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

DIVISION OF
CORPORATION FINANCE

March 28, 2018

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP
shareholderproposals@gibsondunn.com

Re: Delta Air Lines, Inc.
Incoming letter dated February 17, 2018

Dear Mr. Mueller:

This letter is in response to your correspondence dated February 17, 2018 concerning the shareholder proposal (the "Proposal") submitted to Delta Air Lines, Inc. (the "Company") by Flyers Rights Education Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated February 28, 2018. 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,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Paul Hudson
Flyers Rights Education Fund
paul@flyersrights.org

March 28, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Delta Air Lines, Inc.
Incoming letter dated February 17, 2018

The Proposal requests that the board prepare a report on the discriminatory effects of smaller cabin seat sizes on overweight and obese passengers.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to its ordinary business operations. Accordingly, we will not recommend enforcement action to the Commission if the Company 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 basis for omission upon which the Company relies.

Sincerely,

Evan S. Jacobson
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 proposal 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 and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate 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 adversarial procedure.

It is important to note that the staff'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 company's management omit the proposal from the company's proxy materials.

February 28, 2018

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

Re: Stockholder Proposal of Flyers Rights Education Fund

Ladies and Gentlemen:

This letter is in response to the letter submitted by Delta Air Lines, Inc. (the "Company"), dated February 17, 2018, requesting that the Securities and Exchange Commission take no action if the Company omits our Stockholder Proposal from its 2018 proxy materials for its 2018 annual stockholder meeting.

Our Proposal asks the Board of Directors to prepare a report on the discriminatory effects of smaller cabin seat sizes on overweight, obese, and tall passengers. The proposal does not direct the Company to alter cabin seat sizes. The proposal does not micromanage the Company's decisions on seat sizes. Instead, the proposal asks the Company to conduct a review on the discriminatory impact seat sizes have on overweight, obese, and tall passengers. If brought to a vote, the stockholders would have no say and make no judgment on what size airline seats will or should be in the future.

The Company has the burden of persuading the Staff that it may exclude our Proposal from its 2018 proxy materials. Staff Legal Bulletin No. 14 (CF) (July 13, 2001). The Company seeks to exclude our Proposal on the grounds that (1) the Proponent has not demonstrated continuous ownership of the requisite number of shares from January 12, 2018 to January 16, 2018, (2) the proposed report deals with matters relating to the Company's ordinary business operations, and (3) discrimination against overweight, obese, and tall people either is not a significant policy issue or is not the focus of the Proposal.

I. The Company's Interpretation of the Proponent's Proof of Ownership Ignores the Text of the Proof of Ownership Statement

The Proponent submitted the Stockholder Proposal and Proof of Ownership dated January 12, 2018. The documents were actually postmarked January 16, 2018.

The Proponent submitted a new proof of ownership on February 9, 2018 to address the deficiencies. The Company claims that the February 9th letter fails to certify Proponent's continuous ownership of the required number or amount of shares from January 12, 2018 to January 16, 2018.

The February National Financial Services Letter stated in relevant part, as quoted by the Company in its February 17 letter:

> Please be advised that National Financial Services, LLC currently holds 65 shares of Delta Air lines Inc., Cusip 247361702, for the Flyers Rights Education Fund, and has held for the one-year period preceding and including January 16th, 2018.

The Company's specious reading of this letter serves only to distract from an important policy and legal issue that the Proponent has proposed for stockholder consideration.

II. The Proposal Falls Outside of the Company's Ordinary Business Operations Because It Does Not Directly Relate to the Design of a Particular Product Offered by the Company

Under Rule 14a-8(i)(7), a company may exclude a stockholder proposal if it "deals with a matter relating to the company's ordinary business operations." The Company's argument that the Proposal is within its ordinary business operations relies on one contention: that the proposal directly relates to the design of a particular product offered by the Company.

The Stockholder Proposal does not seek direct stockholder oversight of the company's products and services. Even though the Proposal touches on an element of the Company's business, the Proposal is not automatically excludable on ordinary business grounds. In fact, a proposal focusing on a significant policy issue is not excludable on ordinary business grounds "*because* the [proposal] would "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." Staff Legal Bulletin No. 14H (CF) (October 22, 2015).

The Proposal does not direct the Company on how to manage these issues of discrimination, nor does it dictate action on the products or services offered by the Company. In *Apple Inc.* (December 14, 2015), the Staff allowed a proposal that, in part, requested the Board "issue a report identify[ing] Apple's criteria for investing in, operating in and withdrawing from high-risk regions." This proposal cited the "gap between {Apple Inc.'s] lofty rhetoric/aspiration and its performance."

III. Discrimination in Offering Commercial Air Service to the Public is a Significant Policy Issue and Consequently Transcends the Company's Ordinary Business Operations

The Staff should recognize, as an important social policy issue, the discriminatory effects of smaller seat sizes on overweight and obese people. The proposal's focus is on the possibility of discrimination in air travel and the attendant legal ramifications.

Recently, the Commission has denied no-action requests for proposals that are very similar to the proposal submitted by Flyers Rights Education Fund. These proposals pertain to the creation of reports to study the magnitude and the potential legal risks of an important policy issue. In *Citigroup Inc.* (February 2, 2016), the Staff allowed a proposal requesting that "Citigroup prepare a report demonstrating that the company does not have a gender pay gap." The proposal in *Citigroup Inc.* cited statistics about gender pay disparity, regulatory risk, cost savings, and evidence suggesting that diversity leads to better performance. In *Amazon.com, Inc.* (March 25, 2015), the Staff allowed a proposal requesting a report "on Amazon's process for comprehensively identifying and analyzing potential and actual human rights risks of Amazon's entire operations and supply chains."

In *The Proctor & Gamble Company* (August 16, 2016), the Staff allowed a proposal requesting "a report detailing the known and potential risks and costs to the company caused by any enacted or proposed state policies supporting discrimination against LGBT people, and detailing strategies above and beyond litigation or legal compliance that the company may deploy to defend the company's LGBT employees and their families against discrimination and harassment that is encouraged or enabled by the policies." This proposal focused on a significant policy issue and did not attempt to micromanage corporate behavior.

Just like the social policy issues of gender pay discrepancy, human rights, and discrimination against LGBT people, and their resulting legal effects, the issue of discrimination against overweight, obese, and tall passengers presents a significant policy issue. The policy issue raises potential discriminatory effects and potential legal issues that Delta Air Lines should review. In order to operate commercial flights, as a common carrier, among other requirements, Delta Air Lines was required to obtain from the Department of Transportation a Certificate of Public Convenience and Necessity. This certificate demonstrates that an airline is fit to offer commercial air transportation to the general public. When seat sizes reach the point of becoming too small for the average adult male passenger and a large percentage of overall passengers, Delta Air Lines may run the risk of not being able to fulfill its duty to offer transportation, as a common carrier, to the general public—overweight, obese, and tall people included.

The topic of shrinking seat sizes is currently a major issue and has reached the D.C. Circuit Court of Appeals in Flyers Rights v. FAA. The Court of Appeals rebuked the FAA for not having an adequate basis for rejecting a rulemaking petition to halt further reduction of seat sizes on safety grounds.

IV. Conclusion

Our proposal seeks a review of the possible discriminatory effects of cabin seat sizes on overweight, obese, and tall people. Discrimination against overweight and obese people, who account for 70% of the American public according to the CDC, constitutes a significant social policy issue. Additionally, the Proposal, by not dictating how the Company offers a product, does not intrude on the Company's ordinary business operations.

The Company has failed to meet its burden to exclude our Proposal under Rule 14a-8(g). We respectfully ask that the Staff reject Delta Air Lines' request for a no-action letter.

We have filed this response letter with the Securities Exchange Commission and have concurrently sent copies of this letter to the Company. We would be happy to answer any questions and provide additional information. If I can be of further assistance, please do not hesitate to contact me at 800-662-1859 or at paul@flyersrights.org.

Sincerely,

Paul Hudson
President
Flyers Rights Education Fund
Phone: 800-662-1859
Fax: 240-391-1923
4411 Bee Ridge Rd. #274
Sarasota, FL 34233

Cc:

Ronald O. Mueller, for Delta Air Lines

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February 17, 2018

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

Re: *Delta Air Lines, Inc.*
Stockholder Proposal of Flyers Rights Education Fund
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Delta Air Lines, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the "2018 Proxy Materials") a stockholder proposal (the "Proposal") and statements in support thereof received from the Flyers Rights Education Fund (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the date on which the Company intends to first send or give the 2018 Proxy Materials to its stockholders; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states, in relevant part:

> RESOLVED: The shareholders of Delta Air Lines, Inc. (the "Company") request that the Board of Directors prepare a report on the discriminatory effects of smaller cabin seat sizes on overweight and obese passengers. This report will also analyze the impact of smaller cabin seat sizes on the Company's profit margin and stock price.

Copies of the Proposal, as well as related correspondence from the Proponent, are attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to

- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the requisite proof of continuous stock ownership in response to the Company's proper request for that information; and

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations and does not focus on a significant policy issue.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish The Requisite Eligibility To Submit The Proposal.

A. Background

The Proponent sent the Proposal, a cover letter, a letter from National Financial Services dated January 12, 2018 (the "January National Financial Services Letter"), and a letter from SunTrust dated January 12, 2018 (the "SunTrust Letter") to the Company on January 16, 2018 (the "Submission Date"), which the Company received on January 18, 2018. *See* Exhibit A.

> The January National Financial Services Letter stated, in relevant part:
>
> Please be advised that National Financial Services, LLC has held a minimum of $2,000 in market value of Delta Air Lines Inc., CUSIP 247361702, on behalf of Flyers Rights Education Fund continuously since November 19th, 2014.

The SunTrust Letter stated, in relevant part:

> This will confirm that on the date 01/12/2018, Flyers Rights Education Fund submitted the proposal, it beneficially held a minimum of $2000 in market value of Delta Air Lines, Inc. common stock, CUSIP 247361702, continuously since November 19th 2014, which were held of record by this company National Financial Services.

See Exhibit A. As such, the Proponent's submission failed to provide verification of the Proponent's ownership of the required number or amount of Company shares for at least the one year prior to and including the date the Proponent submitted the proposal (*i.e.*, January 16, 2018). In addition, the Company reviewed its stock records, which did not indicate that the Proponent was the record owner of any shares of the Company's stock.

Accordingly, in a letter dated January 26, 2018, which was sent on that day via overnight delivery, the Company notified the Proponent of the procedural deficiency as required by Rule 14a-8(f) (the "Deficiency Notice"). In the Deficiency Notice, attached hereto as Exhibit B, the Company clearly informed the Proponent of the requirements of Rule 14a-8 and how the Proponent could cure the procedural deficiencies. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient shares;
- that the January National Financial Services Letter and the SunTrust Letter were both insufficient because while they both stated that the Proponent held a minimum of $2,000 in market value of the Company's stock as of January 12, 2018, neither letter verified the Proponent's continuous ownership for the full one-year period preceding and including January 16, 2018, the date the Proposal was submitted to the Company;

- that "[t]o remedy th[e] defect, the Proponent must obtain a new proof of ownership letter verifying the Proponent's continuous ownership of the required number or amount of Company shares for the one-year period preceding and including January 16, 2018;" and

- that any response to the Deficiency Notice had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

The Deficiency Notice also included a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F"). The Deficiency Notice was sent within 14 days of the date the Company received the Proposal. The Company's records confirm delivery of the Deficiency Notice to the Proponent at 10:42 a.m. on January 27, 2018. *See* Exhibit C. The Company received the Proponent's response to the Deficiency Notice on February 9, 2018, which included a letter from National Financial Services dated February 2, 2018 (the "February National Financial Services Letter"). *See* Exhibit D. The February National Financial Services Letter stated, in relevant part:

> Please be advised that National Financial Services, LLC currently holds 65 shares of Delta Air lines Inc., Cusip 247361702, for the Flyers Rights Education Fund, and has held for the one-year period preceding and including January 16th, 2018.

As discussed in more detail below, the February National Financial Services Letter is insufficient because it fails to verify the Proponent's *continuous* ownership of the required number or amount of shares for the period from January 16, 2017 to January 16, 2018.

B. Analysis

Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, [a stockholder] must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the stockholder] submit[s] the proposal." Staff Legal Bulletin No. 14 specifies that when the stockholder is not the registered holder, the stockholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the stockholder may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, Staff Legal Bulletin No. 14 (Jul. 13, 2001). SLB 14F clarified that these proof of ownership letters must come from the "record" holder of the Proponent's shares, and that only Depository Trust Company ("DTC") participants are viewed as record holders of securities that are deposited at DTC. Rule 14a-8(f) provides that a company may exclude a stockholder proposal if the

proponent fails to provide evidence of eligibility under Rule 14a-8, including failing to provide the beneficial ownership information required under Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time.

As discussed in the "Background" section above, the Proponent did not include in its original submission sufficient documentary evidence of the Proponent's ownership of Company shares. *See* Exhibit A. The Proponent's response on February 9, 2018 failed to cure this deficiency following the Proponent's receipt of the Company's timely Deficiency Notice, and the Proposal may therefore be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1).

Under well-established precedent, the January National Financial Services Letter and the SunTrust Letter were insufficient because they fail to cover the entire one year period up to and including the date of submission. *See PepsiCo, Inc. (Albert)* (avail. Jan. 10, 2013) (concurring in exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where the proponent's purported proof of ownership covered the one year period up to and including November 19, 2012, but the proposal was submitted on November 20, 2012). *See also Mondelēz International, Inc.* (avail. Feb. 11, 2014) (letter from broker stating ownership for one year as of November 27, 2013 was insufficient to prove continuous ownership for one year as of November 29, 2013); *Union Pacific Corp.* (avail. Mar. 5, 2010) (letter from broker stating ownership for one year as of November 17, 2009 was insufficient to prove continuous ownership as of November 19, 2009); *The McGraw Hill Companies, Inc.* (avail. Jan. 28, 2008) (letter from broker stating ownership for one year as of November 16, 2007 was insufficient to prove continuous ownership for one year as of November 19, 2007).

As with the precedents cited above, the Proponent failed to provide, along with its submission, sufficient verification of the Proponent's ownership of the requisite number of Company shares as of the Submission Date from the record owner of those shares. In addition, the February National Financial Services Letter is insufficient because it only states a number of shares held as of a specific date and does not affirm continuous ownership of the requisite number or amount of shares. Thus, the materials provided to the Company fail to verify the Proponent's *continuous* ownership of the requisite shares for the period from January 16, 2017 to January 16, 2018. *See* Exhibit D; *see, e.g.*, *Verizon Communications, Inc.* (avail. Jan. 12, 2011) (allowing for exclusion under Rule 14a-8(f) where the proponent's response to a timely deficiency notice only stated (1) the number of shares owned and (2) that "[t]he shares had been held in custody for more than one year."). Specifically, the Deficiency Notice notified the Proponent of the four-day date gap and specifically instructed the Proponent that "the Proponent must obtain a new proof of ownership letter verifying the

Proponent's *continuous* ownership of the required number or amount of Company shares for the one-year period preceding and including January 16, 2018." *See* Exhibit B (emphasis added). Instead, as in *Verizon*, the February National Financial Services Letter only states that 65 shares were held on January 16, 2018 but does not verify that the requisite shares were held by the Proponent continuously during the four-day date gap. When read together, the three letters submitted by the Proponent verify the Proponent's continuous ownership from November 19, 2014 to January 12, 2018 but do not confirm that the Proponent held the requisite number of shares continuously for the period from January 12, 2018 to January 16, 2018. Accordingly, the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Deals With Matters Relating To The Company's Ordinary Business Operations And Does Not Focus On A Significant Policy Issue.

A. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Relates To The Design Of A Particular Product By The Company

Pursuant to Rule 14a-8(i)(7), a stockholder proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations." Under well-established precedent, the Proposal is excludable under Rule 14a-8(i)(7) because it relates to the Company's ordinary business activities, namely, the design of a particular product by the Company.

The Commission has stated that the underlying policy of the ordinary business exclusion 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." Securities Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission explained that the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but that the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." The Commission further explained that the ordinary business exclusion rests on two "central considerations." *Id.* The first, and more relevant to this Proposal, is that "[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." *Id*. 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 stockholders, as a group, would not be in a position to make an informed judgment.

In requesting a report to stockholders regarding purported discriminatory effects of smaller cabin seat sizes, the Proposal necessarily implicates the above-described policy considerations. The Company is one of the world's largest airlines, operating over 850 aircraft on thousands of flights daily, with service to 314 destinations in 54 countries on six continents, and serving more than 180 million passengers each year. 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. The Company offers varying seat sizes and configurations in its Main Cabin, Delta Comfort+, Delta Premium Select, and Delta One products. Determining the size of seats is integrally related to determining the number of passengers the Company can service and implicates day-to-day business issues such as pricing, marketing, and competitive considerations. The Proposal strikes directly at these core management functions. The ability to make such decisions is fundamental to management's ability to control the operations of the Company and, as such, is not appropriately delegated to stockholders.

The Staff has consistently concurred in the exclusion of proposals concerning the sale, marketing, or distribution of particular products and services, including proposals concerning product design or 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 *AT&T, Inc.* (avail. Jan. 4, 2017), the Staff concurred in exclusion of a proposal requesting the board to review and report on AT&T's progress toward providing internet service and products for low-income customers, noting that "the proposal relates to the products and services offered by the company." In *Dominion Resources, Inc.* (avail. Feb. 19, 2014), the proposal requested that the company undertake a process to develop options for "Green Power" program changes that would develop local renewable energy, provide current and complete financial and energy generation information to all customers, and/or give customers information on other ways to support development of renewable energy. The Staff concurred in exclusion under Rule 14a-8(i)(7), noting that "the proposal relates to the products and services that the company offers" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)." In *International Business Machines Corp.* (avail. Jan. 6, 2005), the Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal requesting the board of directors to take steps to offer

customers software technology that has greater simplicity, noting that the proposal related to the design and development of the company's products and falls within the company's ordinary business operations. *See also Amazon.com, Inc.* (avail. Mar. 11, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a stockholder proposal because "the proposal relates to the products and services offered for sale by the company" and "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"); *Amazon.com, Inc.* (avail. Mar. 27, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the disclosure of any reputational and financial risks the company may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells because "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"); *Wal-Mart Stores, Inc. (Albert)* (avail. Mar. 30, 2010) (concurring in the exclusion of a proposal requiring that the company stock certain amounts of locally produced and packaged food as concerning "the sale of particular products"); *Wal-Mart Stores, Inc.* (avail. Mar. 24, 2008) (concurring in the exclusion of a proposal requesting a report on the viability of a cage-free egg policy); *Bank of America Corp.* (avail. Mar. 3, 2005) (concurring in the exclusion of a proposal requesting the company to adopt a "Customer Bill of Rights" and creating a "Consumer Advocate" position as relating to the company's ordinary business operations with respect to "customer relations"); *The Quaker Oats Co.* (avail. Mar. 16, 1999) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting the formation of an employee committee to review advertising for content slandering people based on race, ethnicity, or religion because it relates to the manner in which the company advertises its products).

Similar to the precedents cited above, the Proposal may be excluded under Rule 14a-8(i)(7) because it directly relates to product design and the manner in which the Company provides its products and 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 and configurations, which are determined based on considerations such as aircraft type, classes of service, and length of routes. Cabin seat size and configuration is specified in connection with the Company's orders for new aircraft or the refurbishing of existing aircraft, and decisions on whether or when to change these elements involve complex and highly technical analysis and engineering considerations, as well as cost, fare setting, and marketing 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 and cost per available seat mile, which impact the Company's pricing and profit margin. This is exactly the type of management function that Rule 14a-8(i)(7) recognizes as improper for direct stockholder oversight.

B. The Proposal Does Not Focus On A Significant Policy Issue

In the 1998 Release, the Commission stated that proposals relating to ordinary business matters but focusing on sufficiently significant policy issues generally would not be excludable because the proposals would "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." However, the Staff has consistently permitted exclusion of proposals under Rule 14a-8(i)(7) where the proposals focused on ordinary business matters, even though such proposals may assert some connection to a potential significant policy issue, because they do not transcend ordinary business decisions. *See e.g.*, *Amazon.com, Inc.* (avail. Mar. 11, 2016) (concurring with exclusion of a proposal requesting that Amazon issue a report addressing animal cruelty in the supply chain because the proposal related to "the products and services offered for sale by the company"); *Papa John's International, Inc.* (avail. Feb. 13, 2015) (allowing for exclusion of a proposal requesting the company to include more vegan offerings in its restaurants, despite the proponent's assertion that the proposal would promote animal welfare); *Dominion Resources, Inc.* (avail. Feb. 19, 2014) (concurring with exclusion of a proposal relating to use of alternative energy because, while touching on a significant policy issue, it related to the company's choice of technologies for use in its operations).

The Staff has not recognized personal weight or size as raising a significant policy issue, and the Proposal's references to purported "discriminatory effects of smaller cabin seat sizes on overweight and obese passengers" does not change this analysis. The Proposal's principal focus centers around product design and the manner in which a company provides its products and services. For instance, in *The Home Depot, Inc.* (avail. Feb. 13, 2018), the Staff concurred in the exclusion of a proposal that related to a company's contributions to particular organizations, a matter of ordinary business, even though the proponent had tried to present the proposal as relating to human rights policies. *See also Johnson & Johnson* (avail. Jan. 31, 2018) (same). Similarly, in *Johnson & Johnson* (avail. Feb. 23, 2017), a proposal requested a report detailing the known and potential risks and costs to the company caused by pressure campaigns to oppose religious freedom laws (or efforts), public accommodation laws (or efforts), freedom of conscience laws (or efforts) and campaigns against candidates from Title IX exempt institutions, detailing the known and potential risks and costs to the company caused by these pressure campaigns supporting discrimination against religious individuals and those with deeply held beliefs. The Staff concurred that the proposal could be excluded as relating to the company's ordinary business, notwithstanding the fact that the proposal addressed human rights and discrimination, where the company argued that the proposal related to management of the company's workforce and public relations. *See also The Home Depot, Inc.* (avail. Mar. 1, 2017) (allowing for exclusion of a proposal requesting adoption and publication of principles for minimum wage reform, noting

that "the proposal relates to general compensation matters, and does not otherwise transcend day-to-day business matters" despite the proponent's assertion that minimum wage was a significant policy issue); *The TJX Companies, Inc.* (avail. Mar. 1, 2017) (same); *Hewlett-Packard Company* (avail. Jan. 15, 2015) (Staff concurred in the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company prepare a report on sales of products and services to the military, police and intelligence agencies of foreign countries, noting that "the proposal relates to the products and services offered for sale by the company and does not focus on a significant policy issue.").

As such, as in the precedents cited above, the Proposal does not focus on a significant policy issue; rather, the subject matter of the Proposal directly relates to the Company's ordinary business operations and its design choices with respect to products and services the Company offers to its customers. Accordingly, and consistent with the precedents cited above, the Company believes that the Proposal may be excluded from its 2018 Proxy Materials.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal and the Supporting Statement from its 2018 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Peter W. Carter, the Company's Executive Vice President and Chief Legal Officer, at (404) 715-2191.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Peter W. Carter, Delta Air Lines, Inc.
Jan Davidson, Delta Air Lines, Inc.
Alan Rosselot, Delta Air Lines, Inc.
Flyers Rights Education Fund

EXHIBIT A

January 12, 2018

Flyers Rights Education Fund
4411 Bee Ridge Rd. #274
Sarasota, Florida 34233

Law Department, Chief Legal Officer
Delta Air Lines, Inc.
Department 981
1030 Delta Boulevard
Atlanta, GA 30354

Re: FLYERS RIGHTS EDUCATION FUND'S SHAREHOLDER PROPOSAL FOR 2018 ANNUAL MEETING

Dear Sir/Madam:

I submit the enclosed shareholder proposal for inclusion in the proxy statement that Delta Air Lines, Inc. plans to circulate to shareholders in anticipation of the 2018 annual meeting. This proposal is being submitted in accordance with SEC Rule 14a-8 and relates to social priorities.

Flyers Rights Education Fund is located at the above address and has beneficially owned more than $2,000 worth of Delta Air Lines, Inc. stock for more than a year. A letter certifying ownership is enclosed. Flyers Rights Education Fund intends to continue ownership of at least $2,000 worth of Delta Air Lines, Inc. common stock through the date of the 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

Paul Hudson, President
Flyers Rights Education Fund
800-662-1859 240-391-1923 fax
paul@flyersrights.org

enc.

Proposal for Delta Air Lines 2018 PROXY STATEMENT

RESOLVED: The shareholders of Delta Air Lines, Inc. (the "Company") request that the Board of Directors prepare a report on the discriminatory effects of smaller cabin seat sizes on overweight and obese 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 or leg room 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 [to] 28 inches." *Id.* On a Delta Boeing 737-700, the seat width in the main cabin is 17.2 inches. (https://www.delta.com/content/www/en_US/traveling-with-us/airports-and-aircraft/Aircraft/boeing-737-700-73w.html)

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

Some effects of reducing seat size and passenger space are already on display. According to the Association of Flight Attendants, "several flights had to divert after passengers got into over reclining seats and lack of leg room." (http://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.*

NATIONAL FINANCIAL
Services LLC

499 Washington Blvd.
Newport Office Center
Jersey City, NJ 07310

January 12th, 2018

Delta Air Lines, Inc.
1030 Delta Boulevard
Atlanta, GA 30354
Attention: Chief Legal Officer, Department 981

Re: Certification of Ownership

To Whom It May Concern:

Please be advised that National Financial Services, LLC has held a minimum of $2,000 in market value of Delta Air Lines Inc., CUSIP 247361702, on behalf of Flyers Rights Education Fund continuously since November 19th, 2014.

As custodian for Flyers Rights Education Fund, National Financial Services LLC holds these shares with the Depository Trust and Clearing Corporation, under participant code 0226.

If there are any questions concerning this matter, please do not hesitate to contact me directly.

Sincerely,

Claribel Made, Director
National Financial Services, LLC
499 Washington Boulevard
Jersey City, NJ 07310

http://www.nationalfinancial.com

SUNTRUST
PRIVATE WEALTH

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

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

SunTrust Advisory Services, Inc.

01/12/2018

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

Re: Law Department
Delta Air Lines, Inc.
Department 981
1030 Delta Boulevard
Atlanta, Georgia 30354
Attention: **Chief Legal Officer**

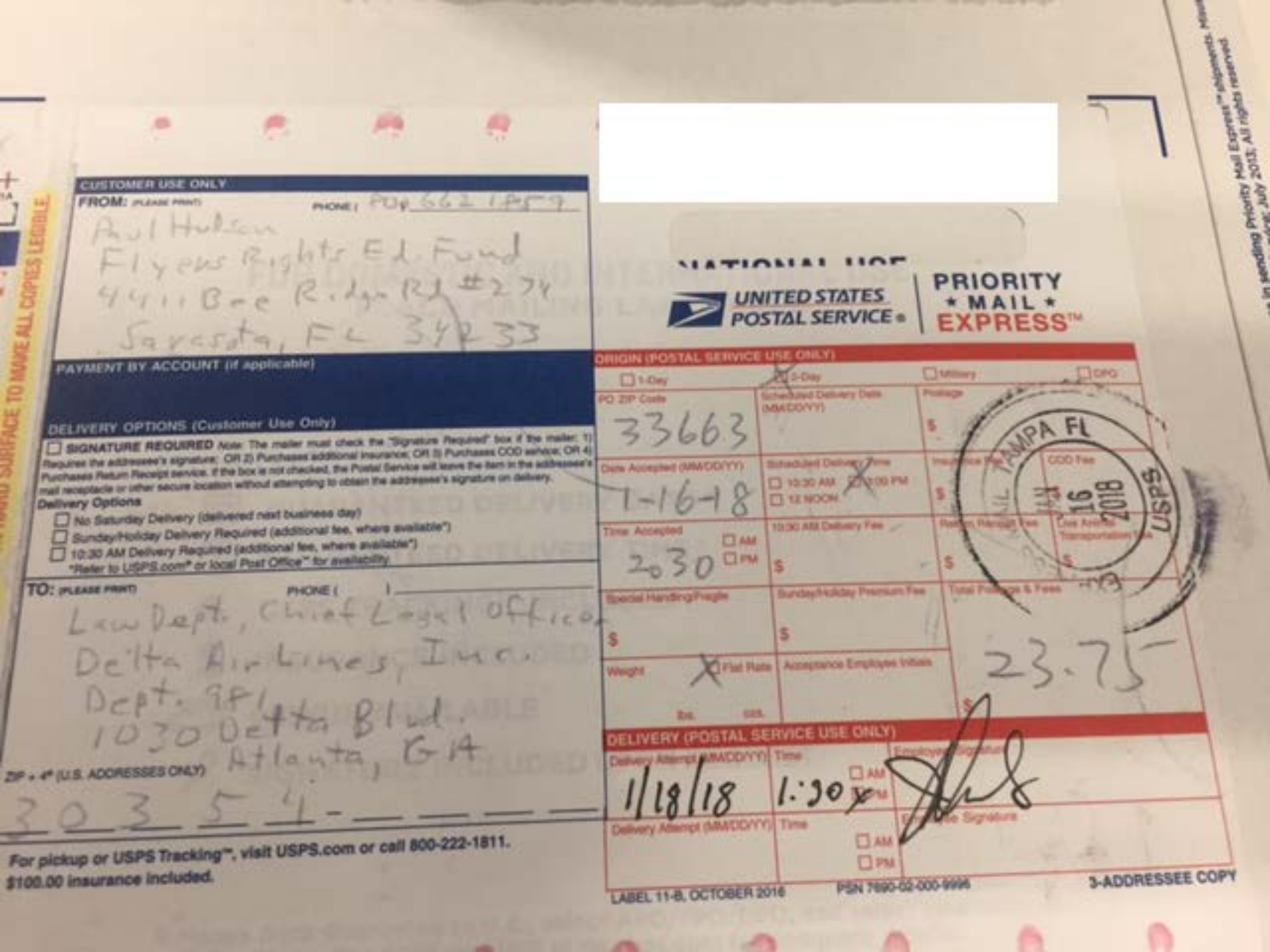
Re: Flyers Rights Education Fund's Shareholder Proposal for 2018 Annual Meeting

Mr. Carter:

I write in connection with the shareholder proposal recently submitted by Flyers Rights Education Fund. This will confirm that on the date 01/12/2018, Flyers Rights Education Fund submitted the proposal, it beneficially held a minimum of $2000 in market value of Delta Air Lines, Inc. common stock, CUSIP 247361702, continuously since November 19th 2014, which were held of record by this company National Financial Services.

Sincerely,

Jon Lowther
Private Financial Advisor



CUSTOMER USE ONLY

FROM: (PLEASE PRINT) PHONE ( ) 941 662 1857

Paul Hudson
Flyers Rights Ed. Fund
4411 Bee Ridge Rd #274
Sarasota, FL 34233

PAYMENT BY ACCOUNT (if applicable)

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☐ SIGNATURE REQUIRED (Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.

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☐ Sunday/Holiday Delivery Required (additional fee, where available*)
☐ 10:30 AM Delivery Required (additional fee, where available*)
*Refer to USPS.com® or local Post Office™ for availability

TO: (PLEASE PRINT) PHONE ( )

Law Dept., Chief Legal Officer
Delta Air Lines, Inc.
Dept. 981
1030 Delta Blvd.
Atlanta, GA

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Date Accepted (MM/DD/YY)	Scheduled Delivery Time	Insurance Fee	COD Fee
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Time Accepted	10:30 AM Delivery Fee	Return Receipt Fee	Live Animal Transportation Fee
2030 ☐ AM ☐ PM	$	$	$

Special Handling/Fragile	Sunday/Holiday Premium Fee	Total Postage & Fees
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lbs. ozs.		

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1/18/18	1:30 ☒ AM ☐ PM	
Delivery Attempt (MM/DD/YY)	Time	Employee Signature
	☐ AM ☐ PM	

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EXHIBIT B

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Ronald O. Mueller
Direct: +1 202.955.8671
Fax: +1 202.530.9569
RMueller@gibsondunn.com

January 26, 2018

VIA OVERNIGHT MAIL

Paul Hudson
Flyers Rights Education Fund
4411 Bee Ridge Road, No. 274
Sarasota, Florida 34233

Dear Mr. Hudson:

I am writing on behalf of Delta Air Lines, Inc. (the "Company"), which received on January 18, 2018, the stockholder proposal submitted by the Flyers Rights Education Fund (the "Proponent") regarding a report on cabin seat sizes pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2018 Annual Meeting of Stockholders (the "Proposal").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that stockholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received adequate proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company. The January 12, 2018 letters from National Financial Services and SunTrust Private Wealth Management that you provided are insufficient because while they both state that the Proponent held a minimum of $2,000 in market value of the Company's stock as of January 12, 2018, neither letter verifies the Proponent's continuous ownership for the full one-year period preceding and including January 16, 2018, the date the Proposal was submitted to the Company.

To remedy this defect, the Proponent must obtain a new proof of ownership letter verifying the Proponent's continuous ownership of the required number or amount of Company shares for the one-year period preceding and including January 16, 2018, the date

the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

(1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including January 16, 2018; or

(2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the required number or amount of Company shares for the one-year period.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including January 16, 2018.

(2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including January 16, 2018. You should be able to find out the identity of the DTC participant by asking

> the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including January 16, 2018, the required number or amount of Company shares were continuously held: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at Gibson, Dunn & Crutcher LLP, 1050 Connecticut Ave., N.W., Washington, DC 20036. Alternatively, you may transmit any response by email to me at rmueller@gibsondunn.com..

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Jan Davidson, Delta Air Lines, Inc.
Alan Rosselot, Delta Air Lines, Inc.

Rule 14a-8 – Shareholder Proposals

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to ''you'' are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

> (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.
>
> (2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
>
> > (i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or
> >
> > (ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d–101), Schedule 13G (§240.13d–102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:
> >
> > > (A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10–Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a–8 and provide you with a copy under Question 10 below, §240.14a–8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S–K (§229.402 of this chapter) or any successor to Item 402 (a “say-on-pay vote”) or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a–21(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a–21(b) of this chapter.

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal?

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments? Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a–9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a–6.

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8 (b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of

Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals.

Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8 (c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the

company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

EXHIBIT C

Proof of Delivery

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

EXHIBIT D

From: Paul Hudson ***
Sent: Friday, February 9, 2018 3:40 PM
To: Mueller, Ronald O. <RMueller@gibsondunn.com>
Subject: Your letter claiming defective proof of stock ownership re Delta Airlines shareholder proposal

Dear Mr. Mueller:

Please find enclosed a copy of the additional certification of ownership dated Feb. 2, 2018 from the broker of record, National Financial Services LLC that you requested.

The original was mailed to Delta Air Lines.

As your firm apparently practices in this area before the SEC and the SEC regulations seem to provide that the date for certification is the date a proposal is submitted **not** the date it is received http://www.sec.gov/interps/legal/cfslb14g.htm as you assert, I find this apparent misinformation very troubling. It is of course impossible for anyone to certify ownership for a future date.

If you are conveying misinformation and making specious objections to others making shareholder proposals, this needs to be corrected immediately. Accordingly, I would request that you withdraw your objection forthwith on behalf of Delta in your letter received on Jan. 30th and as well as for any other similarly situated shareholder proposals.

Sincerely,

Paul Hudson, Pres.
Flyers Rights Education Fund
800-662-1859
paul@flyersrights.org

,

NATIONAL FINANCIAL
Services LLC

499 Washington Blvd.
Newport Office Center
Jersey City, NJ 07310

February 2, 2018

Delta Air Lines Inc.
1030 Delta Boulevard
Atlanta, GA 30354
Attn: Chief Legal Officer, Department 981

Re: Certification of ownership

To Whom It May Concern:

Please be advised that National Financial Services, LLC currently holds 65 shares of Delta Air lines Inc., Cusip 247361702, for The Flyers Right Education Fund, and has held for the one-year period preceding and including January 16th, 2018.

As custodian for beneficial owner The Flyers Right Education Fund, National Financial Services, LLC holds these shares with the Depository Trust Company, under participant code 0226.

If there are any questions concerning this matter, please do not hesitate to contact me directly.

Sincerely,

Peter Closs,

Director, Corporate Actions
Operations and Services Group

http://www.nationalfinancial.com

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