



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

January 24, 2011

Stuart S. Moskowitz
Senior Counsel
International Business Machines Corporation
Corporate Law Department
One New Orchard Road, Mail Stop 329
Armonk, NY 10504

Re: International Business Machines Corporation
Incoming letter dated December 15, 2010

Dear Mr. Moskowitz:

This is in response to your letters dated December 15, 2010 and January 20, 2011 concerning the shareholder proposal submitted to IBM by the AFSCME Employees Pension Plan. We also have received a letter from the proponent dated January 6, 2011. 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,

Gregory S. Belliston
Special Counsel

Enclosures

cc: Charles Jurgonis
Plan Secretary
American Federation of State, County and Municipal Employees, AFL-CIO
1625 L Street, N.W.
Washington, DC 20036-5687

January 24, 2011

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: International Business Machines Corporation
Incoming letter dated December 15, 2010

The proposal requests that IBM provide a report on lobbying contributions and expenditures that contains information specified in the proposal.

We are unable to concur in your view that IBM may exclude the proposal under rule 14a-8(i)(7). In our view, the proposal focuses primarily on IBM's general political activities and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate. Accordingly, we do not believe that IBM may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Bryan J. Pitko
Attorney-Advisor

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.



International Business Machines Corporation
Senior Counsel
Corporate Law Department
One New Orchard Road, Mail Stop 329
Armonk, New York 10504

Rule 14a-8(i)(7)

VIA E-MAIL

January 20, 2011

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

Subject: IBM Stockholder Proposal of AFSCME – Lobbying Report

Ladies and Gentlemen:

Please let this serve as the response of International Business Machines Corporation (the "Company" or "IBM") to the January 6, 2011 letter of AFSCME Employees Pension Plan (the "Proponent") in connection with IBM's request for no-action relief under Rule 14a-8(i)(7) dated December 15, 2010.

The Proponent has spent much time and energy collecting and citing various media articles dealing with the general subject matter of lobbying. But the issue is ***not*** whether stockholder proposals dealing with lobbying must be included in a company's proxy materials because general articles on the topic "*make it a significant social policy issue.*" Rather, as the Staff of the Division of Corporation Finance noted in Staff Legal Bulletin 14 (July 13, 2001) ("SLB 14"), the determination as to whether a stockholder proposal is subject to inclusion or exclusion from any particular company's proxy materials turns on the precise language of the proposal and what it seeks, as well as the specific arguments each company makes with respect to why such proposal should be excluded from that company's proxy materials. In the Staff's words:

6. Do we base our determinations solely on the subject matter of the proposal?

No. We consider the specific arguments asserted by the company and the shareholder, the way in which the proposal is drafted and how the arguments and our prior no-action responses apply to the specific proposal and company at issue. Based on these considerations, we may determine that company X may exclude a proposal but company Y cannot exclude a proposal that addresses the same or similar subject matter.

See Paragraph B.6 of SLB 14.

IBM does not debate that in other circumstances – not present here – other stockholder proponents have filed lobbying proposals that have not been excluded under Rule 14a-8(i)(7). On the other hand, many other stockholder proposals addressing lobbying have been excluded, and we have cited such applicable precedent. For the reasons set forth in our December 15, 2010 letter, and consistent with SLB 14, IBM reiterates that we believe the instant Proposal is defective, and should be subject to exclusion *in its entirety* under Rule 14a-8(i)(7).

The Proponent states again in its January 6 letter that it seeks for IBM “to provide an annual report disclosing its policies and procedures related to direct and grassroots lobbying as well as *certain information* regarding payments used for lobbying purposes.” (emphasis added) It is that “*certain information*” the instant Proponent requires of IBM under this specific Proposal which causes this Proposal to be defective and subject to exclusion under Rule 14a-8(i)(7).

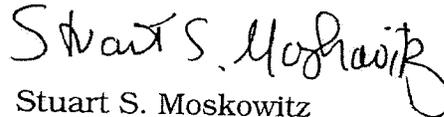
As the Company explained in its December 15, 2010 letter, the Proposal specifically points to IBM’s existing disclosures set forth in our Federal lobbying reports, finds them to be inadequate, and thereupon bases such inadequacy to outline its own additional set of requirements for “drill-down” disclosure with respect to each of the specific items set forth in IBM’s Federal lobbying reports.

As also noted in our December 15, 2010 letter, the Company already has detailed policies and procedures for overseeing and reporting on our lobbying activities which the instant Proposal seeks to supplement. In order to address the Proponent’s specific requirements, the Company

would be required to disclose a host of additional detail on a variety of activities, including many activities conducted in the ordinary course of IBM's business in furtherance of our Company's operations. The Proposal would further require specific disclosures on a host of rank and file IBM employees who are involved in the normal marketing of IBM products, services and other offerings to the Federal government. Since these are clearly ordinary business activities for IBM, the type of micromanagement and disclosures required by this Proposal, as applied to IBM, falls within the scope of Rule 14a-8(i)(7).

In sum, the Company believes it has met its burden of proof and stands by its position. We therefore respectfully renew our request for Staff concurrence that the Proposal can be excluded from our 2011 proxy materials under Rule 14a-8(i)(7). Thank you for your attention and interest in this matter.

Very truly yours,



Stuart S. Moskowitz
Senior Counsel

With copy to:

Mr. Charles Jurgonis, Plan Secretary
AFSCME Employees Pension Plan
1625 L Street, SW
Washington, DC 20036-5687



EMPLOYEES PENSION PLAN

Committee

Gerald W. McEntee

Lee A. Saunders

Edward J. Keller

Kathy J. Sackman

Marianne Steger

January 6, 2011

VIA EMAIL

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

Re: Shareholder proposal of AFSCME Employees Pension Plan; request by International Business Machines Corp. for no-action determination

Dear Sir/Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the American Federation of State, County and Municipal Employees, Employees Pension Plan (the "Plan") submitted to International Business Machines Corp. ("IBM") a stockholder proposal (the "Proposal") asking IBM to provide an annual report disclosing its policies and procedures related to direct and grassroots lobbying as well as certain information regarding payments used for lobbying purposes.

In a letter dated December 15, 2010, IBM stated that it intends to omit the Proposal from its proxy materials being prepared for the 2011 annual meeting of shareholders. IBM claims that it can exclude the Proposal pursuant to Rule 14a-8(i)(7), as relating to the company's ordinary business operations. As discussed more fully below, IBM has not met its burden of establishing its entitlement to rely on this exclusion, and the Plan respectfully requests that the company's request for relief be denied.

Corporate Lobbying is a Significant Social Policy Issue. Defeating Reliance on the Ordinary Business Exclusion

Rule 14a-8(i)(7) allows exclusion of a proposal that relates to the company's ordinary business operations. The purpose of the exclusion is to keep stockholders from micromanaging the company's day-to-day business decision making. The exclusion reflects the Commission's judgment that stockholders generally do not have sufficient information to make ordinary business decisions and that stockholder oversight of such decisions is impractical because those decisions are made daily. Examples provided in the

American Federation of State, County and Municipal Employees, AFL-CIO

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Commission's 1998 release include the hiring and firing of employees, "decisions on production quality and quantity," and choice of suppliers. (Exchange Act Release No. 40,018 (May 21, 1998))

The ordinary business exclusion does not apply, however, to a proposal dealing with a "significant social policy issue," even if the subject matter of the proposal would otherwise be considered ordinary business. For instance, although proposals dealing with management of the workforce are generally considered to relate to ordinary business, companies have not been permitted to exclude proposals on the MacBride Principles—fair employment principles for businesses in Northern Ireland—on ordinary business grounds because ending religious discrimination in employment there was considered a significant social policy issue. (See, e.g., TRW Inc. (Jan. 28, 1986))

That a proposal's subject involves a company's products and services does not preclude it from being deemed a significant social policy issue. Sponsors of proposals addressing tobacco marketing to minors at a cigarette company (see Phillip Morris Companies Inc. (Feb. 22, 1990)); the sale of genetically-modified foods by a grocery chain (see Kroger Co. (Apr. 12, 2000)); and the selection of countries in which an oil exploration company should do business (see Chevron Corporation (Mar. 21, 2008)), among many others, successfully avoided exclusion on ordinary business grounds by arguing that the proposals implicated significant social policy issues, despite their close connections to the company's products or services. Thus, corporate lobbying can be considered a significant social policy issue (as discussed more fully below), defeating application of the ordinary business exclusion, even if lobbying is often¹ done on measures that affect a company's products or services.

The Intense Public and Media Focus on Corporate Lobbying and Its Effect on the Political Process Makes It a Significant Social Policy Issue

In the past several years, an intense public debate has arisen over the extent and role of corporate involvement in both direct and grassroots lobbying activities. Direct lobbying encompasses efforts made directly by companies and their lobbyists, as well as lobbying

¹ It is worth noting that companies may lobby on measures that have little or no connection with their products or services. For example, companies and their trade associations have vigorously lobbied against legislation and regulation that would provide public company stockholders with procedures for nominating director candidates using the company's proxy statement ("proxy access" procedures). (See, e.g., Stephen Grocer, "Proxy Access: The Biggest Businesses Get Their Way," *Deal Journal (Wall Street Journal)*, Aug. 4, 2010) The authors of a recent *Harvard Law Review* article note that management may use corporate resources to lobby against the expansion of stockholder rights that stockholders favor and argue that the likelihood that directors' and officers' interests may be very different from those of stockholders when it comes to corporate political speech, including lobbying, should take political speech decisions out of the realm of ordinary business. (Lucian Bebchuk and Robert Jackson, Jr., "Corporate Political Speech: Who Decides?" *Harvard Law Review*, Vol. 124, pp. 83-117 (2010))

undertaken by trade associations and other groups on behalf of their corporate members. Grassroots lobbying is an attempt to influence the general public, or segments thereof, with respect to elections, legislative matters or referenda. (See 26 U.S.C. section 162(e))

Extensive coverage in major national media outlets demonstrates that corporate lobbying has become a significant social policy issue. The public debate over corporate lobbying has greatly intensified in the past two years as a result of well-publicized corporate lobbying efforts against three pieces of reform legislation that enjoyed substantial public support--health care reform, climate change legislation and financial reform--as well as on other less high-profile measures.

Corporate lobbying on financial services reform was controversial in 2009 and 2010. CEOs of financial services companies tried to distance themselves from the vigorous stances against financial reform undertaken by their own lobbyists, pledging to support re-regulation of financial markets. A Wall Street Journal article reported on a White House meeting involving top executives from a number of large financial services firms, some of whom claimed that their lobbyists had "taken stronger stands than they would have wanted." (Jonathan Weisman, "Bank CEOs Pledge to Push for Re-Regulation," Wall Street Journal, Dec. 15, 2009) President Obama emphasized after that meeting that he had "no intention of letting [financial firms'] lobbyists thwart reforms necessary to protect the American people"; the day before the meeting, National Economic Council Director Lawrence Summers appeared on CNN to blast the industry's \$300 million lobbying effort. (Id.)

Lobbying by trade associations, financed by corporate members whose identities are not disclosed, received a great deal of attention because of concerns that it subverts disclosure regulations and allows corporations to avoid accountability for their lobbying activities. An October 2010 article in The New York Times, "Top Corporations Aid U.S. Chamber of Commerce Campaign," detailed the Chamber's role in channeling corporate funds to lobbying efforts aimed at influencing specific legislation, including health care and financial reform, as well as to a Chamber-affiliated foundation critical of regulation. (Eric Lipton, et al., "Top Corporations Aid U.S. Chamber of Commerce Campaign," The New York Times, Oct. 21, 2010) A 2009 New Yorker article described the internal fractures caused by the Chamber's lobbying against climate change legislation. (James Surowiecki, "Exit Through Lobby," The New Yorker, Oct. 19, 2009)

It is not possible to catalog the extensive national media coverage of the Chamber's recent lobbying efforts; some illustrative examples include:

- The New York Times (see Eric Lichtblau and Edward Wyatt, "Pro-Business Lobbying Blitz Takes on Obama's Plan for Wall Street Overhaul," The New York Times, Mar. 27, 2010 and Anne Mulhern, "'Hot Button' Climate Issue Spotlights How U.S. Chamber

- Sets Policy,” The New York Times, Oct. 6, 2009);
- MSNBC.com (see “Chamber of Commerce Opposes Obama’s Plans,” MSNBC.com, Aug. 9, 2009 and Jim Kuhnhehn, “Chamber Emerges as Formidable Political Force,” MSNBC.com, Aug. 21, 2010);
 - Newsweek (see Nancy Cook, “You Call This Financial Reform,” Newsweek, Oct. 15, 2009);
 - Bloomberg Business Week (see Jane Sasseen, “Financial Regulation: Main Street vs. the White House,” Bloomberg Business Week, Sept. 16, 2009 and Rebecca Christie and Timothy Homan, “Wolin Criticizes Lobbying Against Financial Overhaul,” Bloomberg Business Week, Mar. 24, 2010);
 - Forbes (see Thomas Cooley, “Lobbying Against Reform,” Forbes, Dec. 9, 2009) (“We are now in the midst of a very important national debate.”);
 - The Washington Post (see Brady Dennis, “House Panel Backs New Protection for Consumers,” The Washington Post, Oct. 23, 2009);
 - The Wall Street Journal (see Christopher Conkey, “Pro-Business Group Targets Obama Agenda,” The Wall Street Journal, June 11, 2009; Brody Mullins, “Chamber Ad Campaign Targets Consumer Agency,” The Wall Street Journal, Sept. 8, 2009; and Brody Mullins, “Financial-Services Regulation Fuels Tiff,” The Wall Street Journal, Oct. 14, 2009);
 - Roll Call (see Bennett Roth, “U.S. Chamber Reports Record Spending on Lobbying,” Roll Call, Oct. 19, 2009)
 - The Hill (see Silla Brush, “Chamber Pushes Dems to Cut New Financial Regulator’s Powers,” The Hill, Dec. 10, 2009);
 - CNNMoney (see Jennifer Liberto, “No Senate Deal on Consumer Financial Protection,” CNNMoney.com, Feb. 5, 2010); and
 - National Public Radio (see “Chamber Ads Aim to Stop CFPA,” Mar. 26, 2010) (available at marketplace.publicradio.org/display/web/2010/03/26/pm-chamber-of-commerce/?refid=0) (last visited Jan. 2, 2011)

Similarly, Bloomberg reported that the America’s Health Insurance Plans (“AHIP”) trade association gave the Chamber \$86 million to oppose a public option in health care reform, and to convince lawmakers to vote against the final bill, in 2009 and 2010. Critics such as the Center

for Responsive Politics lambasted the health insurers for covertly funding opposition to reform while negotiating with Democrats over the bill's contents. A lawyer specializing in political activity characterized the expenditure as "breathhtaking." (Drew Armstrong, "Insurers Gave U.S. Chamber \$86 Million Used to Oppose Obama's Health Law," Bloomberg, Nov. 17, 2010)

Former Cigna head of corporate communications turned corporate whistle-blower Wendell Potter garnered substantial media attention in 2009, when he testified before Congress and went public with his descriptions of underhanded health insurer practices. (See Kate Pickert, "The Making of a Health-Care Whistle-Blower," Time, Sept. 8, 2009) Among other things, Potter described the industry's "duplicitous PR campaign" of appearing supportive of reform but working behind the scenes through organizations like AHIP to kill it. (See Lee Fang, "'Duplicitous' Campaign of Insurers to Charm the Public While Secretly Killing Reform," ThinkProgress.org, Sept. 17, 2009 (available at thinkprogress.org/2009/09/17/potter-charm-dirty-campaign)(last visited January 2, 2011))

Potter stressed the role of insurers' lobbying and political expenditures in protecting them from negative consequences of their own behavior. (See pbs.org/moyers/journal/03052010/profile.html) Potter's media appearances and mentions are too numerous to list; he appeared on CNN, CBS News, Fox, ABC News, MSNBC and the BBC, among others, in 2009. A complete list, with links to video, can be found at wendellpotter.com/media/media-archive/.

Corporations' roles in funding simulated "grassroots" citizen communications, using third-party front groups, have also come in for a great deal of scrutiny and criticism recently. A Newsweek article noted in August 2009 that corporate-funded fake grassroots activism (also referred to as "astroturf" lobbying) was behind the protests over "death panels" that supposedly would result from health care reform legislation, as well as the "tea party" protests against the Obama administration's economic stimulus proposals. (Daniel Stone, "The Browning of Grassroots," Newsweek, Aug. 20, 2009) The article reported on a leaked email from the American Petroleum Institute seeking to orchestrate, through funding and logistical coordination, seemingly independent protests against climate change legislation. Corporate interests opposed to financial reform funded an ostensibly grassroots organization, "Stop Too Big To Fail," which opposed financial reform on the ground that it set the stage for another bailout. (See Paul Krugman, "Stop Stop Too Big To Fail," New York Times, Apr. 21, 2010)

In 2009, a scandal erupted when lobbying firm Bonner & Associates was contracted to run a grassroots lobbying campaign for the American Coalition for Clean Coal Electricity, an industry-funded group, against the American Clean Energy and Security Act. Bonner sent forged letters to a Virginia Congressman purporting to be from several Virginia senior citizens' women's, Hispanic and black charities and nonprofit organizations, expressing opposition to the legislation. (See Brian McNeill, "Perriello, Area Groups Contradict Lobbying Firm," The Daily

Progress (Charlottesville), Aug. 29, 2009)

The House Select Committee on Energy Independence and Global Warming held a hearing on the Bonner fraud. (See globalwarming.house.gov/mediacenter/pressreleases_2008?id=0162#main_content)(last visited Jan. 2, 2011)) Congress also probed whether the ACCCE had accurately reported its lobbying activities. (Anne Mulkern and Alex Kaplun, "Markey Expands ACCCE Investigation From Forged Letters to Lobbying Disclosures," The New York Times, Oct. 26, 2009)

The U.S. Supreme Court's decision in Citizens United v. FEC in January 2010 invalidating on free speech grounds certain provisions of the McCain-Feingold campaign finance reform law also served to focus attention on corporate lobbying activities, even though the provision struck down in the case dealt with election-related advertising. According to a former general counsel of the Federal Election Commission, the Citizens United decision empowered lobbyists, allowing them to say to lawmakers, "We have got a million we can spend advertising for you or against you—whichever one you want." (David Kirkpatrick, "Lobbyists Get Potent Weapon in Campaign Ruling," The New York Times, Jan. 21, 2010)

In sum, it is indisputable that there is a robust public debate over the role that corporate lobbying, including lobbying done through conduit organizations, plays in the U.S. political process. Accordingly, the Plan respectfully urges that corporate lobbying is a significant social policy issue and that IBM should therefore not be permitted to exclude the Proposal in reliance on the ordinary business exclusion.

Prior Determinations Did Not Analyze Whether Corporate Lobbying is a Significant Social Policy Issue and Did Not Allow Exclusion of Proposals Asking for Reporting on "Public Policy Advocacy"

In February 2009, the Staff issued determinations allowing exclusion of proposals at Bristol-Myers Squibb Company and Abbott Laboratories asking the companies to report on their lobbying activities and expenses related to the Medicare Part D Prescription Drug Program, on the ground that those proposals related to the companies' ordinary business operations "(i.e., lobbying activities concerning its products)." IBM cites those determinations in its request for no-action relief. The proponent of those proposals had unsuccessfully argued that the ordinary business exclusion should not apply because federal prescription drug price regulation in the Medicare program is a significant social policy issue.

The Proposal's focus is much broader than that of the Bristol-Myers Squibb and Abbott proposals, however. The Bristol-Myers Squibb proponent did not argue that corporate lobbying is a significant social policy issue but instead made the much more narrow claim that federal prescription drug price regulation is a significant social policy issue. Thus, the Staff did not

address whether corporate lobbying is a significant social policy issue. As detailed above, the Plan has made a compelling case that the answer to that question is "yes."

IBM downplays the similarities between the Proposal and the proposals in Wal-Mart Stores, Inc. (Mar. 29, 2010) and PepsiCo, Inc. (Feb. 26, 2010), in which the Staff declined to grant no-action relief on ordinary business grounds. Those proposals asked the board to report on the company's "process for identifying and prioritizing legislative and regulatory public policy advocacy activities," including a number of specific elements such as the "process by which the Company enters into alliances, associations, coalitions and trade associations for the purpose of affecting public policy," the "process by which the Company identifies, evaluates and priorities public policy issues of interest to the Company," and the "business rationale for prioritization."

"Public policy advocacy," as described in the Wal-Mart and PepsiCo proposals, is indistinguishable from lobbying. The supporting statement in the Wal-Mart proposal describes examples of Wal-Mart's activities that clearly qualify as lobbying—signing a letter to President Obama endorsing an employer mandate on business for health care coverage and supporting cap-and-trade legislation. The submission letters for both proposals characterize them as dealing with "lobbying."

Moreover, the Staff rejected arguments made by Wal-Mart and PepsiCo that are substantially similar to those advanced by IBM. Both companies, in their requests for no-action relief, argued that the proposals involved day-to-day operations and sought to micro-manage complex business matters on which shareholders could not make an informed judgment. More specifically, PepsiCo contended that the proposal submitted to it was excludable on ordinary business grounds because its public policy advocacy related to the company's products.

Finally, contrary to IBM's assertion, the Wal-Mart and PepsiCo proposals asked for detailed information relating to public policy advocacy or lobbying. Although they did not seek disclosure of specific expenditures, both proposals requested that the companies not only disclose their processes for identifying, evaluating and prioritizing public policy issues, but also identify and describe public policy issues of interest to the company, prioritize issues by their importance to creating shareholder value, describe the process by which the company enters into groups for the purpose of affecting public policy and explain the business rationale for prioritization. A report addressing all of those issues would be voluminous, especially in the case of a large global public company. The information requested in the Proposal would be no more intrusive or burdensome than the analysis sought in the Wal-Mart and PepsiCo proposals.

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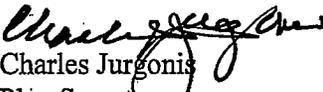
Securities and Exchange Commission

January 6, 2011

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If you have any questions or need additional information, please do not hesitate to call me at (202) 429-1007. The Plan appreciates the opportunity to be of assistance to the Staff in this matter.

Very truly yours,


Charles Jurgonis
Plan Secretary

cc: Stuart S. Moskowitz
Senior Counsel
Fax # 845-491-3203



International Business Machines Corporation
Senior Counsel
Corporate Law Department
One New Orchard Road, Mail Stop 329
Armonk, New York 10504

December 15, 2010

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

Subject: IBM Stockholder Proposal of AFSCME - Lobbying Report

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, I am enclosing six copies of a proposal (the "Proposal"), submitted to International Business Machines Corporation (the "Company" or "IBM") by AFSCME Employees Pension Plan, which will sometimes hereinafter be referred to for convenience as the "Proponent." The Proposal is attached as **Exhibit A** hereto. This letter is being filed with the Securities and Exchange Commission (the "SEC" or the "Commission") by the Company not later than eighty (80) calendar days before the Company files its definitive 2011 Proxy Materials with the Commission.

THE PROPOSAL

The Proposal states:

Resolved: That the stockholders of International Business Machines Corporation ("IBM" or the "Company") hereby request that IBM provide a report, updated annually, disclosing IBM's:

1. Policies and procedures for lobbying contributions and expenditures (both direct and indirect) made with corporate funds and payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including internal guidelines or policies, if any, for engaging in direct and grassroots lobbying communications.
2. Payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including the amount of the payment and the recipient.
3. The report shall also include the following for each payment, as relevant:
 - a. Identification of the person or persons in the Company who participated in making the decision to make the direct lobbying contribution or expenditure; and
 - b. Identification of the person or persons in the Company who participated in making the decision to make the payment for grassroots lobbying expenditures.

For purposes of this proposal, a "grassroots lobbying communication" is a communication directed to the general public that (a) refers to specific legislation, (b) reflects a view on the legislation and (c) encourages the recipient of the communication to take action with respect to the legislation.

The report shall be presented to the Audit Committee of the Board of Directors (the "Board") or other relevant oversight committee of the Board and posted on IBM's website to reduce costs to stockholders.

IBM believes the Proposal may properly be omitted from the proxy materials for IBM's annual meeting of stockholders scheduled to be held on April 26, 2011 (the "2011 Annual Meeting") for the reasons discussed below. To the extent that the reasons for omission stated in this letter are based on matters of law, these

reasons are the opinion of the undersigned as an attorney licensed and admitted to practice in the State of New York.

INTRODUCTION

This Proposal relates to providing more detailed disclosure of our Company's **lobbying** activities, many of which activities are undertaken by IBM as part of our ordinary business operations. To be clear, we recognize that the Staff has, in other circumstances, viewed other stockholder proposals that were drafted to focus on a company's **political contributions** as raising policy issues sufficient to take those proposals outside the scope of a company's ordinary business operations, but this is not a political contributions proposal.¹ **More importantly, as our Company's Business Conduct Guidelines make clear, IBM does not make contributions or payments or otherwise give any endorsement of support which would be considered a contribution directly or indirectly to political parties or candidates, including through intermediary organizations, such as political action committees, campaign funds, or trade or industry associations.**² Thus, to the extent the Proposal could in any way be viewed as

¹ Compare The Chubb Corporation (January 27, 2004)(proposal to prepare a report contining the following: (1) Chubb's policies for **political contributions** made with corporate funds, political action committees sponsored by Chubb; and employee **political contributions** solicited by senior executives of the company; (2) an accounting of Chubb's **political contributions**; (3) a business rationale for each of Chubb's **political contributions**; and (4) the identity of the person or persons involved in making decisions with respect to Chubb's **political contributions**); Time Warner, Inc. (February 11, 2004)(proposal requesting (1) a statement describing Time Warner's political participation policy and business rationale for **its participation in partisan politics**; (2) a description of Time Warner's decision-making process relating to **political contributions**; (3) an accounting of Time Warner's money contributed to **political candidates**, campaigns, parties or committees; (4) an accounting of Time Warner's resources utilized for **political campaign** purposes, or made available to **political candidates**; (5) an accounting of Time Warner's resources utilized with respect to ballot initiatives; and (6) the identity Time Warner personnel involved in making decisions with respect to Time Warner's **political contributions**). We believe our Proposal is distinguishable on its face from the combination "political contributions/campaign finance/lobbying" proposal filed at General Electric for the 2000 proxy, which proposal was not subject to exclusion. See General Electric Company (February 22, 2000)(proposal to have GE publish a report outlining GE's policy and use of shareholder funds for **political** purposes. The Report there sought for GE to summarize: (1) GE's federal, state and local **campaign finance contributions** (including soft money) and lobbying expenses; (2) GE's policies applied in allocating shareholder funds for **political purposes**; and (3) GE's lobbying position on campaign finance reform). In contrast to GE, our Proposal relates solely to **lobbying** activities, not to political contributions or other types of campaign finance activities.

² In this connection, Section 5.4 of IBM's Business Conduct Guidelines provides:

relating to the separate topic of “political contributions” -- *which it should not* -- the Proposal would also be subject to exclusion as **moot** under Rule 14a-8(i)(10). See e.g., AT&T Corporation (January 6, 1995) (proposal that AT&T reduce by 50% its contributions to organizations who lobby and promote abortion determined to subject to exclusion under former Rule 14a-8(c)(10) when AT&T did not make any such contributions); First Federal Bankshares, Inc. (September 18, 2000)(proposal that the board place no restrictions on the eligibility of any adult shareholder to run or serve as director was properly excluded under Rule 14a-8(i)(10) when there were no such restrictions on director eligibility).

As will be shown in greater detail below, much of the **lobbying** activities IBM engages in which form the subject of the Proposal -- for which the Proponent seeks a detailed lobbying report -- are undertaken by IBM in the ordinary course of our business.

5.4 Participation in political life

IBM will not make contributions or payments or otherwise give any endorsement of support which would be considered a contribution directly or indirectly to political parties or candidates, including through intermediary organizations, such as political action committees, campaign funds, or trade or industry associations. For example, IBM will not purchase tickets or pay fees for you or anyone else to attend any event where any portion of the funds will be used for election campaigns. In many countries, political contributions by corporations are illegal. IBM will not make such contributions, even in countries where they are legal. Also, the company will not provide any other form of support that may be considered a contribution.

You must not make any political contribution as a representative of IBM. You may not request reimbursement from IBM, nor will IBM reimburse you, for any personal contributions you make.

In addition, you should recognize that your work time or use of IBM assets is the equivalent of such a contribution. Therefore, you will not be paid by IBM for any time spent running for public office, serving as an elected official or campaigning for a political candidate, unless required by law. You can, however, take reasonable time off without pay for such activities if your IBM duties permit the time off and it is approved by your manager. You also may use vacation time for political activity. You must consult with IBM Governmental Programs before accepting a political appointment to any government entity or running for government office at the local, state, or federal level. (emphasis added)

See http://www.ibm.com/investor/governance/business-conduct-guidelines.wss#Header_54

In addition to the Company’s Business Conduct Guidelines, IBM also publishes a policy statement containing additional detail prohibiting political activities at the Company level. This policy statement provides, in pertinent part:

It is IBM's long-standing policy that we participate in politics as private citizens, not as IBMers. Therefore, it is the policy of the IBM Company not to make contributions of resources such as money, goods or services to political candidates or parties. This policy applies equally in all countries where IBM does business, regardless of whether or not such contributions are considered legal in any host country. (emphasis added)

<http://www.ibm.com/ibm/responsibility/policy5.shtml>

GROUNDS FOR EXCLUSION

The Proposal may be excluded pursuant to Rule 14a-8(i)(7). By requesting a lobbying report that covers operational items, the Proposal relates to the ordinary business operations of the Company.

ANALYSIS

The Company believes that the Proposal may properly be omitted from the Company's proxy materials for the 2011 Annual Meeting pursuant to the provisions of Rule 14a-8(i)(7) because it deals with matters relating to the conduct of the ordinary business operations of the Company. The Commission has expressed two central considerations underlying the ordinary business exclusion. The first underlying consideration expressed by the Commission is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to shareholder oversight." See Amendments to Rules on Shareholder Proposals, Release 34-40018 (63 Federal Register No 102, May 28, 1998 at pp. 29,106 and 29,108). In this connection, examples include "the management of the workforce, such as the hiring, promotion and termination of employees, decisions on production quality and quantity and the retention of suppliers." (*id.* at 29,108) (emphasis added) "The second consideration involves the degree to which the proposal seeks to micro-manage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *id.* **Such micromanagement may occur where a proposal "seeks to impose specific... methods for implementing complex policies."** *id.* The Commission had earlier explained in 1976 that shareholders, as a group, are not qualified to make an informed judgment on ordinary business matters due to their lack of business expertise and their lack of intimate knowledge of the issuer's business. See Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 12999 (November 22, 1976).

The Commission has also reiterated "[t]he general underlying policy of this exclusion is consistent with the policy of most state corporate laws: to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." See Amendments to Rules on Shareholder Proposals, Release 34-40018 (63 Federal Register No 102, May 28, 1998 at p. 29,108). See also Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 relating to Proposals by Security Holders, Exchange Act Release No. 19135 (October 14, 1982), at note 47.

Under this standard, the instant Proposal is subject to omission under Rule 14a-8(i)(7). The Proposal seeks to have the Company deliver, on an annual basis, a

detailed report on IBM's lobbying activities, which the Proponent has defined to include direct, indirect and grassroots lobbying activities, and which report needs to contain each of the "drill-down" items enumerated in the Proposal. As will be shown, *infra*, the Proponent appears unsatisfied with the detail in the disclosures already set forth in our Federal Lobbying reports, and seeks, among other things, additional disclosure on items contained within those reports, including, *inter alia*, specific additional disclosures relating to IBM's lobbying activities conducted by IBM in the ordinary course of business in furtherance of the marketing of IBM products, services and other offerings to a variety of IBM customers (collectively "Products"). Moreover, as will be shown, the Company already has detailed policies and procedures for overseeing and reporting on our lobbying activities, which the instant Proposal would have us supplement in order to address the specific requirements of the Proposal. Since implementation of the Proposal would require the Company to report on a host of lobbying activities in the format required by the Proponent, which lobbying activities are conducted as an integral part of our Company's ordinary business operations, the Proposal is subject to exclusion under Rule 14a-8(i)(7).

- **Requesting a "report" containing additional and specifically detailed disclosures on matters relating to IBM's ordinary business operations is fully excludable under Rule 14a-8(i)(7).**

At the outset, it should be pointed out that in Release 34-20091 (August 16, 1983), the Commission implemented a significant change in the staff's *interpretation* of the ordinary business exclusion. Prior to that time, the Staff took the position that proposals requesting issuers to prepare "reports" on specific aspects of their business, or to form "special committees" to study a segment of their business, would *not* be excludable under the ordinary business exclusion. This interpretation was problematical, and the Commission recognized it. In Release 34-20091, the Commission found that its earlier interpretation raised form over substance and rendered the provisions of the ordinary business exclusion largely a nullity. As a result, the Commission changed its interpretative position, and following the implementation of Release 34-20091, the Commission now considers whether the subject matter of the special report or the committee sought by a proponent involves a matter of ordinary business; where it does, the proposal **will** be excludable as ordinary business under Rule 14a-8(i)(7). See, e.g., The Coca Cola Co. (January 21, 2009, reconsideration denied, April 21, 2009)(excluding proposal seeking a report evaluating new or expanded options to enhance transparency of information to consumers of bottled beverages); FedEx Corporation (July 14, 2009)(excluding proposal requesting a report addressing issues relating to American Indian peoples, including FedEx's efforts to identify and disassociate from any names, symbols and imagery which disparage American Indian peoples in products, advertising, endorsements,

sponsorships and promotions, as relating to FedEx's ordinary business operations (i.e., the manner in which a company advertises its products)).

- **The Subject Matter of the Proponent's Desired Lobbying Report involves IBM's Ordinary Business Operations.**

In the instant matter, and as will be shown below, the subject matter and detail required by the instant Proposal, i.e., to have the Company provide a report annually detailing the Company's direct and "grassroots" lobbying activities – including the Company's lobbying policies, procedures and drill-down detail information as to who participated in and approved each business activity / expenditure – necessarily includes a variety of activities and expenditures incurred by IBM in the ordinary course of business which are made in connection with the sales, support and servicing of IBM's mainline product and service offerings. Since these activities, payments and expenditures relate to our Company's ordinary business operations, the Proposal is subject to exclusion *in its entirety* under Rule 14a-8(i)(7).

- **When any portion of a proposal relates to ordinary business operations, the entire proposal is subject to exclusion under Rule 14a-8(i)(7).**

The Staff has also repeatedly ruled that when any portion of a proposal implicates ordinary business matters, the entire proposal must be omitted under Rule 14a-8(i)(7). Wal-Mart Stores, Inc. (March 15, 1999); The Warnaco Group, Inc. (March 21, 1999)(to same effect); Kmart Corporation (March 12, 1999)(to same effect); Z-Seven Fund, Inc. (November 3, 1999) (proposal containing governance recommendations as well as ordinary business recommendations was permitted to be excluded in its entirety, with the Staff reiterating its position that it is not their practice to permit revisions to shareholder proposals under the ordinary business exception). Thus, even if a portion of the instant Proposal is seen as falling outside the ambit of ordinary business, this should make absolutely no difference in the legal analysis of the entire Proposal's excludability under Rule 14a-8(i)(7). If any portion of the Proposal relates to an ordinary business matter, the *entire* Proposal must be excluded. Associated Estates Realty Corporation (March 23, 2000); E*Trade Group, Inc. (October 31, 2000). In this connection, and for the reasons set forth in this letter, the Company believes a substantial portion of our lobbying activities relate to our ordinary business operations, and the Proposal, which seeks a variety of "drill-down" disclosures related to our ordinary business operations, should be excluded under Rule 14a-8(i)(7).

In the instant case, when the text of the Proposal is read together with the Supporting Statement, it is clear that the Proposal, if implemented, would require IBM to disclose additional and specific detail around a host of existing

lobbying activities already contained in our existing Lobbying Reports, which activities are undertaken by IBM in connection with the sales, service and support of IBM products and services – i.e., lobbying activities that relate to our Company’s ordinary business operations, as well as other business lobbying activities. As will be shown, *infra*, it is also clear that the Proponent’s stated need for the IBM Board and its stockholders to review the “drill-down” level Report it would have us create in order to “evaluate the use of corporate assets for direct and grassroots lobbying and the risks the spending poses” does not change the nature of the Proposal as one subject to outright exclusion under Rule 14a-8(i)(7).

In this connection, the Proponent, having reviewed IBM’s Federal Lobbying reports, writes in the third paragraph of the Supporting Statement that:

“IBM spent about \$11.5 million in 2008 and 2009 on direct lobbying activities, according to the Company’s disclosure reports [U.S. Senate Office of Public Records]. This figure may not include grassroots lobbying, which may indirectly influence legislation by mobilizing the public to support or oppose it.”

The Proponent, evidently not satisfied with the quantum of data IBM provided in our Federal Lobbying reports, is now looking for a more “complete picture” of our lobbying activities. To this end, the Proponent goes on to write in the fourth paragraph of its Supporting Statement:

“Publicly available data does not provide a complete picture of IBM’s lobbying expenditures. IBM’s Board and its stockholders need complete disclosure to be able to evaluate the use of corporate assets for direct and grassroots lobbying and the risks the spending poses.”

In order for the Company to provide the instant Proponent with the “complete picture” it desires, a great degree of additional detail would be required to complete the report. Implementation of the Proposal – calling for disclosure of the Company’s lobbying policies and procedures, and all direct and indirect lobbying contributions, expenditures and payments, including, *inter alia*, the person or persons in the Company who participated in making the decision to make each contribution, expenditure and payment -- would necessarily include supplemental disclosure on specific lobbying activities that relate directly to the Company’s mainline businesses – the sales, servicing and support of IBM products and services, as well as to a variety of other aspects of the Company’s ordinary business operations. Given the quantum of data and desired disclosures on ordinary business matters, and the Proponent’s desire to impose its own specific detailed methodology for the disclosures, implementation of the Proposal would clearly probe too deeply into matters of a complex nature upon which stockholders, as a group, are not in a position to make an informed

judgment. Under these circumstances, and as shown below, supplementing our existing disclosures with specific product-related lobbying disclosures in the manner specified by the Proponent impermissibly implicates ordinary business matters under Rule 14a-8(i)(7).

- **Seeking additional disclosure relating to the Company's lobbying activities in connection with the Company's marketing of products, services and solutions, as well as additional disclosures relating to other aspects of the Company's ordinary business operations, makes the Proposal subject to exclusion in its entirety under Rule 14a-8(i)(7).**

1. Operations-Related Lobbying is an Ordinary Business Matter

IBM makes its consulting services, software, hardware and other integrated information technology offerings (sometimes collectively hereinafter referred to for convenience as "Products") available to our customers and potential customers in the ordinary course of our business. Part of the Company's approach for ensuring that our Products are able to be optimally positioned and received in the marketplace is to monitor the various laws, rules and regulations that affect our Products. In addition, in connection with our marketing of IBM products and services, and related procurement activities, we also monitor *proposed* legislation and regulatory initiatives affecting our Products, and, as appropriate, engage in related lobbying activities in connection with such proposed legislation and regulation -- all in the ordinary course of our Company's business.

2. The IBM Business Conduct Guidelines and the IBM Government Client Guidelines Address Individual Employee and Corporate Activities, including Lobbying Activities

IBM's **Business Conduct Guidelines** (BCGs) is our global code of business conduct, standards, and values, for IBM directors, executive officers and employees.

See www.ibm.com/investor/governance/business-conduct-guidelines.wss

The IBM BCGs provide direction on a variety of issues common to every IBM employee. In addition, as a supplement to our BCGs, IBM has also created an additional set of guidelines for employees who deal with government-owned entities. These employees are also required to comply with the IBM Government Client Guidelines (GCGs).

See <http://www.ibm.com/investor/pdf/guidelines.pdf>

Each IBMer is required to understand and comply with both the BCGs and, as applicable, the GCGs, and to exercise good judgment at all times. Since IBM's reputation for integrity and business are never to be taken for granted, a violation of any IBM guideline may result in disciplinary action, including dismissal.

3. The IBM Governmental Programs Office oversees the Company's Lobbying Activities in the Ordinary Course of Business, which includes ordinary marketing and procurement activities with the government.

IBM's Governmental Programs Office is charged with the responsibility of overseeing and monitoring the Company's lobbying activities. This is done in the ordinary course of our business. Because of the complex nature of lobbying activities, and the variety of rules and regulations associated therewith, this oversight responsibility is specifically mandated under IBM's BCGs. In this connection, Section 4.9.7 of the IBM Business Conduct Guidelines provides:

Any contact with government personnel for the purpose of influencing legislation or rule making, including such activity in connection with marketing or procurement matters, is considered lobbying. Some laws also define lobbying even more broadly to include our normal marketing activities. You are responsible for knowing and adhering to all the relevant lobbying laws and associated gift laws, if applicable, and for compliance with all reporting requirements. (emphasis added)

You must obtain the prior approval of IBM Governmental Programs and advice of IBM counsel to lobby or authorize anyone else (for example, a consultant, agent, or business partner) to lobby on IBM's behalf, including when lobbying involves only normal marketing activities and not influencing legislation or rule making.

See http://www.ibm.com/investor/governance/business-conduct-guidelines.wss#Header_497

Similarly, the Company's GCGs governing Lobbying and Procurement in the public sector, provide:

3.1 Lobbying

Any contact with Government Owned Entity client personnel for the purpose of influencing legislation or rule making is considered lobbying. All lobbying is the responsibility of IBM Governmental Programs. You are not permitted to lobby or authorize anyone else (for example, a consultant, agent, Business Partner, etc.) to lobby on IBM's behalf without prior approval from IBM Governmental Programs. Similarly, you must also obtain approval before registering yourself or anyone else as a lobbyist.

If you are authorized by IBM Governmental Programs to engage in lobbying activities, you are responsible for knowing and adhering to all the relevant lobbying laws and for compliance with all reporting requirements.

3.1.1 Procurement Matters

When marketing or procurement matters become the subject of legislative action or executive branch rule making, they become matters of public policy. Any lobbying activities on government procurement and appropriation matters require the prior approval of IBM Governmental Programs.

Some laws define lobbying very broadly. Under these laws, some of our normal marketing activities are lobbying. In that case, we may need to register our marketing representatives as lobbyists, or track and disclose their activities to the relevant government authority. As long as these normal marketing activities do not involve influencing legislation or rule making, IBM Governmental Programs' approval is not required.

(emphasis added)

IBM's Corporate Governmental Programs Office is responsible for managing IBM's worldwide public policy issues and government relations, and for overseeing the Company's lobbying activities -- including the preparation and filing of the Federal Lobbying reports referenced herein. Our Corporate Governmental Programs Office also formulates IBM's position on all public policy issues, representing IBM's views to government decision makers, and coordinating all IBM representations, either directly or through industry associations, before governments on public policy issues. Our Corporate Governmental Programs Office is staffed with experienced and specialized professionals, who focus, report and comment on a variety of regulatory and legislative issues which have an impact on our Company and its Products. Our Governmental Programs Office maintains good public relations and effective relationships with elected officials and government departments that affect our business. In establishing a public position on legislation and regulations that affect our Company, Products and overall business operations, the Company considers whether that position conforms to IBM's policies and practices, as well as its potential impact (financial and otherwise) on the Company, its Products, and its overall business operations. The Governmental Programs Office has its own issue experts, dedicated in-house legal counsel, as well as access to outside consultants, industry groups and others in order to help ensure that the Company remains abreast of all potential changes in laws and regulations affecting the Company's Products, as well as other activities that affect the Company's normal business operations.

In the instant case, Paragraph 3 of the Supporting Statement shows that the Proponent has reviewed the Company's Federal Lobbying disclosure reports, as filed with the United States Congress, but finds the quantum of disclosures to be insufficient. As a result, the Proponent now seeks for the Company to provide a variety of additional, "drill-down" detail on each of the Company's lobbying

activities -- many of which activities include lobbying that relates directly to the Company's Products as well as to its ordinary business operations.

As a U.S. government contractor, we market our Company's products and services in the ordinary course of business. IBM must comply with, and make all applicable disclosures in accordance with, the Federal Lobbying Disclosure Act ("LDA"). A reading of the definitions of "**lobbying activities**" and "**lobbying contacts**" found in 2 U.S.C. section 1602(7) and 2 U.S.C. section 1602(8)(A)(iii), makes clear that qualifying communications in connection with **the negotiation, award or administration of a Federal contract** are subject to the LDA and the disclosures required thereunder. (emphasis added).

(7) Lobbying activities

The term "lobbying activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

(8) Lobbying contact

(A) Definition

The term "lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—

(iii) the administration or execution of a Federal program or policy **(including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license)**...

http://www.law.cornell.edu/uscode/html/uscode02/usc_sec_02_00001602----000-.html

Since qualifying communications in connection with the negotiation, award or administration of a Federal contract is something that is expected in connection with our ordinary marketing activities, implementation of the Proposal in the form required by the instant Proponent would require additional disclosures related to IBM's Product-related lobbying activities and business operations -- disclosures that have been determined in prior Staff letters to be subject to exclusion under Rule 14a-8(i)(7).

4. **Proposals supporting or opposing legislation that affects a corporation's ordinary business operations is --in itself -- ordinary business.**

A variety of Staff letters issued over the years support the exclusion of the instant Proposal. In this connection, proposals advocating supporting or opposing legislation that affects a corporation's ordinary business operations is, *in itself*, ordinary business. Pacific Telesis Center (February 2, 1990)(proposal recommending "that the Board adopt a corporate policy committed to providing the timely development of quality *affordable child care assistance* to its employees through corporate action and State and Federal laws" was excluded as ordinary business because the subject matter contemplated by the proposal -- employee benefits such as child care -- was related to the company's ordinary business operations); Southern California Edison Co. (January 20, 1984)(proposal mandating that neither corporate funds nor manpower shall be expended in support of, or opposition to, legislation at the local, state or national level which does not bear directly on the business interests of the company was properly excluded by staff as ordinary business, "since it appears to deal with a specific referenda or lobbying activity that relates directly to the [c]ompany's ordinary business (i.e., the protection of the safety of its employees.)"); See General Motors Corporation (April 7, 2006)(proposal to petition the U.S. Government for improved CAFE standards for light duty trucks and cars was excluded as ordinary business, as the proposal was "directed at involving General Motors in the political or legislative process relating to an aspect of General Motors' operations"); General Motors Corporation (March 13, 1978)(ruling that "communication, directly and indirectly with Congress, and other governmental units concerning legislative matters relating to the Company's products" is an ordinary business matter).

The same result should apply here. The lobbying IBM engages in is not undertaken in a vacuum. Rather, such lobbying activities are undertaken under the supervision of the IBM Governmental Programs Office, following careful evaluation of the issues, and appropriate consultations with the cognizant IBM business units. These activities are undertaken in the ordinary course of business in order to ensure that such lobbying activities further the operational goals of IBM as a leader in the information technology business.

A rationale for excluding the instant lobbying Proposal can also be found in the recent letters in Bristol-Myers Squibb Company (February 17, 2009) and Abbott Laboratories (February 11, 2009) letters. In these proposals, the stockholder was also dissatisfied with the quantum of information contained within those registrants' Federal lobbying reports, and filed proposals seeking for those

registrants to prepare more detailed reports that focused on having the registrants do two things: (i) describe their lobbying activities and expenses relating to the Medicare Part D Prescription drug program, and (ii) provide a description of the lobbying activities and expenses of any entity supported by those registrants during the 110th Congress.

Both registrants argued -- and the Staff concurred -- that the proposal could be omitted as a matter of ordinary business because the reports desired by that stockholder related to specific lobbying activities concerning their respective products. The same result should apply here. In fact, the ultimate disclosures resulting from implementation of the instant Proposal would require much greater ordinary business disclosures than in Bristol-Myers and Abbott. Because the language of the instant Proposal is phrased to include a report on all lobbying activities, and because some laws define "lobbying" even more broadly to include IBM's normal marketing activities, were the Proposal to be implemented as drafted, IBM would be required to supplement our existing disclosures with a variety of additional information, including a host of information relating to our own normal marketing activities. See the discussion and definition of a "lobbying contact" as set forth in 2 U.S.C. section 1602(8)(A)(iii), *supra*.³ Inasmuch as the Proposal clearly encompasses IBM's ordinary business marketing activities that constitute "lobbying" under the Proposal, disclosure of these "lobbying" activities, as called for under the Proposal, causes the *entire* proposal to be subject to exclusion under Rule 14a-8(i)(7).

In reading the Proposal and supporting statement together, additional support for the exclusion of the Proposal can also be found in Staff letters excluding proposals dealing with "specific lobbying, advertising and other activities relating to the conduct of the Company's ordinary business operations," even where the subject matter of the proposals may have otherwise raised significant policy matters. General Electric Company (January 29, 1997)(proposal to prohibit payment of company funds to oppose citizen ballot initiatives, except for initiatives specifically targeting GE products, other than nuclear reactors, and initiatives which are demonstrably designed to give a competitive advantage to another company excluded as ordinary business (i.e., lobbying activities which relate to the GE's products)); Philip Morris Companies Inc. (February 22, 1990)(proposal seeking report on company's lobbying activities and expenditures to influence legislation regarding cigarette advertising, smoking in public places and exploiting foreign markets was properly excluded as ordinary business--

³ http://www.law.cornell.edu/uscode/html/uscode02/usc_sec_02_00001602----000-.html

lobbying activities concerning its products); see General Electric Company (February 2, 1987)(proposal to prepare a cost-benefit analysis of the company's nuclear promotion from 1971 to the present, including costs related to lobbying activity and the promotion of nuclear power to the public); Consolidated Edison Company of New York Incorporated (April 30, 1984) (proposal relating to a request that the company cease contributions to the U.S. Committee for Energy Awareness and a request that the company publish a report discussing its contributions and lobbying efforts in support of nuclear and coal energy sources was properly excluded under former Rule 14a-8(c)(7), "*since it appears to deal with specific lobbying, advertising and other activities that relate to the operation of the [c]ompany's business.*"); Dr. Pepper Company (February 2, 1978)(proposal "not to spend any more money to defeat 'Bottle Bill' referenda or legislative attempts in various states" was properly excluded under former Rule 14a-8(c)(7) "since the proposal would appear to direct the management to take action with respect to a matter relating to the conduct of the ordinary business operations of the Company (i.e., the expenditure of Company funds to influence legislation affecting the packaging of their products."); General Motors Corporation (March 17, 1993)(proposal seeking to have company cease all lobbying and other efforts to oppose the "Bryan" bill or any similar legislation that would increase CAFE (Corporate Average Fuel Economy) standards was properly excluded under former Rule 14a-8(c)(7), with the Staff noting that the proposal "appears to be directed toward the company's lobbying activities concerning its products" and therefore "to deal with decisions made by the company with respect to its business operations."); see also Philip Morris Companies Inc. (January 3, 1996)(refraining from legislative efforts to preempt local ordinances concerning sale, distribution, use, display or promotion of cigarettes or other tobacco products was excluded as ordinary business -- lobbying activities concerning the company's products). Hence, even if the Staff were to view a portion of the Proposal as falling outside of IBM's ordinary business, the very same result should apply to exclude the instant Proposal, by reason of the specific additional "drill-down" lobbying disclosures the Proposal would have this Company make in connection with our Products and our other ordinary business activities.

5. Application to IBM

In the instant case, and as noted earlier, the Proponent has reviewed the Company's Federal Lobbying Disclosure Act Reports, which are filed on a quarterly basis by IBM's Corporate Governmental Programs Office. Those reports already contain a variety of disclosures on our legislative and regulatory lobbying activities connected to actual and potential marketing opportunities for IBM's Products. Since the disclosure in such reports do not provide the Proponent with the quantum of "drill-down" detail it has described in the Proposal, the Proponent would, among other things, have the Company expand

upon all of our existing lobbying disclosures, including Product-related disclosures in a separate report, which report would necessarily require, among other items, specific lobbying disclosures in the form specified by the Proponent. The type of micromanagement required by this *sui generis* Proposal, “**seek[ing] to impose specific...methods for implementing complex policies,**” is a particularly cogent reason for exclusion of the Proposal under Rule 14a-8(i)(7). See Amendments to Rules on Shareholder Proposals, Release 34-40018 (63 Federal Register No 102, May 28, 1998 at p. 29,108).

In addition, and as earlier noted in Section 4.9.7 of IBM’s Business Conduct Guidelines, since “[s]ome laws also define lobbying even more broadly to include our normal marketing activities,” implementation of the instant Proposal would also require the Company disclose a variety of additional expenditures that constitute “**lobbying**” under the Proposal, even though these expenditures relate to IBM’s normal marketing activities. These disclosures made in support of specific marketing activities would constitute ordinary business disclosures (i.e., in connection with our Products). As such, the Proposal should be excluded *in its entirety* under Rule 14a-8(i)(7).

The Company’s existing quarterly Federal Lobbying Disclosure Act Reports, which are readily available on the websites of both the U.S. Senate and the U.S. House of Representatives at

<http://soprweb.senate.gov/index.cfm?event=chooseFields> and
<http://disclosures.house.gov/ld/ldsearch.aspx>

respectively, already set forth certain lobbying disclosure on bills and other matters that directly relate to IBM’s marketing of products, services and solutions in the ordinary course of our business. The last three Reports filed by IBM in 2010 can be found at:

<http://disclosures.house.gov/ld/pdfform.aspx?id=300326574> (3Q 2010)

<http://disclosures.house.gov/ld/pdfform.aspx?id=300298215> (2Q 2010)

<http://disclosures.house.gov/ld/pdfform.aspx?id=300279054> (1Q 2010)

We are supplying the following additional information on the lobbying activities already listed in these Federal lobbying reports in order to make clear that these lobbying activities relate to IBM’s Products. In addition to validating the ordinary business nature of IBM’s existing lobbying activities for purposes of this letter, the additional disclosure for each payment or expenditure within the report, in the form desired by the Proponent, would also constitute ordinary business disclosure.

Set forth below is a partial listing of some of the bills listed in the above referenced lobbying reports. For further clarity, we have supplemented this listing with additional information showing the connection to IBM's ordinary business activities. We are also providing, by footnote disclosure, the relevant nexus to IBM's general involvement in these areas as an information technology leader.

- **S. 3800, Department of Defense Appropriations Act 2011** -- the Company's lobbying activities relate to IBM's trusted foundry work connected with sales by IBM's Systems and Technology Group ("STG") for contracts relating to the design and testing of products for such United States government customers as the Department of Defense and the National Security Agency;
- **S. 3607, Department of Homeland Security Appropriations Act 2011** -- the specific lobbying activities relate to IBM Global Business Services contracts with the Department of Homeland Security ("DHS") Customs and Border Protection on the Automated Commercial Environmental and DHS Citizens and Immigration Services ("CIS") on CIS modernization activities⁴;
- Draft bill "**The Surface Transportation Authorization Act of 2009 Innovation**" -- The Company's lobbying activities relate to a possible sales opportunity for IBM's "Smarter Transportation"⁵ solutions;
- **Highway and Transit Program Funding - Reauthorization** --the specific lobbying activities relate to a possible sales opportunity for IBM's "Smarter Transportation" solutions;
- **P.L. 111-5 American Recovery and Reinvestment Act of 2009** -- the specific lobbying activities relate to potential health information technology (IT) opportunities for IBM Sales and IBM Research units ---see IBM's "Smarter Health Care"⁶ solutions;

⁴ IBM's overall business capabilities addressing the myriad of issues associated with the concept of "Homeland Security" are noted on our website at <http://www-935.ibm.com/services/us/index.wss/offering/igs/a1005300>

⁵ The IBM "Smarter Transportation" solutions referenced above relate to the marketing of a variety of business solutions by IBM in the ordinary course of business, as part of IBM's "Smarter Planet" offerings. http://www.ibm.com/smarterplanet/us/en/transportation_systems/overview/index.html?re=CS1

⁶ Additional information about IBM's "Smarter Health Care" solutions, which are marketed by IBM in the ordinary course of business, can be found at

http://www.ibm.com/smarterplanet/us/en/healthcare_solutions/ideas/index.html?ca=agus_brsphlthlp-

- **H.R. 1/S. 1 The American Recovery and Reinvestment Act of 2009** -- relating to lobbying on broadband investment for funding of broadband sales opportunities;⁷
- **Highway and Transit Funding** -- relating to lobbying for intelligent transportation grants and possible IBM Sales and IBM Research unit opportunities; and
- **Energy Grand Challenges** -- relating to IBM Research and IBM STG funding opportunities for “exascale computing.”⁸

Virtually all of the above lobbying activities are conducted as part of IBM’s ordinary business operations. Notwithstanding that these are ordinary business activities, for each of the above-referenced activities, the Proponent would require even greater disclosures and even more detailed “drill-down” reporting. Detailed disclosure of this nature with respect to ordinary business matters is

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⁷ Additional information about IBM’s “Smarter Stimulus” activities -- including products and services in the Broadband arena -- can be found at:

http://www.ibm.com/smarterplanet/us/en/economic_stimulus/ideas/

⁸ IBM’s role in Exascale Computing is currently a hot topic in the news. See <http://www-03.ibm.com/press/us/en/pressrelease/33115.wss>

Made in IBM Labs: Breakthrough Chip Technology Lights the Path to Exascale Computing

IBM Silicon Nanophotonics uses optical signals to connect chips together faster and with lower power

Yorktown Heights, N.Y. - 01 Dec 2010: IBM (NYSE: [IBM](#)) scientists today unveiled a new [chip technology](#) that integrates electrical and optical devices on the same piece of silicon, enabling computer chips to communicate using pulses of light (instead of electrical signals), resulting in smaller, faster and more power-efficient chips than is possible with conventional technologies.

The new technology, called CMOS Integrated Silicon Nanophotonics, is the result of a decade of development at IBM's [global Research laboratories](#). The patented technology will change and improve the way computer chips communicate - by integrating optical devices and functions directly onto a silicon chip, enabling over 10X improvement in integration density than is feasible with current manufacturing techniques. In addition to connecting chips together faster and with lower-power, the technology will enable a new class of terabyte-per-second single-chip transceivers that can increase the number of interconnects within a computer system by hundreds of millions. This technology also will advance IBM’s Exascale computing program, which is creating a supercomputer that can perform one million trillion calculations – or an Exaflop – in a single second. The Exascale supercomputer will be approximately one thousand times faster than the fastest machine today.

precisely what Rule 14a-8(i)(7) is designed to avoid. See generally International Business Machines Corporation (December 17, 2008)(proposal for Company to provide detailed information regarding employee health benefits and to join with other corporations to support the establishment of a national health insurance system excluded under Rule 14a-8(i)(7)); International Business Machines Corporation (January 13, 2005)(proposal to have the board prepare a report examining the competitive impact of rising health insurance costs, including information regarding health care costs and expenditures and steps or policies that the board has adopted, or is considering, to reduce these costs excluded under Rule 14a-8(i)(7)). In addition to the fact that disclosures for each of the above-listed activities clearly relate to the marketing of IBM Products -- ordinary business activities -- the disclosures specifically required by the instant Proposal (including, *inter alia*, providing and reporting on the policies and procedures for all lobbying contributions, expenditures and communications; internal guidelines; listing of all individual lobbying expenditures and payments, as well as the person(s) who participated in the decisions to undertake each of the lobbying activities and expenditures) --impermissibly seeks to micro-manage the Company by imposing the Proponent's own specific disclosure methodology that probes too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.

Indeed, it is the "drill-down" nature of the detail required by the Proponent that readily distinguishes this Proposal from a very different proposal calling for a "Lobbying Priorities Report" which was filed last season by the National and Legal Policy Center (NLPC) with PepsiCo, Inc. (February 26, 2010) and Wal-Mart Stores, Inc. (March 29, 2010). There, the NLPC merely sought for those registrants to deliver a report on the process for identifying and prioritizing public policy issues of interest to those companies; not to dictate the specific, detailed contents of the "drill-down" report, as the instant Proponent has done.

6. Evaluation of Risk

Finally, the Proponent's need for "complete disclosure to be able to evaluate the use of corporate assets for direct and grassroots lobbying and the risks the spending poses" -- as set forth in Paragraph 4 of the Supporting Statement -- should not alter the result and the proper exclusion of the Proposal as an ordinary business matter. The Company's lobbying activities are undertaken in direct furtherance of the Company's business operations, and the exclusion of the Proposal should not be viewed any differently merely by reason of the Proponent's use of the word "risk." Indeed, as the SEC's Division of Corporation Finance recently made clear in Staff Legal Bulletin 14E (October 27, 2009), the Staff will:

focus on the subject matter to which the risk pertains or that gives rise to the risk. The fact that a proposal would require an evaluation of risk will not be dispositive of whether the proposal may be excluded under Rule 14a-8(i)(7). Instead, similar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document – where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business – **we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company** (footnote references omitted)

In the instant case, the subject matter of the Proposal is the Company's ordinary business lobbying activities, and the nature of the Proposal seeks for IBM to provide specific additional "drill-down" disclosure on the Company's lobbying activities over and above those disclosures already contained in our Federal Lobbying Reports. These activities have been shown to be conducted in the ordinary course of business and are directly related to the Company's products, services and business operations. As such, the Proposal is subject to exclusion under Rule 14a-8(i)(7).

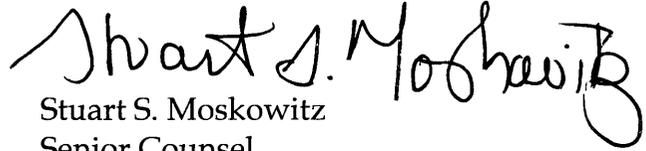
In short, the common principle that can be gleaned from the variety of existing Staff letters, which have concurred to the exclusion of stockholder proposals related to lobbying disclosure as ordinary business matters are fully applicable to exclude the instant Proposal. Moreover, even if a portion of the Proposal implicates matters beyond the Company's ordinary business, since the instant Proposal expressly seeks to have the Company make a host of additional specific "drill-down" disclosures relating to IBM's ordinary business operations, including, without limitation, lobbying activities concerning IBM's ordinary "garden-variety" marketing and procurement activities, the Proposal is subject to exclusion *in its entirety* under Rule 14a-8(i)(7). For all these reasons, the Company respectfully requests that no enforcement action be recommended to the Commission if the Company excludes the Proposal on the basis of Rule 14a-8(i)(7).

CONCLUSION

For the reasons and on the basis of the authorities cited above, IBM respectfully requests your advice that the Division of Corporation Finance will not recommend any enforcement action to the Commission if the Proposal is omitted from IBM's proxy materials for our 2011 Annual Meeting. We are sending the Proponent a copy of this letter, advising of our intent to exclude the Proposal from IBM's proxy materials being prepared for the 2011 Annual Meeting. If you require any further information, please call me at 914-499-6148. My facsimile number is 845-491-3203 and the Proponent's fax number is 202-223-3255. The

Proponent is also hereby respectfully requested to copy the undersigned on any response it may elect to make to the Staff in connection with the Proposal. Thank you for your attention and interest in this matter.

Very truly yours,

A handwritten signature in black ink that reads "Stuart S. Moskowitz". The signature is written in a cursive style with a large, looping "S" at the beginning and a long, sweeping "Z" at the end.

Stuart S. Moskowitz
Senior Counsel

Copy with Exhibit:

Mr. Charles Jurgonis, Plan Secretary
AFSCME Employees Pension Plan
1625 L Street, SW
Washington, DC 20036-5687

Exhibit A

International Business Machines Corporation (“IBM”)

IBM’s request to exclude stockholder proposal from
2011 Proxy Statement pursuant to Rule 14a-8



11-05-10 10:12:10

American Federation of State, County & Municipal Employees
Capital Strategies
1625 L Street, NW
Washington, DC 20036
(202) 223-2255 Fax Number

Facsimile Transmittal

DATE: November 5, 2010

To: Andrew Bonzani, Vice President, Assistant General Counsel
and Corporate Secretary, IBM
(914) 499-6085

From: Lisa Lindsley

Number of Pages to Follow: 4

Message: Attached please find shareholder proposal from
AFSCME Employees Pension Plan.

PLEASE CALL (202) 429-1215 IF ANY PAGES ARE MISSING. Thank You

**Committee**

Gera W. McEntee

Lee A. Saunders

Edward J. Keller

Kathy Sackman

Maranne Steger

EMPLOYEES PENSION PLAN

November 5, 2010

VIA OVERNIGHT MAIL and FAX (914) 499-6085

International Business Machines Corporation

New Orchard Road, Mail Drop 301

Armonk, New York 10504

Attention: Andrew Bonzani, Vice President, Assistant General Counsel and
Corporate Secretary

Dear Mr. Bonzani:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to give notice that pursuant to the 2010 proxy statement of International Business Machines Corporation (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, the Plan intends to present the attached proposal (the "Proposal") at the 2011 annual meeting of shareholders (the "Annual Meeting"). The Plan is the beneficial owner of 9,084 shares of voting common stock (the "Shares") of the Company, and has held the Shares for over one year. In addition, the Plan intends to hold the Shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Plan or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Plan has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to me at (202) 429-1007.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles Jurgonis', is written over a printed name.

Charles Jurgonis
Plan Secretary

Enclosure

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 775-0142 FAX (202) 785-4606 625 L Street, N.W., Washington, D.C. 20036-5687

Resolved, that the stockholders of International Business Machines Corporation ("IBM" or the "Company") hereby request that IBM provide a report, updated annually, disclosing IBM's:

1. Policies and procedures for lobbying contributions and expenditures (both direct and indirect) made with corporate funds and payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including internal guidelines or policies, if any, for engaging in direct and grassroots lobbying communications.
2. Payments (both direct and indirect, including payments to trade associations) used for direct lobbying and grassroots lobbying communications, including the amount of the payment and the recipient.
3. The report shall also include the following for each payment, as relevant:
 - a. Identification of the person or persons in the Company who participated in making the decision to make the direct lobbying contribution or expenditure; and
 - b. Identification of the person or persons in the Company who participated in making the decision to make the payment for grassroots lobbying expenditures.

For purposes of this proposal, a "grassroots lobbying communication" is a communication directed to the general public that (a) refers to specific legislation, (b) reflects a view on the legislation and (c) encourage the recipient of the communication to take action with respect to the legislation.

The report shall be presented to the Audit Committee of the Board of Directors (the "Board") or other relevant oversight committee of the Board and posted on IBM's website to reduce costs to stockholders.

Supporting Statement

As long-term IBM stockholders, we support transparency and accountability in corporate spending to influence legislation. These activities include direct and indirect spending to influence legislation as well as grassroots lobbying communications to influence legislation.

We believe that disclosure is consistent with public policy and is in the best interest of IBM and its stockholders. Absent a system of accountability, IBM assets can be used for policy objectives that may be inimical to IBM's long-term interests and may pose risks to IBM and its stockholders.

IBM spent about \$11.5 million in 2008 and 2009 on direct lobbying activities, according to the Company's disclosure reports. [*U.S. Senate Office of Public Records*] This figure may not include grassroots lobbying, which may indirectly influence legislation by mobilizing the public to support or oppose it.

Publicly available data does not provide a complete picture of IBM's lobbying expenditures. IBM's Board and its stockholders need complete disclosure to be able to evaluate the use of corporate assets for direct and grassroots lobbying and the risks the spending poses.

We urge you to vote FOR this proposal.



Committee
Gerald W. McEntee
Leo A. Saunders
Edward J. Keller
Kathy J. Sackman
Marianne Steger

EMPLOYEES PENSION PLAN

November 5, 2010

VIA OVERNIGHT MAIL and FAX (914) 499-6085

International Business Machines Corporation
New Orchard Road, Mail Drop 301
Armonk, New York 10504

Attention: Andrew Bonzani, Vice President, Assistant General Counsel and
Corporate Secretary

Dear Mr. Bonzani:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to provide you with verified proof of ownership from the Plan's custodian. If you require any additional information, please do not hesitate to contact me at the address below.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles Jurgonis', written in a cursive style.

Charles Jurgonis
Plan Secretary

Enclosure

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 775-8142 FAX (202) 785-4606 1625 L Street, N.W., Washington, D.C. 20036-5687



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November 5, 2010

Lonita Waybright
A.F.S.C.M.E.
Benefits Administrator
1625 L Street N.W.
Washington, D.C. 20036

Re: Shareholder Proposal Record Letter for IBM (cusip 459200101)

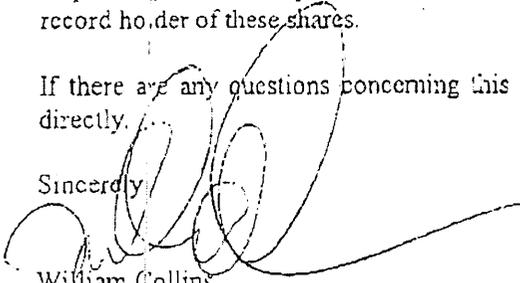
Dear Ms Waybright:

State Street Bank and Trust Company is Trustee for 9,084 shares of **International Business Machines** common stock held for the benefit of the American Federation of State, County and Municiple Employees Pension Plan ("Plan"). The Plan has been a beneficial owner of at least 1% or \$2,000 in market value of the Company's common stock continuously for at least one year prior to November 6, 2009. The Plan continues to hold the shares of **IBM** stock.

As Trustee for the Plan, State Street holds these shares at its Participant Account at the Depository Trust Company ("DTC"). Cede & Co., the nominee name at DTC, is the record holder of these shares.

If there are any questions concerning this matter, please do not hesitate to contact me directly.

Sincerely,


William Collins