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

DIVISION OF
CORPORATION FINANCE

January 10, 2013

Anthony M. Pepper
Praxair, Inc.
tony_pepper@praxair.com

Re: Praxair, Inc.
Incoming letter dated December 13, 2012

Dear Mr. Pepper:

This is in response to your letter dated December 13, 2012 concerning the shareholder proposal submitted to Praxair by John Chevedden. We also have received letters from the proponent dated January 3, 2013 and January 7, 2013. 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: John Chevedden
FISMA & OMB Memorandum M-07-16

January 10, 2013

Response of the Office of Chief Counsel
<u>Division of Corporation Finance</u>

Re: Praxair, Inc.
Incoming letter dated December 13, 2012

The proposal asks the board to adopt a policy that in the event of a change of control of the company, there shall be no acceleration in the vesting of any future equity pay to a senior executive, provided that any unvested award may vest on a pro rata basis as of the day of termination; to the extent any such unvested awards are based on performance, the performance goals must have been met.

There appears to be some basis for your view that Praxair may exclude the proposal under rule 14a-8(i)(3), as vague and indefinite. We note in particular your view that, in applying this particular proposal to Praxair, neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Accordingly, we will not recommend enforcement action to the Commission if Praxair omits the proposal from its proxy materials in reliance on rule 14a-8(i)(3).

Sincerely,

Angie Kim
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.

JOHN CHEVEDDEN

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

January 7, 2013

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

 # 2 Rule 14a-8 Proposal
Praxair, Inc. (PX)
Limit Accelerated Executive Pay
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 13, 2012 company request concerning this rule 14a-8 proposal.

This proposal is consistent with the core principle behind shareholder proposals – that resolution should focus on issues of policy, while leaving details of implementation up to the company.

The company does not cite any text in the proposal that highlights termination due to factors not triggered by a change in control.

Although the company purports that there are a number of ways to implement the proposal, the company does not point to any purported implementation method that would be "significantly different from the actions envisioned" to the extent that an increase in the acceleration of executive pay would result. The company did not cite any way the company might implement this proposal for which shareholders might criticize the company for going in the opposite direction advocated by this proposal. The company does not point to any supporting text that might seem to favor the acceleration of executive pay.

The company in fact believes that pro rata is clear because the company used pro-rata in its 8-K, attached with the proponent's January 3, 2013 letter, without specifying that the company use of pro-rata was to be interpreted in one particular way out of a field of purported possible interpretations.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2013 proxy.

Sincerely,

John Chevedden

cc: Anthony M. Pepper <Tony_Pepper@Praxair.com>

JOHN CHEVEDDEN

FISMA & OMB Memorandum M-07-16

FISMA & OMB Memorandum M-07-16

January 3, 2013

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

 # 1 Rule 14a-8 Proposal
Praxair, Inc. (PX)
Limit Accelerated Executive Pay
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 13, 2012 company request concerning this rule 14a-8 proposal.

The company believes that pro rata is clear because the company used pro-rata in its attached 8-K without specifying that the company use of pro-rata is to be interpreted in one particular way out of a field of possible interpretations.

Additional information will be forwarded soon.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2013 proxy.

Sincerely,

John Chevedden

cc: Anthony M. Pepper <Tony_Pepper@Praxair.com>

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) October 23, 2007

PRAXAIR, INC.
(Exact name of registrant as specified in its charter)

DELAWARE
(State or Other jurisdiction of incorporation)

1-11037 (Commission File Number)	06-124-9050 (IRS Employer Identification No.)
39 OLD RIDGEBURY ROAD, DANBURY, CT (Address of principal executive offices)	06810-5113 (Zip Code)

(203)837-2000
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(d) On October 23, 2007, the Board of Directors of Praxair, Inc. ("Praxair") elected Edward G. Galante a director of Praxair and a member of the Board's Compensation and Management Development Committee and the Governance and Nominating Committee, in each case effective December 1, 2007. Mr. Galante will be entitled to participate in the non-management director compensation arrangements described under the caption "Director Compensation-*director compensation program*" in Praxair's 2007 proxy statement dated March 15, 2007, including a pro-rata 2007 equity grant to be made in accordance with Section 5.6 of the 2005 Equity Compensation Plan for Non-Employee Directors of Praxair (filed as Exhibit 10.04 to Praxair's Form 8-K dated April 29, 2005).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PRAXAIR, INC.
Registrant

Date: October 26, 2007

By: /s/ James T. Breedlove
James T. Breedlove
Senior Vice President, General Counsel
and Secretary

PRAXAIR

39 OLD RIDGEBURY ROAD, DANBURY, CT 06810-5113

ANTHONY M. PEPPER
SENIOR COUNSEL &
ASSISTANT SECRETARY

Tel: 203-837-2264
Fax: 203-837-2515
tony_pepper@praxair.com

December 13, 2012

Via E-Mail to shareholderproposals@sec.gov

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

Re: *Praxair, Inc.*
Shareholder Proposal of John Chevedden
Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, Praxair, Inc., a Delaware corporation (the "Company"), hereby gives notice of its intention to omit from the proxy statement and form of proxy for the Company's 2013 Annual Meeting of Shareholders (together, the "2013 Proxy Materials") a shareholder proposal (including its supporting statement, the "Proposal") received from John Chevedden (the "Proponent"). The full text of the Proposal and all other relevant correspondence with the Proponent (and his representatives) are attached as Exhibit A.

The Company believes it properly may omit the Proposal from the 2013 Proxy Materials for the reasons discussed below. The Company respectfully requests confirmation that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission if the Company excludes the Proposal from the 2013 Proxy Materials.

This letter, including the exhibits hereto, is being submitted electronically to the Staff at shareholderproposals@sec.gov. Pursuant to Rule 14a-8(j), we have filed this letter with the Commission no later than 80 calendar days before the Company intends to file its definitive 2013 Proxy Materials with the Commission. A copy of this letter is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from the 2013 Proxy Materials.

I. The Proposal

The resolution contained in the Proposal reads as follows:

"RESOLVED: The shareholders ask our board of directors to adopt a policy that in the event of a change of control of our company, there shall be no acceleration in the vesting of any future equity pay to a senior executive, provided that any unvested award may vest on a pro rata basis as of the day of termination; to the extent any such unvested awards are based on performance, the performance goals must have been met. This policy shall not affect any legal obligations that may exist at the time of adoption of the requested policy."

The supporting statement following the resolution, which is included in full in Exhibit A, includes a number of assertions about the Company and its officers and directors, including the following:

- *"The GMI/The Corporate Library, an independent investment research firm rated our company "D" with "High Governance Risk," and "Very High Concern" in Executive Pay—$32 million for our CEO Stephen Angel."*
- *"Some of the blame for this goes to our executive pay committee with two Directors from companies that went bankrupt. Robert Wood was associated with the Chemtura Corporation bankruptcy and Wayne Smith was associated with the Citadel Broadcasting bankruptcy."*
- *"Mr. Smith, the chairman of this executive pay committee, was an inside-related director."*
- *"Our nomination committee also included Messrs. Wood and Smith plus Oscar de Paula Bernardes Neto who was associated with the Delphi Corporation bankruptcy."*

II. Reasons for Omission

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including 14a-9 (prohibiting materially false or misleading statements in proxy soliciting materials). We believe that the Proposal properly may be excluded from the 2013 Proxy Materials pursuant to Rule 14a-8(i)(3) because (A) the Proposal is impermissibly vague and indefinite in that it is subject to multiple interpretations and fails to provide sufficient guidance on its implementation, (B) it contains factual statements that are materially false and misleading and (C) it contains statements that directly or indirectly impugn the character, integrity, or personal reputation of certain Company directors without factual foundation.

A. The Proposal may be excluded pursuant to Rule 14a-8(i)(3) because it is impermissibly vague and indefinite in that it is subject to multiple interpretations and fails to provide sufficient guidance on its implementation.

Staff guidance provides that a proposal violates Rule 14a-8(i)(3) if it 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) ("SLB 14B"). Applying this standard, the Staff has concurred that a proposal is excludable under Rule 14a-8(i)(3) where a key term of the proposal is left undefined or a material provision of the proposal is drafted such that it is subject to multiple interpretations. For example, in *The Boeing Co.* (Mar. 2, 2011), the Staff concurred with the exclusion of a proposal that would have requested that the issuer encourage senior executives to relinquish "preexisting executive pay rights" because the proposal did not define or otherwise provide any guidance regarding how the term "preexisting executive pay rights" would apply to the issuer's various compensation programs. Likewise, in *Bank Mutual Corp.* (Jan. 11, 2005), the Staff concurred with the exclusion of a shareholder proposal that "a mandatory retirement age be established for all directors upon attaining the age of 72 years" because it was unclear whether the mandatory retirement age was to be 72 years or whether the mandatory retirement age would be determined when a director attains the age of 72 years. The underlying reasoning for such exclusions is that an ambiguously drafted proposal "may be misleading because any action ultimately taken by the company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (Mar. 12, 1991).[1]

In particular, during 2012 the Staff has concurred in the exclusion of a number of proposals that are very similar to the Proposal, on the basis that in each case, in the words of the Staff, "neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal require." These include the following:

- *Verizon Communications Inc.* (Jan. 27, 2012): proposal requests "a policy that in the event of a senior executive's termination or a change-in-control of the Company, there shall be no acceleration in the vesting of any equity awards to senior executives, except that any unvested equity awards may vest on a pro rata basis that is proportionate to the executive's length of employment during the vesting period. To the extent that the vesting of any such equity awards is based on performance, the performance goals should also be met."

- *Limited Brands, Inc.* (Feb. 29, 2012): proposal requested "a policy that in the event of a change of control of the Company, there shall be no acceleration in the vesting of any equity award to a senior executive, provided that any unvested award may vest on a pro rata basis up to the time of a change of control event. To

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1 In *Fuqua*, the Staff also noted the company's position that the "meaning and application of terms and conditions . . . in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretation."

the extent any such unvested awards are based on performance, the performance goals must have been met."

- *Devon Energy Corp.* (Mar. 1, 2012): proposal requested "a policy that in the event of a senior executive's termination or a change of control of the Company, there shall be no acceleration in the vesting of any equity awards to senior executives, except that an unvested equity awards may vest on a pro rata basis. To the extent any such unvested equity awards are based on performance, the performance goals must be met."

- *Staples, Inc.* (Mar. 5, 2012): proposal requested "a policy that in the event of a senior executive's termination or a change-in-control of the Company, there shall be no acceleration in the vesting of any equity awards to senior executives, except that any unvested equity awards may vest on a pro rata basis that is proportionate to the executive's length of employment during the vesting period. To the extent that the vesting of any such equity awards is based on performance, the performance goals should also be met."

The current Proposal presents the same ambiguities as the proposals noted above, and in fact introduces further ambiguity by referring to the "day of termination" in a proviso, even though the requested prohibition on acceleration does not tie to or otherwise reference termination at all.

Ambiguities as to events that may trigger acceleration. The Proposal seems to allow partial accelerated vesting in certain circumstances. It is not at all clear, however, what these circumstances are. The Proposal's key terms include that "any unvested equity award may vest on a pro rata basis *as of the day of termination*" (emphasis added). This is included as a proviso to the general prohibition on the accelerated vesting of awards *in the event of a change of control.*

This language is subject to multiple interpretations that could result in materially different outcomes. The proviso seems to contemplate some sort of accelerated vesting triggered upon a "termination." It is unclear how this termination-based acceleration would function as an exception to the general prohibition of accelerated vesting triggered by a "change of control." While the language is inherently confusing, there are several potential interpretation as to how to apply this proviso in the context of the general prohibition.

One interpretation is that some level of accelerated vesting is permitted if the executive's employment terminates upon or in connection with the change in control. The language does not define "termination," or in any way distinguish between involuntary termination (with or without cause), voluntary termination (with or without good reason), or termination for other reasons, such as retirement, death or disability, nor does it include any language suggesting that the type of termination matters.[2] Thus, this could be read to allow, for example, the executive to

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2 Similarly, the Proposal does not define the term "change of control," which can have a wide variety of meanings, including an outright merger of the Company into another

terminate his or her employment voluntarily with no good reason following a change in control and to receive some sort of accelerated vesting. This would seem at odds with the general thrust of the proposal, which is not to give executives the opportunity to receive accelerated vesting on a change of control.

Alternatively, the Proposal (though it does not specify this) could be attempting to permit only a "double-trigger" acceleration upon the occurrence of certain termination events within a specified period following a change of control. This would be consistent with, for example, the provisions of Section 16.3 of the 2009 Praxair, Inc. Long-Term Incentive Plan, which contemplates accelerated vesting of unvested awards in the event of a termination of employment, *other than for cause,* in connection with or within a specified period following a change of control. Unfortunately, nothing in the Proposal suggests whether different types of termination should or could be treated differently.

Yet another interpretation is that the Proposal's language could simply be intended to indicate that the prohibition on accelerated vesting on a change in control does not prevent the Company from, as an entirely separate matter, accelerating vesting on a termination to the extent the terms of an award so provide. This would be consistent with the fact that the Proposal does not indicate in any way that the referenced "termination" must be connected to the referenced "change in control." It does not, however, explain why this language is crafted as a proviso to the general prohibition on acceleration upon a change of control, because it would not in fact serve to limit the general prohibition. Under this interpretation, the proviso would essentially be a non sequitur.

Ambiguities as to meaning of "pro rata vesting." Leaving aside the question of what event might trigger "pro rata vesting," the Proposal provides no guidance as to what "pro rata vesting" actually means (other than that it should be calculated to "the day of termination"). For example, suppose the Company has granted an award that vests 25% after one year, 25% after two years and 50% at the end of three years. Suppose further that a change in control occurs in the middle of year two (18 months after the grant date) and the executive's employment terminates (voluntarily or involuntarily) five months into year three (29 months after the grant date). (We are for these purposes, assuming that "pro rata" accelerated vesting is triggered under the Proposal, leaving aside the question discussed above as to what exactly the trigger would be.)

One interpretation of the "pro rata vesting" language in the Proposal is that the executive may simply remain vested in the 50% of the award that vested prior to the termination date, but that there can be no acceleration of the 50% that did not vest prior to the termination date. Under

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entity, a transfer of some portion of the assets or property of the Company, or a mere change in stock ownership or board membership beyond a certain threshold. The Company's equity compensation plans contain a definition of "Change in Control," but this is one of many possible definitions and the Proposal does not reference or describe this definition such that shareholders voting on the Proposal, or the Company in responding to it, would have a common understanding of what the term is intended to cover.

this reading, the proviso is simply indicating that a pro-rated vesting schedule set forth in an award agreement will not be superseded by the requested policy of not accelerating vesting on a change in control. The difficulty with this interpretation, however, is that there is no acceleration of vesting of unvested awards, so there is no need for a proviso to the general prohibition.

A second interpretation is that any unvested portion of the award as of the termination date may be accelerated to some extent. In the above scenario, then, the first 25% would have vested prior to the change in control, and the second 25% would have vested on schedule after the change in control but prior to termination. As of termination, the remaining unvested 50% of the award would be subject to "pro rata" acceleration. This could mean, for example, that the unvested 50% of the award would be viewed as allocable to the third year of the vesting period, and a portion could be accelerated that is allocable to the period through the termination date (so 5/12 of the remaining 50% could be accelerated, for the five months the executive was employed in that year). Alternatively, the remaining 50% could be attributed to the entire three-year vesting period, in which case the executive would be entitled to accelerated vesting of 29/36 of the unvested award (for the 29 months out of 36 months that the executive was employed in the three-year period). Perhaps a more fair and logical calculation would be to accelerate vesting of an amount such that the executive will be vested in a pro rata portion of the entire award over the three-year period. So, an amount of the final unvested 50% would be accelerated as needed to ensure that the executive will be vested in 29/36 of the entire award (taking into account that the executive is already vested in 50% of the entire award as of the termination date).

As in the *Verizon*, *Limited*, *Devon Energy* and *Staples* letters references above, the Proposal provides no guidance whatsoever as to which pro-ration method is contemplated.

Ambiguities as to treatment of performance goals. It is particularly unclear how the Proposal's pro rata requirement would apply to equity awards subject to performance goals. The phrase "to the extent any such unvested awards are based on performance, the performance goals must have been met" appears to be an exception to the language permitting pro rata vesting of unvested awards – it indicates that unvested performance awards may be subject to pro rata vesting if and only if the performance goals "have been met."

As an initial matter, the Proposal does not indicate *by when* the performance goals "must have been met." Is accelerated vesting permitted only if the performance goals were met as of the date of the change in control? As of the date of termination? If the performance goals have been met by those dates, but the awards are still unvested, then presumably the remaining vesting requirements are non-performance-related (*e.g.*, time vesting), though it is unclear what is contemplated here.

Another interpretation would require that unvested performance-based equity awards vest only if the performance goals are met *as of the end of the specified performance period*. Under this interpretation, if an executive was entitled to receive an award if certain performance goals are met at the end of a three-year period, but a change of control event and termination occurred during the performance period, the executive would receive the full award only if the performance goals were met at the end of the three-year period. Under this approach, notwithstanding the executive's earlier departure from the firm, the payout of the performance award would occur, if at all, after the end of the performance period. This, of course, still leaves open the question discussed above of what it means to have a "pro rata" vesting of this award. And, to the extent that the performance goals survive a change of control, the Proposal is unclear about whether they should or could be adjusted as appropriate to apply to the new company, which may be larger.

Another materially different, though equally plausible, reading of the Proposal would apply the "pro rata" vesting language to the performance goals (since the clause referencing performance goals appears to be a qualifier to the clause relating to pro rata awards). However, this would appear to require the proration of the performance criteria prior to the end of the performance period. For example, suppose an executive would be entitled to receive an award if a performance goal is satisfied at the end of a three-year period, and a change in control and termination occur halfway through that three-year period. Should the entire award be forfeited because the performance goals have not yet been met at the time of the change of control, or termination? Or should the Company assess whether the performance goals were *on pace to be met*, as of the date of change of control or termination? Depending on the outcome of that analysis, should the executive receive the full amount of the award, or a pro rated amount?

Absence of language authorizing the board to interpret the language. We are aware that the Staff has indicated that language calling for pro rata acceleration may not be a basis for exclusion under Rule 14a-8(i)(3) if the proposal clearly provides a mechanism for determining the manner of pro ration. In *Walgreen Co.* (Oct. 4, 2012), the Staff refused to allow the exclusion of a proposal to prohibit accelerated vesting where the proposal expressly stated that "the board's Compensation Committee may provide in an applicable grant or purchase agreement that any unvested award will vest on a partial, pro rata basis up to the time of the senior executive's termination, with such qualifications for an award as the Committee may determine." This proposal also did not mention performance awards, and thus avoided further ambiguity in that regard. The Staff's response quoted the language authorizing the Compensation Committee to make these determinations, and concluded that this proposal, unlike the other proposals referenced above, was not excludable as "vague and indefinite."

In our case, the Proposal does not include any such authorizing language, or any other mechanism or authority for determining the manner of pro ration or the resolution of other ambiguities (even though the *Walgreen* letter was publicly available at the time the Proponent submitted the Proposal). Accordingly, we believe that the Proposal is substantially similar to the earlier letters referenced above, and distinguishable from the *Walgreen* letter.

In sum, because neither shareholders in voting on the Proposal nor the Company in implementing the Proposal would be able to determine with reasonable certainty exactly what actions or measures the proposal require, we request that the Staff concur in our view that the Proposal is excludable under Rule 14a-8(i)(3) as impermissibly vague or indefinite.

B. The Proposal may be excluded under Rule 14a-8(i)(3) because it contains materially false and misleading statements.

Rule 14a-8(i)(3) permits the exclusion of proposals and supporting statements that are "contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." As the Staff explained in SLB 14B, Rule 14a-8(i)(3) permits the exclusion of all or part of a shareholder proposal or the supporting statement if, among other things, the company demonstrates objectively that a factual statement is materially false or misleading. The Company believes that objectively false statements included in the supporting statement of the Proposal materially misrepresent the Company's compensation and governance practices in a way that is fundamental to an understanding of the Proposal.

The Staff has allowed exclusion of an entire proposal that contains false and misleading statements. *See, e.g.*, State Street Corp. (Mar. 1, 2005). In State Street, the proposal purported to request shareholder action under a section of state law that had been recodified. Because the proposal by its terms invoked a statute that was not applicable, the Staff concurred that exclusion was permitted under Rule 14a-8(i)(3) because the submission was based upon a false premise that made it materially misleading to shareholders.

Similarly, the supporting statement of the Proposal includes a number of materially false and misleading statements in an effort to establish a basis on which shareholders should cast their votes. In particular, in the first statement made in the supporting statement about the Company's compensation practices, the Proposal states that the CEO, Stephen Angel, received compensation of $32 million. This is a completely false statement. Mr. Angel's total compensation included in the 2011 Summary Compensation Table included in the 2012 proxy statement was $18.6 million. The Proponent overstates Mr. Angel's compensation by a factor of over 70%, with no explanation whatsoever – this is a materially wrong number, and the misstatement goes to a matter that is material to the premise of the proposal. The emphasis in the supporting statement makes clear that purportedly excessive CEO compensation is a concern that the Proposal is meant to remedy; the Proposal expressly states that that it "should ... be evaluated in the context of" this misstatement, among other things. Forcing the Company to include a flatly false statement about CEO compensation will mislead shareholders about the premise of the Proposal and, more broadly, undermines the Commission's carefully considered rulemaking designed to ensure clear and complete compensation disclosure in the proxy statement.

A second materially false statement in the Proposal relates to director independence (another area where the Commission's rules are designed to ensure clear proxy disclosure, but where the inclusion of the Proposal will just engender confusion). The seventh paragraph of the Proposal states that Mr. Smith is an "inside-related director" of the Company. This statement is demonstrably false. As disclosed pages 13 and 17 of the Company's 2012 proxy statement, Mr. Smith is an independent director pursuant to the Company's Independence Standards for Board

Service, which are publicly available on the Company's website at www.praxair.com in the Corporate Responsibility/Governance section.[3]

The purported lack of independent board oversight is set out in the supporting statement as a fundamental reason for the need for the policy advanced by the Proposal. Thus, the false statement as to director independence materially misstates the context for the Proposal.

Together, these demonstrably false statements create a materially misleading pretext for the Proposal, and the Company does not believe that it should be required to include these false statements in its proxy statement. Doing so would be a disservice to shareholders, in that it would undermine the clear compensation and independence disclosure called for by SEC rules, and would put shareholders in a position of voting on a proposal against a backdrop of materially false statements as to critical matters. For this reason, we request that the Staff concur that the Proposal is excludable under Rule 14a-8(i)(3).

C. The Proposal may be excluded pursuant to Rule 14a-8(i)(3) because it contains statements that directly or indirectly impugn the character, integrity, or personal reputation of certain Company directors without factual foundation.

As noted above, Rule 14a-8(i)(3) permits the exclusion of proposals and supporting statements that are "contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." Note (b) to Rule 14a-9 further provides that "[m]aterial which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation" are examples of misleading statements prohibited by the Rule. *Accord SLB 14B.*

The Proposal contains a number of statements that impugn the character, integrity or personal reputation of certain Company directors without factual foundation. The fifth and sixth paragraphs reference a negative GMI/The Corporate Library rating of the Company for "High Governance Risk" and "Very High Concern" regarding executive compensation, and make various assertions as to the levels of CEO compensation. The seventh and eighth paragraphs then go on to suggest that the "blame for this" is attributable to three directors' associations with other issuers that declared bankruptcy. (We note that "blame for" what is unclear – presumably the governance rating and the compensation arrangements specified above.) There is no foundation cited in the Proposal for the proposition that a director's past "association with" another company's bankruptcy is relevant to a discussion of the Company's corporate

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3 Alternatively, the Proponent may have intended to assert that Mr. Smith was an "inside-related director" of Citadel Broadcasting – the drafting is ambiguous on this point. If this is the intended assertion, it is certainly not plainly stated and is susceptible to the interpretation that he is an "inside-related director" of the Company. In addition, even this assertion appears to be untrue as to Mr. Smith, based on the last annual meeting proxy statement filed by Citadel Broadcasting Corporation, which states that Mr. Smith is an independent director under the NYSE standards and the Commission's audit committee independence rules. *See* Citadel Broadcasting Corporation, Schedule 14A, filed with the Commission on April 8, 2009.

governance or executive compensation policies. We note in particular that the Proposal states broadly that these individuals were "associated with" the bankruptcies of the relevant companies, without indicating that the individuals were outside directors of these companies, not members of management. By stating that these directors are somehow "blameworthy" for something, the Proposal insinuates that these directors' integrity or personal reputation undermines their respective abilities to serve the Company's best interests consistent with best practices of corporate governance and executive compensation policies. In doing so, the Proposal impermissibly impugns character, integrity, or personal reputation without factual foundation.

For this reason, we request that the Staff concur that the Proposal is excludable under Rule 14a-8(i)(3).

* * *

Should you have any questions or if you would like any additional information regarding the foregoing, please do not hesitate to contact the undersigned at (203) 837-2264 or by email at tony_pepper@praxair.com. Thank you for your attention to this matter.

Very truly yours,

Anthony M. Pepper

Attachment

cc: John Chevedden

EXHIBIT A-TEXT OF THE PROPOSAL AND RELATED CORRESPONDENCE

JOHN CHEVEDDEN

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

Mr. Stephen F. Angel
Chairman
Praxair, Inc. (PX)
39 Old Ridgebury Rd
Danbury CT 06810

REVISED NOV. 16, 2012

Dear Mr. Angel,

I purchased stock and hold stock in our company because I believed our company has unrealized potential. I believe some of this unrealized potential can be unlocked by making our corporate governance more competitive. And this will be virtually cost-free and not require lay-offs.

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

In the interest of company cost savings and improving the efficiency of the rule 14a-8 process please communicate via email to *** FISMA & OMB Memorandum M-07-16 ***

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal promptly by email to *** FISMA & OMB Memorandum M-07-16 ***

Sincerely,

John Chevedden

October 8, 2012
Date

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

cc:
cc: James T. Breedlove
Corporate Secretary
PH: 203-837-2000
FX: 203-837-2515
Anthony M. Pepper <Tony_Pepper@Praxair.com>
Corporate Counsel

[PX: Rule 14a-8 Proposal, October 8, 2012, Revised November 16, 2012]

Proposal 4* – Limit Accelerated Executive Pay

RESOLVED: The shareholders ask our board of directors to adopt a policy that in the event of a change of control of our company, there shall be no acceleration in the vesting of any future equity pay to a senior executive, provided that any unvested award may vest on a pro rata basis as of the day of termination; to the extent any such unvested awards are based on performance, the performance goals must have been met. This policy shall not affect any legal obligations that may exist at the time of adoption of the requested policy.

Under current or future executive pay plans, our company's highest paid executives can receive "golden parachute" pay after a change in control. It is important to retain the link between executive pay and company performance, and one way to achieve that goal is to prevent windfalls that an executive has not earned.

The vesting of equity pay over a period of time is intended to promote long-term improvements in performance. The link between executive pay and long-term performance can be severed if such pay is made on an accelerated schedule. Our CEO had a potential $70 million entitlement for a change in control.

This proposal should also be evaluated in the context of our Company's overall corporate governance as reported in 2012:

The GMI/The Corporate Library, an independent investment research firm rated our company "D" with "High Governance Risk," and "Very High Concern" in Executive Pay – $32 million for our CEO Stephen Angel. Mr. Angel also had over $20 million in his accumulated pension. Because such payments are not tied directly to company performance, they are difficult to justify in terms of shareholder benefit.

Mr. Angel had realized $50 million in equity profits from option and stock payments. Despite this level of pay, our board continued to give time-vesting as opposed to performance vesting stock options as part of the so-called long-term incentive plan. Finally, Mr. Angel could potentially gain $70 million if there was a change in control. This was not in the interest of shareholders as it presented a conflict of interest by providing a strong financial incentive for Mr. Angel to pursue such an arrangement.

Some of the blame for this goes to our executive pay committee with two Directors from companies that went bankrupt: Robert Wood was associated with the Chemtura Corporation bankruptcy and Wayne Smith was associated with the Citadel Broadcasting bankruptcy. Plus Mr. Smith, the chairman of this executive pay committee, was an inside-related director.

Our nomination committee also included Messrs. Wood and Smith plus Oscar de Paula Bernardes Neto, who was associated with the Delphi Corporation bankruptcy. And our audit committee had two long-tenured directors – Claire Gargalli and Raymond LeBoeuf.

Please encourage our directors to respond positively to this proposal to protect shareholder value:

Limit Accelerated Executive Pay – Proposal 4*

Notes:
John Chevedden, *** FISMA & OMB Memorandum M-07-16 *** sponsored this proposal.

Please note that the title of the proposal is part of the proposal.

*Number to be assigned by the company.

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

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(I)(3) in the following circumstances:
>
> • the company objects to factual assertions because they are not supported;
>
> • the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
>
> • the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
>
> • the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
>
> ***We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.***

See also: Sun Microsystems, Inc. (July 21, 2005).
Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email FISMA & OMB Memorandum M-07-16 ***

Rule 14a-8 Proposal (PX)``

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

to:

Anthony M. Pepper

10/08/2012 06:13 PM

Hide Details

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

To: "Anthony M. Pepper" <Tony_Pepper@Praxair.com>

History: This message has been forwarded.

1 Attachment

CCE00007.pdf

Mr. Pepper,
Please see the attached Rule 14a-8 Proposal.
Sincerely,
John Chevedden

JOHN CHEVEDDEN

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

Mr. Stephen F. Angel
Chairman
Praxair, Inc. (PX)
39 Old Ridgebury Rd
Danbury CT 06810

Dear Mr. Angel,

I purchased stock and hold stock in our company because I believed our company has unrealized potential. I believe some of this unrealized potential can be unlocked by making our corporate governance more competitive. And this will be virtually cost-free and not require lay-offs.

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

In the interest of company cost savings and improving the efficiency of the rule 14a-8 process please communicate via email to *** FISMA & OMB Memorandum M-07-16 ***

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal promptly by email to *** FISMA & OMB Memorandum M-07-16 ***

Sincerely,

John Chevedden

October 8, 2012
Date

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

cc:
cc: James T. Breedlove
Corporate Secretary
PH: 203-837-2000
FX: 203-837-2515
Anthony M. Pepper <Tony_Pepper@Praxair.com>
Corporate Counsel

[PX: Rule 14a-8 Proposal, October 8, 2012]

Proposal 4* – Executives To Retain Significant Stock

Resolved: Shareholders request that our Compensation Committee adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity pay programs until reaching normal retirement age. For the purpose of this policy, normal retirement age shall be defined by the Company's qualified retirement plan that has the largest number of plan participants. The shareholders recommend that the Committee adopt a share retention percentage requirement of 33% of such shares.

The policy should prohibit hedging transactions for shares subject to this policy which are not sales but reduce the risk of loss to the executive. This policy shall supplement any other share ownership requirements that have been established for senior executives, and should be implemented so as not to violate the Company's existing contractual obligations or the terms of any compensation or benefit plan currently in effect.

Requiring senior executives to hold a significant portion of stock obtained through executive pay plans would focus our executives on our company's long-term success. A Conference Board Task Force report on executive pay stated that hold-to-retirement requirements give executives "an ever-growing incentive to focus on long-term stock price performance."

This proposal should also be evaluated in the context of our Company's overall corporate governance as reported in 2012:

The GMI/The Corporate Library, an independent investment research firm rated our company "D" with "High Governance Risk," and "Very High Concern" in Executive Pay – $32 million for our CEO Stephen Angel. Mr. Angel had over $20 million in accumulated pension benefits. Because such payments are not tied directly to company performance, they are difficult to justify in terms of shareholder benefit.

Mr. Angel has realized $50 million in equity profits from option and stock payments. Despite this level of pay, our board continued to give time-vesting as opposed to not performance vesting stock options as part of the so-called long-term incentive plan. Finally, Mr. Angel could potentially gain $70 million if there is a change of control. This is not in the interests of shareholders as it presents a conflict of interest by providing a strong financial incentive for Mr. Angel to pursue such an arrangement. Executive pay polices such as these are not in the interests of company shareholders according to GMI.

Some of the blame for this goes to our executive pay committee with two Directors from companies that went bankrupt. Robert Wood was associated with the Chemtura Corporation bankruptcy and Wayne Smith was associated with the Citadel Broadcasting bankruptcy. Plus Mr. Smith, the chairman of this executive pay committee, was an inside-related director.

Our nomination committee also included Messrs. Wood and Smith plus Oscar de Paula Bernardes Neto who was associated with the Delphi Corporation bankruptcy. And our audit committee had two inside-related directors – Claire Gargalli and Raymond LeBoeuf.

Please encourage our board to respond positively to this proposal for improved governance:

Executives To Retain Significant Stock – Proposal 4.*

Notes:
John Chevedden, *** FISMA & OMB Memorandum M-07-16 *** sponsored this proposal.

Please note that the title of the proposal is part of the proposal.

*Number to be assigned by the company.

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

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:
>
> - the company objects to factual assertions because they are not supported;
> - the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
> - the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
> - the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
>
> ***We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.***

See also: Sun Microsystems, Inc. (July 21, 2005).
Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email *** FISMA & OMB Memorandum M-07-16 ***

Rule 14a-8 Proposal (PX) nfn
*** FISMA & OMB Memorandum M-07-16 ***
to:
Anthony M. Pepper
10/15/2012 04:43 PM
Hide Details
From: *** FISMA & OMB Memorandum M-07-16 ***

To: "Anthony M. Pepper" <Tony_Pepper@Praxair.com>

History: This message has been replied to and forwarded.

1 Attachment

CCE00010.pdf

Mr. Pepper,
Attached is rule 14a-8 proposal stock ownership letter. Please let me know tomorrow whether there is any question.
Sincerely,
John Chevedden

NATIONAL
FINANCIAL℠

P.O. BOX 770001
CINCINNATI, OH 45277-0045

October 15, 2012

John R. Chevedden
Via facsimile to: FISMA & OMB Memorandum M-07-16 ***

To Whom It May Concern:

This letter is provided at the request of Mr. John R. Chevedden, a customer of Fidelity Investments.

Please accept this letter as confirmation that according to our records Mr. Chevedden has continuously owned no less than 50 shares of PPG Industries, Inc. (CUSIP: 693506107, trading symbol: PPG), 50 shares of Praxair, Inc. (CUSIP: 74005P104, trading symbol: PX), 25 shares of International Business Machines Corp. (CUSIP: 459200101, trading symbol: IBM), 300 shares of Goodyear Tire & Rubber Co. (CUSIP: 382550101, trading symbol: GT) and 100 shares of Paccar, Inc. (CUSIP: 693718108, trading symbol: PCAR) since October 1, 2011. These shares are registered in the name of National Financial Services, LLC, a DTC participant (DTC number: 0226) and Fidelity affiliate.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-800-6890 between the hours of 9:00 a.m. and 5:30 p.m. Eastern Time (Monday through Friday). Press 1 when asked if this call is a response to a letter or phone call; press *2 to reach an individual, then enter my 5 digit extension 27937 when prompted.

Sincerely,

George Stasinopoulos
Client Services Specialist

Our File: W893750-15OCT12

Re: Rule 14a-8 Proposal (PX) nfn

Tony Pepper to: *** FISMA & OMB Memorandum M-07-16 *** 10/19/2012 10:31 AM

Received. Thanks.

Tony Pepper
Senior Counsel & Assistant Corporate Secretary
Praxair, Inc.
Law Dept., M1-539
39 Old Ridgebury Road
Danbury, CT 06810-5113
(203) 837-2264 (Office)
(203) 417-2633 (Cell)
(203) 837-2515 (Fax)

*** FISMA & OMB Memorandum M-07-16 ***Mr. Pepper, Attached is rule 14a-8 proposal stoc... 10/15/2012 04:43:15 PM

From:	*** FISMA & OMB Memorandum M-07-16 ***
To:	"Anthony M. Pepper" <Tony_Pepper@Praxair.com>
Date:	10/15/2012 04:43 PM
Subject:	Rule 14a-8 Proposal (PX) nfn

Mr. Pepper,
Attached is rule 14a-8 proposal stock ownership letter. Please let me know tomorrow whether there is any question.
Sincerely,

John Chevedden CCE00010.pdf

Rule 14a-8 Proposal (PX)``
*** FISMA & OMB Memorandum M-07-16 ***
to:
Anthony M. Pepper
11/16/2012 05:03 PM
Hide Details
From: *** FISMA & OMB Memorandum M-07-16 ***

To: "Anthony M. Pepper" <Tony_Pepper@Praxair.com>

History: This message has been replied to and forwarded.

1 Attachment

CCE00012.pdf

Mr. Pepper,
Please see the attached Rule 14a-8 Proposal revision.
Sincerely,
John Chevedden

JOHN CHEVEDDEN

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

Mr. Stephen F. Angel
Chairman
Praxair, Inc. (PX)
39 Old Ridgebury Rd
Danbury CT 06810

REVISED NOV. 16, 2012

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Sincerely,

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

October 8, 2012
Date

cc:
cc: James T. Breedlove
Corporate Secretary
PH: 203-837-2000
FX: 203-837-2515
Anthony M. Pepper <Tony_Pepper@Praxair.com>
Corporate Counsel

[PX: Rule 14a-8 Proposal, October 8, 2012, Revised November 16, 2012]

Proposal 4* – Limit Accelerated Executive Pay

RESOLVED: The shareholders ask our board of directors to adopt a policy that in the event of a change of control of our company, there shall be no acceleration in the vesting of any future equity pay to a senior executive, provided that any unvested award may vest on a pro rata basis as of the day of termination; to the extent any such unvested awards are based on performance, the performance goals must have been met. This policy shall not affect any legal obligations that may exist at the time of adoption of the requested policy.

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Some of the blame for this goes to our executive pay committee with two Directors from companies that went bankrupt: Robert Wood was associated with the Chemtura Corporation bankruptcy and Wayne Smith was associated with the Citadel Broadcasting bankruptcy. Plus Mr. Smith, the chairman of this executive pay committee, was an inside-related director.

Our nomination committee also included Messrs. Wood and Smith plus Oscar de Paula Bernardes Neto, who was associated with the Delphi Corporation bankruptcy. And our audit committee had two long-tenured directors – Claire Gargalli and Raymond LeBoeuf.

Please encourage our directors to respond positively to this proposal to protect shareholder value:

Limit Accelerated Executive Pay – Proposal 4*

Notes:
John Chevedden, *** FISMA & OMB Memorandum M-07-16 *** sponsored this proposal.

Please note that the title of the proposal is part of the proposal.

*Number to be assigned by the company.

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

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> - the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
>
> ***We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.***

See also: Sun Microsystems, Inc. (July 21, 2005).
Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email FISMA & OMB Memorandum M-07-16 ***

Re: Rule 14a-8 Proposal (PX)``
Tony Pepper *** FISMA & OMB Memorandum M-07-16 *** 11/16/2012 11:51 PM

John, does this proposal replace your other proposal submitted to Praxair on October 8, 2012 related to executive stock retention policy?

From:*** FISMA & OMB Memorandum M-07-16 ***
Sent: 11/16/2012 02:02 PM PST
To: Tony Pepper
Subject: Rule 14a-8 Proposal (PX)``

Mr. Pepper,
Please see the attached Rule 14a-8 Proposal revision.
Sincerely,
John Chevedden

Re: Rule 14a-8 Proposal (PX)
Tony Pepper to: *** FISMA & OMB Memorandum M-07-16 ***

11/17/2012 12:19 AM

Thanks

----- Original Message -----
From: *** FISMA & OMB Memorandum M-07-16 ***
Sent: 11/16/2012 09:17 PM PST
To: Tony Pepper
Subject: Rule 14a-8 Proposal (PX)

Yes

Rule 14a-8 Proposal (PX)

*** FISMA & OMB Memorandum M-07-16 *** to: Tony Pepper 11/17/2012 12:17 AM

History: This message has been replied to and forwarded.

Yes