



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-3010

November 29, 2007

Patrick G. Quick  
Foley & Lardner LLP  
777 East Wisconsin Avenue, Suite 3800  
Milwaukee, WI 53202-5306

Re: Oshkosh Truck Corporation  
Incoming letter dated October 5, 2007

Dear Mr. Quick:

This is in response to your letters dated October 5, 2007 and October 26, 2007 concerning the shareholder proposal submitted to Oshkosh Truck by John Chevedden. We also have received letters from the proponent dated October 5, 2007, October 12, 2007, and October 29, 2007. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Jonathan A. Ingram  
Deputy Chief Counsel

Enclosures

cc: John Chevedden

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

CFOCC-00043092

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

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

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

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

November 29, 2007

**Response of the Office of Chief Counsel  
Division of Corporation Finance**

Re: Oshkosh Truck Corporation  
Incoming letter dated October 5, 2007

The proposal requests that the board take steps to redeem the company's poison pill or subject it to a shareholder vote.

We are unable to concur in your view that Oshkosh Truck may exclude the proposal under rule 14a-8(i)(10). Accordingly, we do not believe that Oshkosh Truck may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(10).

We note that Oshkosh Truck did not file its statement of objections to including the proposal in its proxy materials at least 80 days before the date on which it will file definitive proxy materials as required by rule 14a-8(j)(1). Noting the circumstances of the delay, we do not waive the 80-day requirement.

Sincerely,

Mary Beth Breslin  
Special Counsel



FOLEY & LARDNER LLP

RECEIVED

October 5, 2007

2007 OCT -9 PM 1:29

OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

ATTORNEYS AT LAW

777 EAST WISCONSIN AVENUE, SUITE 3800  
MILWAUKEE, WISCONSIN 53202-5306  
414.271.2400 TEL  
414.297.4900 FAX  
www.foley.com

WRITER'S DIRECT LINE  
414.297.5678  
EMAIL pgquick@foley.com

CLIENT/MATTER NUMBER  
061300-0108

Securities Exchange Act of 1934  
Rule 14a-8(i)(10)

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

Re: *Omission of Shareholder Proposal Submitted to Oshkosh Truck Corporation Pursuant to Rule 14a-8(i)(10)*

Ladies and Gentlemen:

In accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we are writing on behalf of our client, Oshkosh Truck Corporation (the "Company"), to request your concurrence that the Company may exclude from the proxy materials for its 2008 Annual Meeting of Shareholders (the "2008 Proxy Materials") the shareholder proposal and the related statement of support (the "Proposal") that Mr. John Chevedden (the "Proponent") submitted to the Company in August 2007. We are attaching copies of the Proposal and related correspondence to this letter as Exhibit A.

For the reasons discussed below, we believe the Company may properly exclude the Proposal from the 2008 Proxy Materials pursuant to Rule 14a-8(i)(10) under the Exchange Act on the basis that the Company has already substantially implemented the Proposal. We hereby request confirmation that the Office of Chief Counsel, Division of Corporation Finance (the "Staff") will not recommend enforcement action if the Company excludes the Proposal from the 2008 Proxy Materials.

**Background**

In August 2007, the Company received the Proposal from the Proponent. The Proposal relates to the preferred share purchase rights (the "Rights") that the Company issued pursuant to the Rights Agreement, dated as of February 1, 1999, between the Company and Computershare Investor Services, LLC (as successor to Firststar Bank, N.A.), as Rights Agent, as amended November 1, 2002 (the "Rights Agreement"). Rights of this nature are often referred to as a "poison pill" or a "rights plan." The Proposal states that "[s]hareholders request that our Board take the steps to redeem our poison pill or subject it to a shareholder vote." Under the plain language of the Proposal, it is clear that the Proposal relates only to the existing Rights Agreement.

BOSTON  
BRUSSELS  
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SAN DIEGO  
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SAN FRANCISCO  
SILICON VALLEY

TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

October 5, 2007

Page 2

The Rights Agreement will expire by its terms on February 1, 2009 unless the Rights Agreement is amended to extend its term. Prior to the date the 2008 Proxy Materials are made available to the Company's shareholders, the Board of Directors of the Company (the "Board") intends to adopt a resolution to the effect that it will not extend the term of the Rights Agreement beyond its stated expiration date. As a result of that Board action, the Rights Agreement will expire on February 1, 2009. If the Board fails to adopt such a resolution, then the Company will include the Proposal in the 2008 Proxy Materials.

### Explanation of Basis for Exclusion

Rules Allow Exclusion of a Proposal That Has Been Substantially Implemented. Rule 14a-8(i)(10) under the Exchange Act permits the exclusion of a proposal from a company's proxy materials if "the company has already substantially implemented the proposal." In interpreting Rule 14a-8(i)(10) and its predecessor, Rule 14a-8(c)(10), the Staff has established that a proposal need not be implemented in full or precisely as set forth by the proponent to be considered substantially implemented. See *Exchange Act Release No. 34-20091* (Aug. 16, 1983). A proposal may be properly excluded in those instances in which the company's actions satisfactorily address the proposal's underlying concerns. See, e.g., *Masco Corporation* (Mar. 29, 1999) (permitting exclusion of a proposal because the Company had "substantially implemented" the proposal by adopting a similar proposal that retained the underlying meaning and objective of the initial proposal). In effect, the "substantial implementation" standard for the exclusion of shareholder proposals and the "mootness" standard for exclusion that preceded it enable a company to "avoid the possibility of [its] shareholders having to consider matters that have been favorably acted upon by management..." *Exchange Act Release No. 34-12598* (Jul. 7, 1976).

Board Action with Stated Expiration Implements the Proposal. The operative language of the Proposal is that "our Board take the steps to redeem our poison pill or subject it to a shareholder vote." As explained more fully below, a logical reading of the Proposal is that it requests that the Rights Agreement be subjected to a shareholder vote at the Company's next annual meeting (*i.e.*, the Company's 2009 Annual Meeting of Shareholders) after the annual meeting at which shareholders vote on the Proposal (*i.e.*, the Company's 2008 Annual Meeting of Shareholders) unless the Company has redeemed the Rights before that meeting. The Board will have taken action prior to the date the 2008 Proxy Materials are made available to the Company's shareholders to the effect that the Board will not extend the term of the Rights Agreement beyond its stated expiration date; as a result, the Rights Agreement will expire in accordance with its terms *prior* to the 2009 Annual Meeting of Shareholders. As explained in more detail below, given the expiration date of the Rights Agreement, the Board's resolution not to extend the term of the Rights Agreement substantially implements the Proposal. Accordingly, there is nothing to be gained by presenting the Proposal to shareholders at the 2008 Annual Meeting of Shareholders. In light of the Board's action that will already have been taken, there is essentially no further action necessary to satisfy the Proposal.

The Staff Has Allowed Exclusion of Rights Plan Proposals on this Basis. In a number of no-action letters, the Staff has concurred that a shareholder proposal to redeem an already-existing rights plan can be excluded on the grounds that actions by a company's board of directors to cause the plan to terminate at a later date constitute substantial implementation of the proposal. In *AvalonBay Communities, Inc.* (Mar. 7, 2002), for example, the Staff allowed exclusion of a proposal to redeem a

October 5, 2007

Page 3

poison pill unless the pill was approved by shareholders where the board of directors adopted an amendment to the poison pill to accelerate the expiration date of the pill to a date prior to the date of the annual meeting at which the proposal would be considered. *See also Praxair, Inc.* (Dec. 24, 2003; reaffirmed Feb. 13, 2004) (permitting exclusion of a proposal to redeem a rights agreement on grounds of "substantial implementation" after the board resolved to amend the rights agreement to require its termination at a future date); *Lear Corporation* (Jan. 10, 2005) (proposal calling for the redemption of any poison pill deemed to have been substantially implemented after the board adopted an amendment to its rights plan to accelerate the expiration date of the plan); and *TJX Companies* (Mar. 12, 1994) (proposal to redeem shareholder rights plan properly excluded as "moot" because the board had already adopted a resolution to redeem the rights at a specified future date).

More recently, in *Morgan Stanley* (Feb. 14, 2005), the Staff granted Rule 14a-8(i)(10) relief for a proposal to "redeem any active poison pill, unless such poison pill is approved by the affirmative vote of holders of a majority of shares present," where the rights agreement would expire by its terms 37 days after the annual meeting and the company's board of directors resolved that the poison pill would not be renewed following its expiration. Similarly, in *Schering-Plough Corporation* (Feb. 28, 2008), the Staff agreed that a shareholder proposal identical to the Proposal was properly excluded where the rights agreement would expire by its terms 53 days after the annual meeting and the company's board of directors resolved that the poison pill would not be renewed following its expiration. In both cases, the rights agreement expired after the date of the annual meeting at which the proposal would have been considered but before the next annual meeting at which any shareholder vote on the poison pill would occur.

The Company's Circumstances are Analogous. In the Company's instance, the Rights Agreement will expire on February 1, 2009, after the annual meeting at which the Proposal would be considered (*i.e.*, the 2008 Annual Meeting of Shareholders) but prior to the Company's next annual meeting (*i.e.*, the 2009 Annual Meeting of Shareholders). Further, similar to the boards of directors in *Morgan Stanley* and *Schering-Plough*, the Board will adopt a resolution, prior to the date the 2008 Proxy Materials are made available to the Company's shareholders, to the effect that it will not extend the term of the Rights Agreement beyond its stated expiration date. Because the Rights Agreement will expire on February 1, 2009, prior to the 2009 Annual Meeting of Shareholders, and its term will not be extended, the Proposal has been substantially implemented. In accordance with Company practice to hold its Annual Meeting of Shareholders on the first Tuesday of February, the 2009 Annual Meeting of Shareholders will be scheduled for February 3, 2009.

The Timing of Expiration Supports Exclusion. The expiration of the Rights Agreement in accordance with its terms satisfies the objective of the Proposal that the Rights Agreement be submitted to a shareholder vote unless the Rights are earlier redeemed by the Company. The Proposal does not include any timing requirement for the redemption of the Rights or the submission of the Rights Agreement to a shareholder vote, which is something that many rights plan proposals address. For example, the proposal in *Morgan Stanley* requested the company's board of directors to redeem the poison pill or submit it to a shareholder vote "as soon as practicable." In light of the Proposal's silence on the subject of timing, a logical reading of the Proposal is that it contemplates subjecting the Rights Agreement to a shareholder vote at the Company's 2009 Annual Meeting of Shareholders unless the Company has redeemed the Rights prior to the time of that meeting. The expiration of the Rights Agreement in accordance with its terms satisfies the Proposal as follows:

October 5, 2007

Page 4

- If the Company included the Proposal in the 2008 Proxy Materials, the shareholders would act on the Proposal at the 2008 Annual Meeting of Shareholders on February 5, 2008.
- Shareholder approval of the Proposal would have the effect of a request by shareholders through their vote on February 5, 2008 that the Board subject the Rights Agreement to a shareholder vote. There is no reason to suggest that the Proposal contemplates a special meeting of shareholders.
- Therefore, the Rights Agreement would be subjected to a shareholder vote at the next scheduled vote of the Company's shareholders, which will occur at the 2009 Annual Meeting of Shareholders to be scheduled for February 3, 2009.
- As noted above, as a result of the Board's action, the Rights Agreement will have expired by its terms on February 1, 2009, prior to the 2009 Annual Meeting of Shareholders.

The expiration of the Rights Agreement will clearly satisfy the objective of the Proposal that the Rights Agreement be submitted to a shareholder vote unless the Rights are earlier redeemed by the Company. Accordingly, given the language of the Rights Agreement under which it expires on February 1, 2009, the Board's resolution not to extend the term of the Rights Agreement substantially implements the Proposal.

Moreover, even if one were to assume that the Proposal includes a timing requirement similar to that in *Morgan Stanley*, the determination that the Proposal has been substantially implemented should remain. In determining whether a proposal has been substantially implemented, the Staff has consistently placed greater emphasis on the material implementation of the underlying objectives of the proposal than on differences between the company's timing for implementing the proposal and the timing for such implementation suggested by the proposal. *See, e.g., Comarco, Inc.* (Mar. 8, 2006); *accord Raytheon Company* (Jan. 26, 2005) (policy stating that any future rights plan adopted by the company's board without prior shareholder approval would expire within one year of its adoption unless ratified by the shareholders substantially implemented a proposal that would have required shareholder approval within four months). *See also Masco Corporation, supra.* Here, the underlying objective of the Proposal is the submission of the Rights Agreement to a shareholder vote unless the Rights are redeemed beforehand. The Board's resolution not to extend the term of the Rights Agreement substantially satisfies this objective.

The Proposal Does Not Address Future Plans. Because the Proposal does not address future rights agreements that the Company may enter into, the expiration of the existing Rights Agreement substantially implements the Proposal. In each of *Morgan Stanley* and *Schering-Plough*, the company's board of directors had also resolved or adopted a policy that any future rights agreement would be submitted to shareholders. In addition, a great number of shareholder proposals, including a number of proposals that the Proponent recently submitted to other companies, request not only the redemption of a current rights plan, but also the submission of any future rights plan to a shareholder vote. Here, because the Proposal refers only to "our poison pill" and is completely silent as to future rights agreements, the focus is rightfully on the existing Rights Agreement. This proposition is supported by *Morgan Stanley* where the Staff, in considering a proposal that referred only to "any active

October 5, 2007

Page 5

poison pill," based its decision that the proposal had been substantially implemented on the fact that the "active" rights agreement would expire 37 days after the annual meeting and would not be renewed. That Morgan Stanley had in effect a policy concerning a future rights agreement did not affect the Staff's determination whether the proposal had been substantially implemented.

**Conclusion.** The Proposal states that "[s]hareholders request that our Board take the steps to redeem our poison pill or subject it to a shareholder vote." As the sequence set forth above illustrates, the expiration of the Rights Agreement prior to the 2009 Annual Meeting of Shareholders satisfies the terms of the Proposal. Therefore, the expiration of the Rights Agreement at that time substantially implements the Proposal.

**Rule 14a-8(j)**

In accordance with Rule 14a-8(j) under the Exchange Act, six additional copies of this letter, including the annexed Proposal and related correspondence, are enclosed herewith. Also in accordance with Rule 14a-8(j), a copy of this letter and its exhibits are being mailed on this date to the Proponent informing him of the Company's intention to exclude the Proposal from the 2008 Proxy Materials.

The Company will hold its 2008 Annual Meeting of Shareholders on February 5, 2008 and currently intends to mail the 2008 Proxy Materials to shareholders, and file its definitive proxy materials with the Commission, on or about December 17, 2007. The date 80 days from the date of this letter is December 24, 2007. Accordingly, we are submitting this letter fewer than 80 days before the Company intends to file its definitive proxy materials with the Commission. If necessary, the Company will postpone the date on which it intends to mail and file the 2008 Proxy Materials so that that date is at least 80 days after the date we submitted this letter. However, Rule 14a-8(j) provides that the Staff may permit the Company to make its submission fewer than 80 days before the Company files its definitive proxy materials if the Company demonstrates good cause for missing the deadline. Because of the facts described below, the Company respectfully requests a waiver of the 80-day requirement and submits that, in light of these facts, the Company had "good cause" for its inability to meet the 80-day requirement.

The Board had its first opportunity to consider the Proposal at its scheduled mid-September meeting. Since that meeting, the Company and the Proponent have been engaged in ongoing, good faith written and oral communications with respect to the conditions under which the Proponent might withdraw the Proposal. Throughout these communications, the Company has attempted to satisfy the requests of the Proponent without having to include the Proposal in the 2008 Proxy Materials. It now appears that the Company will be unable to satisfy the Proponent in any manner other than by including the Proposal in the 2008 Proxy Materials. Because the Company has delayed the submission of this letter in hopes of reaching an agreement with the Proponent, the Company cannot timely submit this letter to the Staff without postponing the date on which it intends to mail and file the 2008 Proxy Materials. Additionally, because of the ongoing communications between the Proponent and the Company, we respectfully submit that the Proponent is already familiar with the Company's position as articulated in this request and will have an adequate opportunity to respond to it, consistent with the purpose of Rule 14a-8(j).

October 5, 2007

Page 6

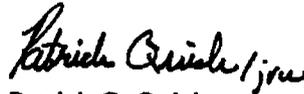
**Conclusion**

For the reasons set forth above, we believe that the Company may exclude the Proposal from the 2008 Proxy Materials under Rule 14a-8(i)(10), and we hereby request confirmation that the Staff will not recommend any enforcement action if the Company so excludes the Proposal.

The Company anticipates that the 2008 Proxy Materials will be finalized for printing in December 2008 to meet the Company's schedule for filing and mailing definitive proxy materials. The Staff's prompt review of this matter would be greatly appreciated. If the Staff disagrees with any of our conclusions, or is not inclined to grant the advice or relief requested in this letter, then we respectfully request an opportunity to discuss the matter with the Staff prior to any written response to this letter. If you have any questions or if you require any additional information concerning this letter and the matters we discuss in this letter, please contact me at (414) 297-5678 or John K. Wilson at (414) 297-5642.

Please acknowledge receipt of this filing by date-stamping the enclosed copy of this letter and returning it in the envelope provided for that purpose.

Very truly yours,



Patrick G. Quick

cc: Bryan J. Blankfield  
Pamela Patzke  
Oshkosh Truck Corporation

John K. Wilson  
Spencer T. Moats  
Foley & Lardner LLP

**EXHIBIT A**

MILW\_2641745.1

JOHN CHEVEDDEN

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Mr. Bryan J. Blankfield  
Corporate Secretary  
Oshkosh Truck Corporation  
2307 Oregon St  
Oshkosh WI 54902  
Phone: 920 235-9151  
Fax: 920 233-9314  
FX: 920-233-9231 <AUG. 16, 2007 >

RECEIVED  
AUG 16 2007

Rule 14a-8 Proposal

Dear Mr. Blankfield,

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

In the interest of saving company expenses please communicate via email to

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email.

Sincerely,

  
John Chevedden

August 1, 2007

cc: Robert G. Bohn  
Chairman





some of the above topics. These deficiencies also reinforce the reason to take one step forward now and vote yes:

**Redeem Our Poison Pill  
Yes on 3**

---

**Notes:**

John Chevedden,

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

sponsors this proposal.

The above format is requested for publication without re-editing or re-formatting.

The company is requested to assign a proposal number (represented by "3" above) based on the chronological order in which proposals are submitted. The requested designation of "3" or higher number allows for ratification of auditors to be item 2.

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

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.

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

Please note that the title of the proposal is part of the argument in favor of the proposal. In the interest of clarity and to avoid confusion the title of this and each other ballot item is requested to be consistent throughout all the proxy materials.

Please advise if there is any typographical question.

Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting.

Please acknowledge this proposal by email within 14-days and advise the most convenient fax number and email address to forward a broker letter, if needed, to the Corporate Secretary's office.

**OSHKOSH TRUCK CORPORATION**

ISO 9001 CERTIFIED

2307 OREGON STREET  
POST OFFICE BOX 2566  
OSHKOSH, WISCONSIN 54903-2566  
920-235-9151



August 29, 2007

**Mr. John Chevedden**

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

**Re: Rule 14a-8 Proposal**

Dear Mr. Chevedden:

This letter acknowledges receipt of your Rule 14a-8 Proposal. While the letter is dated August 1, 2007, it was first received with your August 15, 2007 email. A second copy was received by facsimile on August 16, 2007.

Please forward the broker letter you reference to my attention at the headquarters address, P.O. Box 2566, Oshkosh, WI 54903-2566. A copy can also be sent to fax number 920-233-9231.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan J. Blankfield".

Bryan J. Blankfield  
Corporate Secretary  
Oshkosh Truck Corporation

National Financial Services LLC  
Operations and Services Group  
1000 Lakeside Drive, Suite 1000, Wilmington, DE 19801

August 31, 2007

John Chevedden

\*\*\* FISM Fax OMB Memorandum M-07-16 \*\*\*

Post-It® Fax Note	7871	Date	8-31-07	# of pages	1
To	Bryan Blantfield	From	John Chevedden		
Co./Dept.		Co.			
Phone #	***	Phone #	FISMA & OMB Memorandum M-07-16 ***		
Fax #	920-233-9231	Fax #			

To Whom It May Concern,

I am responding to Mr. Chevedden's request to confirm his position in Oshkosh Truck Corp. ("OSK").

I can confirm that John Chevedden has continuously held no less than 200,000 shares of OSK since July 1, 2006.

I hope this information is helpful. If you have any questions, please contact me at 800-482-9984, extension 27941. I am available Monday through Friday, 10:00 a.m. to 6:30 p.m. Eastern time.

Sincerely,

Devon Goodwin  
Client Services Specialist

Our File: W044265-30AUG07

Creating custody or other documents may be governed by National Financial Services LLC or Fidelity Investments Securities LLC, Member SIPC.

**Fidelity**  
Smart move.™

----- Forwarded by Bryan Blankfield/OSK/OTC on 09/11/2007 10:05 AM -----



FISMA & OMB Memorandum M-07-16 \*\*\*

09/11/2007 09:55 AM

To "Bryan J. Blankfield" <BBlankfield@oshtruck.com>

cc "CFLETTERS@SEC.GOV" <CFLETTERS@SEC.GOV>

Subject Broker Letter OSK

Mr. Bryan J. Blankfield  
Corporate Secretary  
Oshkosh Truck Corporation (OSK)  
2307 Oregon St  
Oshkosh WI 54902  
Phone: 920 235-9151

Dear Mr. Blankfield,  
The requested broker letter was faxed to you on August 31, 2007. Please confirm today by email that it was received. Also please advise today whether there is any question on the letter meeting the requirement and whether any additional documentation is needed.  
Sincerely,  
John Chevedden

cc:  
Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission

**Pamela Patzke/OSK/OTC**  
09/19/2007 11:22 AM

\*\*\* FISIA & OMB Memorandum M-07-16 \*\*\*

cc **Bryan Blankfield/OSK/OTC@OTC**  
bcc

Subject **Fw: Rule 14a-8 Proposal**

Dear Mr. Chevedden:

By way of introduction, I am attorney in the Oshkosh Truck Corporation legal department, reporting to Mr. Blankfield.

I wanted to let you know that we have received the information requested from your broker and have confirmed that this meets the requirements for the filing of a proposal under Rule 14a-8.

Mr. Blankfield and I believe that it would be helpful to have a brief conversation with you and would appreciate your proposing a few times that are convenient for you.

Due to travel schedules, today is preferred. Both Bryan and I have a commitment this evening, so suggestions of times prior to 5 pm central time will be appreciated. We should be able to accommodate times later this week, but that will require a bit more planning. If that is your preference, it will be helpful if you give us several times on both Thursday and Friday so that we can ensure that we are able to meet.

I look forward to receiving your response and thank you for your attention.

Regards,  
Pamela Patzke

Pamela Patzke  
Associate General Counsel - Corporate & Securities  
2307 Oregon Street  
P.O. Box 2566  
Oshkosh, WI 54903-2566  
Phone - 920-233-9301  
Fax - 920-233-9231



FISMA & OMB Memorandum M-07-16 \*\*\* To <ppatzke@oshtruck.com>

09/19/2007 12:40 PM

cc <BBlankfield@oshtruck.com>

bcc

Subject (OSK) Rule 14a-8 Proposal

Dear Ms. Patzke, Thank you for confirming that the proposal meets the requirements for the filing of a proposal under Rule 14a-8. I will be glad to speak to one person only. Good times today would be between 11:00 a.m. and 11:30 a.m. and between 2:00 p.m. and 3:00 p.m. Pacific time. Also I expect be be available much of the time today otherwise.

Sincerely,  
John Chevedden

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

**Pamela Patzke/OSK/OTC**  
09/24/2007 02:04 PM

\*\*\* FISA & OMB Memorandum M-07-16 \*\*\*

cc

bcc

**Subject: Fw: Rule 14a-8 Proposal**

**Hello Mr. Chevedden:**

**I would like to know when would be a convenient time for us to follow-up to our discussion of last week.**

**I am available today until 3 pm CDT and tomorrow, any time prior to 10 am and after 11 am CDT tomorrow.**

**I look forward to your reply and thank you for your attention,  
Pamela**

**Pamela Patzke  
Associate General Counsel - Corporate & Securities  
2307 Oregon Street  
P.O. Box 2568  
Oshkosh, WI 54903-2568  
Phone - 920-233-9301  
Fax - 920-233-9231**



FISMA & OMB Memorandum M-07-16 \*\*\* To <ppatzke@oshtruck.com>

09/24/2007 08:17 PM

cc

bcc

Subject Re Rule 14a-8 Proposal

History:

☞ This message has been replied to.

Dear Ms. Patzke, After 11 am CDT Tuesday should be fine.  
John Chevedden

**Pamela Patzke/OSK/OTC**  
09/25/2007 08:15 AM

**To** FISMA & OMB Memorandum M-07-16 \*\*\*  
**cc**  
**bcc**  
**Subject** Re: Re Rule 14a-8 Proposal 

Thank you. I will call you then.

**Pamela Patzke**  
**Associate General Counsel - Corporate & Securities**  
**2307 Oregon Street**  
**P.O. Box 2566**  
**Oshkosh, WI 54903-2566**  
**Phone - 920-233-9301**  
**Fax - 920-233-9231**

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

**Pamela Patzke/OSK/OTC**  
09/25/2007 02:58 PM

\*\*\* FISA & OMB Memorandum M-07-16 \*\*\*

cc

bcc

Subject Timing of response

Mr. Chevedden:

I just wanted to let you know that due to some scheduling issues for me this afternoon, I have not been able to finish the document I promised you. It will be coming tomorrow.

I appreciate your understanding.

Pam

**Pamela Patzke**  
Associate General Counsel - Corporate & Securities  
2307 Oregon Street  
P.O. Box 2566  
Oshkosh, WI 54903-2566  
Phone - 920-233-9301  
Fax - 920-233-9231

Pamela Patzke/OSK/OTC  
09/26/2007 03:14 PM

\*\*\* FIRM & OMB Memorandum M-07-16 \*\*\*  
cc  
bcc Bryan Blankfield/OSK/OTC@OTC  
Subject Proposed Email to Chevedden

Mr. Chevedden:

I wanted to take a little extra time to prepare this follow-up to our conversation.

Rather than go through the step of sending a draft letter, I thought it would be more helpful to recap the information shared in our prior conversations and the company's recommendation for moving forward.

I would first remind you that you have previously agreed that the information shared in our prior conversations, which is re-stated here, is non-public and that you must maintain the confidentiality of that information until it is publicly announced, if ever. Any public release of that information by you, prior to a public announcement by the company, would be a violation of this confidentiality agreement.

In our prior conversation we have discussed the Shareholder Proposal that you filed in accordance with Securities and Exchange Commission Rule 14a-8. In that proposal you have requested:

"... our Board take the steps to redeem our poison pill or subject it to a shareholder vote."

In our last conversation, we discussed that the rights plan, that is the subject of your proposal, will expire on its terms in February 2009. If accepted, your proposal would be included in the proxy for shareholder vote in February 2008. If shareholders agreed with the proposal, the earliest there could be a vote of shareholders on the plan itself would be February 2009, coinciding with the expiration of the plan.

Given this timing, it is in the interest of all of the shareholders of the company to address this issue in the most cost effective and efficient manner possible.

With this as its goal, the Board of the company will agree to allow the rights plan to expire, by its terms, in February 2009, provided you withdraw the proposal in a timely manner. It is the company's view that this will substantially meet all of the terms of your proposal as written, especially given the timing issues reviewed above.

In addition, since the company fiscal year end is September 30, provided the proposal has been appropriately withdrawn, the Board will agree to include a statement in the 10-K, to be sent to shareholders before the end of the calendar year, indicating that the plan will be allowed to expire by its terms in February 2009.

Please contact me to discuss at your earliest convenience.

Sincerely,  
Pamela Patzke

Pamela Patzke  
Associate General Counsel - Corporate & Securities  
2307 Oregon Street  
P.O. Box 2566  
Oshkosh, WI 54903-2566  
Phone - 920-233-9301  
Fax - 920-233-9231

**Pamela Patzke/OSK/OTC**  
10/01/2007 09:05 AM

\*\*\* FIMA & OMB Memorandum M-07-16 \*\*\*

cc

bcc

**Subject 14a-8 Proposal**

**Mr. Chevedden:**

**I just received a notice that my earlier email apparently did not reach you. If you could please confirm receipt of this email, that would be appreciated.**

**In response to your voice message received last Thursday concerning timing, I can advise you that the Company's Board of Directors, to meet their fiduciary duties, on due consideration of all relevant factors, may make decisions to act or refrain from acting, when in the Board's judgment, doing so furthers the interests of our shareholders.**

**Please advise if you have any additional questions. Also, we would appreciate your confirming by close of business (5 CDT) this Wednesday, October 3, whether you will be withdrawing your proposal based on our offer (reproduced below). We do not want to incur expenses for the preparation and filing of documentation with the SEC if not needed.**

**Thank you for your continued attention to this matter.**

**Sincerely,  
Pamela**



**MEMORANDUM**

**LEGAL DEPARTMENT**

**DATE:** October 5, 2007  
**TO:** Memo to File  
**CC:**  
**FROM:** Pam Patzke (ext. 22301)  
**SUBJECT:** Transcribed Voice Message from Mr. Chevedden

---

Date of call: October 3, 2007  
Time of call: 12:16 a.m.

Ms. Patzke,

John Chevedden. I think it is in the best interest of the Shareholders that the proposal be published in the proxy.

Thank you very much.

October 5, 2007

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

**Oshkosh Truck Corporation (OSK)**  
**Shareholder Position on Company No-Action Request**  
**Rule 14a-8 Proposal: Poison Pill**  
**John Chevedden**

Ladies and Gentlemen:

This is an initial response to the company no action request which is dated October 5, 2007 starting at page 2.

This is the Resolved statement:

“3 – Redeem Our Poison Pill

“RESOLVED: Shareholders request that our Board take the steps to redeem our poison pill or subject it to a shareholder vote. Currently our management is protected by a poison pill that triggers at a low 15% threshold. A poison pill has the potential to give our directors increased job security if our stock price declines significantly due to our directors’ poor performance.”

Thus the rule 14a-8 proposal requests the company to “redeem our poison pill or subject it to a shareholder vote.” If one temporarily accepts the company argument that there is no point to subject the poison pill to a shareholder vote, then there is still nothing to prevent the company from redeeming the poison pill from up to 11-months ahead of schedule. Therefore if this proposal receives a strong shareholder vote at the February 2008 annual meeting, it could be adopted almost immediately by the board in response to the shareholder vote.

The company presented no argument that there is nothing to be gained for the board to adopt a shareholder proposal by redeeming the pill promptly after it receives a strong shareholder vote, for instance in February or March 2008 as opposed to waiting until 2009.

Additionally the company claims credit for communication with the proponent. Unfortunately this communication included the statement or threat that one reason to withdraw this proposal is that the company would strictly enforce the rules regarding a qualified representative making the required annual meeting presentation, should this proposal be published in the proxy.

For the above reasons it is respectfully requested that concurrence not be granted to the company on the purported basis of substantial implementation. It is also respectfully requested that the shareholder have the last opportunity to submit material in support of including this proposal – since the company had the first opportunity.

Sincerely,

John Chevedden

cc:

Pamela Patzke <ppatzke@oshtruck.com>

Oshkosh Truck Corporation (OSK)

Associate General Counsel - Corporate & Securities

2307 Oregon Street

P.O. Box 2566

Oshkosh, WI 54903-2566

Phone - 920-233-9301

Fax - 920-233-9231

RECEIVED  
October 26, 2007

2007 OCT 29 PM 1:03

OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

## ATTORNEYS AT LAW

777 EAST WISCONSIN AVENUE, SUITE 3800  
MILWAUKEE, WISCONSIN 53202-5306  
414.271.2400 TEL  
414.297.4900 FAX  
www.foley.comWRITER'S DIRECT LINE  
414.297.5678  
EMAIL pgquick@foley.comCLIENT/MATTER NUMBER  
061300-0108Securities Exchange Act of 1934  
Rule 14a-8(i)(10)U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F. Street N.E.  
Washington, D.C. 20549Re: *Rule 14a-8(i)(10) No-Action Request Submitted October 5, 2007*

Ladies and Gentlemen:

Please refer to our letter dated October 5, 2007 (the "Original Request") that we submitted on behalf of our client Oshkosh Truck Corporation (the "Company") regarding the shareholder proposal and the related statement of support (the "Proposal") that Mr. John Chevedden (the "Proponent") submitted to the Company in August 2007. This letter responds in general terms to the Proponent's objections to the Original Request as set forth in the Proponent's objection letters to the Staff dated October 5, 2007 and October 12, 2007. Capitalized terms used but not defined in this letter shall have the respective meanings ascribed to them in the Original Request. We respectfully request that you consider the following:

1. The Proponent May Not Rewrite the Proposal. In his responses, the Proponent argues that, to substantially implement the Proposal, the Company must both redeem the Rights and do so prior to the February 1, 2009 expiration date of the Rights Agreement. The Proponent's argument (a) is inconsistent with the plain language of the Proposal, which presents an alternative: "[s]hareholders request that our Board take the steps to redeem our poison pill *or* subject it to a shareholder vote" (*emphasis added*), and (b) seeks to add a time requirement that is not in the Proposal. If the Proponent only wanted the Rights redeemed and further wanted this done prior to February 1, 2009, then the Proponent should have stated this in the Proposal as he has done in other instances as to timing.<sup>1</sup> He should not now be allowed to rewrite the Proposal to eliminate

<sup>1</sup> In contrast to the Proposal, the Proponent has included specific timing requirements in proposals he has submitted to other companies. *See, e.g., Sempra Energy* (January 25, 2006) ("Shareholders request our Board of Directors to redeem any poison pill...as soon as may be practicable."); *The Home Depot, Inc.* (March 7, 2005) ("Shareholders request that our Board adopt a policy that any future poison pill be redeemed or put to a shareholder vote within 4-months after it is adopted by our Board."); *Raytheon Company* (January 26, 2005) ("Shareholders request that our Board adopt a policy that any future poison pill be redeemed or put to a shareholder vote within 4-months after it is

BOSTON  
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SAN DIEGO  
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SILICON VALLEYTALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

October 26, 2007

Page 2

one of the two equal alternatives in the Proposal or to impose timing requirements not originally included.

2. The Proposal Does Not Apply to Future Rights Plans. The Proponent argues that a non-existent, future rights plan, which he supposes may be adopted subsequent to the expiration of the Rights Agreement, comes within the meaning of “our poison pill” as written in the Proposal. This too is inconsistent with the ordinary meaning of the Proposal. The use of the word “our” in the Proposal clearly contemplates only the Company’s existing Rights Agreement. The Proponent drafted the Proposal and elected to focus only on the Company’s existing Rights Agreement, contrary to what he has done in other cases.<sup>2</sup> He cannot now “edit” the Proposal to argue that it extends to non-existent, future rights agreements.
3. The Company’s Action Fully Implements the Proposal. In stating that the Company “argues that it can implement the proposal by doing almost nothing,” the Proponent both misunderstands and misstates the Company’s position. At its November 15, 2007 meeting, the Board intends to adopt a resolution to the effect that it will not extend the term of the Rights Agreement beyond its stated expiration date. The Board’s action will be effective prior to the date the 2008 Proxy Materials are made available to the Company’s shareholders. That this action is occurring after the Company submitted the Original Request does not affect the result. The Staff has accepted companies’ representations as sufficient grounds for granting no-action relief pursuant to Rule 14a-8(i)(10).<sup>3</sup>

If the Company were to include the Proposal in the 2008 Proxy Materials and shareholders were to vote in favor of the Proposal (at the 2008 Annual Meeting of Shareholders), a shareholder vote on the Rights Agreement would not occur until the 2009 Annual Meeting of Shareholders. However, as a result of the Board’s action at its November 15, 2007 meeting, the Rights Agreement will no longer exist at the time of the 2009 Annual Meeting of Shareholders, rendering a shareholder vote on the Rights Agreement moot. Accordingly, the Board’s resolution not to extend the term of the Rights Agreement substantially implements the Proposal.

4. Acceleration of the Expiration Date is Not Required. The Proponent argues that “the [C]ompany does not address why it has not moved forward the expiration date of its poison pill just like its purported precedents did.” As with the Proponent’s other arguments, this both ignores the

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adopted by the Board.”); and *Lear Corporation* (January 10, 2005) (“The shareholders...request our Board of Directors to redeem any poison pill...as soon as may be practicable.”).

<sup>2</sup> In contrast to the Proposal, the Proponent has expressly extended his proposal to future agreements in numerous proposals he has submitted to other companies. See, e.g., *The Home Depot, Inc.*, *supra*; *Raytheon Company*, *supra*; and *Weyerhaeuser Company* (March 8, 2004) (“the shareholders...request that the Board of Directors seek shareholder approval at the earliest subsequent shareholder election, for the adoption, maintenance or extension of any current or future poison pill”).

<sup>3</sup> See *Masco Corporation* (March 29, 1999) and *Erie Indemnity Company* (March 15, 1999).

October 26, 2007

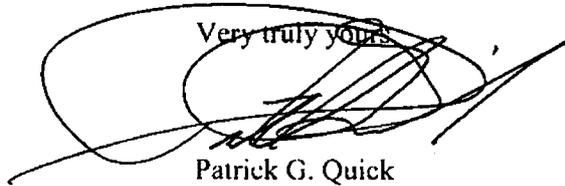
Page 3

language of the Proposal, which does not request an acceleration of the expiration date, and misreads the Company's cited precedents. In both *Morgan Stanley* (February 14, 2005) and

*Schering Plough Corporation* (February 28, 2007), the Staff granted Rule 14a-8(i)(10) relief in the absence of any action by the company to accelerate the expiration date of its rights plan.

Finally, while the Company reminded the Proponent that presenting the Proposal at the 2008 Annual Meeting of Shareholders would require compliance with the requirements of Rule 14a-8(h), the Company objects to the suggestion that this constituted a "threat" to the Proponent in any way.

Thank you for your consideration of our request. The Company will provide additional evidence in support or explanation of its position in this letter and in the Original Request as the Staff may require. If you have any questions, please do not hesitate to contact me at (414) 297-5678 or John K. Wilson at (414) 297-5642.

Very truly yours,  
  
Patrick G. Quick

cc: Bryan J. Blankfield  
Pamela Patzke  
Oshkosh Truck Corporation

John K. Wilson  
Spencer T. Moats  
Foley & Lardner LLP

**JOHN CHEVEDDEN**

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

October 29, 2007

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

**Oshkosh Truck Corporation (OSK)**  
**# 3 Shareholder Position on Company No-Action Request**  
**Rule 14a-8 Proposal: Poison Pill**  
**John Chevedden**

Ladies and Gentlemen:

This is an additional response to the company no action request which is dated October 5, 2007 starting at page 2 of the company letter.

The company argues that it can implement a proposal by doing almost nothing. The company claims that in November 2007 that it will merely reaffirm a date set more than 8-years ago. This is additionally inconsequential because the company does not claim that it had earlier indicated that it would extend its poison pill past February 2009. Twenty-four days have past since the company October 5, 2007 no action request and the company has not even provided a draft of its proposed reaffirmation of an 8 year-old date.

This is contrary to precedents the company cited where other companies took a variety of actions such as moving forward poison pill expiration dates and other actions that limited the use of poison pills. The company does not address why it has not moved forward the expiration date of its poison pill to be consistent with its purported precedents. The company essentially claims that a poison pill expiring 37-days or 53-days after an annual meeting at other companies is as effective as a poison pill expiring 360-days after the company's next annual meeting. The company claims that if it takes 5 or 10-times as long for a purportedly similar event, as cited in its own precedents, that it should get the same credit as the companies that acted 5 to 10-times faster.

Redeeming the pill clearly has priority over a shareholder vote on it, based on the preference indicated by the ordering of the text.

The company "logical reading of the Proposal" omits the fact that the first priority of the proposal is to "redeem" the pill. Then as a secondary accommodating option the company is asked to subject the pill to a shareholder vote. Furthermore the company does not even claim its "logical reading of the Proposal" is likely to be the most accurate "logical reading of the Proposal." The company does not address its "logical reading" argument to the that fact that the 4-word title of the proposal at both the beginning and the conclusion of the proposal is "Redeem Our Poison Pill."

The company does not answer why, if its does not want to do the emphasized first part of the proposal (redeem the pill), that it should then be given special consideration and a special interpretation so that it does not have to do the second part of the proposal – a shareholder vote.

The company argument, if successful, would have a chilling effect on shareholders including a second accommodating option in rule 14a-8 proposals. The company essentially claims that if it is asked to do A and is given the accommodating option of B, which is less than A, it is therefore entitled to come up with C, which is less than B, and then collect full credit for A.

The text of the proposal refers to “our poison pill.” It does not specify a poison pill expiring on a particular date. If the company adopts a new poison pill, it does not claim that such a new poison pill would be something other than “our poison pill.” The company does not state that during the during the 1-1/2 year span from the date of the submittal of this rule 14a-8 proposal through February 2009 that it would impossible for the company to have more than one active poison pill which would of necessity be “our” poison pill.

Additionally the company will not even make a commitment that it will not adopt a new poison pill during the two-days preceding its February 3, 2009 annual meeting. The company does not claim that if it adopts a new poison pill that such a pill would be something other than “our poison pill” and thereby subject to the text of the rule 14a-8 proposal.

The company claims that it was purely an innocent gesture, not intimidation, to give notice 4-months before the annual meeting, that it would strictly enforce the rules regarding a qualified representative making the required annual meeting presentation. Plus the company made this its final pitch its effort to have the rule 14a-8 proposal withdrawn.

For the above reasons it is respectfully requested that concurrence not be granted to the company on the purported basis of substantial implementation. It is also respectfully requested that the shareholder have the last opportunity to submit material in support of including this proposal – since the company had the first opportunity.

Sincerely,

John Chevedden

cc:

Pamela Patzke <ppatzke@oshtruck.com>  
Oshkosh Truck Corporation (OSK)  
Associate General Counsel - Corporate & Securities  
2307 Oregon Street  
P.O. Box 2566  
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