



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

DIVISION OF  
CORPORATION FINANCE

March 29, 2018

Gary Gerstman  
Sidley Austin LLP  
ggerstman@sidley.com

Re: eBay Inc.  
Incoming letter dated January 25, 2018

Dear Mr. Gerstman:

This letter is in response to your correspondence dated January 25, 2018 and March 15, 2018 concerning the shareholder proposal (the "Proposal") submitted to eBay Inc. (the "Company") by the Sisters of the Order of St. Dominic of Grand Rapids and the Unitarian Universalist Association for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on behalf of the Sisters of the Order of St. Dominic of Grand Rapids dated March 9, 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: Pat Miguel Tomaino  
Zevin Asset Management, LLC  
pat@zevin.com

March 29, 2018

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

Re: eBay Inc.  
Incoming letter dated January 25, 2018

The Proposal requests that the compensation committee prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into the performance measures of the CEO under the Company's compensation incentive plans.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's policies, practices and procedures compare favorably with the guidelines of the Proposal and that the Company has, therefore, substantially implemented the Proposal. 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)(10).

Sincerely,

Lisa Krestynick  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the 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.



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March 15, 2018

*Via Electronic Mail*

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

Re: eBay Inc. – Shareholder Proposal Submitted by the Sisters of the Order of St. Dominic of Grand Rapids and Unitarian Universalist Association

Zevin Asset Management, LLC (“Zevin”), on behalf of the Sisters of the Order of St. Dominic of Grand Rapids, and together with Unitarian Universalist Association (each, a “Proponent” and collectively, the “Proponents”), submitted a stockholder proposal and statement in support thereof (the “Proposal”) to eBay Inc., a Delaware corporation (“eBay” or the “Company”), for inclusion in eBay’s proxy statement for its 2018 Annual Meeting of Stockholders (the “2018 Proxy Materials”). The Proposal requests that the eBay’s Compensation Committee “prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into the performance measures of the CEO under the Company’s compensation incentive plans.”

This supplemental letter is submitted in response to a letter from Zevin on behalf of the Proponents, dated March 9, 2018 (the “March 9 Letter”), and should be read in conjunction with eBay’s January 25, 2018 letter to the Staff regarding eBay’s intention to exclude the Proposal from its 2018 Proxy Materials pursuant to Exchange Act Rule 14a-8 (the “No-Action Request”).

## ANALYSIS

eBay appreciates the dialogue and engagement with Zevin on diversity and social responsibility, which are a focus of the Company and are core cultural values of the Company. However, we have carefully reviewed the March 9 Letter and believe that the March 9 Letter mischaracterizes both the Proposal and how eBay has already acted to implement the Proposal. As a result, we continue to believe that the Proposal may be excluded pursuant to Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal.

First, because the essential purpose of the Proposal is the “*feasibility* of integrating sustainability metrics into performance measures” (emphasis added) and that essential purpose has been substantially implemented by eBay, the Proponent attempts to re-write the Proposal in the March 9 Letter and alter the original request in the Proposal. In the section of the March 9 Letter entitled “What the current Proposal requests,” the Proponent never mentions the word “feasibility,” despite the fact that this is the essential purpose of the Proposal. The Proponent is forced to redefine the Proposal in the March 9 Letter because the eBay Compensation Committee has already determined that including sustainability metrics is feasible and, in fact, already incorporates some elements of sustainability and diversity into its compensation decisions for the Chief Executive Officer, which substantially implements the original Proposal (as further outlined in the No-Action Request).

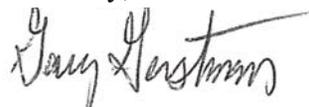
Additionally, the March 9 Letter mischaracterizes the steps eBay has taken to incorporate sustainability metrics into its compensation incentive plans. The eBay Compensation Committee believes a “holistic” approach with respect to sustainability is the optimal approach for eBay and its stockholders and has adopted an approach that can take into account both quantifiable and non-quantifiable sustainability and diversity metrics, as appropriate, without fixed weightings. The fact that the Proponent may have its own views and philosophies does not change the fact that the Proposal has indeed been substantially implemented. The eBay Compensation Committee has assessed the feasibility of integrating sustainability and diversity metrics, has determined that integrating such metrics is feasible and has implemented a compensation incentive program which takes sustainability and diversity metrics into account in a holistic manner that is not narrowly limited.

### CONCLUSION

Based upon the foregoing analysis, in addition to the arguments set forth in the No-Action Request, we respectfully request that the Staff concur that it will not recommend enforcement action if eBay excludes the Proposal 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. If you have any questions regarding this request or desire additional information, please contact the undersigned at (312) 853-2060 or by email at ggerstman@sidley.com.

Sincerely,



Gary Gerstman

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
March 15, 2018  
Page 3

Cc: Marie Oh Huber, eBay Inc.  
Allison Koehler, eBay Inc.  
Pat Miguel Tomaino, Zevin Asset Management, LLC

# Zevin Asset Management, LLC

PIONEERS IN SOCIALLY RESPONSIBLE INVESTING

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March 9, 2018

Via E-Mail: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

**Re: eBay Inc January 25, 2018 Request to Exclude Shareholder Proposal on Sustainability and CEO Compensation**

Ladies and gentlemen:

This letter is submitted by Zevin Asset Management, LLC as the designated representative in this matter on behalf of the Sisters of the Order of St. Dominic of Grand Rapids (hereinafter referred to as "Proponent"), which is the beneficial owner of 11,508 shares of stock of eBay Inc (hereinafter referred to as "eBay" or the "Company"), and which has submitted a shareholder proposal (hereinafter referred to as "the Proposal") to eBay, to respond to the letter dated January 25, 2018 sent to the Office of Chief Counsel by eBay, in which it contends that the Proposal may be excluded from the Company's 2018 proxy statement under Rule 14a-8(i)(10).

After reviewing the Company's letter and the relevant SEC rules as they apply to the Proposal, we have concluded that the Proposal must be included in eBay's 2018 proxy statement, because the Proposal has not been substantially implemented by the company. Thus, the Company is not justified in excluding the Proposal on these grounds, and we respectfully request that the Staff not issue the no-action letter sought by the Company.

Pursuant to Staff Legal Bulletin 14D (November 7, 2008) we are filing our response via e-mail in lieu of paper copies and are providing a copy to eBay's corporate secretary Marie Oh Huber at [mhuber@ebay.com](mailto:mhuber@ebay.com).

**The Proposal**

The Proposal, the full text of which is attached as Attachment A, reads as follows:

**RESOLVED:** Shareholders request the Board Compensation Committee prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into the performance measures of the CEO under the Company's compensation incentive plans. For the purposes of this proposal, "sustainability" is defined as how environmental and social considerations, and related financial impacts, are integrated into long-term corporate strategy, and "diversity" refers to gender, racial and ethnic diversity.

**I. Rule 14a-8(i)(10)**

eBay argues that the Proposal may be excluded from the 2018 Proxy Materials under

Rule 14a-8(i)(10). The Company claims that its current “holistic approach” for reviewing executive performance constitutes substantial implementation. We believe that this approach does not compare favorably with the guidelines of the Proposal nor with its essential objective, and therefore the Proposal is not excludable under Rule 14a-8(i)(10).

In order for the Company to meet its burden of proving substantial implementation pursuant to Rule 14a-8(i)(10), it must show that its activities meet the guidelines and essential purpose of the Proposal. The Staff has noted that a determination that a company has substantially implemented a proposal depends upon whether a company's particular policies, practices, and procedures compare favorably with the guidelines of the proposal. *Texaco, Inc.* (Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed *both* the proposal's guidelines and its essential objective. See, e.g., *Exelon Corp.* (Feb. 26, 2010).

Thus, when a company can demonstrate that it has already taken actions that meet the guidelines of a proposal and meet the proposal's essential purpose, the Staff has concurred that the proposal has been “substantially implemented.” In the current instance, the Company has not substantially fulfilled either the guidelines nor the essential purpose of the Proposal. eBay's letter of January 25, 2018 focuses on whether it has implemented the Proposal's essential objectives, no doubt because its “particular policies, practices and procedures” do not compare favorably with the guidelines of the proposal.

## **II. What the current Proposal requests.**

The Proposal at issue asks for eBay to consider a clear set of improvements to its approach to executive compensation. The measures that the Proposal asks the Company to consider are clearly articulated as guidelines in the Resolved clause:

1. Clearly integrated metrics on sustainability in the compensation incentive plans.
2. Clearly integrated metrics on diversity among senior executives in the compensation incentive plans.

Critically, the report component of the Proposal makes clear that the above should be disclosed and explained in a way that clarifies the following:

1. The requested approach should be defined (and explained to shareholders) at a level of specificity that corresponds with the last sentence of the Resolved clause:  
*... “sustainability” is defined as how environmental and social considerations, and related financial impacts, are integrated into long-term corporate strategy, and “diversity” refers to gender, racial and ethnic diversity...*
2. What are the metrics being integrated into the compensation incentive plans?
3. As specifically as possible, how do those metrics function within the compensation arrangements?
4. How can the information in question be presented in a way that is usable and illuminating for investors seeking to assess the effectiveness of the CEO compensation strategy as well as sustainability/diversity management?

## **III. Where eBay stands.**

In its No Action letter, the Company highlights certain components of its executive compensation approach. From that letter and from the most recent proxy statement, it is only evident that the

Compensation Committee takes account of eBay’s cultural aspirations toward diversity. By its own admission, eBay’s approach to CEO compensation does not utilize specific metrics related to sustainability, diversity or inclusion. Moreover, according to the Company, “specific individual goals or performance criteria” related to sustainability are not assigned particular weight in the process of setting CEO compensation.

The Company, instead, emphasizes, its “holistic” approach to setting the CEO’s compensation. Under this approach, the specific role of sustainability and diversity metrics and performance in eBay’s approach to CEO compensation remain obscure and unclear.

Therefore, to review, significant gaps remain between eBay’s practice and the guidelines of the Proposal:

- Where the Proposal asks for the Company to consider integrating sustainability metrics into performance measures of the CEO under the Company’s compensation incentive plan, eBay can point to no such metrics.
- Where the Proposal for the Company to consider integrating metrics on diversity among senior executives into performance measures of the CEO under the Company’s compensation incentive plan, eBay can point to no such metrics.
- Where the Proposal asks that the above analysis be reported in a manner that is useful for investors to assess the compensation incentive plans and their effectiveness in driving sustainability, diversity, and inclusion, eBay can only point to vague sentences in its most recent Proxy Statement. Page 49 of eBay’s 2017 Proxy Statement mentions “diversity,” but it offers no information on how executive performance on diversity is assessed or quantified by the Compensation Committee. **Far from being an account of the integration of sustainability and diversity metrics, the current state of practice offers no metrics at all, and it gives no reliable sense of whether and to what extent such metrics have been considered.**
- Where the Proposal’s request is prospective and seeks an account of how the above will be considered and carried out in the future, the Company’s disclosures are focused exclusively on the past.

In light of the above, it is clear that eBay has not provided disclosure or evidence of action which compares favorably with the guidelines of the Proposal. As a result, the Company’s current state of practice also fails to fulfil the Proposal’s essential objective, which concerns the integration of metrics on sustainability and diversity into compensation determinations. The Rule 14a-8(i)(10) analysis should be straightforward because no such metrics exist.

#### **IV. The gap between the Proposal and eBay’s practice is meaningful.**

It is plain from the above that eBay’s practice does not meet the Proposal’s guidelines or essential purpose, and therefore the Proposal is not substantially implemented. Looking briefly beyond eBay and the current Proposal, the gap becomes even clearer. The state of practice at eBay does not match up with the emerging global corporate practice of tying executive compensation to sustainability metrics:

- A large and diverse group of companies has integrated specific sustainability metrics into executive pay incentive plans and, critically, explained to investors specifically how those metrics function in the process of setting executive pay. Among these companies are Alcoa, PepsiCo, Walmart, Danone, National Grid, Nokia, TELUS, Intel, Baxter, and GlaxoSmithKline, and

Unilever, to name a few.

- The 2016 Glass Lewis report *In-Depth: Linking Compensation to Sustainability* finds a “mounting body of research showing that firms that operate in a more responsible manner may perform better financially.... Moreover, these companies were also more likely to tie top executive incentives to sustainability metrics.”<sup>1</sup> That report repeatedly cites research of the advantages of companies establishing links between executive compensation and clear ESG (environmental, social, and governance) metrics. The state of practice which has emerged among experts, investors, and practitioners is focused on companies establishing clear metrics linking sustainability performance with CEO compensation. This is distinct from the amorphous and under-disclosed approach which eBay describes in its letter of January 25, 2018.
- Finally, a large community of other investors are calling on companies to integrate sustainability metrics into CEO pay determinations. According to Ceres, the respected coalition on companies and investors focused on long-term sustainability, at least 26 companies have received shareholder proposals on this matter since 2011. Numerous proposals have resulted in successfully negotiated settlements and significant shareholder votes, such as at Expeditors International of Washington and Walgreen Company in 2017 when proposals on this issue received investor support of 22 percent and 23 percent respectively. All of those proposals have focused on specific metrics.

Looking beyond the current Proposal to the Company’s own statements regarding diversity and inclusion management, it is even clearer that the Proposal has not been implemented. As eBay highlighted in its January 2018 letter, the Company increased disclosure on its approach to diversity in recent years. This includes a report on its workforce composition.<sup>2</sup> However, the Company has not described which of the pieces of information which it now discloses are considered as metrics or “key performance indicators” for assessing the overall approach to diversity and inclusion. Going by the Company’s public disclosure, it is even less clear which of the Company’s disclosures could or would serve as metrics for integrating as a performance measure in the CEO’s incentive compensation plan.

eBay’s current diversity and inclusion disclosures lay out a general goal which is admirable: “Our goal is to ensure that our current and prospective employees and millions of buyers and sellers experience eBay as a place that welcomes and includes everyone – and that when they are part of eBay, they all have a fair shot at great opportunities.” However, nothing in those reports nor in the Proxy Statements nor in the Company’s January 2018 letter describe how that goal is assessed (i.e. what are the metrics?) and how would such metrics specifically function within the compensation analysis for the CEO.

The Company’s reporting gives the sense that management considers that diversity and inclusion, as an important example of sustainability more generally, is critical for the Company’s long-term performance. We believe that this priority is sincerely held at eBay, and we are grateful for a constructive set of interactions with management which have illuminated certain policies and practices that eBay is rolling out to pursue that priority. But that does not equal a clear account of how sustainability and diversity metrics function within the process of setting CEO pay. Investors do not have the metrics which the Proposal asks for the Company to consider, and we lack an account of whether/how they have been considered.

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<sup>1</sup> <http://www.glasslewis.com/wp-content/uploads/2016/03/2016-In-Depth-Report-LINKING-COMPENSATION-TO-SUSTAINABILITY.pdf>

<sup>2</sup> <https://www.ebayinc.com/our-company/diversity-inclusion/>

Taking diversity and inclusion as a key case in point, it is clear that investors lack the necessary and requested tools to assess how eBay is addressing a mission critical area of risk and opportunity. In the U.S. technology sector (where underrepresented people of color hold just 9 percent of technical roles and women hold 36 percent of entry level tech jobs and just 19 percent of C-Suite positions), a complete response to this Proposal is necessary. And at eBay (where Black people and Latinos still account for only 3 percent of technical roles and there are only 5 underrepresented people of color among the top 70 executives), a substantial response to our request on metrics is necessary and warranted. Without the clear metrics and disclosure contemplated in this Proposal, investors have little hope of discovering whether the proper amount of management attention and compensation-based rigor are being deployed to right the ship.

## **V. Conclusion**

Based on the above, we believe it is clear that eBay's approach does not compare favorably with the Proposal's guidelines nor with its essential purpose. Therefore, the Proposal has not been substantially implemented.

The Company has not met its burden that the Proposal is excludable under Rule 14a-8(i)(10). In conclusion, we respectfully request the Staff to inform the Company that the Rules require a denial of the Company's no-action request.

Thank you for your consideration. In the event that the Staff should decide to concur with the Company and issue a no-action letter, we respectfully request the opportunity to speak with the Staff in advance. Please contact me at (617) 742-6666 or pat@zevin.com with any questions in connection with this matter, or if the Staff seeks any further information.

Sincerely,



Pat Miguel Tomaino  
Director of Socially Responsible Investing  
Zevin Asset Management, LLC

cc: Marie Oh Huber, eBay Inc  
Allison Koehler, eBay Inc  
Gary Gerstman, Sidley Austin  
Sister Mary Brigid Clingman, Sisters of the Order of St. Dominic of Grand Rapids  
Tim Brennan, Unitarian Universalist Association

## **Attachment A: 2018 Proposal**

**WHEREAS:** Studies suggest that companies that integrate environmental, social, and governance (ESG) factors into business strategy reduce reputational, legal, and regulatory risks and improve long-term performance.

A leading group of companies has integrated sustainability metrics into executive pay incentive plans, among them Unilever and Walmart. Guidance from the UN Principles for Responsible Investment (2012) states that including ESG factors in executive incentive schemes can help protect long-term shareholder value.

The 2016 Glass Lewis report *In-Depth: Linking Compensation to Sustainability* finds a “mounting body of research showing that firms that operate in a more responsible manner may perform better financially.... Moreover, these companies were also more likely to tie top executive incentives to sustainability metrics.”

Diversity and inclusion are key components of business sustainability and success:

- McKinsey research shows that companies in the top quartiles for gender and racial/ethnic diversity were more likely to have above average financial returns (“Diversity Matters,” McKinsey, 2015).
- In a 2013 Catalyst report, diversity was positively associated with more customers, increased sales revenue, and greater relative profits.
- A 2016 study by Intel and Dalberg estimates the technology sector could generate \$300–\$370 billion in additional annual revenue if tech companies reflected the racial diversity of the talent pool.

Yet technology companies have not seized this opportunity. Underrepresented people of color hold just 9 percent of technical roles in the sector (Intel/Dalberg, 2016). Women hold 36 percent of entry level tech jobs and just 19 percent of C-Suite positions (“Women in the Workplace,” McKinsey, 2016).

The tech diversity crisis creates challenges for talent acquisition and retention, product development, and customer service. According to a recent study of why workers leave tech sector jobs, nearly 40 percent of employees surveyed indicated that unfairness or mistreatment played a major role in their decision, and underrepresented men were most likely to leave jobs due to unfairness (“2017 Tech Leavers Study,” Kapor Center, 2017).

These human capital risks are playing out at eBay where Black people and Latinos account for only 3 percent of technical roles. eBay has taken steps to address diversity; however, current disclosures reveal that leadership remains predominantly white and male. Among eBay’s top 70 executives in 2016, there were only 5 underrepresented people of color.

Investors seek clarity on how eBay drives improvement through C-Suite accountability. Explicitly integrating diversity metrics into executive compensation assessments would enhance eBay’s approach. Peers (e.g. Microsoft, Intel, IBM) have begun tying parts of executive pay to diversity and sustainability goals.

**RESOLVED:** Shareholders request the Board Compensation Committee prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into the performance measures of the CEO under the Company’s compensation incentive plans. For the purposes of this proposal, “sustainability” is defined as how environmental and social considerations, and related financial impacts, are integrated into long-term corporate strategy, and “diversity” refers to gender, racial, and ethnic diversity.



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January 25, 2018

***VIA ELECTRONIC MAIL***

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

Re: eBay Inc. – Shareholder Proposal submitted by the Sisters of the Order of St. Dominic of Grand Rapids and Unitarian Universalist Association

This letter is submitted on behalf of eBay Inc., a Delaware corporation (“eBay” or the “Company”), pursuant to Rule 14a-8 of the Securities Exchange Act of 1934 (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of eBay’s intention to exclude from its proxy materials for its 2018 Annual Meeting of Stockholders (the “2018 Annual Meeting”) a shareholder proposal (the “Proposal”) and statement in support thereof received from Zevin Asset Management, LLC on behalf of the Sisters of the Order of St. Dominic of Grand Rapids and separately received from the Unitarian Universalist Association (each, a “Proponent” and collectively, the “Proponents”), with each of the Proponents authorizing Zevin Asset Management, LLC as a representative.

eBay intends to file its definitive proxy materials for the 2018 Annual Meeting on or about April 16, 2018. Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008), this letter and its exhibits are being submitted via email to *shareholderproposals@sec.gov*. A copy of this letter and its exhibits will also be sent to the Proponents.

eBay hereby respectfully requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if eBay excludes the Proposal from its 2018 Annual Meeting proxy materials for the reasons set forth below.

## THE PROPOSAL

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

**RESOLVED:** Shareholders request the Board Compensation Committee prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into the performance measures of the CEO under the Company’s compensation incentive plans. For the purposes of this proposal, “sustainability” is defined as how environmental and social considerations, and related financial impacts, are integrated into long-term corporate strategy, and “diversity” refers to gender, racial and ethnic diversity.

A copy of the Proposal and the supporting statement (the “Supporting Statement”) is set forth in Exhibit A.

## BASIS FOR EXCLUSION OF THE PROPOSAL

### **The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(10) Because the Company Has Already Substantially Implemented the Proposal.**

Rule 14a-8(i)(10) provides that a company may exclude a proposal from its proxy materials if “the company has already substantially implemented the proposal.” According to the Commission, this exclusion “is designed to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management.”<sup>1</sup> A company need not have implemented each element in the precise manner suggested by the proponent.<sup>2</sup> Rather, the actions taken by a company must have addressed the proposal’s “essential objective.” See *Anheuser-Busch Companies, Inc.* (Jan. 17, 2007).

The Company interprets the Proposal as having one “essential objective”: that eBay assess the “*feasibility* of integrating sustainability metrics into the performance measures” (emphasis added) used in the Company’s incentive compensation awards for its CEO, Devin Wenig, and publicly disclose the committee’s assessment of feasibility.

According to the Oxford English Dictionary, “feasibility” means “capability of being done; practicability.” The Compensation Committee of the Company’s Board of Directors has already assessed whether it would be feasible to integrate sustainability metrics into the performance measures it uses to compensate Mr. Wenig, and has determined that not only is it feasible to do so, the Company already incorporates some elements of sustainability and

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<sup>1</sup> See Release No. 34-20091 (Aug. 16, 1983) (the “1983 Release”).

<sup>2</sup> See 1983 Release.

diversity into the review and determination of Mr. Wenig's total compensation. The Company's individual review process for executives, including that of Mr. Wenig, utilizes a holistic approach and takes into account the cultural values of the Company, which include sustainability and diversity, as further described below. This review process, in part, assesses how the employee has contributed to those values.

To illustrate the Company's cultural value of environmental responsibility, consider that the Company has publicly stated its commitment to integrating environmentally responsible practices in its business. eBay's website states that the Company supports "a more sustainable, low-carbon economy." Its teams across the globe "drive energy savings, waste reduction and green building principles and practices." More information on eBay's commitment to environmental sustainability can be found on its website (<https://www.ebayinc.com/global-impact/environmental-footprint/>).

Diversity and social responsibility are also important cultural values of the Company. eBay's commitment to social responsibility has earned it a 100% score on the Human Rights Campaign Corporate Equity Index in 2017, the tenth straight year it has earned that perfect score. eBay has consistently shown commitment to increasing the number and success rates of eBay sellers from low-income, underserved communities. As stated on the Company's website, diversity and inclusion at eBay "goes well beyond a moral necessity"; it is the foundation of the Company's business model and "absolutely critical to [its] ability to thrive in an increasingly competitive global landscape." eBay has three focus points when it comes to diversity and inclusion—its workforce, its workplace and its marketplace. More information on eBay's commitment to diversity and inclusion can be found on its website (<https://www.ebayinc.com/our-company/diversity-inclusion/>).

The holistic approach used in evaluating Mr. Wenig's performance and determining compensation includes consideration of his success in fostering a diverse and inclusive culture, as well as a commitment to the Company's values of environmental and social responsibility. As explained in the Company's 2017 definitive proxy statement, in determining Mr. Wenig's 2016 equity award, the Compensation Committee took into account, among other items, Mr. Wenig's "focus on shaping eBay's culture to embrace . . . diversity in the workplace." In taking a holistic approach to setting Mr. Wenig's compensation, the Compensation Committee considered Mr. Wenig's success in "[b]uilding . . . a values-based culture that is inventive, bold, courageous, diverse, and inclusive to enable eBay to attract and retain top talent." The Compensation Committee does not assign fixed weightings to these specific individual goals or performance criteria. Instead, it takes "a holistic view of performance during the year and the Company's positioning for the future."

The Company does not believe that this issue—the feasibility of integrating sustainability metrics into Mr. Wenig's compensation performance measures—merits a separate report as the Company has already determined that this practice is feasible and, in fact, it already incorporates these elements. In addition, the Company intends to enhance its disclosure regarding the use of

sustainability metrics in executive compensation in its proxy materials for the 2018 Annual Meeting. Thus, for the reasons stated above and in accordance with Rule 14a-8(i)(10), the Company believes the Proposal may be excluded from its 2018 Proxy Statement. *See Exxon Mobil* (Jan. 24, 2001) (concurring that a proposal for the board to review a pipeline project, develop criteria for involvement in the project, and report to shareholders was substantially implemented by prior analysis of the project); *see also Mondelez International, Inc.* (Mar. 7, 2014) (concurring that a proposal requesting a report on the company's process for identifying and analyzing human rights risks was substantially implemented because the company had made the relevant information available on its website); *The Coca-Cola Co.* (Jan. 25, 2012) (concurring that a proposal requesting a report on public-policy implications of BPA was substantially implemented because the company's website contained various references to the issue).

Indeed, it is not clear what else the Company would need to do to implement the Proposal's essential objective. It would not be meaningful for the 2018 Proxy Statement to include a proposal asking shareholders to vote on whether they should ask for a report on the feasibility of integrating sustainability metrics into performance measures when the Company has already stated that doing so is not only feasible but is already a component of assessing the CEO's performance.

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff confirm that it will take no action if the Company excludes the Proposal from its proxy materials for the 2018 Annual Meeting.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If you have any questions regarding this request or desire additional information, please contact the undersigned at (312) 853-2060 or by email at [ggerstman@sidley.com](mailto:ggerstman@sidley.com).

Sincerely,



Gary Gerstman

### Attachments

cc: Marie Oh Huber, eBay Inc.  
Allison Koehler, eBay Inc.  
Pat Miguel Tomaino, Zevin Asset Management, LLC

**Exhibit A**  
(see attached)

# Zevin Asset Management, LLC

PIONEERS IN SOCIALLY RESPONSIBLE INVESTING

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November 27, 2017

Marie Oh Huber  
eBay Inc  
Corporate Secretary  
2025 Hamilton Avenue  
San Jose, CA 95125

**RE: Shareholder proposal for 2018 Annual Meeting**

Dear Ms. Huber,

I write to file the attached proposal to be included in the proxy statement of eBay Inc ("eBay" or the "Company") for its 2018 annual meeting of stockholders.

Zevin Asset Management is a socially responsible investment manager which integrates financial and environmental, social, and governance research in making investment decisions on behalf of our clients. We are filing the attached proposal to consider explicitly linking executive compensation to sustainability and diversity metrics because investors need additional clarity on eBay's approach to its material diversity and sustainability challenges.

For the reasons presented in the attached proposal, investors view diversity and inclusion as critical to long-term success and sustainable risk management at eBay. I have reviewed eBay's disclosures on this issue and found that the Company's approach could be significantly improved with additional accountability. The Company (and the wider tech industry) face a crisis in diversity and inclusion — which threatens eBay's ability to retain diverse talent, nurture its human capital, and connect with its consumer base. In this context, eBay must show investors that it is making the proper efforts and using appropriate tools to respond to that crisis effectively.

We believe that eBay should formally consider enhancing its process for setting CEO compensation by considering sustainability metrics, including metrics regarding senior executive diversity. Explicitly linking CEO compensation assessments to such metrics would reassure investors that the Company's approach to critical sustainability issues like diversity and inclusion are driven and incentivized effectively from the top of the organization.

I was grateful for the opportunity to meet with Selim Freiha and Damien Hooper-Campbell on these matters in August, and I look forward to further constructive engagement. In our call, Mr. Hooper-Campbell acknowledged eBay's challenges and described efforts underway to invest in inclusion and culture change at eBay. However, it was clear that eBay was not considering developing specific diversity and inclusion goals and explicitly linking goals with executive compensation determinations as many of the Company's leading peers have done. Investors hope that eBay will reconsider that position in the coming weeks.

We are filing this shareholder resolution on behalf of the Sisters of the Order of St. Dominic of Grand Rapids (the Proponent), which has continuously held, for at least one year of the date hereof, more than 11,000 shares of the Company's stock which would meet the requirements of Rule 14a-8

under the Securities Exchange Act of 1934, as amended. Verification of this ownership from our client's custodian PNC Institutional Asset Management (PNC) is enclosed. That documentation shows that the Sisters of the Order of St. Dominic of Grand Rapids (the Proponent) is beneficial owner of the above mentioned eBay shares, which are held in multiple accounts referenced in the PNC letters.

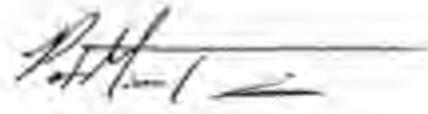
Zevin Asset Management, LLC has complete discretion over the Proponent's shareholding account at PNC, which means that we have complete discretion to buy or sell investments as well as submit shareholder proposals at the direction of our client (the Proponent) to companies in the Proponent's portfolio.

In consultation with our client (the Proponent), we confirm that the Proponent intends to continue to hold the requisite number of shares through the date of the Company's 2018 annual meeting of stockholders.

Zevin Asset Management, LLC is the primary filer for this resolution. We will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules. We may be joined by one or more co-filers.

Please direct any communications to me at 617-742-6666 or pat@zevin.com. We request copies of any documentation related to this proposal. I am grateful for your time, and I look forward to continued meaningful dialogue with Mr. Freiha, Mr. Hooper-Campbell, and other eBay leaders on these issues.

Sincerely,



Pat Miguel Tomaino  
Associate Director of Socially Responsible Investing  
Zevin Asset Management, LLC

CC: Selim Freiha, Vice President, Investor Relations, eBay  
Damien Hooper-Campbell, Chief Diversity Officer, eBay

**WHEREAS:** Studies suggest that companies that integrate environmental, social, and governance (ESG) factors into business strategy reduce reputational, legal, and regulatory risks and improve long-term performance.

A leading group of companies has integrated sustainability metrics into executive pay incentive plans, among them Unilever and Walmart. Guidance from the UN Principles for Responsible Investment (2012) states that including ESG factors in executive incentive schemes can help protect long-term shareholder value.

The 2016 Glass Lewis report *In-Depth: Linking Compensation to Sustainability* finds a “mounting body of research showing that firms that operate in a more responsible manner may perform better financially.... Moreover, these companies were also more likely to tie top executive incentives to sustainability metrics.”

Diversity and inclusion are key components of business sustainability and success:

- McKinsey research shows that companies in the top quartiles for gender and racial/ethnic diversity were more likely to have above average financial returns (“Diversity Matters,” McKinsey, 2015).
- In a 2013 Catalyst report, diversity was positively associated with more customers, increased sales revenue, and greater relative profits.
- A 2016 study by Intel and Dalberg estimates the technology sector could generate \$300–\$370 billion in additional annual revenue if tech companies reflected the racial diversity of the talent pool.

Yet technology companies have not seized this opportunity. Underrepresented people of color hold just 9 percent of technical roles in the sector (Intel/Dalberg, 2016). Women hold 36 percent of entry level tech jobs and just 19 percent of C-Suite positions (“Women in the Workplace,” McKinsey, 2016).

The tech diversity crisis creates challenges for talent acquisition and retention, product development, and customer service. According to a recent study of why workers leave tech sector jobs, nearly 40 percent of employees surveyed indicated that unfairness or mistreatment played a major role in their decision, and underrepresented men were most likely to leave jobs due to unfairness (“2017 Tech Leavers Study,” Kapor Center, 2017).

These human capital risks are playing out at eBay where Black people and Latinos account for only 3 percent of technical roles. eBay has taken steps to address diversity; however, current disclosures reveal that leadership remains predominantly white and male. Among eBay’s top 70 executives in 2016, there were only 5 underrepresented people of color.

Investors seek clarity on how eBay drives improvement through C-Suite accountability. Explicitly integrating diversity metrics into executive compensation assessments would enhance eBay’s approach. Peers (e.g. Microsoft, Intel, IBM) have begun tying parts of executive pay to diversity and sustainability goals.

**RESOLVED:** Shareholders request the Board Compensation Committee prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into the performance measures of the CEO under the Company’s compensation incentive plans. For the purposes of this proposal, “sustainability” is defined as how environmental and social considerations, and related financial impacts, are integrated into long-term corporate strategy, and “diversity” refers to gender, racial, and ethnic diversity.

# Zevin Asset Management, LLC

PIONEERS IN SOCIALLY RESPONSIBLE INVESTING

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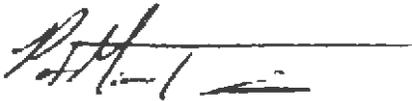
November 27, 2017

To Whom It May Concern:

Please find attached PNC Institutional Asset Management custodial proof of ownership statements of eBay Inc (EBAY) from the Sisters of the Order of St. Dominic of Grand Rapids. Zevin Asset Management, LLC is the investment advisor to the Sisters of the Order of St. Dominic of Grand Rapids and filed a shareholder resolution on sustainability, diversity, and executive compensation on behalf of the Sisters of the Order of St. Dominic of Grand Rapids.

The following two letters serve as confirmation that the Sisters of the Order of St. Dominic of Grand Rapids is beneficial owner of the shares held in each account referenced.

Sincerely,



Pat Miguel Tomaino  
Associate Director of Socially Responsible Investing  
Zevin Asset Management, LLC



November 27, 2017

To Whom It May Concern:

This is to confirm that PNC Institutional Asset Management is the custodian of 2,401 shares of Ebay Inc (EBAY) owned by Sisters of the Order of St. Dominic of Grand Rapids.

We confirm that the above account has beneficial ownership of at least \$2,000 in market value of the voting securities of EBAY and that such beneficial ownership has continuously existed for one or more years in accordance with rule 14a-8(a)(1) of the Securities Exchange Act of 1934, as amended.

This letter serves as confirmation that Sisters of the Order of St. Dominic of Grand Rapids is the beneficial owner of the above referenced stock.

Sincerely,

A handwritten signature in blue ink that reads "Barbara A Citizen".

Barbara A Citizen, AVP  
Fiduciary Advisor  
PNC Institutional Client Services



November 27, 2017

To Whom It May Concern:

This is to confirm that PNC Institutional Asset Management (DTC # 2616) is the custodian for 9,107 shares of Ebay Inc (EBAY) owned by Sisters of the Order of St. Dominic Grand Rapids Charitable Trust.

We confirm that the above account has beneficial ownership of at least \$2,000 in market value of the voting securities of EBAY and that such beneficial ownership has continuously existed for one or more years in accordance with rule 14a-8(a)(1) of the Securities Exchange Act of 1934, as amended.

This letter serves as confirmation that Sisters of St. Dominic Charitable Trust is the beneficial owner of the above referenced stock.

Sincerely,

A handwritten signature in blue ink that reads "Jocy Muya".

Jocy Muya

Fiduciary Advisor II

Assistant Vice President



SIDLEY AUSTIN LLP  
ONE SOUTH DEARBORN STREET  
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AMERICA • ASIA PACIFIC • EUROPE

ANDREA.REED@SIDLEY.COM  
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December 8, 2017

VIA EMAIL

Pat Miguel Tomaino  
Associate Director of Socially Responsible Investing  
Zevin Asset Management, LLC  
11 Beacon Street, Suite 1125  
Boston, MA 02108  
[pat@zevin.com](mailto:pat@zevin.com)

Re: Shareholder Proposal for the 2018 Annual Meeting

Dear Mr. Tomaino,

We are writing on behalf of our client, eBay Inc. (the “Company”). On November 28, 2017, the Company received by email your letter dated November 27, 2017, regarding a shareholder proposal (the “Proposal”) submitted by you on behalf of the Sisters of the Order of St. Dominic of Grand Rapids (the “Shareholder”) and intended for inclusion in the Company’s proxy materials for its 2018 Annual Meeting of Stockholders (the “2018 Annual Meeting”).

The staff of the SEC’s Division of Corporation Finance (the “Staff”) allows a shareholder to submit a proposal through a representative, a practice commonly referred to as “proposal by proxy.” To better evaluate whether the eligibility requirements under Rule 14a-8 of the Securities Exchange Act of 1934 (“Rule 14a-8”) have been satisfied when shareholder proposals are submitted through a representative, the Staff recently included guidance in *Staff Legal Bulletin No. 14I* (November 1, 2017) (“SLB 14I”), which specified that “going forward, the [S]taff will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder’s delegation of authority to the proxy.” The Staff expects this documentation to: (i) identify the shareholder-proponent and the person or entity selected as proxy; (ii) identify the company to which the proposal is directed; (iii) identify the annual or special meeting for which the proposal is submitted; (iv) identify the specific proposal to be submitted; and (v) be signed and dated by the shareholder. Where the foregoing information is not provided, there may be a basis to exclude the proposal under Rule 14-8(b).

We have examined your letter and other documents provided to the Company and determined that you have not provided any documentation from the Shareholder that confirms your authority to act on behalf of the Shareholder in accordance with the above-cited requirements of SLB 14I. Without such documentation, we cannot confirm that the eligibility requirements of Rule 14a-8(b) have been satisfied.

Pat Miguel Tomaino

December 8, 2017

Page 2

Please note that if you or the Shareholder intend to submit such documentation as referenced in this letter, it must be postmarked, or transmitted electronically, no later than 14 calendar days from the date you receive this letter. For your reference, copies of Rule 14a-8 and SLB 14I are attached to this letter as Exhibit A and Exhibit B, respectively.

If you have any questions concerning the above, please do not hesitate to contact the undersigned by phone at (312) 853-7881 or by email at [andrea.reed@sidley.com](mailto:andrea.reed@sidley.com).

Very truly yours,



Andrea L. Reed

**Attachments**

cc: Marie Oh Huber, Senior Vice President, Legal Affairs, General Counsel and Secretary, eBay, Inc.

## **Exhibit A**

### **Rule 14a-8**

Title 17: Commodity and Securities Exchanges

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.14a-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 (P29.402 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.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]

**Exhibit B**

**SLB 14I**



**U.S. Securities and Exchange Commission**

**Division of Corporation Finance  
Securities and Exchange Commission**

**Shareholder Proposals**

**Staff Legal Bulletin No. 14I (CF)**

**Action:** Publication of CF Staff Legal Bulletin

**Date:** November 1, 2017

**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 submitting a web-based request form at [https://www.sec.gov/forms/corp\\_fin\\_interpretive](https://www.sec.gov/forms/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 about the Division’s views on:

- the scope and application of Rule 14a-8(i)(7);
- the scope and application of Rule 14a-8(i)(5);
- proposals submitted on behalf of shareholders; and
- the use of graphs and images consistent with Rule 14a-8(d).

You can find additional guidance about 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](#), [SLB No. 14E](#), [SLB No. 14F](#), [SLB No. 14G](#) and [SLB No. 14H](#).

## **B. Rule 14a-8(i)(7)**

### **1. Background**

Rule 14a-8(i)(7), the “ordinary business” exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that “deals with a matter relating to the company’s ordinary business operations.” The purpose of the exception 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.”<sup>1</sup>

### **2. The Division’s application of Rule 14a-8(i)(7)**

The Commission has stated that the policy underlying the “ordinary business” exception rests on two central considerations.<sup>2</sup> The first relates to the proposal’s subject matter; the second, the degree to which the proposal “micromanages” the company. Under the first consideration, proposals that raise matters that 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” may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote.<sup>3</sup> Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.<sup>4</sup>

At issue in many Rule 14a-8(i)(7) no-action requests is whether a proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant. These determinations often raise difficult judgment calls that the Division believes are in the first instance matters that the board of directors is generally in a better position to determine. A board of directors, acting as steward with fiduciary duties to a company’s shareholders, generally has significant duties of loyalty and care in overseeing management and the strategic direction of the company. A board acting in this capacity and with the knowledge of the company’s business and the implications for a particular proposal on that company’s business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.

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<sup>1</sup> Release No. 34-40018 (May 21, 1998).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See Staff Legal Bulletin No. 14H (Oct. 22, 2015), *citing* Staff Legal Bulletin No. 14E (Oct. 27, 2009) (stating that a proposal generally will not be excludable “as long as a sufficient nexus exists between the nature of the proposal and the company”).

Accordingly, going forward, we would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned. We believe that a well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7).

### **C. Rule 14a-8(i)(5)**

#### **1. Background**

Rule 14a-8(i)(5), the "economic relevance" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "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."

#### **2. History of Rule 14a-8(i)(5)**

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal."<sup>5</sup> The Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today.<sup>6</sup> In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting."<sup>7</sup>

Shortly after the 1983 amendments, however, the District Court for the District of Columbia in *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554 (D.D.C. 1985) preliminarily enjoined a company from excluding a proposal regarding sales of a product line that represented only 0.05% of assets, \$79,000 in sales and a net loss of (\$3,121), compared to the company's total assets of \$78 million, annual revenues of \$141 million and net earnings of \$6 million. The court based its decision to grant the injunction "in light of the ethical and social significance" of the proposal and on "the fact that it implicates significant levels of sales." Since that time, the Division has interpreted *Lovenheim* in a manner that has significantly narrowed the scope of Rule 14a-8(i)(5).

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<sup>5</sup> Release No. 34-19135 (Oct. 14, 1982).

<sup>6</sup> *Id.*

<sup>7</sup> Release No. 34-20091 (Aug. 16, 1983).

### 3. The Division's application of Rule 14a-8(i)(5)

Over the years, the Division has only infrequently agreed with exclusion under the “economic relevance” exception. Under its historical application, the Division has not agreed with exclusion under Rule 14a-8(i)(5), even where a proposal has related to operations that accounted for less than 5% of total assets, net earnings and gross sales, where the company conducted business, no matter how small, related to the issue raised in the proposal. The Division’s analysis has not focused on a proposal’s significance to the company’s business. As a result, the Division’s analysis has been similar to its analysis prior to 1983, with which the Commission expressed concern.

That analysis simply considered whether a company conducted any amount of business related to the issue in the proposal and whether that issue was of broad social or ethical concern. We believe the Division’s application of Rule 14a-8(i)(5) has unduly limited the exclusion’s availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal “deals with a matter that is not significantly related to the issuer’s business” and is therefore excludable. Accordingly, going forward, the Division’s analysis will focus, as the rule directs, on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal’s relevance to the company’s business.

Because the test only allows exclusion when the matter is not “otherwise significantly related to the company,” we view the analysis as dependent upon the particular circumstances of the company to which the proposal is submitted. That is, a matter significant to one company may not be significant to another. On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.

Where a proposal’s significance to a company’s business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is “otherwise significantly related to the company’s business.”<sup>8</sup> For example, the proponent can provide information demonstrating that the proposal “may have a significant impact on other segments of the issuer’s business or subject the issuer to significant contingent liabilities.”<sup>9</sup> The proponent could continue to raise social or ethical issues in its arguments, but it would need to tie those to a significant effect on the company’s business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the “total mix” of information about the issuer.

As with the “ordinary business” exception in Rule 14a-8(i)(7), determining whether a proposal is “otherwise significantly related to the company’s business” can raise difficult judgment calls.

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<sup>8</sup> Proponents bear the burden of demonstrating that a proposal is “otherwise significantly related to the company’s business.” See Release No. 34-39093 (Sep. 18, 1997), citing Release No. 34-19135.

<sup>9</sup> Release No. 34-19135.

Similarly, we believe that the board of directors is generally in a better position to determine these matters in the first instance. A board acting with the knowledge of the company's business and the implications for a particular proposal on that company's business is better situated than the staff to determine whether a particular proposal is "otherwise significantly related to the company's business." Accordingly, we would expect a company's Rule 14a-8(i)(5) no-action request to include a discussion that reflects the board's analysis of the proposal's significance to the company. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.

In addition, the Division's analysis of whether a proposal is "otherwise significantly related" under Rule 14a-8(i)(5) has historically been informed by its analysis under the "ordinary business" exception, Rule 14a-8(i)(7). As a result, the availability or unavailability of Rule 14a-8(i)(7) has been largely determinative of the availability or unavailability of Rule 14a-8(i)(5). Going forward, the Division will no longer look to its analysis under Rule 14a-8(i)(7) when evaluating arguments under Rule 14a-8(i)(5). In our view, applying separate analytical frameworks will ensure that each basis for exclusion serves its intended purpose.

We believe the approach going forward is more appropriately rooted in the intended purpose and language of Rule 14a-8(i)(5), and better helps companies, proponents and the staff determine whether a proposal is "otherwise significantly related to the company's business."

#### **D. Proposals submitted on behalf of shareholders**

While Rule 14a-8 does not address shareholders' ability to submit proposals through a representative, shareholders frequently elect to do so, a practice commonly referred to as "proposal by proxy." The Division has been, and continues to be, of the view that a shareholder's submission by proxy is consistent with Rule 14a-8.<sup>10</sup>

The Division is nevertheless mindful of challenges and concerns that proposals by proxy may present. For example, there may be questions about whether the eligibility requirements of Rule 14a-8(b) have been satisfied. There have also been concerns raised that shareholders may not know that proposals are being submitted on their behalf. In light of these challenges and concerns, and to help the staff and companies better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied, going forward, the staff will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder's delegation of authority to the proxy.<sup>11</sup> In general, we would expect this documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;

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<sup>10</sup> We view a shareholder's ability to submit a proposal by proxy as largely a function of state agency law provided it is consistent with Rule 14a-8.

<sup>11</sup> This guidance applies only to proposals submitted by proxy after the date on which this staff legal bulletin is published.

- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and be signed and dated by the shareholder.

We believe this documentation will help alleviate concerns about proposals by proxy, and will also help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal's submission by proxy. Where this information is not provided, there may be a basis to exclude the proposal under Rule 14a-8(b).<sup>12</sup>

## **E. Rule 14a-8(d)**

### **1. Background**

Rule 14a-8(d) is one of the procedural bases for exclusion of a shareholder proposal in Rule 14a-8. It provides that a "proposal, including any accompanying supporting statement, may not exceed 500 words."

### **2. The use of images in shareholder proposals**

Questions have recently arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.<sup>13</sup> In two recent no-action decisions,<sup>14</sup> the Division expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.<sup>15</sup> Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.<sup>16</sup>

The Division recognizes the potential for abuse in this area. The Division believes, however, that these potential abuses can be addressed through other provisions of Rule 14a-8. For example, exclusion of graphs and/or images would be appropriate under Rule 14a-8(i)(3) where they:

- make the proposal materially false or misleading;

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<sup>12</sup> Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder's failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. See Rule 14a-8(f)(1).

<sup>13</sup> Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. See Release No. 3412999 (Nov. 22, 1976).

<sup>14</sup> *General Electric Co.* (Feb. 3, 2017, recon. granted Feb. 23, 2017); *General Electric Co.* (Feb. 23, 2016).

<sup>15</sup> These decisions were consistent with a longstanding Division position. See *Ferrofluidics Corp.* (Sep. 18, 1992).

<sup>16</sup> Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

- render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
- directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
- are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.<sup>17</sup>

Exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphics, exceeds 500.

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<sup>17</sup> See *General Electric Co.* (Feb. 23, 2017).

**Reed, Andrea**

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**From:** Pat Tomaino <Pat@zevin.com>  
**Sent:** Friday, January 5, 2018 1:04 PM  
**To:** Reed, Andrea  
**Cc:** mhuber@ebay.com; alkoehler@ebay.com; Gerstman, Gary D.  
**Subject:** RE: eBay - Notice to Mr. Tomaino of Zevin Asset Management  
**Attachments:** signed\_EBAY Authorization Dominican Sisters 2017.pdf

Dear Ms. Reed,

The attached letter is presented in response to your letter regarding purported deficiencies in the proposal filed on behalf of the Sisters of the Order of St. Dominic of Grand Rapids.

I trust that this satisfies the issues in your. If it does not, please inform me.

My best,  
Pat Tomaino

Pat Miguel Tomaino  
*Director of Socially Responsible Investing*  
Zevin Asset Management, LLC  
11 Beacon Street, Suite 1125 | Boston, MA 02108  
617.742.6666 x310 | [pat@zevin.com](mailto:pat@zevin.com)  
[www.zevin.com](http://www.zevin.com)

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**From:** Reed, Andrea [andrea.reed@sidley.com]  
**Sent:** Friday, December 8, 2017 12:00 PM  
**To:** Pat Tomaino  
**Cc:** mhuber@ebay.com; alkoehler@ebay.com; Gerstman, Gary D.  
**Subject:** eBay - Notice to Mr. Tomaino of Zevin Asset Management

Dear Mr. Tomaino,

Attached please find a letter on behalf of our client, eBay Inc., regarding your letter dated November 27, 2017.

**ANDREA L. REED**  
Associate

**SIDLEY AUSTIN LLP**  
One South Dearborn  
Chicago, IL 60603  
+1 312 853 7881  
[andrea.reed@sidley.com](mailto:andrea.reed@sidley.com)  
[www.sidley.com](http://www.sidley.com)



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If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

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Sister Mary Brigid Clingman, OP  
Sisters of the Order of St. Dominic  
202 E. Fulton  
Grand Rapids, MI 49503

Re: Appointment of Zevin Asset Management, LLC

To Whom It May Concern:

hereby confirm that I have authorized and appointed Zevin Asset Management, LLC (or its agents), to represent the Sisters of the Order of St. Dominic of Grand Rapids in regard to holdings of eBay Inc ("the Company" or "eBay") in all matters relating to shareholder engagement – including (but not limited to):

- The submission, negotiation, and withdrawal of shareholder proposals
- Requesting letters of verification from custodians, and
- Voting, attending and presenting at shareholder meetings

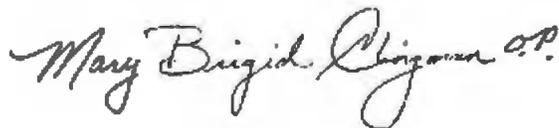
To a company receiving a shareholder proposal under this durable appointment and grant of authority, please consider this letter as both authorization and instruction to:

- Dialogue with Zevin Asset Management, LLC
- Comply with all requests/instructions in relation to the matters noted above
- Direct all correspondence, questions, or communication regarding same to Zevin Asset Management, LLC

This letter of authorization and appointment is intended to be durable and forward-looking.

On November 27, 2017, authorized Zevin Asset Management, LLC to file the shareholder proposal regarding sustainability, diversity, and executive compensation on behalf of the Sisters of the Order of St. Dominic of Grand Rapids to be included in the proxy statement of eBay for its 2018 annual meeting of stockholders. I hereby also confirm that the Sisters of the Order of St. Dominic of Grand Rapids intend to continue to hold the requisite number of eBay shares through the date of the Company's 2018 annual meeting of stockholders, in compliance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended.

Sincerely,



–  
Sister Mary Brigid Clingman, OP  
Promoter of Justice  
Dominican Sisters ~ Grand Rapids

1/5/18



**Dominican Sisters**  
Grand Rapids, Michigan

*Emboldened by faith, serving with joy*

November 28, 2017

Marie Oh Huber  
Corporate Secretary  
eBay Inc.  
2025 Hamilton Avenue  
San Jose, CA 95125

Dear Ms. Huber:

The Unitarian Universalist Association (“UUA”), holder of 130 shares in eBay, Inc. (“Company”), is hereby submitting the enclosed resolution for consideration at the upcoming annual meeting. The resolution requests that the Board Compensation Committee prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into the performance measures of the CEO under the Company’s compensation incentive plans.

This resolution is submitted by the Unitarian Universalist Association, which is a faith community of more than 1000 self-governing congregations that bring to the world a vision of religious freedom, tolerance and social justice. With roots in the Jewish and Christian traditions, Unitarianism and Universalism have been forces in American spirituality from the time of the first Pilgrim and Puritan settlers. The UUA is also an investor with an endowment valued at approximately \$184 million, the earnings of which are an important source of revenue supporting our work in the world. The UUA takes its responsibility as an investor and shareowner very seriously. We view the shareholder resolution process as an opportunity to bear witness to our values at the same time that we enhance the value of our investments.

We submit the enclosed resolution for inclusion in the proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 for consideration and action by the shareowners at the upcoming annual meeting. We have held at least \$2,000 in market value of the company’s common stock for more than one year as of the filing date and will continue to hold at least the requisite number of shares for filing proxy resolutions through the stockholders’ meeting.



**WHEREAS:** Studies suggest that companies that integrate environmental, social, and governance (ESG) factors into business strategy reduce reputational, legal, and regulatory risks and improve long-term performance.

A leading group of companies has integrated sustainability metrics into executive pay incentive plans, among them Unilever and Walmart. Guidance from the UN Principles for Responsible Investment (2012) states that including ESG factors in executive incentive schemes can help protect long-term shareholder value.

The 2016 Glass Lewis report *In-Depth: Linking Compensation to Sustainability* finds a “mounting body of research showing that firms that operate in a more responsible manner may perform better financially.... Moreover, these companies were also more likely to tie top executive incentives to sustainability metrics.”

Diversity and inclusion are key components of business sustainability and success:

- McKinsey research shows that companies in the top quartiles for gender and racial/ethnic diversity were more likely to have above average financial returns (“Diversity Matters,” McKinsey, 2015).
- In a 2013 Catalyst report, diversity was positively associated with more customers, increased sales revenue, and greater relative profits.
- A 2016 study by Intel and Dalberg estimates the technology sector could generate \$300–\$370 billion in additional annual revenue if tech companies reflected the racial diversity of the talent pool.

Yet technology companies have not seized this opportunity. Underrepresented people of color hold just 9 percent of technical roles in the sector (Intel/Dalberg, 2016). Women hold 36 percent of entry level tech jobs and just 19 percent of C-Suite positions (“Women in the Workplace,” McKinsey, 2016).

The tech diversity crisis creates challenges for talent acquisition and retention, product development, and customer service. According to a recent study of why workers leave tech sector jobs, nearly 40 percent of employees surveyed indicated that unfairness or mistreatment played a major role in their decision, and underrepresented men were most likely to leave jobs due to unfairness (“2017 Tech Leavers Study,” Kapor Center, 2017).

These human capital risks are playing out at eBay where Black people and Latinos account for only 3 percent of technical roles. eBay has taken steps to address diversity; however, current disclosures reveal that leadership remains predominantly white and male. Among eBay’s top 70 executives in 2016, there were only 5 underrepresented people of color.

Investors seek clarity on how eBay drives improvement through C-Suite accountability. Explicitly integrating diversity metrics into executive compensation assessments would enhance eBay’s approach. Peers (e.g. Microsoft, Intel, IBM) have begun tying parts of executive pay to diversity and sustainability goals.

**RESOLVED:** Shareholders request the Board Compensation Committee prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into the performance measures of the CEO under the Company’s compensation incentive plans. For the purposes of this proposal, “sustainability” is defined as how environmental and social considerations, and related financial impacts, are integrated into long-term corporate strategy, and “diversity” refers to gender, racial, and ethnic diversity.



All of us SERVING YOU

November 28, 2017

To Whom It May Concern:

The Unitarian Universalist Association currently holds 130 shares of eBay Inc., Cusip=278642103.

The Unitarian Universalist Association holds 130 shares in account xxxxxx! \*\*\*

The shares have been held in custody for more than a one year period preceding and including November 28, 2017, previously with State Street Bank and now with US Bank NA since 3/9/17.

The Unitarian Universalist Association is the beneficial owner of the shares. US Bank's DTC participant number is 2803.

Please contact me if you have any questions or require further information

Thank you,

Lynn S. Shotwell  
Assistant Vice President | Account Manager  
p. 302.576.3711 | f. 302.576.3718 | [lynn.shotwell@usbank.com](mailto:lynn.shotwell@usbank.com)

U.S. Bank Institutional Trust & Custody  
300 Delaware Avenue, Suite 901 | Wilmington, DE 19801 | [www.usbank.com](http://www.usbank.com)

December 4, 2017

Marie Oh Huber  
Corporate Secretary  
eBay Inc.  
2025 Hamilton Avenue  
San Jose, CA 95125

Dear Ms. Huber:

I hereby authorize Zevin Asset Management, LLC, as lead filer of the diversity proposal at eBay, Inc., authority to represent the Unitarian Universalist Association in dialogue with the company regarding the proposal including the authority to withdraw the proposal on our behalf.



UNITARIAN  
UNIVERSALIST  
ASSOCIATION

Timothy Brennan  
Treasurer and  
Chief Financial Officer

Yours very truly,

Timothy Brennan

CC: Pat Miguel Tomaino, Zevin Asset Management, LLC

red.  
12/11/17 og

## Reed, Andrea

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**From:** Pat Tomaino <Pat@zevin.com>  
**Sent:** Wednesday, January 17, 2018 10:42 AM  
**To:** Reed, Andrea  
**Cc:** alkoehler@ebay.com; Gerstman, Gary D.  
**Subject:** RE: eBay Shareholder Proposal - Urgent Question

Andrea,

Thanks very much for your note. There is only one proposal.

From the looks of things, UUA is making it clear that Zevin Asset Management as lead filer on behalf of our client is authorized to negotiate and withdraw this proposal.

This is common practice and would allow me to withdraw the proposal in the event of a successful negotiation with eBay without having to secure a separate letter from UUA withdrawing as a co-filer.

Thank you, and please let me know if you require any further clarification.

My best,  
Pat

Pat Miguel Tomaino  
*Director of Socially Responsible Investing* | Zevin Asset Management, LLC  
11 Beacon Street, Suite 1125 | Boston, MA 02108  
617.742.6666 x310 | [pat@zevin.com](mailto:pat@zevin.com)  
[www.zevin.com](http://www.zevin.com)

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**From:** Reed, Andrea [mailto:andrea.reed@sidley.com]  
**Sent:** Wednesday, January 17, 2018 9:16 AM  
**To:** Pat Tomaino <Pat@zevin.com>  
**Cc:** alkoehler@ebay.com; Gerstman, Gary D. <ggerstman@sidley.com>  
**Subject:** eBay Shareholder Proposal - Urgent Question

Dear Mr. Tomaino,

As you are aware, our client, eBay Inc., is in possession of two identical proposals regarding sustainability metrics in executive compensation from two different proponents, although each of them name Zevin Asset Management as a representative. We have attached the proposals to this email for your reference.

Will you please clarify whether these proposals are intended to be a single proposal with each of the Sisters of the Order of St. Dominic and Unitarian Universalist as co-filers? If they are separate proposals, we intend to request that the SEC allow the exclusion of one of the proposals as they are identical.

Please confirm whether these proposals are intended to be a single proposal or separate proposals at your earliest convenience.

Best,

Andrea

**ANDREA L. REED**  
Counsel

**SIDLEY AUSTIN LLP**  
One South Dearborn  
Chicago, IL 60603  
+1 312 853 7881  
[andrea.reed@sidley.com](mailto:andrea.reed@sidley.com)  
[www.sidley.com](http://www.sidley.com)



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