation S-K Item 402(b), represent a subset of the Company's Section 16 Officers, and as such, all of the Company's Named Executive Officers are covered by the Updated Clawback Policy. Further, the mandatory application of the Updated Clawback Policy to all Section 16 Officers regardless of fault, as discussed below, ensures that the Updated Clawback Policy will apply to "each Named Executive Officer." Thus, by adopting the Updated Clawback Policy, the Company has already amended the Prior Clawback Policy to satisfy the coverage requested by the Proposal.

2. The Application of the Updated Clawback Policy is Triggered Regardless of Fault, Which is a Higher Standard of Conduct Than What the Proposal Requests

The second prong of the Proposal requests that the Company's clawback policy state that "conduct or negligence" shall trigger application of that policy. The Proponent supports its concerns by stating that "The Amgen Clawback Policy... seems to apply only to misconduct and is entirely optional. Thus an executive bonus due to negligence would be exempt. And the clawback only applies to an executive who was involved with misconduct. Thus if the misconduct of one executive resulted in a bonus for 5 executives then only one executive bonus would be recoverable."

Consistent with the Clawback Listing Standard, the Updated Clawback Policy applies regardless of fault or misconduct of any individual. In this respect, the Updated Clawback Policy has an even higher standard than the Proposal's requested minimum standard of "conduct or negligence." Under the Company's Prior Clawback Policy, recoupment of compensation could only occur if the Board determined that the executive officer's misconduct caused or partially caused the financial restatement, and recoupment could only be for that officer. Under the Updated Clawback Policy, the Board need not determine that an officer of the Company was negligent or acted (or omitted to act) in any way at all in order for the policy to apply to all executive officers. If the Company is required to prepare an accounting restatement (as defined by the Clawback Listing Standard), the Updated Clawback Policy is automatically triggered, and the Company must "recover reasonably promptly the amount of incentive-based compensation" from all executive officers of the Company who received such compensation during the covered period. As the Proposal's supporting statement itself notes, the amendments requested by the Proposal are consistent with the Clawback Listing Standard: "A 2022 rule from the Securities and Exchange Commission requires a clawback of erroneously awarded incentive pay – even with no misconduct – if a company restates its financial statements owing to material errors." Thus, by adopting the no-fault Updated Clawback Policy, the Company addresses the Proposal's essential objective of having a policy that states that any conduct could lead to recoupment of compensation.

3. The Application of the Updated Clawback Policy is Mandatory, as Requested by the Proponent

Consistent with the Clawback Listing Standard, the Updated Clawback Policy is mandatorily applied without discretion in the event the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial

reporting requirement under the securities laws (including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period). Under the Prior Clawback Policy, the Board had the discretion to determine whether to recapture past cash or equity compensation payouts in the event of a financial restatement. Under the Updated Clawback Policy, the Board has no such discretion – as a result, the Updated Clawback Policy has implemented the Proposal's requested amendment for mandatory application of the policy. Although the Updated Clawback Policy provides for certain exceptions to the mandatory application of the policy in very limited circumstances, consistent with the exception determinations made by the SEC and provided in the Clawback Listing Standard, where it is impracticable to apply the policy, the essential objective of mandatory application of the policy without Board discretion has been satisfied.

As discussed above, even if a company's actions do not go as far as those requested by the stockholder proposal, they nonetheless may be deemed to "compare favorably" with the requested actions. *See, e.g., Walgreen Co.* (avail. Sept. 26, 2013); *Johnson & Johnson* (avail. Feb. 17, 2006); *Masco Corp.* (avail. Mar. 29, 1999). Given the mandatory nature of the Updated Clawback Policy, the Company's actions satisfactorily address the Proposal's essential objectives and the third prong of the Proponent's request is satisfied.

4. The Updated Clawback Policy Requires the Company to Make Disclosures Under Applicable Securities Laws About the Application of the Policy

The fourth prong of the Proposal's request is that the Board "report to shareholders in each annual meeting proxy the results of any deliberations regarding the policy, including the Board's reasons for not applying the policy after specific deliberations conclude, about whether or not to cancel or seek recoupment of unearned compensation paid, granted or awarded to" the Company's Named Executive Officers. First, the Company previously stated in its 2023 Proxy Materials that it intends to provide disclosure regarding the application of its clawback polices. Specifically, the 2023 Proxy Materials state that "[s]ubject to our recoupment and clawback policies and provisions, we intend to disclose the general circumstances of any application of our recoupment or clawback policies and provisions against any executive officer (current or former) and the aggregate amount of compensation recovered." Second, the Updated Clawback Policy requires that the "Company shall make all disclosures with respect to this policy in accordance with the requirements of the federal securities laws, including disclosures required under Item 402(w) of Regulation S-K of the Securities Act of 1933 (the "Securities Act") regarding the Company's actions to recover erroneously awarded compensation and the filing of this policy as an exhibit to the Company's annual report on Form 10-K."

And lastly, the Clawback Listing Standard requires the Company to comply with certain disclosure requirements. The required disclosures include information about when the policy was triggered, the amount of erroneously awarded compensation subject to recoupment, and details regarding any reliance on the impracticability exceptions, including the amount of recovery forgone and a brief description of the reason the Company decided in each case not to pursue recovery. In addition, if the Company was required to prepare an accounting restatement and yet concluded that recovery of erroneously awarded compensation was not required pursuant

to the Updated Clawback Policy, the Company is required to briefly explain why application of the Updated Clawback Policy resulted in this conclusion. Each of these disclosures is required to be made in the Company's Annual Report on Form 10-K under Item 11, Part III. The disclosures required by Part III of Form 10-K are typically included in a company's proxy statement and incorporated by reference from the proxy statement into a company's Annual Report on Form 10-K. The Company intends and expects to provide these disclosures, if and when applicable, in its proxy statement, as requested by the Proposal. As a result, the Updated Clawback Policy and the application of these disclosure requirements, which are mandated by the Updated Clawback Policy, satisfy the Proposal's request to "report to shareholders in each annual meeting proxy the results of any deliberations regarding the policy, including the Board's reasons for not applying the policy after specific deliberations conclude, about whether or not to cancel or seek recoupment of unearned compensation paid, granted or awarded to NEOs under this policy."

5. The Company Has Posted its Updated Clawback Policy on the Corporate Governance Page of its Website and Intends to Disclose This Website in its Proxy Materials

Consistent with the Proponent's request, the Updated Clawback Policy has been posted on the Company's website<sup>2</sup> and the Company intends to include this website address in its future proxy statements. These actions satisfy the final objective of the Proposal.

#### D. Summary

When a company and its board of directors have already acted favorably on an issue addressed in a stockholder proposal, Rule 14a-8(i)(10) does not require the company and its stockholders to reconsider the issue. By adopting the Updated Clawback Policy and posting the policy on the Company's website, and by complying with the Clawback Listing Standard and applicable securities laws, the Company has already acted favorably on all five prongs addressed in the Proposal. Accordingly, consistent with the precedent discussed above, there is no further action required to address the essential objective and respond to the essential concerns of the Proposal, and the Proposal may be excluded from the Company's 2024 Proxy Materials under Rule 14a-8(i)(10).

# **Conclusion**

For the foregoing reasons, the Company believes that it may properly exclude the Proposal from the 2024 Proxy Materials under Rule 14a-8(i)(10). We respectfully request that the Staff not recommend any enforcement action if the Company excludes the Proposal from its 2024 Proxy Materials. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

<sup>&</sup>lt;sup>2</sup> https://www.amgen.com/about/how-we-operate/corporate-governance/amgen-policy-on-recovery-of-erroneously-awarded-compensation

Please contact the undersigned at (714) 755-8261 to discuss any questions you may have regarding this matter.

Very truly yours,

Regina M. Schlatter
Regina M. Schlatter

of LATHAM & WATKINS LLP

# **Enclosures**

cc: John Chevedden

Andrea Robinson, Amgen Inc.

Jessica Lennon, Latham & Watkins LLP

# Exhibit A

Proposal Submitted by John Chevedden

#### JOHN CHEVEDDEN PII

Mr. Jonathan P. Graham Amgen Inc. (AMGN) One Amgen Center Drive Thousand Oaks, CA 91320-1799 PH: 805 447 1000

Dear Mr. Graham,

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 the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

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 including the table of contents, like Board of Directors proposals, and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message to

it may very well save you from formally requesting a broker letter from me.

Please confirm that this proposal was sent to the correct email address for rule 14a-8 proposals. Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." I so request.

Sincerely,

ohn Chevedden

Date

eul 5,2023

cc: Mark Schlossberg <mschloss@amgen.com>

1 whereast

# [AMGN: Rule 14a-8 Proposal, December 5, 2023] [This line and any line above it is not for publication.] Proposal 4 – Improve Clawback Policy for Unearned Executive Pay

Shareholders ask the Board of Directors to amend the Company Policy on recoupment of incentive pay to apply to the each Named Executive Officer and to state that conduct or negligence – not merely misconduct – shall trigger mandatory application of that policy. Also the Board shall report to shareholders in each annual meeting proxy the results of any deliberations regarding the policy, including the Board's reasons for not applying the policy after specific deliberations conclude, about whether or not to cancel or seek recoupment of unearned compensation paid, granted or awarded to NEOs under this policy. There shall at least be the full web address of the complete Clawback Policy in each annual meeting proxy.

These amendments should operate prospectively, be in plain English and be implemented so as not to violate any contract, compensation plan, law or regulation. This includes that at the time of the amendment that no section of such revised policy be adopted that would act against this proposal and make it more difficult to clawback unearned NEO pay and that no section of such revised policy shall further restrict the current policy.

The Amgen Clawback Policy, described by 57-words in the 2023 AMGN annual meeting proxy, seems to apply only to misconduct and is entirely optional. Thus an executive bonus due to negligence would be exempt. And the clawback only applies to an executive who was involved with misconduct. Thus if the misconduct of one executive resulted in a bonus for 5 executives then only one executive bonus would be recoverable. Plus there is no web address in the proxy for the complete Clawback Policy.

A 2022 rule from the Securities and Exchange Commission requires a clawback of erroneously awarded incentive pay – even with no misconduct – if a company restates its financial statements owing to material errors.

Wells Fargo offers a prime example of why HD needs a stronger policy. After 2016 Congressional hearings, Wells Fargo agreed to pay \$185 million to resolve claims of fraudulent sales practices. Wells Fargo's board then moved to claw back \$136 million from 2 top executives. Wells Fargo unfortunately concluded that the CEO had only turned a blind eye to the practice of opening fraudulent accounts.

Please vote ves:

Improve Clawback Policy for Unearned Executive Pay – 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

"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 next Annual Meeting of Stockholders as is or will be documented in my ownership proof.

Please acknowledge this proposal promptly by email

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.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on

If there is objection to the title please negotiate or seek no action relief as a last resort. Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.



From: John Chevedden

Subject: Fwd: Rule 14a-8 Proposal (AMGN) Date: December 5, 2023 at 12:35 PM

To:



Begin forwarded message:

From: John Chevedden -

Subject: Rule 14a-8 Proposal (AMGN) Date: December 5, 2023 at 12:34:31 PM PST

To: "Jonathan P. Graham" < jgraham@amgen.com >, Mark Schlossberg

<mschloss@amgen.com>

Rule 14a-8 Proposal (AMGN)

Dear Mr. Graham,

Please see the attached rule 14a-8 proposal.

Please confirm that this is the correct email address for rule 14a-8 proposals.

Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." I so request.

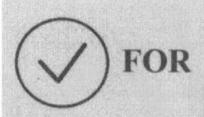
Hard copies of any request related to this proposal are not needed as long as you request that I confirm receipt in the email cover message.

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.

Please arrange in advance in a separate email message regarding a meeting if needed. John Chevedden



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Shareholder



VIA: FDX

FROM: John Robert Chevedden