



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

DIVISION OF  
CORPORATION FINANCE

October 17, 2012

Gregory R. Noe  
Deere & Company  
noegregoryr@johndeere.com

Re: Deere & Company  
Incoming letter dated September 21, 2012

Dear Mr. Noe:

This is in response to your letter dated September 21, 2012 concerning the shareholder proposal submitted to Deere by James Barnett. We also have received a letter from the proponent dated October 1, 2012. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Ted Yu  
Senior Special Counsel

Enclosure

cc: James Barnett

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

October 17, 2012

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

Re: Deere & Company  
Incoming letter dated September 21, 2012

The proposal requests the managing officers and the members of the board of the corporation to voluntarily repatriate 33% of their total monetary compensation for the 2013 calendar year into a bonus pool to be distributed to other Deere employees.

There appears to be some basis for your view that Deere may exclude the proposal under rule 14a-8(i)(7), as relating to Deere's ordinary business operations. In this regard, we note that the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors. Proposals that concern general employee compensation matters are generally excludable under rule 14a-8(i)(7). Accordingly, we will not recommend enforcement action to the Commission if Deere omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which Deere relies.

Sincerely,

Ted Yu  
Senior Special Counsel

## **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.



**JOHN DEERE**

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**Gregory R. Noe**  
Corporate Secretary &  
Associate General Counsel

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

September 21, 2012

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

RE: Deere & Company – 2013 Annual Meeting  
Omission of Shareholder Submission of James Barnett

Ladies and Gentlemen:

We are writing pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended, to request that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) concur with our view that, for the reasons stated below, Deere & Company, a Delaware corporation (“Deere”), may exclude the purported shareholder proposal and supporting statement (the “Submission”) submitted by James Barnett (the “Proponent”) from the proxy materials to be distributed by Deere in connection with its 2013 annual meeting of shareholders (the “2013 proxy materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of Deere’s intent to omit the Submission from the 2013 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Submission, a copy of that correspondence should concurrently be furnished to the undersigned.

## **I. The Submission**

The text of the resolution contained in the Submission is copied below:

We the shareholders of Deere and Company petition the managing officers and the members of the board of the corporation to voluntarily repatriate 33% of their total monetary compensation for the 2013 calendar year, whether in the form of salary, bonuses, stock equities or the options thereon, into a bonus pool, to be distributed amongst employees of the company, with a goal that this money be distributed in such a manner that everyone within the corporation, from high to low, have a shot at earning a share of it if they are recognized by their supervisors and/or their peers as having done a superior job. We authorize the Board to create a committee to supervise the distribution of these funds.

## **II. Bases for Exclusion**

We hereby respectfully request that the Staff concur in Deere's view that it may exclude the Submission from the 2013 proxy materials pursuant to:

- Rule 14a-8(a) because the Submission is not a proposal;
- Rule 14a-8(i)(7) because the Submission deals with a matter relating to Deere's ordinary business operations;
- Rule 14a-8(i)(6) because Deere lacks the power or authority to implement the Submission; and
- Rule 14a-8(i)(3) because the Submission is materially false and misleading.

## **III. Background**

Deere received the Submission on July 6, 2012. A copy of the Submission is attached hereto as Exhibit A.<sup>1</sup>

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<sup>1</sup> After confirming that the Proponent was not a shareholder of record, in accordance with Rule 14a-8(f)(1), on July 10, 2012, Deere sent a letter to the Proponent requesting a written statement from the record owner of the Proponent's shares verifying that the Proponent had beneficially owned the requisite number of shares of Deere stock continuously for at least one year as of the date of submission of the purported shareholder proposal and a written statement from the Proponent that he intends to continue to hold his shares through the date of the annual meeting. On July 25, 2012, the Proponent mailed Deere a letter from Fidelity Investments, dated July 20, 2012, verifying the Proponent's stock ownership as of such date and

**IV. The Submission May be Excluded from Deere's Proxy Materials Pursuant to Rule 14a-8(a) Because the Submission Is Not a Proposal.**

Under Rule 14a-8(a), a shareholder proposal is defined as a shareholder's "recommendation or requirement that the company and/or its board of directors take action." Rule 14a-8(a) further provides that a shareholder proposal "should state as clearly as possible the course of action that [the proponent] believe[s] the company should follow."

Rule 14a-8(a) was adopted as part of the 1998 amendments to the proxy rules. In the 1997 proposing release, the Commission noted:

The answer to Question 1 of revised rule 14a-8 would define a "proposal" as a request that the company or its board of directors take an action. The definition reflects our belief that *a proposal that seeks no specific action, but merely purports to express shareholders' views, is inconsistent with the purposes of rule 14a-8 and may be excluded from companies' proxy materials.* The Division, for instance, declined to concur in the exclusion of a "proposal" that shareholders express their dissatisfaction with the company's earlier endorsement of a specific legislative initiative. Under the proposed rule, the Division would reach the opposite result, because the proposal did not request that the company take an action.

Exchange Act Release No. 39093 (Sept. 18, 1997) (emphasis added).

Since adopting this definition of "proposal," the Staff has confirmed in subsequent no-action letters its view that a shareholder submission is excludable if it "merely purports to express shareholders' views" on a subject matter. For example, in *Sensar Corp.* (Apr. 23, 2001), the Staff permitted the company to exclude a submission seeking to allow a shareholder vote to express shareholder displeasure over the terms of granted stock options because "it does not recommend or require that Sensar or its board of directors take any action." See also *Longs Drug Stores Corp.* (Jan. 23, 2008) (permitting exclusion under Rule 14a-8(a) where the submission requested that a letter be included in the company's proxy materials and therefore "[did] not recommend or require that Longs or its board of directors take any action"); *CSX Corp.* (Feb. 1, 1999) (permitting exclusion under Rule 14a-8(a) where the submission included three poems and therefore "[did] not recommend or require that CSX or its board of directors take an action").

Similarly, the Submission serves as an expression of the Proponent's views on certain issues and neither recommends nor requires that Deere or the Board take any action. In the

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included a written statement confirming the Proponent's intent to continue to hold his shares through the date of the annual meeting.



supporting statement the Proponent states that "the increasing division between rich and poor is a problem, both within the ranks of our corporation and in American society at large." The Proponent also calls for "the leadership of Deere and Company to take a step in the right direction and voluntarily repatriate 33% of their monetary compensation" and "commit to something that will help both our company and our nation," and "help build morale throughout the ranks of Deere." None of the Proponent's concerns amount to recommendations or requirements that Deere or the Board take action. Instead, the Submission calls for action from individuals on a voluntary basis. The only reference to action by Deere or the Board is authorization for the Board to "to create a committee to supervise" distributions from the bonus pool, which authorization does not amount to a recommendation or requirement for Deere or the Board to take action.

Because the Submission fails to recommend or require that Deere or its Board take any action, Deere believes that the Submission is not a proper proposal and may be excluded from its proxy materials pursuant to Rule 14a-8(a).

**V. The Submission May be Excluded from Deere's Proxy Materials Pursuant to Rule 14a-8(i)(7) Because the Submission Deals with a Matter Relating to Deere's Ordinary Business Operations.**

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), the Commission stated that the policy underlying the ordinary business exclusion rests on two central considerations. The first recognizes that certain 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 direct shareholder oversight. The second consideration relates to 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.

Consistent with these principles, the Staff has consistently permitted companies to exclude shareholder proposals pursuant to Rule 14a-8(i)(7) when such shareholder proposals address general employee compensation issues. *See, e.g., ENGlobal Corp.* (Mar. 28, 2012) (permitting exclusion of a proposal relating to the company's 2009 equity incentive plan relating to stock awards to employees, directors and consultants of the company); *Green Bankshares, Inc.* (Feb. 7, 2011) (permitting exclusion of a proposal requesting that the company reduce by 9% the salaries of employees making more than \$25,000 per year); *Cascade Financial Corp.* (Feb. 22, 2010) (permitting exclusion of a proposal to prohibit certain increases in base salaries for employees earning more than \$100,000 per year); *Plexus Corp.* (Aug. 13, 2007) (permitting exclusion of a proposal seeking to eliminate all stock

options); *Pfizer Inc.* (Jan. 29, 2007) (permitting exclusion of a proposal seeking to eliminate all stock options); *Amazon.com, Inc.* (Mar. 7, 2005) (permitting exclusion of a proposal seeking to cancel the company's 1997 equity plan); *Woodward Governor Co.* (Sept. 28, 2004) (permitting exclusion of a proposal seeking to eliminate all stock option programs).

While the Staff has not permitted companies to exclude shareholder proposals pursuant to Rule 14a-8(i)(7) when a shareholder proposal relates solely to executive compensation, the Staff has permitted exclusion when shareholder proposals address both executive compensation and non-executive (or general employee) compensation. *See, e.g., Bank of America Corp.* (Jan. 31, 2012) (permitting exclusion of a proposal requesting that quarterly total compensation for the company's 100 top earning executives and board members be calculated as specified in the proposal); *Bank of America Corp.* (Feb. 26, 2010) (permitting exclusion of a proposal relating to compensation of the company's named executive officers and 100 most highly compensated employees); *Comcast Corp.* (Feb. 22, 2010) (permitting exclusion of a proposal requesting a cap on compensation paid to management). In such instances, the Staff has noted that the proposal related to compensation that may be paid to employees generally and was not limited to compensation that may be paid to senior executive officers and directors. Similarly, in this case, the Submission is not limited to compensation that may be paid to Deere's senior executive officers and directors because it explicitly addresses "managing officers," which term encompasses a much broader group of employees than senior executive officers and directors.

In addition, even if the repatriation aspect of the Submission had referred to senior executive officers, the primary focus of the Submission relates to general employee compensation and benefits. In *Delta Air Lines, Inc.* (Mar. 27, 2012), the Staff permitted the company to exclude a shareholder proposal requesting a program prohibiting payments under any incentive program for management or executive officers unless there was an appropriate process to fund the retirement accounts of certain retired Delta pilots. Although the proposal referred to an incentive program for management or "executive officers," the Staff noted that the "thrust and focus of the proposal is on the ordinary business matter of employee benefits." Here, the main focus of the Submission is to fund an employee bonus pool from the voluntary contributions of Deere's "managing officers" and directors. While the Submission may be framed as a request for "managing officers" to take certain actions, it is clear from the resolution, which refers to "everyone within the corporation, from high to low, hav[ing] a shot at earning a share of [the bonus pool]," and supporting statement that the purpose of the Submission is to create a bonus pool for the benefit of all Deere employees.

The policies and practices relating to the compensation of Deere's employees, including the distribution of bonuses, are fundamental management functions and part of Deere's ordinary business operations. Because the Submission relates to Deere's general



employee compensation and is not limited to compensation that may be paid to senior executive officers and directors, Deere believes that the Submission may be excluded from its proxy materials pursuant to Rule 14a-8(i)(7).

**VI. The Submission May be Excluded from Deere's Proxy Materials Pursuant to Rule 14a-8(i)(6) Because Deere Lacks the Power or Authority to Implement the Submission.**

Under Rule 14a-8(i)(6), a shareholder proposal may be excluded from the company's proxy materials if the company would lack the power or authority to implement the proposal. Deere believes that the Submission is excludable under Rule 14a-8(i)(6) because Deere cannot guarantee that officers and directors will "voluntarily repatriate 33% of their total monetary compensation for the 2013 calendar year ... into a bonus pool."

The Staff has permitted companies to exclude shareholder proposals under Rule 14a-8(i)(6) where the proposal requests that the company take action on a matter over which the company has no ownership or control. In *Beckman Coulter, Inc.* (Dec. 23, 2008), the Staff permitted exclusion under Rule 14a-8(i)(6) where the proposal requested that the company implement compensation reforms at a different company over which the company had no direct or indirect control. In *Catellus Development Corp.* (Mar. 3, 2005), the Staff permitted exclusion under Rule 14a-8(i)(6) where the proposal required the company to take certain actions with respect to a property that the company no longer owned, noting that the company "can no longer dictate the transfer, use or development" of the property.

In addition, in the 1998 Release the Commission stated that exclusion under Rule 14a-8(i)(6) "may be justified where implementing a proposal would require intervening actions by independent third parties," and has permitted exclusion of proposals where implementing the proposal would require action from third parties. In *eBay Inc.* (Mar. 26, 2008), the Staff permitted the company to exclude a proposal prohibiting the sale of dogs and cats on the company's affiliated Chinese website, where the website was a joint venture which the company did not control and where implementing the proposal would require consent of the joint venture partner. See also *SCEcorp* (Dec. 20, 1995) (permitting exclusion of a proposal to require unaffiliated fiduciary trustees of the employee stock plan to amend voting agreements because it was "beyond the power of the Company to effectuate"); *The Southern Co.* (Feb. 23, 1995) (permitting exclusion of a proposal requesting that the board take steps to ensure ethical behavior by employees serving in the public sector because it was "beyond the power of the Company to effectuate").

The Submission requests that Deere's officers and directors "voluntarily repatriate 33% of their total monetary compensation for the 2013 calendar year" into a bonus pool to be distributed to the employees of Deere. Because the Submission requests that the bonus pool be funded voluntarily, any such contributions would be controlled entirely by Deere's officers

and directors. Moreover, Deere would have no power or authority to dictate that its officers and directors make such voluntary contributions.

Accordingly, Deere lacks the power or authority to implement the Submission and believes that the Submission may be excluded from its proxy materials pursuant to Rule 14a-8(i)(6).

**VII. The Submission May be Excluded Pursuant to Rule 14a-8(i)(3) Because it is Vague and Indefinite in Violation of Rule 14a-9.**

Under Rule 14a-8(i)(3), a shareholder proposal may be excluded from a company's proxy materials if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in a company's proxy materials. The Staff has recognized that a proposal may be excluded pursuant to Rule 14a-8(i)(3) if "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004).

The Staff has consistently found that proposals relating to executive compensation are excludable under Rule 14a-8(i)(3) where aspects of the proposals created ambiguities that resulted in the proposals being vague or indefinite. In particular, the Staff has allowed exclusion of proposals relating to executive compensation that failed to define key terms or otherwise provide guidance on how the proposal would be implemented. *See, e.g., The Boeing Co.* (Mar. 2, 2011) (permitting exclusion of a proposal regarding executive compensation where the term "executive pay rights" was not sufficiently defined and thus subject to multiple reasonable interpretations); *General Electric Co.* (Jan. 21, 2011) (permitting exclusion of a proposal requesting that the compensation committee make certain changes to executive compensation where terms such as "short-term incentive awards" and "financial metric(s)" were not adequately described); *Verizon Communications Inc.* (Feb. 21, 2008) (permitting exclusion of a proposal requesting that the board adopt a new policy for the compensation of senior executives which would incorporate criteria specified in the proposal for future awards of incentive compensation where the proposal failed to define critical terms and was internally inconsistent); *Energy East Corp.* (Feb. 12, 2007) (permitting exclusion of a proposal relating to executive compensation where key terms such as "benefits" and "peer group" were not defined); *Woodward Governor Co.* (Nov. 26, 2003) (permitting exclusion of a proposal requesting "a policy for compensation for the executives ... based on stock growth" where the proposal failed to specify whether it addressed all executive compensation or merely stock-based compensation); *Eastman Kodak Co.* (Mar. 3, 2003) (permitting exclusion of a proposal requesting a cap on executive salaries at \$1 million

"to include bonus, perks [and] stock options" where the proposal failed to define various terms, including "perks," and gave no indication of how options were to be valued); *General Electric Co.* (Jan. 23, 2003) (permitting exclusion of a proposal requesting "an individual cap on salaries and benefits of one million dollars for G.E. officers and directors" where the proposal failed to define the critical term "benefits" or otherwise provide guidance on how benefits should be measured for purposes of implementing the proposal); *Fuqua Industries, Inc.* (Mar. 12, 1991) (permitting exclusion of a proposal where the "meaning and applications of terms and conditions ... in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations"). In issuing its no-action letter in *Fuqua Industries*, the Staff stated that "the proposal may be misleading because any action ultimately taken by the [c]ompany upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal."

Similar to the foregoing precedent, the Submission is vague and indefinite because it fails to define key terms or otherwise provide guidance on how the Submission would be implemented if adopted. The Submission requests that "managing officers and the members of the board ... voluntarily repatriate 33% of their total monetary compensation for the 2013 calendar year." However, it is impossible to determine with any certainty to whom repatriation would apply. For example, the Submission fails to define the term "managing officers" and, depending on how "managing officers" is defined, the term could apply to a number of different groups of employees, officers and management. In addition, it is impossible to determine with any certainty which compensation is subject to the repatriation request. The Submission refers to monetary compensation "for the 2013 calendar year," but it is unclear and unascertainable from the Submission whether compensation "for the 2013 calendar year" refers to amounts actually paid or awarded during 2013 or amounts earned during 2013 and whether, with respect to equity awards, it refers to value realized upon vesting or exercise of such awards during 2013 or values associated with equity awards granted during 2013.

Furthermore, the Submission fails to provide any guidance as to how the Submission should be implemented. For example, the Submission does not indicate how compensation would be repatriated and it is unclear whether Deere should withhold amounts from "managing officers" and directors or whether the "managing officers" and directors should pay back a portion of their compensation to Deere. In addition, the Submission seeks to provide all Deere employees with "a shot at earning a share of [the bonus pool] if they are recognized by their supervisors and/or their peers as having done a superior job," but fails to provide any criteria to determine who is considered a "peer," what constitutes a "superior job," and how bonuses should be awarded.

Because neither Deere nor, if the Submission were to be included in Deere's proxy materials, its shareholders, would be able to determine with any reasonable certainty exactly

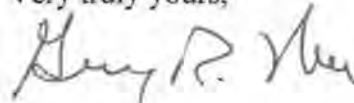
Office of Chief Counsel  
September 21, 2012  
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what actions or measures the Submission would require if adopted, Deere believes that the Submission is vague and indefinite in violation of Rule 14a-9 and therefore may be excluded from Deere's proxy materials pursuant to Rule 14a-8(i)(3).

#### **VIII. Conclusion**

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if Deere excludes the Submission from its 2013 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Deere's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact me at (309) 765-5467.

Very truly yours,



Gregory Noe  
Corporate Secretary and  
Associate General Counsel

Enclosures

cc: James Barnett



James Barnett

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

Corporate Secretary  
Deere and Company  
One John Deere Place  
Moline, IL 61265-8098



July 2, 2012

I, James Barnett, owner of 200 shares of Deere and Company common stock through my account at Fidelity Investments, would like to present the following proposal before my fellow shareholders for a vote at the next annual meeting:

*We the shareholders of Deere and Company petition the managing officers and the members of the board of the corporation to voluntarily repatriate 33% of their total monetary compensation for the 2013 calendar year, whether in the form of salary, bonuses, stock equities or the options thereon, into a bonus pool, to be distributed amongst employees of the company, with a goal that this money be distributed in such a manner that everyone within the corporation, from high to low, have a shot at earning a share of it if they are recognized by their supervisors and/or their peers as having done a superior job. We authorize the Board to create a committee to supervise the distribution of these funds.*

*Argument: In this day and age, there is no point in owning a stock that you don't believe in, so it almost goes without saying that we, the stockholders of Deere and Company, believe in the skills and the abilities of John Deere's management, as well as those of its Board of Directors. But we must also realize that the increasing division between rich and poor is a problem, both within the ranks of our corporation and in American society at large. We as stockholders have a role in rectifying this problem. In this regard, I ask the leadership of Deere and Company to take a step in the right direction and voluntarily repatriate 33% of their monetary compensation into a fund that will give bonuses to salaried and other employees as a reward for and in recognition of a job well done. As the level of compensation is commonly understood as a barometer of actual worth, I am not asking for our top executives to put themselves on a lower rung of this economic totem pole than their peers at other comparable companies. But I am asking them to voluntarily commit to something that will help both our company and our nation. It would help build morale throughout the ranks of Deere and Company. It would be good publicity for our company. And perhaps, in some small way, it might help to bridge a chasm that is slowly tearing our nation apart.*

*Sincerely,*  
*Jim Barnett*

EXHIBIT A

JAMES BARRETT

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

CORPORATE SECRETARY  
DEERE AND COMPANY  
ONE JOHN DEERE PLACE  
MOLINE, IL. 61265-8098

