November 21, 2019

Patrick G. Quick  
Foley & Lardner LLP  
pqquick@foley.com

Re: Oshkosh Corporation  
Incoming letter dated September 27, 2019

Dear Mr. Quick:

This letter is in response to your correspondence dated September 27, 2019, October 22, 2019 and November 13, 2019 concerning the shareholder proposal (the “Proposal”) submitted to Oshkosh Corporation (the “Company”) by John Chevedden (the “Proponent”) for inclusion in the Company’s proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated October 1, 2019, October 3, 2019, October 13, 2019, October 21, 2019, October 22, 2019, October 27, 2019, November 13, 2019 and November 17, 2019. 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.

Sincerely,

M. Hughes Bates  
Acting Deputy Chief Counsel

Enclosure

cc: John Chevedden
November 21, 2019

Response of the Office of Chief Counsel  
Division of Corporation Finance  

Re: Oshkosh Corporation  
Incoming letter dated September 27, 2019  

The Proposal requests that the board initiate the appropriate process to amend the Company’s articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections. The Proposal includes a requirement that a director who receives less than a majority of the votes cast be removed from the board immediately.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(2). We note that in the opinion of your counsel, implementation of the Proposal would cause the Company to violate the corporate laws of the State of Wisconsin where the Company is incorporated. According to your counsel’s opinion, there are only two methods to remove a director from the board of directors under Wisconsin law – by a shareholder vote pursuant to the process the statute specifies or by a judicial proceeding – and neither is immediate or an action that the Company or its board of directors can unilaterally undertake. 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)(2). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Dorrie Yale  
Special Counsel
November 17, 2019

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

#8 Rule 14a-8 Proposal
Oshkosh Corporation (OSK)
Majority Vote Election of Directors
John Chevedden

Ladies and Gentlemen:

This is in regard to the September 27, 2019 no-action request and the latest supplement.

The original no-action request had no objection to the words in the resolved statement to “initiate the appropriate process . . . .”

The company initially claimed it could not do what the proposal called for.

Then the proponent showed that the company could do what the proposal called for.

Now the company belatedly claims that those steps had to be in the original resolved statement.

It is requested that the proponent have the last response because the company had the first letter. Plus the company had more than 2 months to prepare its initial no action request.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Ignacio Cortina <icortina@oshkoshcorp.com>
November 13, 2019

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

# 7 Rule 14a-8 Proposal  
Oshkosh Corporation (OSK)  
Majority Vote Election of Directors  
John Chevedden

Ladies and Gentlemen:

This is in regard to the September 27, 2019 no-action request and the latest supplement.

There will be an additional response on November 17, 2019.

It is requested that the proponent have the last response because the company had the first letter.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Ignacio Cortina <icortina@oshkoshcorp.com>
November 13, 2019

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: Oshkosh Corporation – Response to Letters from John Chevedden
Regarding No-Action Request submitted by Oshkosh Corporation for
Exclusion of the Shareholder Proposal Submitted by Mr. Chevedden
Pursuant to Rule 14a-8 Under the Securities Exchange Act of 1934, as
Amended

Ladies & Gentlemen:

Oshkosh Corporation, a Wisconsin corporation (the “Company”), hereby
respectfully submits this letter in response to the following letters (the “Proponent’s Additional
Response Letters”) submitted to the U.S. Securities and Exchange Commission (the
“Commission”) by John Chevedden (the “Proponent”): a letter dated October 22, 2019 and a
letter dated October 27, 2019 (the “Proponent’s October 27 Response Letter”). The Proponent
submitted the Proponent’s Additional Response Letters with respect to the Company’s letter
dated September 27, 2019 (the “No-Action Request”) requesting confirmation that the staff of
the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that
enforcement action be taken if the Company omits the shareholder proposal and supporting
statement submitted by the Proponent (the “Proposal”) from the proxy materials to be distributed
by the Company in connection with its 2020 annual meeting of shareholders (the “2020 Proxy
Materials”).

This letter supplements the No-Action Request. In accordance with Section C of
Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB No. 14D”), we are emailing this letter to the
Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are
simultaneously emailing a copy of this letter to the Proponent.

As a reminder, the Proposal includes the following language: “This proposal
includes that a director who receives less than such a majority vote be removed from the board
immediately.” The No-Action Request explains that Wisconsin law explicitly addresses the
subject of removal of a director and the process by which it can occur. Immediate removal of an incumbent director as the Proposal requires is directly contrary to Wisconsin law because there is no action the Company, or its Board, could lawfully take to effect immediate removal of a director.

In the Proponent’s October 27 Response Letter, the Proponent asserts that the Company has not addressed whether (i) a director can agree in advance to tender his resignation upon the announcement of a failed vote and (ii) it can adopt a policy for the Board to immediately accept such a resignation and then appoint such a director to a temporary directorship. There was and is no reason for the Company to address these items because a director agreeing in advance to tender his resignation and the Company adopting a policy for the Board to immediately accept such a resignation are not subjects of the Proposal and the Proponent may not revise the Proposal to include them at this time. Rather, the Proposal requires immediate removal of a director, and the facts remain that removal of a director is a subject that Wisconsin law explicitly addresses and the Board could not implement the Proposal under Wisconsin law.

Based on the analysis contained in the No-Action Request, we respectfully restate our request that the Staff concur in our view that the Proposal can be excluded from the Company’s 2020 Proxy Materials pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6). If you have any questions or need additional information, please feel free to contact me at (414) 297-5678. In accordance with Staff Legal Bulletin No. 14F (Oct. 18, 2011), please send your response to this letter by email to pgquick@foley.com.

I would appreciate if the Staff also would send a copy of any response to Ignacio A. Cortina, Executive Vice President, General Counsel and Secretary, Oshkosh Corporation, at ICortina@oshkoshcorp.com. Thank you.

Very truly yours,

Patrick G. Quick

cc: Ignacio A. Cortina
    Oshkosh Corporation
    John K. Wilson
    Foley & Lardner LLP
    John Chevedden
October 27, 2019

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

# 6 Rule 14a-8 Proposal
Oshkosh Corporation (OSK)
Majority Vote Election of Directors
John Chevedden

Ladies and Gentlemen:

This is in regard to the September 27, 2019 no-action request.

This proposal is the first proposal submitted with this specific resolved statement.

The company has not addressed whether a director can agree in advance to tender his resignation immediately upon the Item 5.07 announcement of a failed vote. According to WBCL a director can resign at any time. According to WBCL a resignation can occur at a specific later date.

The company has not addressed whether it can adopt a policy for the board to immediately accept such a resignation and then appoint such a director to a temporary directorship.

The Oshkosh Board can appoint a director. For example:
"OSHKOSH, Wis.--(BUSINESS WIRE)--Oshkosh Corporation (NYSE:OSK), a leading designer and manufacturer of specialty vehicles, vehicle bodies and access equipment, announced today that its Board of Directors has appointed Sandra E. “Sandy” Rowland to join the Company’s board effective September 11, 2018."

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Ignacio Cortina <icortina@oshkoshcorp.com>
Proposal [4] – Directors to be Elected by Majority Vote

Shareholders request that our Board of Directors initiate the appropriate process as soon as possible to amend our Company’s articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats.

This proposal includes that a director who receives less than such a majority vote be removed from the board immediately. If such a director has key experience the director can transition to work as a consultant. If the board deems it critical to have such a person as a director, then the board can reappoint the director to the board on a temporary basis and report the basis for its decision in its official report of the annual meeting voting results.
October 22, 2019

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

# 5 Rule 14a-8 Proposal
Oshkosh Corporation (OSK)
Majority Vote Election of Directors
John Chevedden

Ladies and Gentlemen:

This is in regard to the September 27, 2019 no-action request.

There will be an additional response on October 27, 2019.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Ignacio Cortina <lcortina@oshkoshcorp.com>
October 22, 2019

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: Oshkosh Corporation – Response to Letters from John Chevedden
Regarding No-Action Request submitted by Oshkosh Corporation for
Exclusion of the Shareholder Proposal Submitted by Mr. Chevedden
Pursuant to Rule 14a-8 Under the Securities Exchange Act of 1934, as Amended

Ladies & Gentlemen:

Oshkosh Corporation, a Wisconsin corporation (the “Company”), hereby respectfully submits this letter in response to the following letters (the “Proponent’s Response Letters”) submitted to the U.S. Securities and Exchange Commission (the “Commission”) by John Chevedden (the “Proponent”): a letter dated October 1, 2019, a letter dated October 3, 2019, a letter dated October 13, 2019, and a letter dated October 21, 2019 (the “Proponent’s October 21 Response Letter”). The Proponent submitted the Proponent’s Response Letters with respect to the Company’s letter dated September 27, 2019 (the “No-Action Request”) requesting confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if the Company omits the shareholder proposal and supporting statement submitted by the Proponent (the “Proposal”) from the proxy materials to be distributed by the Company in connection with its 2020 annual meeting of shareholders (the “2020 Proxy Materials”).

This letter supplements the No-Action Request. In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB No. 14D”), we are emailing this letter to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously emailing a copy of this letter to the Proponent.

In the Proponent’s Response Letters, the Proponent states: “The first line of the shareholder proposal asks that the Board of Directors take action. The company has not pointed out any text in the proposal that calls for shareholders to take action.”
Office of Chief Counsel  
October 22, 2019  
Page 2

There is no dispute, and nothing in the No-Action Request suggested, that the Proposal requests action by anyone other than the Company’s Board of Directors. That is exactly the point discussed in the No-Action Request: the Proposal is asking the Board to act, but the action requested of the Board would violate Wisconsin law, and therefore, the Company lacks the power or authority to implement the Proposal. It is on that basis that the Company believes the Proposal can be excluded pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6). To be clear, the Company is not seeking concurrence from the Staff that the Proposal can be excluded pursuant to Rule 14a-8(i)(1) as an improper subject for shareholder action under state law.

The Proponent’s October 21 Response Letter refers to the Company’s existing resignation policy, which is in the Company’s bylaws, stating: “The company has not explained how only this proposal can purportedly be in violation of WBCL when its current bylaws can result in the termination of a director who is subject to excessive withheld votes.” The Company’s existing policy requires a director who receives a greater number of votes “withheld” from his or her election than votes “for” to tender his or her resignation, and the director remains in office until the Board considers the resignation and decides whether to accept or reject it. In contrast, the Proposal requires that a director who fails to secure majority support “be removed from the board immediately.” Immediate removal of an incumbent director is directly contrary to Wisconsin law because, as we explained in the Company’s No-Action Request, there is no action the Company, or its Board, could lawfully take to effect immediate removal of a director under Wisconsin law. For this reason, and for the reasons stated in the Company’s No-Action Request, the Proposal does not comport with Wisconsin law.

Based on the analysis contained in the No-Action Request, we respectfully restate our request that the Staff concur in our view that the Proposal can be excluded from the Company’s 2020 Proxy Materials pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6). If you have any questions or need additional information, please feel free to contact me at (414) 297-5678. In accordance with Staff Legal Bulletin No. 14F (Oct. 18, 2011), please send your response to this letter by email to pgquick@foley.com.
I would appreciate if the Staff also would send a copy of any response to Ignacio A. Cortina, Executive Vice President, General Counsel and Secretary, Oshkosh Corporation, at ICortina@oshkoshcorp.com. Thank you.

Very truly yours,

Patrick G. Quick

cc: Ignacio A. Cortina
    Oshkosh Corporation
    John K. Wilson
    Foley & Lardner LLP
    John Chevedden
October 21, 2019

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

# 4 Rule 14a-8 Proposal
Oshkosh Corporation (OSK)
Majority Vote Election of Directors
John Chevedden

Ladies and Gentlemen:

This is in regard to the September 27, 2019 no-action request.

The first line of the shareholder proposal asks that the Board of Directors take action.

The company has not pointed out any text in the proposal that calls for the shareholders to take action. The company does not claim that this proposal calls for its shareholders to take any additional action. Under this proposal shareholders will continue to cast ballots at the annual meeting.

The company makes the so-what statement that according to WBCL a director with a failed vote shall continue to serve until there is a decrease in the number of directors.

If the Board adopts this proposal it does not need to obtain shareholder approval. This further distances shareholders from taking any action in connection with this proposal.

The company has not explained how only this proposal can purportedly be in violation of WBCL when its current bylaws can result in the termination of a director who is subject to excessive withheld votes.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Ignacio Cortina <icortina@oshkoshcorp.com>
Shareholders request that our Board of Directors initiate the appropriate process as soon as possible to amend our Company’s articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats.

This proposal includes that a director who receives less than such a majority vote be removed from the board immediately. If such a director has key experience the director can transition to work as a consultant. If the board deems it critical to have such a person as a director, then the board can reappoint the director to the board on a temporary basis and report the basis for its decision in its official report of the annual meeting voting results.

In order to provide shareholders a meaningful role in director elections, our Company’s current director election standard should be changed from a plurality vote standard to a majority vote standard. The majority vote standard is the most appropriate voting standard for director elections where only board nominated candidates are on the ballot. The 2019 Oshkosh annual meeting proxy said that Directors are elected through plurality voting.

This will establish a more meaningful vote standard for board nominees and could lead to improved performance by individual directors and the entire board. Under our Company’s current voting system, a director can be elected with as little as one yes-vote from 68 million eligible votes. In other words a director can be elected if all shareholders oppose the director and one shareholder makes a mistake and checks the wrong box.

Please vote yes:

Directors to be Elected by Majority Vote – Proposal [4]

[The above line – Is for publication.]
October 13, 2019

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

# 3 Rule 14a-8 Proposal
Oshkosh Corporation (OSK)
Majority Vote Election of Directors
John Chevedden

Ladies and Gentlemen:

This is in regard to the September 27, 2019 no-action request.

The first line of the shareholder proposal asks that the Board of Directors take action.

The company has not pointed out any text in the proposal that calls for the shareholders to take action. The company does not claim that this proposal calls for its shareholders to take any additional action.

The company claims that according to WBCL a director with a failed vote shall continue to serve until there is a decrease in the number of directors.

There will be at least one more response to the company no action request.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Ignacio Cortina <icortina@oshkoshcorp.com>
Proposal [4] – Directors to be Elected by Majority Vote

Shareholders request that our Board of Directors initiate the appropriate process as soon as possible to amend our Company’s articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats.

This proposal includes that a director who receives less than such a majority vote be removed from the board immediately. If such a director has key experience the director can transition to work as a consultant. If the board deems it critical to have such a person as a director, then the board can reappoint the director to the board on a temporary basis and report the basis for its decision in its official report of the annual meeting voting results.

In order to provide shareholders a meaningful role in director elections, our Company’s current director election standard should be changed from a plurality vote standard to a majority vote standard. The majority vote standard is the most appropriate voting standard for director elections where only board nominated candidates are on the ballot. The 2019 Oshkosh annual meeting proxy said that Directors are elected through plurality voting.

This will establish a more meaningful vote standard for board nominees and could lead to improved performance by individual directors and the entire board. Under our Company’s current voting system, a director can be elected with as little as one yes-vote from 68 million eligible votes. In other words a director can be elected if all shareholders oppose the director and one shareholder makes a mistake and checks the wrong box.

Please vote yes:
Directors to be Elected by Majority Vote – Proposal [4]
[The above line – Is for publication.]
October 3, 2019

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

# 2 Rule 14a-8 Proposal
Oshkosh Corporation (OSK)
Majority Vote Election of Directors
John Chevedden

Ladies and Gentlemen:

This is in regard to the September 27, 2019 no-action request.

The first line of the shareholder proposal asks that the Board of Directors take action.

The company has not pointed out any text in the proposal that calls for the shareholders to take action.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Ignacio Cortina <icortina@oshkoshcorp.com>
Proposal [4] – Directors to be Elected by Majority Vote

Shareholders request that our Board of Directors initiate the appropriate process as soon as possible to amend our Company’s articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats.

This proposal includes that a director who receives less than such a majority vote be removed from the board immediately. If such a director has key experience the director can transition to work as a consultant. If the board deems it critical to have such a person as a director, then the board can reappoint the director to the board on a temporary basis and report the basis for its decision in its official report of the annual meeting voting results.

In order to provide shareholders a meaningful role in director elections, our Company’s current director election standard should be changed from a plurality vote standard to a majority vote standard. The majority vote standard is the most appropriate voting standard for director elections where only board nominated candidates are on the ballot. The 2019 Oshkosh annual meeting proxy said that Directors are elected through plurality voting.

This will establish a more meaningful vote standard for board nominees and could lead to improved performance by individual directors and the entire board. Under our Company’s current voting system, a director can be elected with as little as one yes-vote from 68 million eligible votes. In other words a director can be elected if all shareholders oppose the director and one shareholder makes a mistake and checks the wrong box.

Please vote yes:

Directors to be Elected by Majority Vote – Proposal [4]

[The above line – Is for publication.]
October 1, 2019

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

#1 Rule 14a-8 Proposal
Oshkosh Corporation (OSK)
Majority Vote Election of Directors
John Chevedden

Ladies and Gentlemen:

This is in regard to the September 27, 2019 no-action request.

There will be at least one rebuttal to the company no action request.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Ignacio Cortina <icortina@oshkoshcorp.com>
September 27, 2019

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: Oshkosh Corporation 2020 Annual Meeting
Omission of Shareholder Proposal Submitted by John Chevedden

Ladies & Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Oshkosh Corporation, a Wisconsin corporation (the “Company”), to request that the staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with the Company’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by John Chevedden (the “Proponent”) from the proxy materials to be distributed by the Company in connection with its 2020 annual meeting of shareholders (the “2020 Proxy Materials”). We request confirmation that the Staff will not recommend to the Commission that enforcement action be taken if the Company omits the Proposal from the 2020 Proxy Materials for the reasons discussed below.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB No. 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously emailing a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal from the 2020 Proxy Materials.

Rule 14a-8(k) and Section E of SLB No. 14D provide that a shareholder proponent is required to send to the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent elects to submit correspondence to the Commission or the Staff relating to the Proposal, then a copy of that correspondence should concurrently be furnished to the Company.
The Company currently intends to file its definitive 2020 Proxy Materials with the Commission on or about December 20, 2019. Accordingly, as contemplated by Rule 14a-8(j), we have filed this letter with the Commission no later than 80 calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission.

I. The Proposal

The Proposal submitted to the Company by the Proponent relates to majority voting for the election of Company directors and states in relevant part as follows:

Shareholders request that our Board of Directors initiate the appropriate process as soon as possible to amend our Company’s articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats.

This proposal includes that a director who receives less than such a majority vote be removed from the board immediately. If such a director has key experience the director can transition to work as a consultant. If the board deems it critical to have such a person as a director, then the board can reappoint the director to the board on a temporary basis and report the basis for its decision in its official report of the annual meeting voting results.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur in the Company’s view that it may exclude the Proposal from the 2020 Proxy Materials pursuant to:

- Rule 14a-8(i)(2) under the Exchange Act because the Proposal, if implemented, would cause the Company to violate the corporate laws of the State of Wisconsin, which is the Company’s jurisdiction of incorporation; and

- Rule 14a-8(i)(6) under the Exchange Act because the Company lacks the power or authority to implement the Proposal.

III. Background

On August 21, 2019, the Company received the Proposal accompanied by a cover letter from the Proponent dated August 21, 2019. On August 22, 2019, the Company received a revised version of the Proposal. On September 13, 2019, the Company received a letter from Fidelity Brokerage Services LLC, dated September 12, 2019, verifying the Proponent’s share
ownership as of such date (the “Broker Letter”). Copies of the Proposal, as revised, the cover letter and the Broker Letter are attached hereto as Exhibit A.

IV. Analysis

A. The Company Can Exclude the Proposal Under Rule 14a-8(i)(2) Because the Proposal, if Implemented, Would Cause the Company to Violate Wisconsin Law.

Rule 14a-8(i)(2) permits a company to exclude a shareholder proposal from its proxy materials “if the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject.” As noted above, the Company is incorporated in the State of Wisconsin and, accordingly, is subject to, and governed by, the Wisconsin Business Corporation Law, as amended (the “WBCL”). For reasons discussed below, the Company believes implementation of the Proposal would cause the Company to violate the WBCL. Accordingly, the Company respectfully submits that it can properly exclude the Proposal from its 2020 Proxy Materials under Rule 14a-8(i)(2).

The Proposal, as submitted by the Proponent, requires that a director who fails to receive the affirmative vote of the majority of votes cast at an annual meeting of shareholders “be removed from the board immediately.” That result, as it relates to incumbent directors, is directly contrary to the WBCL because there is no action the Company, or its Board of Directors, could lawfully take to effect immediate removal of a director under Wisconsin law. Section 180.0805 of the WBCL provides in relevant part:

**Terms of directors generally.**

(1) The terms of the directors of a corporation . . . expire at the next annual shareholders' meeting . . .

. . .

(3) Despite the expiration of a director’s term, the director shall continue to serve, subject to ss. 180.0807, 180.0808 and 180.0809, until his or her successor is elected and, if necessary, qualifies or until there is a decrease in the number of directors.

Hence, an incumbent director of a Wisconsin corporation who fails to secure the required shareholder vote at an annual meeting of shareholders, under Wisconsin law, continues as a director, subject to the three statutory sections listed above, until his successor is elected or there is a decrease in the number of directors. As discussed below, none of the referenced statutory provisions changes the fact that the proposal, if implemented, would cause the Company to violate the WBCL.
One of those sections, Section 180.0807 of the WBCL, permits a director to resign:

**Resignation of directors.**

(1) A director may resign at any time by delivering written notice that complies with s. 180.0141 to the board of directors, to the chairperson of the board of directors or to the corporation.

The second referenced section, Section 180.0808 of the WBCL, permits shareholders to remove a director:

**Removal of directors by shareholders.**

(1) The shareholders may remove one or more directors . . . .

. . .

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

Because Section 180.0808 requires a process involving both a shareholders meeting called for the purpose of removing the director and a shareholder vote at the meeting to approve the removal, there is no possibility that shareholders could act to remove the director immediately, as required by the Proposal, and there is no certainty that the shareholders would vote to remove the director.

The third referenced section, Section 180.0809 of the WBCL, provides for removal of a director by a court:

**Removal of directors by judicial proceeding.**

(1) The circuit court . . . may remove a director of the corporation from office brought by the corporation or by its shareholders holding at least 10 percent of the outstanding shares of any class if the court finds all of the following: (a) [t]hat the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation[, and] (b) [t]hat removal is in the best interest of the corporation. . . .

Because Section 180.0809 requires a court process, it does not provide a mechanism for immediate removal of a director, and there is of course no certainty that the standard for judicial removal will be met.
The Proposal requires that the director “be removed from the board immediately.” However, under the WBCL, there are only two methods to remove a director from a board of directors—by shareholder vote pursuant to the process the statute specifies or by a court finding that a standard has been met—and neither is immediate or an action that the Company or its Board of Directors can unilaterally undertake. Therefore, the immediate removal mandate proposed by the Proponent contradicts the WBCL. If the Company were to initiate a process to amend its articles of incorporation or bylaws to provide for majority voting with immediate removal, as the Proposal requests, then the Company would be pursuing an amendment that would be in violation of Wisconsin state law, and therefore, the Company could not implement the Proposal without violating state law.

Wisconsin courts have long held that provisions of articles of incorporation or bylaws that conflict with state statutes are void. Addressing language of a corporation’s articles of incorporation stating that officers will be elected by a majority vote of the stockholders in the face of the Wisconsin statute that provided that officers are to be elected by directors, the Wisconsin Supreme Court held: “The provision of the charter or articles of incorporation being in conflict with the statute, the statute governs . . . .” State Ex Rel. Badger Telephone Co. v. Rosenow, 174 Wis. 9, 10 (Wis. 1921). Furthermore, in finding a bylaw void because it prohibited payment for services of any officer or employee without consent of a supermajority of stockholders while the Wisconsin statute provided that the care and management of corporate property, affairs and business are vested in the board of directors, the Wisconsin Supreme Court quoted 14 C. J. 362, § 460: “By-laws of a corporation which are contrary to or inconsistent with its charter, articles of association or incorporation, or governing statute, are ultra vires and void, even though they may have been unanimously assented to by the stockholders or members.” Security Savings & Trust Co. v. Coos Bay Lumber & Coal Co., 219 Wis. 647, 650 (Wis. 1935). In addition, Section 180.0206(2) of the WBCL states: “The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent . . . with the laws of this state.”

This letter also serves as the opinion of Foley & Lardner LLP that, for the reasons set forth above, implementation of the Proposal would cause the Company to violate the WBCL. Please note that, in accordance with Staff guidance, this opinion does not make assumptions about the operation of the Proposal that are not called for by the language of the Proposal.

The Staff previously has found a basis to concur with several no-action requests to exclude shareholder proposals requesting that companies implement majority voting standards for director elections in direct conflict with state law. For example, in Reliance Steel & Aluminum Co. (March 10, 2011), a shareholder submitted a proposal requesting that the company adopt a director majority voting standard bylaw, which also explicitly required a director who did not receive a majority of votes cast to resign. Reliance Steel submitted to the Staff that the adoption of the majority vote standard proposed conflicted with the cumulative voting requirements under applicable California law and that, therefore, the shareholder proposal
was excludable under Rules 14a-8(i)(2) and (i)(6) as well as Rule 14a-8(i)(3). The Staff concurred that the shareholder proposal could be properly excluded under Rule 14a-8(i)(2).

Similarly, in *PG&E Corp.* (February 14, 2006), the Staff concurred with the exclusion, pursuant to Rule 14a-8(i)(2), of a shareholder proposal requesting that the board of directors “initiate the appropriate process” to amend the company’s governance documents to provide for majority voting for directors after the company submitted that such amendments conflicted with a California statute requiring directors to be elected by plurality vote. *See also Sigma Designs, Inc.* (Jun. 9, 2015) (permitting exclusion of a shareholder proposal requesting the board of directors to amend the company’s governance documents to provide for majority voting where the company submitted that, under California law, a majority vote standard can only be adopted if a company first eliminates cumulative voting, which the company had not done); *IDACORP, Inc.* (Feb. 13, 2012) (permitting exclusion of a shareholder proposal requesting an amendment to the company’s bylaws after the company submitted that, under Idaho law, an amendment to the articles would be required); *PG&E Corp.* (Feb. 25, 2008) (concurring with the exclusion of a shareholder proposal requesting that the company adopt cumulative voting in director elections where the company submitted that it had previously adopted majority voting, and state law prevented the company from having both majority voting and cumulative voting); *AT&T, Inc.* (Feb. 19, 2008) (concurring with the exclusion of a shareholder proposal requesting amendment of the company’s bylaws allowing shareholder action by written consent where the company submitted that such an amendment was only valid if set forth in the company’s certificate of incorporation); *The Boeing Co.* (Feb. 19, 2008) (same); *Hewlett Packard Co.* (Jan. 5, 2005) (concurring with the exclusion of a shareholder proposal requesting amendment of the company’s bylaws altering the “one share, one vote” standard set forth under Delaware corporate law where the company submitted that such an amendment was only valid if set forth in the company’s certificate of incorporation).

Furthermore, neither the purported precatory nature of the Proposal (in that the Proposal “requests” the Board to take the action) nor the use of the phrase “initiate the appropriate process” to implement the proposal precludes exclusion of the proposal on the basis that the implementation of the proposal would violate state, federal or foreign law. The Staff has repeatedly permitted exclusion of precatory or advisory shareholder proposals and proposals using similar phrasing to “initiate the process” pursuant to Rule 14a-8(i)(2) if the action called for in the proposal would violate state, federal or foreign law. *See, e.g., Merck & Co., Inc.* (Jan. 29, 2010) (in a proposal likewise submitted by the Proponent, the Staff permitted exclusion, pursuant to Rule 14a-8(i)(2), of a shareholder proposal requesting that the company’s board “undertake the steps as may be necessary” to permit shareholder action by written consent); *Ball Corp.* (Jan. 25, 2010) (concurring with the company’s request to exclude a precatory board declassification proposal under Rules 14a-8(i)(2) and (i)(6)); *AT&T, Inc.* (Feb. 19, 2008) (concurring with the company’s request to exclude a precatory shareholder proposal regarding shareholder action by written consent under Rules 14a-8(i)(2) and (i)(6)); *MeadWestvaco Corp.* (Feb. 27, 2005) (concurring with the company’s request to exclude a precatory shareholder proposal requesting the company adopt per capita voting under Rule 14a-8(i)(2)); and *Hewlett
Packard Co. (Jan. 5, 2005) (concurring with the company’s request to exclude a precatory shareholder proposal regarding shareholder approval of certain executive compensation payments under Rule 14a-8(i)(2)).

For these reasons, and consistent with previous positions of the Staff, the Company respectfully submits that the Proposal can be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(2).

B. The Company Can Exclude the Proposal Under Rule 14a-8(i)(6) Because the Company Lacks the Power or Authority to Implement the Proposal.

Rule 14a-8(i)(6) permits a company to exclude a shareholder proposal from its proxy materials “if the company would lack the power or authority to implement the proposal.” As discussed above, the Proposal requests that a director who receives less than a majority shareholder vote be removed from the Board immediately; however, the Company lacks the legal authority or practical ability to implement such a mandate. As stated above, in accordance with the WBCL, a director continues to serve until his or her successor is elected and qualified. A director may only be removed by a vote of the shareholders at a meeting called for that purpose or by judicial proceeding, for cause. The Company, acting through its Board, does not have the authority to remove a director under Wisconsin law. There is no amendment of its articles of incorporation or bylaws that the Board can propose to lawfully effect immediate removal of a director, as the Proposal requests, and any such action would be void and ultra vires.

Although the Proposal is vague with respect to means of implementation of the removal mandate, the Company cannot implement the Proposal by means of an amendment to the articles of incorporation or bylaws that, by its very nature, would contravene the WBCL. Further, as stated above, in accordance with the WBCL, a director may only be removed by a company’s shareholders at a meeting or by a court for cause. In either case, removal requires action by third parties over which the Company has no control.

The Staff on numerous occasions has permitted exclusion under Rule 14a-8(i)(6) of similar shareholder proposals that would result in the violation of applicable law because implementation of the proposal exceeds and is outside the power and authority of a company. See, e.g., IDACORP, Inc. (Feb. 13, 2012) (permitting exclusion of a shareholder proposal requesting an amendment to the company’s bylaws that would violate Idaho law); Ball Corp. (Jan. 25, 2010) (permitting exclusion of a shareholder proposal that would violate Indiana law); Schering-Plough Corp. (Mar. 27, 2008) (permitting exclusion of a shareholder proposal that would violate New Jersey law); AT&T, Inc. (Feb. 19, 2008) (permitting exclusion of a shareholder proposal that would violate Delaware law); PG&E Corp. (Feb. 14, 2006) (permitting exclusion of a shareholder proposal requesting implementation of majority voting for directors after the company submitted that such amendments conflicted with a California statute requiring directors to be elected by plurality vote).
For these reasons, and consistent with published positions of the Staff, the Company respectfully submits that the Proposal can be excluded from its 2020 Proxy Materials pursuant to Rule 14a-8(i)(6).

IV. Conclusion

For the reasons stated above, the Company believes it may exclude the Proposal from its 2020 Proxy Materials. The Company requests the Staff’s concurrence in the Company’s view or, alternatively, confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2020 Proxy Materials.

If you have any questions or need additional information, please feel free to contact me at (414) 297-5678. In accordance with Staff Legal Bulletin No. 14F (Oct. 18, 2011), please send your response to this letter by email to pgquick@foley.com.

I would appreciate if the Staff also would send a copy of any response to Ignacio A. Cortina, Executive Vice President, General Counsel and Secretary, Oshkosh Corporation, at ICortina@oshkoshcorp.com.

Very truly yours,

Patrick G. Quick

Enclosures

cc: Ignacio A. Cortina  
Oshkosh Corporation  
John K. Wilson  
Foley & Lardner LLP  
John Chevedden
EXHIBIT A

Proposal; Broker Letter
Mr. Ignacio Cortina  
Executive Vice President, General Counsel and Secretary  
Oshkosh Corporation (OSK)  
2307 Oregon Street, P.O. Box 2566  
Oshkosh, WI 54903-2566  
PH: 920-233-9301  
FX: 920-237-4228

Dear Mr. Cortina,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This proposal is intended to be implement as soon as possible.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to ***

Sincerely,

John Chevedden

cc: Heather A. Kelly <hkelly@oshkoshcorp.com>  
Lynn Handrick <lliebergen@oshkoshcorp.com>  
Lynn Liebergen <lliebergen@oshkoshcorp.com>

August 21, 2019
Proposal [4] – Directors to be Elected by Majority Vote

Shareholders request that our Board of Directors initiate the appropriate process as soon as possible to amend our Company’s articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats.

This proposal includes that a director who receives less than such a majority vote be removed from the board immediately. If such a director has key experience the director can transition to work as a consultant. If the board deems it critical to have such a person as a director, then the board can reappoint the director to the board on a temporary basis and report the basis for its decision in its official report of the annual meeting voting results.

In order to provide shareholders a meaningful role in director elections, our Company’s current director election standard should be changed from a plurality vote standard to a majority vote standard. The majority vote standard is the most appropriate voting standard for director elections where only board nominated candidates are on the ballot. The 2019 Oshkosh annual meeting proxy said that Directors are elected through plurality voting.

This will establish a more meaningful vote standard for board nominees and could lead to improved performance by individual directors and the entire board. Under our Company’s current voting system, a director can be elected with as little as one yes-vote from 68 million eligible votes. In other words a director can be elected if all shareholders oppose the director and one shareholder makes a mistake and checks the wrong box.

Please vote yes:

Directors to be Elected by Majority Vote – Proposal [4]

[The above line – Is for publication.]
John Chevedden, *** sponsors this proposal.

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

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***
September 12, 2019

John R Chevedden

Dear Mr. Chevedden:

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

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than the share quantity listed in the following table in the following security, since July 1, 2018.

<table>
<thead>
<tr>
<th>Security Name</th>
<th>CUSIP</th>
<th>Symbol</th>
<th>Share Quantity</th>
</tr>
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<tr>
<td>Oshkosh Corporation</td>
<td>688239201</td>
<td>OSK</td>
<td>100.000</td>
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</tbody>
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These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-397-9945 between the hours of 8:30 a.m. and 5:00 p.m. Eastern Standard Time (Monday through Friday) and entering my extension 13813 when prompted.

Sincerely,

Stormy Delehanty
Operations Specialist

Our File: W372727-12SEP19