DIVISION OF
CORPORATION FINANCE

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

January 26, 2011

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

Re: International Business Machines Corporation
Incoming letter dated January 4, 2011

Dear Mr. Moskowitz:

This is in response to your letter dated January 4, 2011 concerning the shareholder proposal submitted to IBM by Peter W. Lindner. 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: Peter W. Lindner

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

January 26, 2011

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: International Business Machines Corporation
Incoming letter dated January 4, 2011

The proposals relate to electronically stored information and nomination of the proponent for membership on IBM's board of directors.

There appears to be some basis for your view that IBM may exclude the proposals under rule 14a-8(c), which provides that a shareholder "may submit no more than one proposal to a company for a particular shareholders' meeting." In arriving at this position, we particularly note that the proponent previously submitted a proposal for inclusion in the company's proxy materials with respect to the same meeting. Accordingly, we will not recommend enforcement action to the Commission if IBM omits the proposals from its proxy materials in reliance on rule 14a-8(c).

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

Sincerely,

Matt S. McNair
Attorney-Adviser

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.

Senior Counsel
IBM Corporate Law Department
One New Orchard Road, Mail Stop 329
Armonk, New York 10504

VIA UPS EXPRESS

January 4, 2011

RULE 14a-8(c)

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

Subject: Fourth and Fifth Stockholder Proposals of Mr. Peter W. Lindner

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, I am enclosing six copies of this letter, together with a six (6) page submission dated December 31, 2010 from Mr. Peter W. Lindner (the "Proponent"), containing two revised stockholder proposals (sometimes hereinafter referred to as the "Fourth and Fifth Proposals" respectively). The Fourth Proposal again seeks for IBM to have our stockholders vote on his proposal relating to Electronically Stored Information. **(See Page 6 of Exhibit A).** In addition to the Fourth Proposal, as with his earlier submissions, the Proponent again states that "*I also hereby declare myself as a candidate for the IBM Board of Directors, and wish to have my name appear on the IBM Proxy along with my shareholder proposal(s) on the April 2011 Proxy.*" (hereinafter the "Fifth Proposal"). **(See Page 1 of Exhibit A).**

The Fourth and Fifth Proposals constitute yet another revision of the Proponent's three earlier proposals, which he initially filed with IBM on October 31, 2010, and revised on November 21, 2010 following a timely request to do so by the Company. The three earlier proposals were the subject of the Company's no-action letter request to the Staff of the Division of Corporation Finance (the "Staff") dated November 30, 2010. On December 28, 2010, the Staff issued a no-action letter to IBM, permitting IBM to exclude all of the Proponent's three earlier proposals under Rule 14a-8(f). **(See Exhibit B).**

IBM believes that the Fourth and Fifth Proposals may also 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 set forth 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.

I. THE FOURTH AND FIFTH PROPOSALS, IN ADDITION TO BEING UNTIMELY, MAY BE OMITTED UNDER RULE 14a-8(c) BECAUSE A PROPONENT MAY SUBMIT NO MORE THAN ONE PROPOSAL TO A COMPANY FOR A PARTICULAR SHAREHOLDERS' MEETING.

As noted above, these are the Fourth and Fifth Proposals the Proponent has filed with the Company for inclusion in our proxy materials in connection with the 2011 proxy statement.[1] In this connection, on December 31, 2010, the Proponent e-mailed the Fourth and Fifth Proposals to Mr. Andrew Bonzani, our Company's Secretary, and to Mr. Peter Barbur, IBM's external counsel.[2] The Proponent sent this December 31 e-mail:

> (i) nearly 2 months after the Company's 2011 stockholder proposal deadline;
>
> (ii) a month after the Proponent received the Company's November 30, 2010 no-action letter request to the Staff challenging his three earlier-filed proposals; *and*
>
> (iii) after the Staff issued its December 28, 2010 response to the Company's November 30, 2010 no-action letter request, concurring with IBM's position to exclude the Proponent's all three of the earlier proposals from our 2011 proxy materials.

The Proponent's latest attempt to have IBM stockholders consider the Fourth and Fifth Proposals in our proxy materials is improper, and subject to exclusion under Rule 14a-8(c). Such rule provides that a stockholder may submit no more than one proposal to a company for a particular shareholders' meeting. Since Mr. Lindner's three earlier stockholder proposals were already fully considered by IBM for our 2011 Annual Meeting -- and determined to be subject to exclusion from our proxy materials with SEC Staff concurrence on December 28, 2010 -- the instant submission by Mr. Lindner is improper and may be excluded by the Company from our 2011 proxy materials under Rule 14a-8(c). See Nobles Roman, Inc. (March 12, 2010)("the one-

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[1] Mr. Lindner also filed an untimely submission in connection with our 2010 annual meeting in February 2010 which was the subject of a separate Staff no-action letter. See International Business Machines Corporation (February 22, 2010, *reconsideration denied*, March 24, 2010).

[2] It appears from the cover note to the Proponent's December 31, 2010 e-mail that he also e-mailed a copy of his submission to the Staff at "cfletter@sec.gov" *(sic)*. The Company also wishes to call out that notwithstanding the Proponent's notation of **"Via fax: 845-491-3203"** on the top of page 1 of his 6 page letter **(See Exhibit A)**, the undersigned did ***not*** receive any such fax from the Proponent.

proposal limit allows the omission of a second proposal, notwithstanding the absence of notice, if a company has filed a statement of reasons to omit a proposal in accordance with rule 14a-8(j) and subsequently the proponent submits the second proposal."); Hanesbrands Inc. (December 11, 2009); International Business Machines Corporation (March 7, 2006); The Procter & Gamble Company (March 20, 2003); Citigroup Inc. (March 7, 2002); Motorola Inc. (December 31, 2001). Therefore, on the basis of consistent Staff precedent on this issue, IBM now respectfully requests Staff concurrence that the Company be permitted to exclude the Fourth and Fifth Proposals in accordance with Rule 14a-8(c).

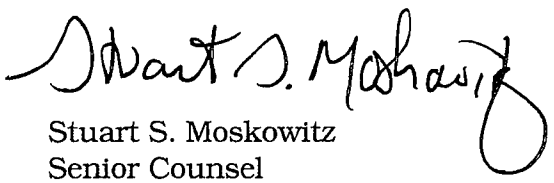
II. THE COMPANY REQUESTS A WAIVER OF THE 80 DAY RULE UNDER RULE 14a-8(j)(1) BECAUSE THE FOURTH AND FIFTH PROPOSALS WERE RECEIVED BY IBM LESS THAN 80 DAYS BEFORE THE ANTICIPATED FILING DATE OF OUR 2011 PROXY MATERIALS.

The Company presently intends to file its 2011 proxy materials on or about March 7, 2011, which is less than 80 days from today. In accordance with Rule 14a-8(j)(1), since the Proponent just e-mailed his Fourth and Fifth Proposals to IBM on December 31, 2010, the Company submits that good cause exists for our filing of this request less than 80 days prior to the filing of our proxy materials. We therefore respectfully request a waiver of the 80 day rule under Rule 14a-8(j)(1). See International Business Machines Corporation (March 7, 2006); and International Business Machines Corporation (March 6, 2003)(each granting waivers to IBM in similar circumstances).

We are sending the Proponent a copy of this submission, advising him of our intent to exclude the Fourth and Fifth Proposals from our proxy materials. The Proponent is again respectfully requested to copy the undersigned on any response that he may choose to make to the Staff.

Thank you very much for your attention and interest in this matter.

Very truly yours,



Stuart S. Moskowitz
Senior Counsel

copy, with exhibits, to:

Mr. Peter W. Lindner

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

Exhibit A

International Business Machines Corporation ("IBM")

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

----- Original Message -----
From: *** FISMA & OMB Memorandum M-07-16 ***
Sent: 12/31/2010 04:00 PM EST
To: Andrew Bonzani
Cc: Peter Barbur <PBarbur@cravath.com>; CFLetters at SEC <CFLetter@sec.gov>
Subject: IBM Shareholder Proposal for April 2011 on EEOC compliance for ESI

To the SEC and IBM:
Attached is my revised Shareholder Proposal, in which I removed the 2nd part of the proposal, as you wanted.

I do not understand what proof you need that I have $2,000 worth of IBM shares. Please tell me what is acceptable, or check your own records.

Also: this is a matter relating to discrimination, and thus is not a normal managerial concern. It has to do with EEOC suits brought by current (and former) employees, and following the law in some States, and going above those minimum requirements in other States. Just like it is legal to discriminate against gays in some States, I suggest that IBM not just follow the law in those States, but exceed them. In this situation, I'm referring to FRCP 26 revised in Dec 2006 by the US Supreme Court, which Sam Palmisano said he was not aware of since he's not a lawyer. Well, Mr. Bonzani, last time he refused my request to have you answer the question at the S/H meeting. I suggest that Sam and you research the question, and answer it in this meeting, proactively, rather than wait for me to answer it, since it is bad form and perhaps illegal not to answer a S/H question to which you know or can get the answer.

Regards,
Peter

Peter Lindner

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

home / FISMA & OMB Memorandum M-07-16 ***

cell: *** FISMA & OMB Memorandum M-07-16 ***

IBM Shareholder Proposal ver c for Apr 2011 of Mr. Lindner on EEOC giving ESI.pdf

Mr. Lindner's Shareholder Proposal on Truth Commission and EEOC
For IBM's Annual Shareholder Meeting April 2011
Friday, December 31, 2010
Via fax: 845-491-3203

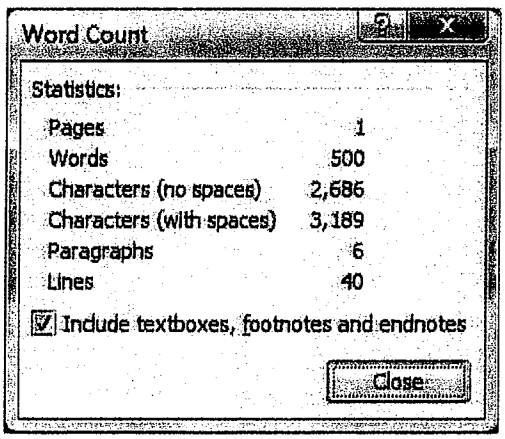
Peter T. Barbur, Esq. of Cravath Swaine pbarbur@cravath.com
Stuart Moskowitz, Esq.
c/o Andrew Bonzani, Vice President, Assistant General Counsel & Assistant Secretary of IBM
IBM
Corporate HQ
Armonk, NY
RE: Shareholder Proposal of Peter Lindner

Proposals

Firstly: Mr. Moskowitz sent me paper documents for the Shareholder Proposal, which I can NOT find, and I specifically requested ESI. If you as IBM cannot do that, then clearly you are playing games to frustrate this submission.

This Shareholder Proposal concerns discrimination, a socially important issue:

> The proposal that IBM comply with ESI (electronically stored information) as required by FRCP 26 of Dec2006, especially for discrimination cases that involve the Equal Employment Opportunities Commission ("EEOC"). This proposal is attached and is exactly 500 words using MS Word to count including footnotes, but not including the title.



I also hereby declare myself as a candidate for the IBM Board of Directors, and wish to have my name appear on the IBM Proxy along with my shareholder proposal(s) on the April 2011 Proxy.

The ESI for EEOC proposal would give IBM compliance under FRCP 26 (Federal Rules of Civil Procedure, as amended December 2006) to "employees", who usually are filing for cases of discrimination, either under various statutes, such as OWBPA (Older Worker Benefit Protection Act) and Title VII of the Civil Rights Act of 1964. The term "employees" encompasses both current and former employees, as per the ruling[1] of the US Supreme Court in 1997.

[1] There are many references to this decision, including:
"SUPREME COURT HOLDS EX-EMPLOYEES PROTECTED BY TITLE VII

Details:

Firstly, IBM as a leader in data processing for over 100 years, should strictly obey evidentiary rules in discrimination cases with regard to providing electronically stored information (ESI) to Plaintiffs as is required by the revised Federal Rules of Civil Procedure[2] (FRCP) 26, and for example, as required in discrimination cases by the Southern District of New York (SDNY) of October 11, 2007, which specifies the personnel records. These documents should be searchable (in "native" format) rather than fax copies that cannot be searched. This especially should apply to all cases at IBM involving the EEOC (Equal Employment Opportunity Commission), since that involves discrimination.

Background

Mr. Peter Lindner was in a class-action suit on age-discrimination entitled Syverson v IBM Case No. C 03-04529 RMW and 461 F.3d 1147 (in California) that "has been resolved."

Mr. Lindner was allegedly also wronged by IBM in getting a job with a vendor, which became *Lindner v IBM, et al* 06 cv 4751 SDNY. The full name of the case is *Peter W. Lindner, Plaintiff v International Business Machines Corporation, Robert Vanderheyden, Heather Christo Higgins, John Doe #1, And John Doe #2,Defendants* 06 Civ. 4751 (RJS) (DFE).

However IBM refused to "Produce the 'personnel records' concerning the plaintiff as defined"[3] by the SDNY. Moreover, IBM turned over documents that were fax copies, and thus not searchable by Personal Computers (PCs) in an attempt to make it difficult to access the information. IBM also alleged (wrongly) to federal judge on June 5, 2009 that all ESI had been turned over when it was not:

On February 18, 1997, the Supreme Court ruled that while the term "employees" in sec-tion 704(a) of Title VII of the Civil Rights Act of 1964 is ambiguous as to whether it includes former employees, "[I]t being more consistent with the broader context of Title VII and the pri-mary purpose of section 704(a), we hold that former employees are included within section 704(a)'s coverage." The unanimous decision was written by Justice Clarence Thomas, Robinson v. Shell Oil Co., No. 95-1376. The holding revers ed the decision of the Fourth Circuit sitting en banc."
http://www.civilrights.org/monitor/vol9_no1/art3p1.html

[2] The SDNY refers to FRCP 26, 33 and 34, with FRCP 26 entitled "Duty to Disclose; General Provisions Governing Discovery". Although the text is somewhat dense and tough to read / understand, the concept is that computer data (electronically stored information, email, Microsoft Word files, Excel spreadsheets) should be given to the opponent prior to the opponent asking for them. Moreover, if some documents are covered by Attorney-Client privilege, a list of such documents should be given to the adversary, with the reasons for being "privileged" or exempt from disclosure, stating plainly without compromising their privileged information what the nature of the confidential information is.
http://www.law.cornell.edu/rules/frcp/Rule26.htm

[3] http://www1.nysd.uscourts.gov/cases/show.php?db=forms&id=67
Also: ESI documents are referred to in "Order To Prepare Civil Case Management Plan" which talks about
"4. any issues relating to discovery of electronically stored information, including the costs of production and the form(s) in which such discovery should be produced."
A complete set of forms is at:
http://www1.nysd.uscourts.gov/forms.php

II. Plaintiff's Letter Motion to Compel Electronic Discovery

Plaintiff also seeks to compel Defendants to produce unspecified electronically stored information in metadata format. Plaintiff's suggestion that Defendants have failed to provide electronically stored information is disingenuous as Defendants advised Plaintiff via letter on February 20, 2009 that in responding to discovery requests, Defendants searched for hard copy and electronically stored records that are responsive and produced any and all such records.

When Mr. Lindner pointed out on June 15, 2009 an email sent by IBM (specifically by IBM'er Ron Janik) indicating that the prospective employer Wunderman had asked for a reference on Mr. Lindner, and that this relevant email was not turned over, IBM did not produce the relevant documents, nor did IBM explain how this email (from Janik) was overlooked, nor did IBM notify the Judge that IBM erroneously sworn that IBM had turned over all relevant ESI.

It is worth noting that the presiding Judge in the case, USDJ Sullivan, may have violated the law by threatening Mr. Lindner with Contempt of Court for reporting a possible crime to a federal law enforcement officer. Mr. Lindner asserts that USDJ Sullivan did knowingly keep in place an OSC (Order to Show Cause) why Mr. Lindner should not be held in Contempt of Court, which amounted to USDJ Sullivan attempting to hinder or delay Mr. Lindner from reporting a possible crime to the US Marshal of IBM's alleged witness tampering and of delaying communications to the SDNY Chief Judge. This is an impeachable offense. Mr. Lindner has been contacted by the US Marshal as to whether he plans to threaten or harm USDJ Sullivan; the answer is quite simple: "No" – Mr. Lindner intends to use the Constitutionally protected and prescribed method to remove Judges who serve only upon their "good behavior": that is to say: USDJ Sullivan ought to be impeached by the US Senate for violating 18 USC §1512(b)(3) for His Honor's knowing attempt to hinder and delay Mr. Lindner in the conveniently public record of Pacer in a document Number 130 Filed Oct 8 2009 USDJ Sullivan order to show cause for sec 401 sanction contempt for communications to US Marshal includes letter to USM. USDJ Sullivan was alerted by Mr. Lindner of ORDER #130 being in and of itself a violation of 18 USC §1512(b)(3), at which point even a non-knowledgeable USDJ Sullivan would thus become "knowingly" violating the law by continuing said OSC. Federal Judges are powerful, and appointed for life. It is Mr. Lindner's contention that IBM secured USDJ Sullivan's cooperation in violation of federal laws, and that IBM was successful to hide its own violations of 18 USC §1512(b)(3) by conspiring with USDJ Sullivan, or through third parties.

It is worth noting that even in an adversarial process such is the Federal Court system, the two sides voluntarily turn over ESI **prior** to the start of discovery. In other words, IBM should not have waited for a specific notice to compel their production of electronically stored information, and in this case, did not even produce the computer searchable documents. Few people can match the power of a corporation, and IBM in particular. For IBM to make it difficult to use a computer to search records is opposite to the goal of IBM when it was founded over 100 years ago, and is contrary to the wishes of data processing experts everywhere.

IBM was aware that Mr. Lindner is gay (as well as having donated to Lesbian and Gay charities), was part of the IBM Gay and Lesbian Employee group and had come out to both his manager Tim Bohling and later his group leader Robert Vanderheyden. This is a matter of gay discrimination as well as age discrimination. Studies have shown that stock prices drop with age discrimination cases, so it makes economic sense as well as social justice to stop discrimination

and obey the law fully. The "rules" on discovery are a "duty", and IBM should obey[4] the law rather than try to evade it. IBM should lead by example in providing electronically stored information – if IBM won't do it, who will?

Finally, Mr. Lindner brought this issue up to the US Second Circuit Court of Appeals, since IBM won on summary judgment in the lower court without having Mr. Lindner presenting his side. The Second Circuit curiously voided the appeal, even though allegations of misconduct and witness tampering (and violations of 18 USC §1512 and 18 USC §1512(b)(3) were alleged on 3 or more separate events in or about August 2009, October 2009, and August 2010). Specifically, Mr. Lindner alleged that IBM did tamper with witnesses in 06cv4751 by communicating to potential witnesses (IBM Vendors) in violation of 18 USC §1512(e), without the defendant's [IBM's] "sole intention was to encourage, induce, or cause the other person to testify truthfully":

> "**(e)** In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully. "
> [TITLE 18 > PART I > CHAPTER 73 > § 1512. Tampering with a witness, victim, or an informant]
> http://www.law.cornell.edu/uscode/18/usc_sec_18_00001512----000-.html

IBM's CEO Sam Palmisano evades/avoids answering direct question in April 2010

In the April 27, 2010 Annual IBM Shareholders' Meeting in Milwaukee, Wisconsin, Mr. Lindner asked CEO Sam Palmisano point blank about the legal requirement of releasing information in ESI format, and Mr. Palmisano claimed he was not aware of the law – since he's not a lawyer. I noted to Mr. Palmisano that the gentleman next to him was a NY State Lawyer and the Secretary of the Corporation, and instead of getting Andrew Bonzani, Esq. VP in General Counsel's Office, to answer, Mr. Palmisano made fun that I mispronounced Mr. Bonzani's name, and then cut me off without letting me finish or without answering a simple straight forward question.

IBM refused to give me the video of that incident, and as best I can tell, refused to give me the official text / transcript of that information, which I requested in writing to IBM's lawyers, so that the Shareholders can see for themselves the disrespect Mr. Palmisano had for supplying such information to the Shareholders, and perhaps in violation of SEC rules for giving incomplete or misleading information as applied to sanctioned Corporate events, to wit: Shareholders Meetings.

The goal would be a trail blazing Code of Ethics that has ESI included in the rights of its employees, which is workable, and would not lead to some bad circumstances that the US has witnessed over the 1990's to the present in Fortune 500 Companies in general and perhaps in IBM.

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[4] In the humorous situation comedy "Curb Your Enthusiasm" in the episode about a Native American contractor / gardener entitled "Wandering Bear," a nasty woman refuses to pay the fee for some work done, and then she insults the gardener who says: "There's no need to say that, you're a better person than that." (The various people who know her in the background say: "No, she's not.") So, as the US Supreme Court said that a corporation is like a person (in *Citizens United versus Federal Election Commission*, January 21, 2010), then IBM should be a better person / corporation than that.

Not to be too picky, but IBM's **[PDF]** is listed on Google as a "Scanned Document" and is not searchable. This document should be an ESI (electronically stored information) that is searchable, and not as a photo that cannot be readily checked. One more piece of obstructionism from IBM.

IBM Business Conduct Guidelines (195KB) - Scanned Document
http://www.ibm.com/investor/pdf/BCG2009.pdf

Sincerely yours,

Peter W. Lindner

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

home/fax:
cell: *** FISMA & OMB Memorandum M-07-16 ***
email:

PS: I am willing to work with IBM to refine, reduce, and streamline this in a spirit of cooperation, in case IBM finds it too long, cumbersome, failing to meet IBM or SEC requirements for Shareholder Proposals, or wish to be more succinct in wording this proposal. I also wish to work with IBM to have IBM implement this proposal on their own, without Shareholders voting, if IBM will so implement it in the next 12 months.

PPS: Mr. Lindner asserts as per IBM and SEC requirements that he owns more than $2,000 worth of IBM shares (perhaps $10,000 or more). As of 8/27/2010, Mr. Lindner has IBM Stock worth $6,508. IBM wrote to the SEC that I do not have enough shares, which is untrue, and should be supported by them, or qualified that they don't know the amount, or that they require stronger proof.

Text of Proposal 1: Enabling compliance with EEOC with computer searchable files

This proposal is to enable compliance with EEOC (Equal Employment Opportunity Commission) rules to combat the socially important goal of non-discrimination with computer searchable files, as indicated in NY Federal Courts and in NYC Human Rights Laws. This would apply the most generous laws from NYC in getting ESI (electronically stored information) to those who file against IBM for discrimination.

Just as IBM is a leader in not discriminating against gays, when it was legal to do so in some US States, so too IBM should as the nation's biggest computer firm, be a leader in providing what it does best: electronically readable/searchable files to their employees in such matter. Giving those employees (which the US Supreme Court said includes the "former" employees) computer searchable data allows them to process it, instead of IBM just giving paper. Mr. Lindner knows from experience in his case 06cv3834 *Lindner v IBM, Heather Christo, Bob Vanderheyden, et al.* that he was NOT given computer readable files, and asserts moreover, that a critical file was intentionally omitted.

IBM as a leader in data processing for over 100 years, should strictly obey evidentiary rules in discrimination cases with regard to providing electronically stored information (ESI) to Plaintiffs as is required by the revised Federal Rules of Civil Procedure[5] (FRCP) 26, and for example, as required in discrimination cases by the Southern District of New York (SDNY) of October 11, 2007, which specifies the personnel records. These documents should be searchable (in "native" format) rather than fax copies that cannot be searched. This especially should apply to all cases at IBM involving the EEOC, since that involves discrimination.

The ESI for EEOC cases be voted upon, which would give IBM compliance under FRCP 26 (as amended December 2006) to "employees", who usually are filing for cases of discrimination, either under various statutes, such as OWBPA (Older Worker Benefit Protection Act) and Title VII of the Civil Rights Act of 1964. Mr. Lindner asked Sam Palmisano at the April 2010 Shareholder Meeting whether IBM was meeting the legal requirements FRCP 26 revised in 2006, and Mr. Palmisano dodged the question (saying he was not a lawyer), and then when Mr. Lindner pointed out that Mr. Andrew Bonzani, Secretary of the Corporation, next to him on the stage was a lawyer, Sam refused to answer, and went on to some other Shareholders.

[5] The SDNY refers to FRCP 26, 33 and 34, with FRCP 26 entitled "Duty to Disclose; General Provisions Governing Discovery". Although the text is somewhat dense and tough to read / understand, the concept is that computer data (electronically stored information, email, Microsoft Word files, Excel spreadsheets) should be given to the opponent prior to the opponent asking for them. Moreover, if some documents are covered by Attorney-Client privilege, a list of such documents should be given to the adversary, with the reasons for being "privileged" or exempt from disclosure, stating plainly without compromising their privileged information what the nature of the confidential information is.
http://www.law.cornell.edu/rules/frcp/Rule26.htm

Exhibit B

International Business Machines Corporation ("IBM")

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

DIVISION OF
CORPORATION FINANCE

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

December 28, 2010

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

Re: International Business Machines Corporation
Incoming letter dated November 30, 2010

Dear Mr. Moskowitz:

This is in response to your letter dated November 30, 2010 concerning the shareholder proposals submitted to IBM by Peter W. Lindner. 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: Peter W. Lindner

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

December 28, 2010

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: International Business Machines Corporation
Incoming letter dated November 30, 2010

The proposals relate to electronically stored information, IBM's code of ethics, and nomination of the proponent for membership on IBM's board of directors.

There appears to be some basis for your view that IBM may exclude the proposals under rule 14a-8(f). Rule 14a-8(b) requires a proponent to provide a written statement that the proponent intends to hold its company stock through the date of the shareholder meeting. It appears that the proponent failed to provide this statement within 14 calendar days from the date the proponent received IBM's request under rule 14-8(f). Accordingly, we will not recommend enforcement action to the Commission if IBM omits the proposals from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which IBM relies.

Sincerely,

Matt S. McNair
Attorney-Adviser