



DIVISION OF  
CORPORATION FINANCE

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

January 13, 2011

Trevor S. Norwitz  
Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019-6150

Re: eBay Inc.

Dear Mr. Norwitz:

This is in regard to your letter dated January 12, 2011 concerning the shareholder proposal submitted by The Nathan Cummings Foundation for inclusion in eBay's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the proponent has withdrawn the proposal and that eBay therefore withdraws its December 21, 2010 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Sincerely,

Charles Kwon  
Special Counsel

cc: Scott Hirst  
Vice President and General Counsel  
The American Corporate Governance Institute, LLC  
One Mifflin Place, Suite 400  
Cambridge, MA 02138

The American Corporate Governance Institute, LLC  
One Mifflin Place, Suite 400  
Cambridge, MA 02138

January 10, 2011

**VIA EMAIL (shareholderproposals@sec.gov)**

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

**Re: Notice of Withdrawal of the Shareholder Proposal of the Nathan Cummings  
Foundation Submitted for inclusion in the 2011 Proxy Statement of eBay Inc.**

Ladies and Gentlemen:

Further to our letter of December 27, 2010 regarding the stockholder proposal (the "Proposal") submitted by the Nathan Cummings Foundation (the "Foundation") for inclusion in the 2011 Proxy Statement of eBay, Inc. (the "Corporation"), we have reached a negotiated agreement with the Corporation involving, and resulting, in the withdrawal of the Proposal.

In the letter from the Foundation to the Corporation, dated November 19, 2011, the Foundation authorized the American Corporate Governance Institute, LLC to act on behalf of the Foundation in relation to the Proposal, including corresponding with the Securities and Exchange Commission and the Corporation regarding the Proposal. This notice of withdrawal is sent pursuant to such authority.

Pursuant to Staff Legal Bulletin No. 14D this letter is being submitted by email to the Office of the Chief Counsel; copies are also being sent by email to Mr. Norwitz and to the Corporation. If you have any questions please do not hesitate to contact me at shirst@amcorp.gov or (617) 863-6341.

Very truly yours,



Scott Hirst  
Vice President and General Counsel

Cc: Mr. Trevor Norwitz, Wachtell, Lipton, Rosen & Katz  
Mr. Michael R. Jacobson, eBay Inc.  
Ms. Laura Campos, the Nathan Cummings Foundation

## WACHTELL, LIPTON, ROSEN & KATZ

MARTIN LIPTON  
HERBERT M. WACHTELL  
BERNARD W. NUSSBAUM  
LAWRENCE B. PEDOWITZ  
PAUL VIZCARRONDO, JR.  
PETER C. HEIN  
HAROLD S. NOVIKOFF  
KENNETH B. FORREST  
MEYER G. KOPLOW  
THEODORE N. MIRVIS  
EDWARD D. HERLIHY  
DANIEL A. NEFF  
ERIC M. ROTH  
ANDREW R. BROWNSTEIN  
MICHAEL H. BYOWITZ  
PAUL K. ROWE  
MARC WOLINSKY  
DAVID GRUENSTEIN  
PATRICIA A. VLAHAKIS  
STEPHEN G. GELLMAN  
STEVEN A. ROSENBLUM  
PAMELA S. SEYMON

STEPHANIE J. SELIGMAN  
ERIC S. ROBINSON  
JOHN F. SAVARESE  
SCOTT K. CHARLES  
ANDREW C. HOUSTON  
PHILIP MINDLIN  
DAVID S. NEILL  
JODI J. SCHWARTZ  
ADAM O. EMMERICH  
GEORGE T. CONWAY III  
RALPH M. LEVINE  
RICHARD G. MASON  
DOUGLAS K. MAYER  
MICHAEL J. SEGAL  
DAVID M. SILK  
ROBIN PANOVKA  
DAVID A. KATZ  
ILENE KNABLE GOTTS  
DAVID M. MURPHY  
JEFFREY M. WINTNER  
TREVOR S. NORWITZ  
BEN M. GERMANA

51 WEST 52ND STREET  
NEW YORK, N.Y. 10019-6150  
TELEPHONE: (212) 403-1000  
FACSIMILE: (212) 403-2000

GEORGE A. KATZ (1965-1989)  
JAMES H. FOGELSON (1967-1991)

### OF COUNSEL

WILLIAM T. ALLEN	ROBERT M. MORGENTHAU
PETER C. CANELLOS	LEONARD M. ROSEN
DAVID M. EINHORN	MICHAEL W. SCHWARTZ
THEODORE GEWERTZ	ELLIOTT V. STEIN
RICHARD D. KATCHER	WARREN R. STERN
THEODORE A. LEVINE	J. BRYAN WHITWORTH
ROBERT B. MAZUR	AMY R. WOLF

### COUNSEL

MICHELE J. ALEXANDER	NANCY B. GREENBAUM
LOUIS J. BARASH	MAURA R. GROSSMAN
DIANNA CHEN	IAN L. LEVIN
ANDREW J.H. CHEUNG	J. AUSTIN LYONS
PAMELA EHRENKRANZ	AMANDA N. PERSAUD
ELAINE P. GOLIN	HOLLY M. STRUTT
PAULA N. GORDON	JEFFREY A. WATIKER

ANDREW J. NUSSBAUM  
RACHELLE SILVERBERG  
DAVID C. BRYAN  
STEVEN A. COHEN  
GAVIN D. SOLOTAR  
DEBORAH L. PAUL  
DAVID C. KARP  
RICHARD K. KIM  
JOSHUA R. CAMMAKER  
MARK GORDON  
JOSEPH D. LARSON  
LAWRENCE S. MAKOW  
JEANNEMARIE O'BRIEN  
WAYNE M. CARLIN  
JAMES COLE, JR.  
STEPHEN R. DIPRIMA  
NICHOLAS G. DEMMO  
IGOR KIRMAN  
JONATHAN M. MOSES  
T. EIKO STANGE  
DAVID A. SCHWARTZ  
JOHN F. LYNCH

WILLIAM SAVITT  
ERIC M. ROSOF  
MARTIN J.E. ARMS  
GREGORY E. OSTLING  
DAVID B. ANDERS  
ADAM J. SHAPIRO  
NELSON O. FITTS  
JEREMY L. GOLDSTEIN  
JOSHUA M. HOLMES  
DAVID E. SHAPIRO  
DAMIAN G. DIDDEN  
ANTE VUCIC  
IAN BOCKZO  
MATTHEW M. GUEST  
DAVID E. KAHAN  
DAVID K. LAM  
BENJAMIN M. ROTH  
JOSHUA A. FELTMAN

January 12, 2011

DELIVERED BY EMAIL (shareholderproposals@sec.gov)

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

**Re: Withdrawal of No-Action Request Regarding Stockholder Proposal submitted by The Nathan Cummings Foundation for inclusion in the 2011 Proxy Statement of eBay Inc.**

Ladies and Gentlemen:

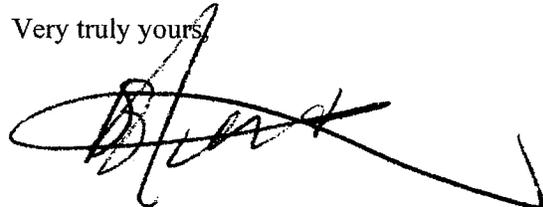
On December 21, 2010, on behalf of our client, eBay Inc. (the "Company"), we submitted to the staff of the Division of Corporation Finance of the Securities and Exchange Commission (the "Commission") a no-action request relating to the Company's ability to exclude from its proxy materials for its 2011 annual meeting of stockholders a stockholder proposal (the "Proposal") from The Nathan Cummings Foundation (the "Foundation") pursuant to Rule 14a-8 under the Exchange Act of 1934, as amended (the "No-Action Request").

Enclosed is a letter, dated January 10, 2011, delivered by the American Corporate Governance Institute, LLC, acting on behalf of the Foundation, to the Commission confirming the Proponent's withdrawal of the Proposal. Accordingly, on behalf of the Company, we hereby withdraw the No-Action Request.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), question C, this letter is being delivered to the Commission via e-mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In addition, a copy of this letter is being emailed simultaneously to the Proponent.

If you have any questions, please do not hesitate to contact the undersigned at [tsnorwitz@wlrk.com](mailto:tsnorwitz@wlrk.com) or by telephone at (212) 403-1333.

Very truly yours,

A handwritten signature in black ink, appearing to read "T. Norwitz", written over a horizontal line.

Trevor S. Norwitz

cc: Michael Jacobson, Esq.,  
Senior Vice President, Legal Affairs, General Counsel and Secretary, eBay Inc.

Scott Hirst, Esq.,  
General Counsel, The American Corporate Governance Institute LLC

The American Corporate Governance Institute, LLC  
One Mifflin Place, Suite 400  
Cambridge, MA 02138

January 10, 2011

**VIA EMAIL (shareholderproposals@sec.gov)**

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

**Re: Notice of Withdrawal of the Shareholder Proposal of the Nathan Cummings Foundation Submitted for inclusion in the 2011 Proxy Statement of eBay Inc.**

Ladies and Gentlemen:

Further to our letter of December 27, 2010 regarding the stockholder proposal (the "Proposal") submitted by the Nathan Cummings Foundation (the "Foundation") for inclusion in the 2011 Proxy Statement of eBay, Inc. (the "Corporation"), we have reached a negotiated agreement with the Corporation involving, and resulting, in the withdrawal of the Proposal.

In the letter from the Foundation to the Corporation, dated November 19, 2011, the Foundation authorized the American Corporate Governance Institute, LLC to act on behalf of the Foundation in relation to the Proposal, including corresponding with the Securities and Exchange Commission and the Corporation regarding the Proposal. This notice of withdrawal is sent pursuant to such authority.

Pursuant to Staff Legal Bulletin No. 14D this letter is being submitted by email to the Office of the Chief Counsel; copies are also being sent by email to Mr. Norwitz and to the Corporation. If you have any questions please do not hesitate to contact me at shirst@amcorp.gov or (617) 863-6341.

Very truly yours,



Scott Hirst  
Vice President and General Counsel

Cc: Mr. Trevor Norwitz, Wachtell, Lipton, Rosen & Katz  
Mr. Michael R. Jacobson, eBay Inc.  
Ms. Laura Campos, the Nathan Cummings Foundation

## WACHTELL, LIPTON, ROSEN & KATZ

MARTIN LIPTON  
HERBERT M. WACHTELL  
BERNARD W. NUSSBAUM  
LAWRENCE B. PEDOWITZ  
PAUL VIZCARRONDO, JR.  
PETER C. HEIN  
HAROLD S. NOVIKOFF  
KENNETH B. FORREST  
MEYER G. KOPLOW  
THEODORE N. MIRVIS  
EDWARD D. HERLIHY  
DANIEL A. NEFF  
ERIC M. ROTH  
ANDREW R. BROWNSTEIN  
MICHAEL H. BYOWITZ  
PAUL K. ROWE  
MARC WOLINSKY  
DAVID GRUENSTEIN  
PATRICIA A. VLAHAKIS  
STEPHEN G. GELLMAN  
STEVEN A. ROSENBLUM  
PAMELA S. SEYMON

STEPHANIE J. SELIGMAN  
ERIC S. ROBINSON  
JOHN F. SAVARESE  
SCOTT K. CHARLES  
ANDREW C. HOUSTON  
PHILIP MINDLIN  
DAVID S. NEILL  
JODI J. SCHWARTZ  
ADAM O. EMMERICH  
GEORGE T. CONWAY III  
RALPH M. LEVENE  
RICHARD G. MASON  
DOUGLAS K. MAYER  
MICHAEL J. SEGAL  
DAVID M. SILK  
ROBIN PANOVKA  
DAVID A. KATZ  
ILENE KNABLE GOTTS  
DAVID M. MURPHY  
JEFFREY M. WINTNER  
TREVOR S. NORWITZ  
BEN M. GERMANA

51 WEST 52ND STREET  
NEW YORK, N.Y. 10019-6150  
TELEPHONE: (212) 403-1000  
FACSIMILE: (212) 403-2000

GEORGE A. KATZ (1965-1989)  
JAMES H. FOGELSON (1967-1991)

### OF COUNSEL

WILLIAM T. ALLEN  
PETER C. CANELLOS  
DAVID M. EINHORN  
THEODORE GEWERTZ  
RICHARD D. KATCHER  
THEODORE A. LEVINE  
ROBERT B. MAZUR

ROBERT M. MORGENTHAU  
LEONARD M. ROSEN  
MICHAEL W. SCHWARTZ  
ELLIOTT V. STEIN  
WARREN R. STERN  
J. BRYAN WHITWORTH  
AMY R. WOLF

### COUNSEL

MICHELE J. ALEXANDER  
LOUIS J. BARASH  
DIANNA CHEN  
ANDREW J.H. CHEUNG  
PAMELA EHRENKRANZ  
ELAINE P. GOLIN  
PAULA N. GORDON

NANCY B. GREENBAUM  
MAURA R. GROSSMAN  
IAN L. LEVIN  
J. AUSTIN LYONS  
AMANDA N. PERSAUD  
HOLLY M. STRUTT  
JEFFREY A. WATIKER

ANDREW J. NUSSBAUM  
RACHELLE SILVERBERG  
DAVID C. BRYAN  
STEVEN A. COHEN  
GAVIN D. SOLOTAR  
DEBORAH L. PAUL  
DAVID C. KARP  
RICHARD K. KIM  
JOSHUA R. CAMMAKER  
MARK GORDON  
JOSEPH D. LARSON  
LAWRENCE S. MAKOW  
JEANNEMARIE O'BRIEN  
WAYNE M. CARLIN  
JAMES COLE, JR.  
STEPHEN R. DIPRIMA  
NICHOLAS G. DEMMO  
IGOR KIRMAN  
JONATHAN M. MOSES  
T. EIKO STANGE  
DAVID A. SCHWARTZ  
JOHN F. LYNCH

WILLIAM SAVITT  
ERIC M. ROSOF  
MARTIN J.E. ARMS  
GREGORY E. OSTLING  
DAVID B. ANDERS  
ADAM J. SHAPIRO  
NELSON O. FITTS  
JEREMY L. GOLDSTEIN  
JOSHUA M. HOLMES  
DAVID E. SHAPIRO  
DAMIAN G. DIDDEN  
ANTE VUCIC  
IAN BOCKZO  
MATTHEW M. GUEST  
DAVID E. KAHAN  
DAVID K. LAM  
BENJAMIN M. ROTH  
JOSHUA A. FELTMAN

December 21, 2010

DELIVERED BY EMAIL (shareholderproposals@sec.gov)

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

**Re: Stockholder Proposal submitted by The Nathan Cummings Foundation for inclusion in the 2011 Proxy Statement of eBay Inc.**

Ladies and Gentlemen:

Our client, eBay Inc. (the "Company"), has received a stockholder proposal (the "Proposal") from The Nathan Cummings Foundation (the "Proponent") for inclusion in the proxy statement and form of proxy to be distributed to the Company's stockholders in connection with its 2011 annual meeting of stockholders (the "2011 Proxy Materials"). On behalf of our client, we hereby notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude the Proposal from its 2011 Proxy Materials for the reasons set forth below. The Company respectfully requests that the staff of the Division of Corporation Finance of the Commission (the "Staff") confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2011 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), question C, on behalf of the Company, the undersigned hereby submits this letter, which

attaches the Proposal and includes an explanation of the several individual bases on which the Company believes it may exclude the Proposal, to the Commission via e-mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov) and in lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In addition, in accordance with Rule 14a-8(j), a copy of this submission is being emailed and mailed simultaneously to the Proponent, informing the Proponent of the Company's intention to exclude the Proposal from the 2011 Proxy Materials.

The Company intends to file its definitive 2011 Proxy Materials with the Commission on or about March 21, 2011. Accordingly, pursuant to Rule 14a-8(j), this letter is being submitted to the Commission not later than 80 calendar days before the Company intends to file its 2011 Proxy Materials.

I. Background.

The Proposal reads as follows (a copy including the full supporting statement is attached as Annex A to this letter):

**PROPOSAL TO REPEAL CLASSIFIED BOARD**

RESOLVED: that shareholders of eBay Inc. urge the Board of Directors to take all necessary steps (other than any steps that must be taken by shareholders) to eliminate the classification of the Board of Directors, and to require that, commencing no later than the annual meeting of 2013, all directors stand for elections annually.

Pursuant to (i) Article VI(B) of the Company's Amended and Restated Certificate of Incorporation (the "Charter")<sup>1</sup> and (ii) Section 2.2(a) of the Company's Amended and Restated Bylaws (the "Bylaws"),<sup>2</sup> the Company's board of directors (the "Board") is divided into three classes. One class of directors is elected at each annual meeting of stockholders of the Company ("Annual Meeting"). The term of each director elected at an Annual Meeting expires "at each third succeeding annual meeting of stockholders after such election."

Four directors elected at the 2009 Annual Meeting are currently serving terms that will expire at the 2012 Annual Meeting, while three directors elected at the 2010 Annual Meeting are currently serving terms that will expire at the 2013 Annual Meeting. At the upcoming 2011 Annual Meeting, stockholders of the Company will be asked to elect four directors to serve terms that will expire at the 2014 Annual Meeting.

The Proposal would have the Board "require that, commencing no later than the annual meeting of 2013, all directors stand for elections annually." This would not be legally permissible or possible for the Board to accomplish under Delaware law. Even assuming, for the sake of argument, (i) the stockholders of the Company were to support a proposal to declassify the Board at the 2011 Annual Meeting, (ii) such a proposal were to be submitted to the stockholders at the 2012 Annual Meeting and (iii) that proposal were to be approved by the stockholders at the 2012

---

<sup>1</sup> The Charter is filed as Exhibit 3.01 to its Quarterly Report on Form 10-Q for the Quarterly Period Ended June 30, 2005.

<sup>2</sup> The Bylaws are filed as Exhibit 3.02 to its Current Report on Form 8-K, filed on October 3, 2008.

Annual Meeting, it would still be beyond the power of the Board to truncate the terms of those directors already duly elected to three-year terms.

II. Bases for Exclusion.

Because the Proposal would purport to require the Board to take actions that are not permissible under Delaware law, as described in more detail below, the Company intends to exclude the Proposal from the 2011 Proxy Materials for the following reasons:

- Rule 14a-8(i)(2) – By purporting to require the Board to prevent elected directors from completing the full terms for which they were duly elected, the implementation of the Proposal would, if implemented, cause the company to violate state law.
- Rule 14a-8(i)(6) – The Company and the Board lack the power or authority to implement the Proposal.
- Rule 14a-8(i)(8) – By purporting to require the Board to prevent elected directors from completing the full terms for which they were duly elected, the Proposal impermissibly relates to an election for membership to the Board.

III. The Proposal may be excluded because its implementation would cause the Company to violate Delaware law.

A stockholder proposal may be excluded under Rule 14a-8(i)(2) if implementation of the proposal would cause a company to “to violate any state, federal or foreign law to which it is subject.” The Company is incorporated under the laws of the State of Delaware. Section 141(d) of the Delaware General Corporation Law (the “DGCL”) states that:

The directors of any corporation organized under this chapter may, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes; the term of office of those of the first class to expire at the first annual meeting held after such classification becomes effective; of the second class 1 year thereafter; of the third class 2 years thereafter; and at each annual election held after such classification becomes effective, **directors shall be chosen for a full term**, as the case may be, to succeed those whose terms expire (emphasis added).

Section 141(k) of the DGCL states in relevant part:

(k) Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, **except as follows**:

(1) Unless the certificate of incorporation otherwise provides, **in the case of a corporation whose board is classified** as provided in subsection (d) of this section, **stockholders may effect such removal only for cause** (emphasis added).

This principle that directors serving on classified boards may not be removed from their office by stockholders without cause is also well established in Delaware case law. See, e.g., *Insituform of North America, Inc. vs. Chandler*, 534 A.2d 257 (Del. Ch. 1987).

In addition, it is firmly established in Delaware law that directors may not be removed from their office by other directors. *See, e.g., Dillon vs. Berg*, 326 F. Supp. (1214 D. Del), aff'd 453 F.2d. 876 (3d Cir. 1971).

It is well settled Delaware law that directors on classified boards serve full three-year terms. Fifty years ago, in *Essential Enterprises vs. Automatic Steel Products, Inc.*,<sup>3</sup> Chancellor Seitz concluded: "Clearly the 'full term' visualized by the statute is a period of three years – not up to three years."<sup>4</sup> This was recently affirmed by the Delaware Supreme Court in the case of *Airgas, Inc. vs. Air Products and Chemicals, Inc.*,<sup>5</sup> in which the Court struck down a bylaw that purported to shorten the terms of sitting directors elected to three-year terms. The opinion of Justice Ridgely, unanimously supported by all of the Justices, concluded: "It [the January Bylaw in question] serves to frustrate the plan and purpose behind the provision for [Airgas's] staggered terms and [ ] it is incompatible with the pertinent language of the statute and the Charter. Accordingly, the January Bylaw is invalid, not only because it impermissibly shortens the directors' three-year staggered terms as provided by Article 5, Section 1 of the Airgas Charter, but also because it amounted to a *de facto* removal without cause of those directors. . . ."<sup>6</sup>

As noted above, Article VI(B) of the Charter (along with Section 2.2(a) of the Bylaws and Section 141(d) of the DGCL) provides that the Board shall have three classes with each director's full term expiring at the "third succeeding annual meeting of stockholders after such election." One need look no further than the text of the Proposal itself to understand how implementation of the Proposal would directly conflict with Delaware law by preventing previously elected directors from serving out their full terms. The Proposal purports to have the Board "require that, commencing no later than the annual meeting of 2013, all directors stand for elections annually." However there is no way this result can be achieved without truncating the terms of directors duly elected to three-year terms, which is not permitted under Delaware law.

Even if one were to assume that the Company's stockholders were supportive of the Proposal's primary aim of eliminating the Company's classified board structure, the earliest time at which this could legally happen in the ordinary course with "all directors stand[ing] for elections annually" would be commencing at the 2015 Annual Meeting. Assuming for the sake of argument, (i) the stockholders of the Company were to support a proposal to declassify the Board at the 2011 Annual Meeting, (ii) such a proposal to declassify the Board were to be submitted to the stockholders of the Company at the 2012 Annual Meeting and (iii) that proposal were to be approved by the stockholders of the Company at the 2012 Annual Meeting, the directors who are elected at the 2012 Annual Meeting would serve three-year terms expiring at the 2015 Annual Meeting.

It is also worth noting that, although the Proposal "urges" that the Company eliminate the classification of the Board, even a precatory proposal is excludable if the action called for by the proposal would violate state, federal or foreign law. *See, e.g., MeadWestvaco Corp.* (avail. Feb. 27, 2005) (finding a basis for exclusion, under Rule 14a-8(i)(2), of a proposal recommending that the company adopt a per capita voting standard where the company argued that, under Delaware law, a per capita voting standard can only be adopted through an amendment to the certificate of

---

<sup>3</sup> 159 A.2d 288 (Del. Ch. 1960).

<sup>4</sup> *Id* at 290-291.

<sup>5</sup> C.A. No. 5817 (Del. Sup. Ct. Nov. 23, 2010).

<sup>6</sup> *Id* at 23

incorporation). *See also* RadioShack Corp. (avail Feb. 28, 2005) (finding a basis for exclusion, under Rule 14a-8(i)(2), for the same reasons as *MeadWestvaco Corp.*).

This letter also serves as the opinion of Wachtell, Lipton, Rosen & Katz that, for the reasons provided herein, the implementation of the Proposal would cause a violation of Delaware law.

Since the Proposal, if implemented, would cause the Company to violate Delaware law, the Proposal is excludable under Rule 14a-8(i)(2).

IV. The Proposal may be excluded because the Company lacks the power or authority to implement the Proposal.

A stockholder proposal may be excluded under Rule 14a-8(i)(6) if “the company would lack the power or authority to implement the proposal.” As the Staff has held on numerous occasions, Rule 14a-8(i)(6) applies to a stockholder proposal that, if adopted by the company’s stockholders, would cause the company to violate applicable state law. *See, e.g., Noble Corporation* (Jan. 19, 2007); *SBC Communications Inc.* (Jan. 11, 2004); *Xerox Corp.* (Feb. 23, 2004). As discussed above, it would be beyond the power of the Board to achieve what the Proposal purports to require it to do (i.e., have all directors stand for elections annually commencing no later than the annual meeting of 2013). Because the Company lacks the power or authority to implement the Proposal, the Proposal is also excludable under Rule 14a-8(i)(6).

V. The Proposal may be excluded because it impermissibly relates to a nomination or an election for membership on the Board.

A stockholder proposal may be excluded under Rule 14a-8(i)(8) if it “relates to a nomination or an election for membership on the company’s board of directors or analogous governing body or a procedure for such nomination or election.” It has been a long-standing position of the Staff that proposals which have the purpose, or that could have the effect, of prematurely removing a director from office before his or her term expired are considered to relate to a nomination or an election and are therefore excludable. *See, e.g., Royal Caribbean Cruises Ltd.* (Mar. 9, 2009); *Dollar Trees Stores Inc.* (Mar. 7, 2008); *Hilb Rogal & Company* (Mar. 3, 2008); *Peabody Energy Corporation* (Mar. 4, 2005); *FirstEnergy Corp* (Mar. 17, 2003); *Sears Roebuck and Co.* (Feb. 17, 1989); and *American Information Technologies Corp.* (Dec.13, 1985).

In *Shareholder Proposals Relating to the Election of Directors*, Exchange Act Release No. 56914 (Dec. 6, 2007) (the “2007 Release”), the Commission amended the text of Rule 14a-8(i)(8) to clarify its application to stockholder proposals that relate to procedures that would result in a contested election. In doing so, the Commission noted that:

[W]e emphasize that the changes to the rule text relate only to procedures that would result in a contested election, either in the year in which the proposal is submitted or in subsequent years. The changes to the rule text do not affect or address any other aspect of the agency’s prior interpretation of the exclusion (2007 Release, text at note 56).

The Commission then noted several examples of stockholder proposals that the Staff considered excludable under Rule 14a-8(i)(8), including proposals that could have the effect of, or

that propose a procedure that could have the effect of, “[r]emoving a director from office before his or her term expired.” (2007 Release at note 56.)

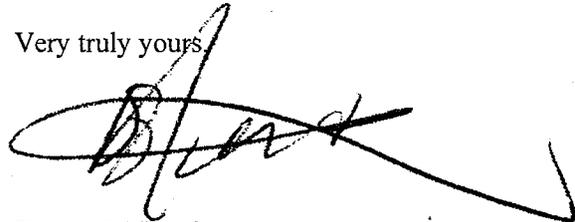
In this case, the Proposal would have the Board “require that, commencing no later than the annual meeting of 2013, all directors stand for elections annually.” As described in some detail above, this would necessarily mean that some of the Company’s directors (specifically directors elected at the 2011 and/or 2012 Annual Meetings) would be prevented from completing their full terms. As a result, the Proposal is excludable under Rule 14a-8(i)(8) as well.

VI. Conclusion.

For the foregoing reasons, the Company respectfully requests that the Staff confirm that it would not recommend enforcement action if the Company omits the Proposal from its 2011 Proxy Materials.

If you have any questions, please do not hesitate to contact the undersigned at [tsnorwitz@wlrk.com](mailto:tsnorwitz@wlrk.com) or by telephone at (212) 403-1333. If the Staff is unable to concur with the Company’s conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter.

Very truly yours

A handwritten signature in black ink, appearing to read "T. Norwitz", with a long, sweeping horizontal line extending to the right.

Trevor S. Norwitz

cc: Michael Jacobson, Esq.,  
Senior Vice President, Legal Affairs, General Counsel and Secretary, eBay Inc.

Scott Hirst, Esq.,  
General Counsel, The American Corporate Governance Institute LLC

THE · NATHAN · CUMMINGS · FOUNDATION

---

November 19, 2010

VIA EMAIL AND U.S. MAIL  
**RECEIPT CONFIRMATION REQUESTED**

eBay Inc.  
2145 Hamilton Avenue  
San Jose, CA 95125  
Attention: Corporate Secretary

**Re: Shareholder Proposal for the 2011 Annual Meeting**

The Nathan Cummings Foundation (the "Foundation") is the owner of 1,900 shares of common stock of eBay Inc. (the "Company"). Proof of this ownership is available upon request. The Foundation intends to continue to hold these shares through the date of the Company's 2011 annual meeting of shareholders (the "Annual Meeting"). The Foundation has continuously held common shares of the Company with a market value of at least \$2,000 for more than one year as of today's date. Pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, the Foundation hereby submits the attached shareholder proposal and supporting statement (the "Proposal") for inclusion in the Company's proxy materials for presentation to a vote of shareholders at the Annual Meeting.

The Foundation hereby authorizes the American Corporate Governance Institute, LLC (the "ACGI") or its designee to act on behalf of the Foundation during the 2010 and 2011 calendar years in relation to the Proposal both prior to and during the Annual Meeting, including forwarding the Proposal to the Company, corresponding with the Company and the Securities and Exchange Commission with respect to the inclusion of the Proposal in the Company's Proxy Statement and presenting the Proposal at the Annual Meeting. This authorization does not grant the ACGI the power to vote the shares owned by the Foundation.

Please promptly acknowledge receipt of the Proposal, and direct all subsequent communications relating to the Proposal, to Scott Hirst, General Counsel, The American Corporate Governance Institute, LLC, One Mifflin Place, Fourth Floor, Cambridge, MA 02138, email [shirst@amcorp.gov](mailto:shirst@amcorp.gov).

Sincerely,



Lance E. Lindblom  
President & Chief Executive Officer



Laura Campos  
Director of Shareholder Activities

## **PROPOSAL TO REPEAL CLASSIFIED BOARD**

RESOLVED, that shareholders of eBay Inc. urge the Board of Directors to take all necessary steps (other than any steps that must be taken by shareholders) to eliminate the classification of the Board of Directors, and to require that, commencing no later than the annual meeting of 2013, all directors stand for elections annually.

### **SUPPORTING STATEMENT**

This resolution, submitted by the Nathan Cummings Foundation with the assistance of the American Corporate Governance Institute, LLC, urges the board of directors to facilitate a declassification of the board. Such a change would enable shareholders to register their views on the performance of all directors at each annual meeting. Having directors stand for elections annually makes directors more accountable to shareholders, and could thereby contribute to improving performance and increasing firm value.

Over the past decade, many S&P 500 companies have declassified their board of directors. According to FactSet Research Systems, between 2000 and 2009, the number of S&P 500 companies with classified boards declined from 300 to 164. Furthermore, according to Georgeson reports, there were 187 shareholder proposals to declassify boards during the five proxy seasons of 2006 through 2010. The average percentage of votes cast in favor of proposals to declassify exceeded 65% in each of these five years.

The significant shareholder support for proposals to declassify boards is consistent with evidence in academic studies that classified boards could be associated with lower firm valuation and/or worse corporate decision-making. Studies report that:

- takeover targets with classified boards are associated with lower gains to shareholders (Bebchuk, Coates, and Subramanian, 2002);
- classified boards are associated with lower firm valuation (Bebchuk and Cohen, 2005);
- firms with classified boards are more likely to be associated with value-decreasing acquisition decisions (Masulis, Wang, and Xie, 2007); and
- classified boards are associated with lower sensitivity of compensation to performance and lower sensitivity of CEO turnover to firm performance (Faleye, 2007).

Although one study (Bates, Becher and Lemmon, 2008) reports that classified boards are associated with higher takeover premiums, this study also reports that classified boards are associated with a lower likelihood of an acquisition, and that classified boards are associated with lower firm valuation.

Please vote for this proposal to make directors more accountable to shareholders.