



February 2, 2018

Via Electronic Mail

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

Re: United Continental Holdings, Inc. – Shareholder Proposal submitted by Flyers Rights Education Fund

Ladies and Gentlemen:

This letter and the materials enclosed herewith are submitted by United Continental Holdings, Inc. (the “Company”), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of its intention to exclude from its proxy materials for its 2018 Annual Meeting of Stockholders (the “2018 Annual Meeting” and such materials, the “2018 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof submitted by Flyers Rights Education Fund (the “Proponent”).

The Company intends to file its definitive proxy materials for the 2018 Annual Meeting on or about April 23, 2018. The Company is submitting this letter no later than eighty calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission. Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008), this letter and its exhibits are being submitted via email to *shareholderproposals@sec.gov*. A copy of this letter and its exhibits will also be sent to the Proponent as notice of the Company’s intent to exclude the Proposal from the 2018 Proxy Materials.

The Company intends to omit the Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) of the Exchange Act and respectfully requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its 2018 Proxy Materials for the reasons set forth below.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by the Company’s shareholders at the 2018 Annual Meeting:

RESOLVED: The shareholders of United Continental Holdings, Inc. (the “Company”) request that the Board of Directors prepare a report on the regulatory risk and discriminatory effects of smaller cabin seat sizes on overweight, obese, and tall passengers. This report will also analyze the impact of smaller cabin seat sizes on the Company’s profit margin and stock price.

A copy of the Proposal, including its supporting statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because it Relates to Matters of the Company’s Ordinary Business.

A. Background on the Ordinary Business Standard Under Rule 14a-8(i)(7)

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company’s proxy materials if the proposal “deals with a matter relating to the company’s ordinary business operations.” The underlying policy of the ordinary business exclusion, according to the Commission, is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” Release No. 34-40019 (May 21, 1998) (the “1998 Release”) (citing Exchange Act Release No. 12999 (Nov. 22, 1998)). Two considerations underlie this exclusion. The first relates to the subject matter of the proposal: “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” 1998 Release. 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.” 1998 Release.

In applying Rule 14a-8(i)(7) to proposals requesting companies to prepare reports on specific aspects of their business, the Staff has determined that it will consider whether the subject matter of the report involves a matter of ordinary business. If it does, the proposal can be excluded even if it requests only the preparation of the report and not the taking of any action with respect to such ordinary business matter, as set forth in the 1998 Release.

The 1998 Release also provided a social policy exception to the general rule of allowing a company to exclude shareholder proposals if they deal with matters relating to a company’s ordinary business operations. The Staff has indicated that, “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.” Staff Legal Bulletin No. 14E (Oct. 27, 2009). The question is whether the proposal focuses primarily on the matter of broad public policy versus matters related to the company’s ordinary business operations.¹

¹ *Id.*

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because it Relates to the Manner in Which the Company Provides Air Transportation Services

The Company is a major airline carrier and operates approximately 4,500 flights a day to 338 airports across five continents. In 2017, the Company operated more than 1.6 million flights carrying more than 148 million customers worldwide. The Company offers passengers various amenities in air travel, including variable types of cabin seats aboard its 744 mainline aircraft and 518 regional aircraft. Evaluating the size and specifications of the Company's cabin seats and ensuring the Company's ability to attract and retain passengers as customers is fundamental to the role of management. The Company's management is in the best position to evaluate and determine what amenities are necessary to adequately respond to passenger demand, as well as how and when the nature of those amenities change, as it considers the operation of the Company's air transportation services. Management also considers the potential economic impact on the Company of any such changes, including any impact on profit margin and stock price. The Proposal strikes directly at these core management functions.

The Proposal requests that the Board of Directors of the Company "prepare a report on the regulatory risk and discriminatory effects of smaller cabin seat sizes on overweight, obese, and tall passengers." As further detailed below, the Staff consistently has recognized that decisions relating to the products and services offered by a company are part of a company's ordinary business operations and has concurred in the exclusion of such shareholder proposals. The principal focus of the Proposal is the size of cabin seats for passengers, which is a decision made by the Company's management and clearly central to the manner in which the Company provides air transportation services.

There is a long line of precedents in which the Staff has concurred in the exclusion of proposals concerning the sale or distribution of particular products and services, including the manner in which a company provides its products and services. The Staff has reached the same result where the proposal asks for a report concerning the sale or distribution of particular products and services. For example, in *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013), the Staff concurred in the exclusion of a proposal requesting that the company prepare a report discussing its policies in addressing the social and financial impacts of the company's direct deposit advance lending service. The Staff noted that "the proposal relates to the products and services offered for sale by the company," which it further explained as being "generally excludable under [R]ule 14a-8(i)(7)." In *International Business Machines Corp.* (Jan. 6, 2005), the Staff concurred in the exclusion of a proposal requesting the board of directors to take steps to offer customers software technology that has greater simplicity. The Staff noted that the proposal related to the design and development of the company's products and falls within the company's ordinary business operations. Similarly, in *Kroger Co.* (Mar. 20, 2003), the Staff concurred in the exclusion of a proposal requesting that the company cease making available certain shopping carts to its customers under Rule 14a-8(i)(7) as relating to "the manner in which a company sells and markets its products." See also *Morgan Stanley* (Jan. 10, 2012, *recon. denied* Mar. 13, 2012) (concurring in the exclusion of a proposal that, among other items, requested that the company, when acting as a repo dealer, adopt the use of transparent, multilateral trading facilities); *FMC Corp.* (Feb. 25, 2011, *recon. denied* Mar. 16, 2011) (concurring in the exclusion of a proposal about pesticides that were "suspected to have been

misused by third parties to harm wildlife or humans,” as relating to “products offered for sale by the company”); *Pepco Holdings, Inc.* (Feb. 18, 2011) (concurring in the exclusion of a proposal urging the company to pursue the market for solar technology and noting that the “proposal relates to the products and services offered for sale by the company”); *Wal-Mart Stores, Inc.* (Mar. 30, 2010) (concurring in the exclusion of a proposal requiring that all company stores stock certain amounts of locally produced and packaged food as concerning “the sale of particular products”); *JPMorgan Chase & Co.* (Mar. 16, 2010) (concurring in the exclusion of a proposal for the board of directors to implement a policy mandating that the company cease its practice of issuing refund anticipated loans); *PetSmart, Inc.* (Apr. 8, 2009) (concurring in the exclusion of a proposal requesting that the board of directors issue a report on the feasibility of phasing out the company’s sale of live animals by 2014); *Wal-Mart Stores, Inc.* (Mar. 24, 2008) (concurring in the exclusion of a proposal requesting a report on the viability of a cage-free egg policy); *PetSmart, Inc.* (Apr. 14, 2006) (concurring in the exclusion of a proposal requesting that the board of directors issue a report detailing whether the company will end all bird sales).

Similar to the precedents cited above, the Proposal may be excluded under Rule 14a-8(i)(7) because it directly relates to the manner in which the Company provides services. The size of cabin seats for passengers is a key operational and strategic decision made by management with input from specialized employees and outside professionals. The Company’s aircraft are equipped with a variety of cabin seat sizes, which are variable according to the type of aircraft and class of passenger (*e.g.*, Polaris, First Class, Business Class, Economy and Economy Plus). Cabin seat size and configuration is specified in connection with the Company’s orders for new aircraft or the refurbishing of existing aircraft. These specifications are highly technical in nature and involve complex engineering analysis in addition to economic and strategic decisions to ensure that the Company’s aircraft are equipped to optimally meet passenger demand. These decisions also necessarily consider the potential impact on the Company’s passenger revenue per available seat mile (PRASM) and cost per available seat mile (CASM), which may impact the Company’s profit margin and stock price. This is exactly the type of management function that Rule 14a-8(i)(7) recognizes as improper for direct shareholder oversight.

C. The Proposal Does Not Focus on a Significant Policy Issue

The Commission has stated that “proposals relating to such [ordinary business] matters but focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered to be excludable because the proposals would transcend the day-to-day business matter and raise policy matters so significant that it would be appropriate for a shareholder vote.” 1998 Release. *See also Staff Legal Bulletin 14H* (Oct. 22, 2015) (emphasizing that the Staff “intends to continue to apply Rule 14a-8(i)(7) as articulated by the Commission and consistent with the Division’s prior application of the exclusion”). However, the mere mention of or limited connection to a social policy issue is not enough for a proposal to avoid exclusion on this basis. The Staff has consistently permitted exclusion of proposals under Rule 14a-8(i)(7) where the proposals primarily focused on ordinary business matters, even though such proposals may have some connection to a potential significant policy issue, because they do not transcend ordinary business decisions.

For example, in *Amazon.com, Inc.* (Mar. 27, 2015), the Staff permitted the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company “disclose to shareholders any reputational and financial risks it may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells,” where the proponent argued that the company’s sale of foie gras implicated a significant policy issue (animal cruelty). In granting no-action relief, the Staff determined that “the proposal relate[d] to the products and services offered for sale by the company.” See also *Hewlett-Packard Co.* (Jan. 23, 2015) (concurring in the exclusion of a proposal requesting that the board of directors provide a report on the company’s sales of products and services to the military, police, and intelligence agencies of foreign countries under Rule 14a-8(i)(7), with the Staff noting that the proposal related to ordinary business and “does not focus on a significant policy issue”); *Danaher Corp.* (Mar. 8, 2013, recon. denied Mar. 20, 2013) (concurring in the exclusion of a proposal requesting a report summarizing the company’s policies and plans for eliminating releases of mercury from the company’s products, with the Staff noting that proposals concerning product development were generally excludable under Rule 14a-8(i)(7)).

Like the proposals in the precedents cited above, the underlying subject of the Proposal – the size of cabin seats that the Company holds out for sale to passengers – does not raise a significant policy issue that transcends the Company’s ordinary business operations. Accordingly, and consistent with the precedents cited above, the Company believes that the Proposal may be excluded from its 2018 Proxy Materials.

CONCLUSION

Based on the foregoing, I respectfully request your concurrence that the Proposal may be excluded from the Company’s 2018 Proxy Materials. If you have any questions regarding this request or desire additional information, please contact the undersigned by phone at (872) 825-7667 or by email at jennifer.kraft@united.com.

Very truly yours,



Jennifer L. Kraft
Vice President and Corporate Secretary
United Continental Holdings, Inc.

Attachments

cc: Paul Hudson, Flyers Rights Education Fund

Exhibit A

Copy of the Proposal and Related Correspondence



December 19, 2017

Flyers Rights Education Fund

4411 Bee Ridge Road #274

Sarasota, Florida 34233 paul@flyersrights.org 800-662-1859 240-391-1923 fax

Corporate Secretary – United Continental Holdings, Inc.

233 S. Wacker Drive

Chicago, Illinois 60606

BY FEDERAL EXPRESS

Re: Shareholder Proposal for 2018 Annual Meeting

To Whom It May Concern:

I submit the enclosed shareholder proposal for inclusion in the proxy statement that United Continental Holdings Inc. plans to circulate to shareholders in anticipation of the 2018 annual meeting. The proposal is being submitted in accordance with SEC Rule 14a-8 and relates to social policies.

Flyers Rights Education Fund is located at the address shown above and has beneficially owned more than \$2,000 worth of United Continental Holdings Inc. stock for longer than a year. A letter from SunTrust Investment Services, the record holder, confirming ownership is enclosed. Flyers Rights Education Fund intends to continue ownership of at least \$2,000 worth of United Continental Holdings Inc. common stock through the date of the 2018 annual meeting, which a representative is prepared to attend.

We would be pleased to discuss this proposal with you. If you require any additional information, please let me know.

Sincerely,

Paul Hudson

President, Flyers Rights Education
Fund



Jon Lowther
Vice President
Private Financial Advisor
SunTrust Investment Services, Inc.

Tel: 941-951-3325
Fax: 941-365-9189
Mail Code: FI-Sarasota-3010
1777 Main St.
Sarasota, Fl. 34231

SunTrust Advisory Services, Inc.

12/19/2017

Flyers Rights Education Fund
4411 Bee Ridge Rd. #274
Sarasota, FL 34233-2514
Cc: Paul Hudson

Re: Corporate Secretary – United Continental Holdings, Inc.
233 S. Wacker Drive
Chicago, Illinois 60606

Re: Flyers Rights Education Fund's Shareholder Proposal for 2018 Annual Meeting

To Whom It May Concern:

I write in connection with the shareholder proposal recently submitted by Flyers Rights Education Fund. This will confirm that on the date Flyers Rights Education Fund submitted the proposal, it beneficially held 50 shares of United Continental Holdings Inc. common stock which were held of record by this company National Financial Services. This will confirm as well that Flyers Rights Education Fund continuously has held more than \$2,000 worth of United Continental Holdings common stock for more than one year prior to that date.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Lowther". The signature is fluid and cursive.

Jon Lowther
Private Financial Advisor

Investment and Insurance Products:

- Are not FDIC or any other Government Agency Insured • Are not Bank Guaranteed • May Lose Value

SunTrust Private Wealth Management is a marketing name used by SunTrust Bank, SunTrust Banks Trust Company (Cayman) Limited, SunTrust Delaware Trust Company, SunTrust Investment Services, Inc. (STIS), and SunTrust Advisory Services, Inc. (STAS), which are each affiliates of SunTrust Banks, Inc. Banking and trust products and services, including investment management products and services, are provided by SunTrust Bank and SunTrust Delaware Trust Company. Securities and insurance (including annuities) are offered by STIS, a SEC registered broker-dealer, member FINRA, SIPC, and a licensed insurance agency. Investment advisory services are offered by STAS, a SEC registered investment adviser.

RESOLVED: The shareholders of United Continental Holdings, Inc. (the “Company”) request that the Board of Directors prepare a report on the regulatory risk and discriminatory effects of smaller cabin seat sizes on overweight, obese, and tall passengers. This report will also analyze the impact of smaller cabin seat sizes on the Company’s profit margin and stock price.

SUPPORTING STATEMENT

Average seat width in economy class has dramatically decreased in the past two decades, from 18.5 inches in the early 2000s to 17 inches today. (www.thedailybeast.com/flying-coach-is-so-cramped-it-could-be-a-death-trap). Seat pitch in economy class has similarly declined, “from an average of 35 inches in the early 2000s to 31 inches today – and in an increasing number of cases [...] 28 inches.” *Id.* On a United Boeing 737-700, the seat width in economy class ranges from 16.1 inches to 17.1 inches and standard seat pitch is 31 inches.

(www.united.com/web/enUS/content/travel/inflight/aircraft/737/700)

According to the CDC, over 70% of American adults aged 20 and over are overweight or obese. (www.cdc.gov/nchs/fastats/obesity-overweight.htm) About 4% of adults are over 74 inches.

Reducing seat size in the face of these trends risks losing loyal customers at best – and discriminates at worst. When the Air Carrier Access Act was enacted, seat width in economy class on United Airlines ranged from 19.5 inches to 20 inches, while economy class seat pitch ranged from 32 inches to 36 inches.

(<https://www.usatoday.com/story/travel/columnist/mcgee/2014/09/24/airplane-reclining-seat-pitch-width/16105491/>) Those who passed the law could hardly have imagined that more than a majority of Americans could now be in a position where one seat is insufficient.

Some effects of reducing seat size and passenger space are already on display. According to the Association of Professional Flight Attendants, “[s]everal flights had to divert after passengers got into fights over reclining seats and lack of leg room.” (<https://www.reuters.com/article/us-airlines-seats/airline-seat-squeeze-raises-health-and-safety-concerns-idUSKBN0N723A20150416>) Reduced seat pitch also made “it harder for crew to treat anyone needing medical help.” *Id.*

Reducing seat size and passenger space also exposes the Company to potential regulatory risk. In July, the U.S. Court of Appeals for the D.C. Circuit ordered the FAA to adequately address a petition brought asking the agency “to promulgate rules governing the minimum requirements for seat sizes and spacing on commercial passenger airlines.”

([https://www.cadc.uscourts.gov/internet/opinions.nsf/79A1759702B937FE8525816B00543945/\\$file/16-1101-1686279.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/79A1759702B937FE8525816B00543945/$file/16-1101-1686279.pdf))

Excluding a majority of the population from being able to reliably, comfortably, and safely use the Company’s services is highly questionable as a business model for the Company, its revenue, and shareholder interests. Millions of passengers who would otherwise fly are now forced to look to alternate forms of transportation.

We urge shareholders to vote FOR this proposal.